



Queensland

# **Education and Training Legislation Amendment Act 2011**

**Act No. 39 of 2011**





## Queensland

# Education and Training Legislation Amendment Act 2011

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Queensland

## **Education and Training Legislation Amendment Act 2011**

**Act No. 39 of 2011**

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**An Act to amend the Central Queensland University Act 1998, the Education (General Provisions) Act 2006, the Education (Queensland College of Teachers) Act 2005, the Griffith University Act 1998, the James Cook University Act 1997, the Queensland University of Technology Act 1998, the University of Queensland Act 1998, the University of Southern Queensland Act 1998 and the Vocational Education, Training and Employment Act 2000 for particular purposes**

**[Assented to 24 November 2011]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Education and Training Legislation Amendment Act 2011*.

### **2 Commencement**

This Act, other than parts 2 and 5 to 10, commences on a day to be fixed by proclamation.

## **Part 2 Amendment of Central Queensland University Act 1998**

### **3 Act amended**

This part amends the *Central Queensland University Act 1998*.

### **4 Amendment of s 49 (Application of Land Act 1994)**

Section 49(3)—

*omit, insert—*

- ‘(3) Despite the *Land Act 1994*, a trustee lease or sublease for land under that Act that is subject to an operational reserve may be for up to 100 years.



[s 8]

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(2) Section 364—

*insert—*

**‘director**, of a non-State school’s governing body, means—

- (a) if the governing body is a company under the Corporations Act—a person appointed as a director of the governing body; or
- (b) otherwise—a person who is, or is a member of, the executive or management entity, by whatever name called, of the governing body.

**relevant person** means a person mentioned in section 365(1)(a) to (c), 365A(1)(a) to (c), 366(1)(a) to (c) or 366A(1)(a) to (c).

**sexual abuse**, in relation to a relevant person, includes sexual behaviour involving the relevant person and another person in the following circumstances—

- (a) the other person bribes, coerces, exploits, threatens or is violent toward the relevant person;
- (b) the relevant person has less power than the other person;
- (c) there is a significant disparity between the relevant person and the other person in intellectual capacity or maturity.’.

(3) Section 364, definition *employee*, ‘non-State school or’—

*omit.*

## **8 Amendment of s 365 (Obligation to report sexual abuse of person under 18 years at State school)**

- (1) Section 365(1), ‘that any of the following have been sexually abused by another person who is an employee of the school’—

*omit, insert—*

‘in the course of the staff member’s employment at the school, that any of the following has been sexually abused by another person’.

- 
- (2) Section 365—  
*insert—*
- ‘(2A) However, if the first person is the school’s principal, the principal must give a written report about the abuse, or suspected abuse, to a police officer—
- (a) immediately; and
  - (b) if a regulation is in force under subsection (3), as provided under the regulation.
- Maximum penalty—20 penalty units.’
- (3) Section 365(4), ‘a person nominated by the chief executive for the purpose (the *chief executive’s nominee*)’—  
*omit, insert—*  
‘a police officer’.
- (4) Section 365(5)—  
*omit.*
- (5) Section 365—  
*insert—*
- ‘(4A) Subsection (5) applies if the report is about abuse by an employee of a State school.
- ‘(5) The principal or principal’s supervisor must also immediately give a copy of the report to a person nominated by the chief executive for the purpose (the *chief executive’s nominee*).  
Maximum penalty—20 penalty units.’
- (6) Section 365(6), ‘subsection (2)’—  
*omit, insert—*  
‘subsection (2) or (2A)’.

## 9 Insertion of new s 365A

After section 365—

*insert—*

[s 9]

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**‘365A Obligation to report likely sexual abuse of person under 18 years at State school**

- ‘(1) Subsection (2) applies if a staff member of a State school (the *first person*) reasonably suspects, in the course of the staff member’s employment at the school, that any of the following is likely to be sexually abused by another person—
- (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.
- ‘(2) The first person must give a written report about the first person’s suspicion to the school’s principal or the principal’s supervisor—
- (a) immediately; and
  - (b) if a regulation is in force under subsection (4), as provided under the regulation.
- ‘(3) However, if the first person is the school’s principal, the principal must give a written report about the suspicion to a police officer—
- (a) immediately; and
  - (b) if a regulation is in force under subsection (4), as provided under the regulation.
- ‘(4) A regulation may prescribe the particulars the report must include.
- ‘(5) A State school’s principal or a principal’s supervisor must immediately give a copy of a report given to the principal or supervisor under subsection (2) to a police officer.
- ‘(6) Subsection (7) applies if the report is about a suspicion of likely abuse by an employee of a State school.

- 
- ‘(7) The principal or principal’s supervisor must also immediately give a copy of the report to a person nominated by the chief executive for the purpose (the *chief executive’s nominee*).
- ‘(8) A person who makes a report under subsection (2) or (3), or gives a copy of a report under subsection (5) or (7), is not liable, civilly, criminally or under an administrative process, for giving the information contained in the report to someone else.
- ‘(9) Without limiting subsection (8)—
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the given information under an Act, oath, rule of law or practice—the person does not contravene the requirement by giving the information.’.

**10 Amendment of s 366 (Obligation to report sexual abuse of person under 18 years at non-State school)**

- (1) Section 366(1), ‘that any of the following have been sexually abused by another person who is an employee of the school’—
- omit, insert—*
- ‘in the course of the staff member’s employment at the school, that any of the following has been sexually abused by another person’.
- (2) Section 366—
- insert—*
- ‘(2A) However, if the first person is the school’s principal, the principal must give a written report about the abuse, or suspected abuse, to a police officer—
- (a) immediately; and
  - (b) if a regulation is in force under subsection (3), as provided under the regulation.

[s 11]

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Maximum penalty—20 penalty units.

- ‘(2B) If subsection (2A) applies, the principal must also immediately give a copy of the report to a director of the school’s governing body.

Maximum penalty—20 penalty units.’

- (3) Section 366(5), ‘subsection (2), or gives a copy of a report under subsection (4)’—

*omit, insert—*

‘subsection (2) or (2A), or gives a copy of a report under subsection (2B) or (4)’.

- (4) Section 366(7)—

*omit.*

## 11 Insertion of new ss 366A and 366B

Chapter 12, part 10—

*insert—*

### ‘366A Obligation to report likely sexual abuse of person under 18 years at non-State school

- ‘(1) Subsection (2) applies if a staff member of a non-State school (the *first person*) reasonably suspects, in the course of the staff member’s employment at the school, that any of the following is likely to be sexually abused by another person—
- (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.

- 
- ‘(2) The first person must give a written report about the first person’s suspicion to the school’s principal or a director of the school’s governing body—
- (a) immediately; and
  - (b) if a regulation is in force under subsection (5), as provided under the regulation.
- ‘(3) However, if the first person is the school’s principal, the principal must give a written report about the suspicion to a police officer—
- (a) immediately; and
  - (b) if a regulation is in force under subsection (5), as provided under the regulation.
- ‘(4) If subsection (3) applies, the principal must also immediately give a copy of the report to a director of the school’s governing body.
- ‘(5) A regulation may prescribe the particulars the report must include.
- ‘(6) A non-State school’s principal or a director of a non-State school’s governing body must immediately give a copy of a report given to the principal or director under subsection (2) to a police officer.
- ‘(7) A person who makes a report under subsection (2) or (3), or gives a copy of a report under subsection (4) or (6), is not liable, civilly, criminally or under an administrative process, for giving the information contained in the report to someone else.
- ‘(8) Without limiting subsection (7)—
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the given information under an Act, oath, rule of law or practice—the person does not contravene the requirement by giving the information.

[s 12]

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**‘366B Delegation of director’s reporting function under s 366 or 366A**

- ‘(1) Subsection (2) applies if a non-State school’s governing body has only one director.
- ‘(2) The director may delegate, to an appropriately qualified individual, the director’s function.
- ‘(3) Subsection (4) applies if a non-State school’s governing body has more than one director.
- ‘(4) All of the directors may, by unanimous resolution, delegate the directors’ function to an appropriately qualified individual.
- ‘(4A) However, the director or directors must not delegate the function to the principal or any other staff member of the non-State school.
- ‘(5) If a delegate commits an offence against section 366(4), the delegator also commits the offence.
- ‘(6) However, it is a defence for the delegator to prove the delegator took all reasonable steps to ensure the delegate complied with the section.
- ‘(7) In this section—  
*appropriately qualified*, to perform a director’s function, means having the qualifications, experience or standing appropriate to perform the function.  
*function*, of a director of a non-State school’s governing body, means the director’s function of receiving a report and giving a copy of the report to a police officer under section 366 or 366A.’.

**12 Amendment of sch 4 (Dictionary)**

Schedule 4—

*insert—*

‘*director*, for chapter 12, part 10, see section 364.’.

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## **Part 4**                      **Amendment of Education (Queensland College of Teachers) Act 2005**

### **13**      **Act amended**

This part amends the *Education (Queensland College of Teachers) Act 2005*.

### **14**      **Amendment of s 9 (Eligibility for provisional registration)**

Section 9(3), ‘and’—  
*omit, insert—*  
‘to’.

### **15**      **Insertion of new ch 2, pt 1A**

Chapter 2—  
*insert—*

## **‘Part 1A**                      **Eligibility declarations**

### **‘Division 1**                      **Preliminary**

#### **‘12B**      **Purpose of pt 1A**

‘The purpose of this part is to allow a person who is an eligibility applicant to apply to the college for a declaration (*eligibility declaration*) that the person is not an excluded person.

#### **‘12C**      **Application of part 1A**

‘This part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

[s 15]

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## **‘12D Definitions for pt 1A**

‘In this part—

*eligibility applicant* means a person who—

- (a) is, or has been, convicted of a serious offence, other than a person whose conviction for the offence is overturned on appeal; and
- (b) is not subject to an imprisonment order for the offence; and
- (c) is not a relevant excluded person.

## **‘Division 2 Eligibility application**

### **‘12E Application for eligibility declaration**

- ‘(1) An eligibility applicant may make an application (*eligibility application*) to the college for an eligibility declaration.
- ‘(2) However, the applicant can not make an eligibility application within 2 years after making a previous eligibility application that has been refused, unless the decision to refuse the previous eligibility application was based on wrong or incomplete information.
- ‘(3) The eligibility application must be—
  - (a) in the approved form; and
  - (b) signed by the applicant; and
  - (c) accompanied by each of the following—
    - (i) the prescribed fee;
    - (ii) the criminal history check fee;
    - (iii) other documents or information, identified in the approved form, reasonably required by the college to decide the application.
- ‘(4) The approved form—
  - (a) must include provision for—

- 
- (i) identifying information about the applicant; and
  - (ii) certification by a prescribed person that the prescribed person has sighted the applicant's proof of identity documents; and
- (b) may require disclosure of police information about the applicant.
- '(5) Information contained in or accompanying the application must, if required by the college, be verified by statutory declaration.

'(6) In this section—

*commissioner for declarations* means commissioner for declarations under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

*identifying information*, about an applicant, means information that identifies the applicant.

*prescribed person* means a justice, commissioner for declarations, lawyer or police officer.

*proof of identity documents*, for an eligibility applicant, means the documents, relating to proof of the identity of the applicant, prescribed under a regulation.

## '12F Decision on eligibility application

- '(1) The college must refuse to grant the eligibility application unless the college is satisfied it is an exceptional case in which it would not harm the best interests of children to issue the eligibility declaration.
- '(2) The college may obtain information about the applicant under sections 14 to 15D as if the application were an application for registration or permission to teach.
- '(3) In deciding whether there is an exceptional case, the college must have regard to the information mentioned in subsection (2).

[s 15]

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- ‘(4) In having regard to the criminal history of the applicant, the college must consider the following matters relating to information about the commission, or alleged or possible commission, of an offence by the applicant—
- (a) when the offence was committed, is alleged to have been committed or may possibly have been committed;
  - (b) the nature of the offence and its relevance to the duties of a teacher;
  - (c) any penalty imposed by the court and the court’s reasons for the penalty.
- ‘(5) Also, in deciding whether there is an exceptional case, the college must have regard to the following—
- (a) documents or information contained in the applicant’s eligibility application;
  - (b) if the applicant has been refused registration in another jurisdiction or has held registration in another jurisdiction that has been suspended or cancelled—
    - (i) the reason for the refusal, suspension or cancellation; and
    - (ii) the way in which the refusal, suspension or cancellation relates to the applicant’s suitability to teach;
  - (c) if the applicant has had the applicant’s employment terminated by an employing authority for a school for a reason relating to the applicant’s suitability to teach—the reason for the termination;
  - (d) anything else the college considers relevant in deciding whether an exceptional case exists.

*Example of an exceptional case—*

The eligibility applicant was convicted, at 17 years, of unlawful carnal knowledge of his 15 year girlfriend and has not been convicted of a further serious offence.

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## **‘12G Grant or refusal to grant eligibility application**

- ‘(1) If the eligibility application is granted, the college must issue an eligibility declaration to the eligibility applicant.
- ‘(2) If the application is refused, the college must give the applicant a notice stating the reasons for the refusal.
- ‘(3) If the college considers the applicant has not been convicted of a serious offence, the college must give notice to the applicant stating the following—
  - (a) the college may issue an eligibility declaration only if the applicant has been convicted of a serious offence;
  - (b) the college does not consider the applicant has been convicted of a serious offence and, for that reason, the college can not issue an eligibility declaration to the applicant;
  - (c) that, if the applicant is not an excluded person for another reason, the applicant may apply for registration or permission to teach;
  - (d) that the application will not be further dealt with by the college.
- ‘(4) There is no review or appeal under this Act in relation to a decision of the college under this section to refuse to grant an eligibility application.

## **‘Division 3 Withdrawal of eligibility application**

### **‘12H Withdrawal by notice**

- ‘(1) An eligibility applicant may, by notice, withdraw the applicant’s eligibility application at any time before the college—
  - (a) issues an eligibility declaration; or
  - (b) gives the applicant a notice, relating to the application, under section 12G(2) or (3).
- ‘(2) The notice must be—

[s 15]

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- (a) signed by the eligibility applicant; and
- (b) given to the college.

**‘12I Deemed withdrawal—identity of eligibility applicant not established**

‘An eligibility applicant is taken to have withdrawn the applicant’s eligibility application if—

- (a) the college gives the applicant a notice—
  - (i) asking the applicant to provide, within a reasonable stated time, stated information that the college reasonably needs to establish the applicant’s identity; and
  - (ii) warning the applicant that, if the applicant does not comply with the notice, the applicant’s application may be taken to have been withdrawn; and
- (b) the applicant does not comply with the notice within the stated time; and
- (c) the college can not establish with certainty the applicant’s identity; and
- (d) the college gives the applicant a notice stating that the applicant is taken to have withdrawn the application.

**‘12J Deemed withdrawal—notice not complied with**

‘An eligibility applicant is taken to have withdrawn the applicant’s eligibility application if—

- (a) the college gives the applicant a notice asking the applicant to provide, within a reasonable stated time—
  - (i) stated information, including by way of a submission, about a stated matter that the college reasonably believes is relevant to the application; or
  - (ii) a consent that the college reasonably believes is relevant to the application; and

- (b) the notice includes a warning that, if the applicant does not comply with the notice, the applicant's application may be taken to have been withdrawn; and
- (c) the applicant does not comply with the notice within the stated time; and
- (d) the college gives the applicant a notice stating that the applicant is taken to have withdrawn the application.

#### **'12K Deemed withdrawal—other circumstances**

'An eligibility applicant is taken to have withdrawn the applicant's eligibility application if the applicant—

- (a) is charged with a serious offence; or
- (b) becomes an excluded person.

### **'Division 4                      Miscellaneous**

#### **'12L Revocation of decision to refuse eligibility declaration**

- '(1) The college may revoke a decision to refuse an eligibility application and issue an eligibility declaration if—
  - (a) the college is satisfied the decision on the application was based on wrong or incomplete information; and
  - (b) based on the correct or complete information, the college decides under section 12F that the college may issue the eligibility declaration.
- '(2) The college may exercise the power under subsection (1) on—
  - (a) the college's own initiative; or
  - (b) application by the eligibility applicant whose eligibility application was refused.

[s 16]

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**‘12M Automatic expiry of eligibility declaration**

- ‘(1) This section applies to an eligibility declaration if—
- (a) the holder of the declaration is not an approved teacher; and
  - (b) after the declaration is issued, the holder—
    - (i) is charged with a serious offence; or
    - (ii) becomes an excluded person.
- ‘(2) This section also applies to an eligibility declaration if—
- (a) the holder of the declaration is an approved teacher; and
  - (b) after the declaration is issued, the holder becomes an excluded person.
- ‘(3) The eligibility declaration expires on the day the holder is charged with the offence or becomes an excluded person.’.

**16 Amendment of s 14 (Application for registration or permission to teach)**

Section 14(10), definition *criminal history check fee*—  
*omit.*

**17 Amendment of s 15 (Obtaining police information about applicant)**

Section 15(6A)(c) and (6B), ‘disqualification order or’—  
*omit.*

**18 Amendment of s 44 (Amending or replacing certificate of registration or certificate of permission to teach)**

Section 44(4)—  
*omit, insert—*

- ‘(4) In this section—

---

*relevant notice* means a notice under section 41(3), 42(2) or 43(3).’.

**19 Amendment of s 48 (Effect of charge for disqualifying offence, temporary offender prohibition order or interim sexual offender order)**

(1) Section 48, heading, ‘disqualifying’—

*omit, insert—*

‘**serious**’.

(2) Section 48(1)—

*omit, insert—*

‘(1) This section applies if, after the relevant commencement, an approved teacher is charged with a serious offence.

*Note—*

See also section 343 (Effect of serious offence charge before relevant commencement).’.

**20 Amendment of s 50 (Requirement to give notice of suspension)**

Section 50(2)(b)—

*omit, insert—*

‘(b) the reasons for the suspension and the evidence or other material on which the suspension was based;’.

**21 Amendment of s 52 (When suspension ends)**

Section 52(a), ‘102,’—

*omit.*

**22 Replacement of ss 56 and 57**

Sections 56 and 57—

*omit, insert—*

[s 22]

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## **‘56 Cancellation in particular circumstances**

‘(1) This section applies if, after the relevant commencement, an approved teacher—

- (a) is convicted of a serious offence; or
- (b) becomes a relevant excluded person.

*Note—*

See also section 344 (Effect of serious offence conviction before relevant commencement).

‘(2) The college must, as soon as practicable after it becomes aware of a matter mentioned in subsection (1), cancel the teacher’s registration or permission to teach.

‘(3) The college must immediately give notice to the teacher of the cancellation.

‘(4) The notice must state that—

- (a) there is no appeal under this Act or the QCAT Act in relation to the cancellation of the teacher’s registration or permission to teach; and
- (b) unless subsection (c) applies, the teacher can never be granted registration or permission to teach; and
- (c) the teacher can apply for registration or permission to teach if the cancellation of the teacher’s registration or permission to teach was under this section and any of the following apply in relation to the teacher—
  - (i) the conviction of the teacher for the serious offence is overturned on appeal;
  - (ii) the decision or order of the court resulting in the teacher becoming a relevant excluded person—
    - (A) is overturned on appeal; and
    - (B) was not made in relation to a conviction for a serious offence;
  - (iii) an eligibility declaration is issued to the teacher under part 1A.

- 
- ‘(5) A copy of the notice must be given to the employing authority for, and the principal of, each school at which the teacher is employed.
  - ‘(6) There is no appeal under this Act or the QCAT Act against the cancellation under this section of the teacher’s registration or permission to teach.
  - ‘(7) In this section—  
*appeal* includes review.

### **‘57 Effect of appeal on cancellation**

- ‘(1) This section applies if—
  - (a) the registration or permission to teach of an approved teacher is cancelled by the college under section 56; and
  - (b) any of the following is appealed—
    - (i) the conviction of the teacher for the serious offence;
    - (ii) the decision or order of the court resulting in the teacher becoming a relevant excluded person.
- ‘(2) The cancellation remains in effect during the appeal.
- ‘(3) The person is no longer an excluded person in relation to the cancellation if—
  - (a) the conviction is overturned on appeal; or
  - (b) the decision or order—
    - (i) is overturned on appeal; and
    - (ii) was not made in relation to a conviction for a serious offence.’.

### **23 Omission of ch 2, pt 6, div 4 (Disqualification order)**

Chapter 2, part 6, division 4—

*omit.*

[s 24]

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**24 Amendment of s 69 (Requirements for disclosure of changes in police information)**

Section 69(3)(c) and (4), ‘disqualification order or’—  
*omit.*

**25 Amendment of s 75 (Commissioner of police must notify changes in police information)**

Section 75(1)(a)(iv), (3)(c)(iii) and (d), ‘disqualification order or’—  
*omit.*

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

Section 80(7)—  
*omit.*

**27 Amendment of s 92 (Grounds for disciplinary action)**

- (1) Section 92(1)(a)—  
*omit.*
- (2) Section 92(1)(b), from ‘because’ to ‘offender order’—  
*omit.*
- (3) Section 92(1)(b), note, ‘as mentioned in this paragraph’—  
*omit.*
- (4) Section 92(2)(a)(i) and (ii), ‘disqualifying’—  
*omit, insert—*  
‘serious’.
- (5) Section 92(5), definition *dealt with*, ‘in relation to a charge of a disqualifying offence,’—  
*omit, insert—*

---

‘in relation to a charge against a relevant teacher for a serious offence.’.

**28 Amendment of s 93 (Disciplinary matters)**

(1) Section 93(a)—

*omit.*

(2) Section 93(b) and (c)—

*renumber* as section 93(a) and (b).

**29 Omission of s 94 (Show cause matters)**

Section 94—

*omit.*

**30 Amendment of s 95 (PP&C matters)**

Section 95(1)(a)(ii), ‘section 92(2)(a), (b) or (c)’—

*omit, insert—*

‘section 92(2)(a) or (b)’.

**30A Amendment of s 97 (Requirement for college to start disciplinary proceedings)**

Section 97(2)(a), ‘show cause matter or’—

*omit.*

**30B Omission of ch 5, pt 2 (Show cause matters dealt with by QCAT)**

Chapter 5, part 2—

*omit.*

[s 30C]

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**30C Amendment of s 111A (PP&C committee may refer matter to QCAT)**

- (1) Section 111A(1)(a), ‘a teacher’—  
*omit, insert—*  
‘a relevant teacher’.
- (2) Section 111A(1)(b)—  
*omit, insert—*  
‘(b) if the ground is established—
- (i) for an approved teacher—disciplinary action mentioned in section 160(2)(d) to (h) or (j) should be taken against the teacher; or
  - (ii) for a former approved teacher—disciplinary action mentioned in section 161(2)(b) or (c) should be taken against the teacher.’.

**30D Amendment of s 123 (Disciplinary action by PP&C committee)**

- Section 123(2)(b)—  
*omit, insert—*  
‘(b) refer the matter to QCAT if the committee believes—
- (i) for an approved teacher—disciplinary action mentioned in section 160(2)(d) to (h) or (j) should be taken against the teacher; or
  - (ii) for a former approved teacher—disciplinary action mentioned in section 161(2)(b) or (c) should be taken against the teacher;’.

**30E Amendment of s 160 (Decision about disciplinary action against approved teacher)**

- Section 160(2)(j), from ‘teach for’—  
*omit, insert—*

‘teach for a stated period from the day the order is made or indefinitely;

*Note—*

See also section 350 (Decision about disciplinary action against approved teacher).’.

**30F Amendment of s 161 (Decision about disciplinary action against former approved teacher)**

Section 161(2)(c), from ‘teach for’—

*omit, insert—*

‘teach for a stated period from the day the order is made or indefinitely;

*Note—*

See also section 352 (Decision about disciplinary action against former approved teacher).’.

**30G Amendment of s 288 (Register of approved teachers to be kept)**

Section 288(5)(e)—

*omit.*

**30H Insertion of new ch 12, pt 13**

Chapter 12—

*insert—*

**‘Part 13 Transitional provisions for Education and Training Legislation Amendment Act 2011**

**‘342 Existing applications by new excluded persons**

‘(1) This section applies if—

[s 30H]

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- (a) before the relevant commencement, a person applied to the college for—
    - (i) full or provisional registration or permission to teach; or
    - (ii) the renewal of full registration or permission to teach; or
    - (iii) the restoration of the person’s full registration that has ended; and
  - (b) on the relevant commencement, the application has not been decided or withdrawn; and
  - (c) the person is a new excluded person.
- ‘(2) However, this section does not apply to an approved teacher mentioned in section 344(5).
- ‘(3) The application is taken to be withdrawn.
- ‘(4) The college must—
- (a) immediately give notice to the person of the withdrawal; and
  - (b) refund each fee accompanying the application; and
  - (c) if the application is an application mentioned in subsection (1)(a)(ii) or (iii)—give a copy of the notice to the employing authority for, and the principal of, each school at which the teacher is employed.
- ‘(5) The notice must state that—
- (a) the application is withdrawn; and
  - (b) if the person is an eligibility applicant—the person may apply for an eligibility declaration under chapter 2, part 1A.
- ‘(6) In this section—
- new excluded person*** means a person who was not an excluded person immediately before the relevant commencement but is an excluded person on the relevant commencement.

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**‘343 Effect of serious offence charge before relevant commencement**

- ‘(1) This section applies if—
- (a) before the relevant commencement, an approved teacher was charged with a serious offence; and
  - (b) on the relevant commencement—
    - (i) the charge has not been dealt with; and
    - (ii) the teacher’s registration or permission to teach has not been suspended under section 48.
- ‘(2) The provisions of this Act as in force from the relevant commencement apply in relation to the teacher.
- ‘(3) In this section—
- dealt with*, in relation to a charge against an approved teacher for a serious offence, means any of the following—
- (a) the teacher has been acquitted of the charge;
  - (b) the charge has been withdrawn or dismissed;
  - (c) a nolle prosequi or no true bill has been presented in relation to the charge.

**‘344 Effect of serious offence conviction before relevant commencement**

- ‘(1) Subsection (2) applies if—
- (a) before the relevant commencement—
    - (i) an approved teacher was convicted of a serious offence; and
    - (ii) the college was not aware of the conviction; and
  - (b) on the relevant commencement, the conviction has not been overturned on appeal.
- ‘(2) The college must, as soon as practicable after it becomes aware of the conviction—

[s 30H]

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- (a) cancel the teacher's registration or permission to teach; and
  - (b) comply with section 56(3) to (5) in relation to the cancellation.
- '(3) Subsection (4) applies if—
- (a) before the relevant commencement—
    - (i) an approved teacher was convicted of a serious offence for which an imprisonment order was made; and
    - (ii) the college was aware of the conviction; and
  - (b) on the relevant commencement, neither of the following has been overturned on appeal—
    - (i) the conviction;
    - (ii) the imprisonment order.
- '(4) The college must, as soon as practicable after the relevant commencement—
- (a) cancel the teacher's registration or permission to teach; and
  - (b) comply with section 56(3) to (5) in relation to the cancellation.
- '(5) Subsection (6) applies if—
- (a) before the relevant commencement—
    - (i) an approved teacher was convicted of a serious offence for which no imprisonment order was made; and
    - (ii) the college was aware of the conviction; and
  - (b) on the relevant commencement, the conviction has not been overturned on appeal.
- '(6) The college must, as soon as practicable after the relevant commencement, comply with section 345.

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**‘345 Show cause notice**

- ‘(1) If section 344(5) applies in relation to an approved teacher, the college must give the approved teacher a notice under this section (a *show cause notice*).
- ‘(2) The show cause notice must state the following—
- (a) that the college proposes to cancel the registration or permission to teach (the *proposed action*);
  - (b) that the college is required under this section to give the show cause notice;
  - (c) an outline of the facts and circumstances forming the basis for giving the notice;
  - (d) an invitation to the teacher to show within a stated period (the *show cause period*) why the proposed action should not be taken;
  - (e) that, until the college issues an eligibility notice under section 347(2) or gives the teacher an information notice under section 347(3)—
    - (i) the teacher’s registration or permission to teach continues; and
    - (ii) the teacher is not an excluded person.
- ‘(3) The show cause period must be a period ending at least 30 days after the show cause notice is given to the teacher.
- ‘(4) Until the college issues an eligibility notice under section 347(2) or gives the teacher an information notice under section 347(3)—
- (a) the teacher’s registration or permission to teach continues; and
  - (b) the teacher is not an excluded person.

**‘346 Representations about show cause notice**

- ‘(1) The approved teacher may make written representations about the show cause notice to the college during the show cause period.

[s 30H]

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- ‘(2) The college must consider all written representations (the *accepted representations*) made under subsection (1).

**‘347 Decision after considering accepted representations**

- ‘(1) The college must cancel the approved teacher’s registration unless, after considering the accepted representations for the show cause notice and the matters mentioned in section 12F(2) to (4), the college is satisfied it is an exceptional case in which it would not harm the best interests of children for the proposed action not to be taken.
- ‘(2) If college decides not to take the proposed action, the college must issue an eligibility declaration to the approved teacher.
- ‘(3) If the college decides to take the proposed action, the college must give the approved teacher an information notice.

**‘348 Grounds for disciplinary action**

- ‘(1) This section applies if, before the relevant commencement—
- (a) a relevant teacher’s registration or permission to teach was suspended under section 48 because the teacher was charged with a disqualifying offence; and
  - (b) either—
    - (i) the charge was dealt with; or
    - (ii) the teacher was convicted of an offence other than an indictable offence.
- ‘(2) Section 92 as in force immediately before the relevant commencement continues to apply in relation to the teacher.
- ‘(3) In this section—
- dealt with*, in relation to a charge against a relevant teacher for a serious offence, means any of the following—
- (a) the teacher has been acquitted of the charge;
  - (b) the charge has been withdrawn or dismissed;

- 
- (c) a nolle prosequi or no true bill has been presented in relation to the charge.

*disqualifying offence* see the Commissioner's Act, section 168.

**'349 QCAT show cause notice given but not dealt with**

- '(1) Subsection (2) applies if—
- (a) before the relevant commencement, QCAT gave a notice under section 101 to a relevant teacher; and
  - (b) on the relevant commencement, QCAT has not made a decision under section 102 or 103.
- '(2) On the relevant commencement—
- (a) the notice is taken to be withdrawn; and
  - (b) any disciplinary action started under chapter 5, part 2 is taken to be discontinued.

*Note—*

See section 344 (Effect of serious offence conviction before relevant commencement).

**'350 Decision about disciplinary action against approved teacher**

- '(1) Subsection (2) applies if—
- (a) before the relevant commencement—
    - (i) a general matter in relation to an approved teacher was referred to QCAT under section 97(2); or
    - (ii) a PP&C matter in relation to an approved teacher was referred to QCAT under section 111A(2) or 123(2)(b); and
  - (b) on the relevant commencement, QCAT has not made a decision under section 160.

[s 30I]

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- ‘(2) Section 160 as in force immediately before the relevant commencement continues to apply in relation to the approved teacher.

**‘351 Referral to QCAT under ss 111A and 123**

- ‘(1) This section applies if, before the relevant commencement, a PP&C matter in relation to a former approved teacher was referred to QCAT under section 111A(2) or 123(2)(b).
- ‘(2) Sections 111A(1)(b) and 123(2)(b) are taken always to have referred to disciplinary action mentioned in section 161(2)(b) or (c).

**‘352 Decision about disciplinary action against former approved teacher**

- ‘(1) Subsection (2) applies if—
- (a) before the relevant commencement—
- (i) a general matter in relation to a former approved teacher was referred to QCAT under section 97(2); or
- (ii) a PP&C matter in relation to a former approved teacher was referred to QCAT under section 111A(2) or 123(2)(b); and
- (b) on the relevant commencement, QCAT has not made a decision under section 161.
- ‘(2) Section 161 as in force immediately before the relevant commencement continues to apply in relation to the former approved teacher.’.

**30I Amendment of sch 1 (Decisions for which information notice must be given)**

Schedule 1—

*insert—*

- ‘347(3) college’s decision to cancel registration or permission to teach for a conviction for a serious offence’.

### **30J Amendment of sch 3 (Dictionary)**

- (1) Schedule 3, definitions *disqualification order*, *disqualifying offence*, *excluded person*, *relevant excluded person*, *review notice* and *show cause matter—*

*omit.*

- (2) Schedule 3—

*insert—*

‘*accepted representations* see section 346(2).

*criminal history check fee* means the criminal history check fee prescribed under a regulation.

*eligibility applicant* see section 12D.

*eligibility application*, for chapter 2, part 1A, see section 12E(1).

*eligibility declaration* see section 12B.

*excluded person* means a person—

- (a) who is a relevant excluded person, other than a person mentioned in section 57(3); or
- (b) who is, or has been, convicted of a serious offence other than—
- (i) a person to whom an eligibility declaration is issued, and not revoked, under chapter 2, part 1A; or
- (ii) a person mentioned in section 57(3)(a); or
- (c) who is prohibited from reapplying for registration or permission to teach by a disciplinary order.

*proposed action* see section 345(2)(a).



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**32 Amendment of s 53 (Application of Land Act 1994)**

Section 53(3)—

*omit, insert—*

- ‘(3) Despite the *Land Act 1994*, a trustee lease or sublease for land under that Act that is subject to an operational deed of grant in trust may be for up to 100 years.
- ‘(4) Subsection (5) applies if the purpose for which land was granted in trust under the *Land Act 1994* includes a reference to ‘university’.
- ‘(5) The purpose is taken to include anything that is consistent with the university’s functions under section 5.
- ‘(6) Subsections (4) and (5) apply whether the land was granted in trust before or after the commencement of this section.
- ‘(7) In this section—  
*operational deed of grant in trust* see the *Land Act 1994*, section 61(6).’.

**Part 6 Amendment of James Cook University Act 1997**

**33 Act amended**

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

**34 Amendment of s 49 (Application of Land Act 1994)**

Section 49(3)—

*omit, insert—*

- ‘(3) Despite the *Land Act 1994*, a trustee lease or sublease for land under that Act that is subject to an operational reserve or operational deed of grant in trust may be for up to 100 years.







- ‘(6) Subsections (4) and (5) apply whether the reserve was dedicated before or after the commencement of this section.
- ‘(7) In this section—  
*operational reserve* see the *Land Act 1994*, schedule 6.’.

## **Part 10                      Amendment of Vocational Education, Training and Employment Act 2000**

### **41        Act amended**

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

### **42        Amendment of s 218E (Functions of a statutory TAFE institute)**

Section 218E(3)

*omit, insert—*

- ‘(3) In performing its functions, the principal objective of a statutory TAFE institute is to be efficient and effective in providing vocational education and training services, including vocational education and training services provided—
- (a) under an agreement with the chief executive under section 218S; or
  - (b) as community service obligations.
- ‘(3A) It is also an objective of a statutory TAFE institute to be commercially successful in carrying on its activities.’.

### **43        Amendment of ch 6A, pt 3, div 4 hdg**

Chapter 6A, part 3, division 4, heading, ‘Dividends’—

[s 44]

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*omit, insert—*

**‘Returns’.**

**44 Amendment of s 218W (Payment of dividends)**

- (1) Section 218W, heading, ‘dividends’—

*omit, insert—*

**‘returns’.**

- (2) Section 218W(3), (5)(b), (6) and (7), ‘dividend’—

*omit, insert—*

‘return’.

- (3) Section 218W(6), ‘profits’—

*omit, insert—*

‘surpluses’.

**45 Amendment of s 218X (Interim dividends)**

- (1) Section 218X, heading, ‘dividends’—

*omit, insert—*

**‘returns’.**

- (2) Section 218X(1) and (3)(b), ‘dividend’—

*omit, insert—*

‘return’.

- (3) Section 218X(4), ‘profit’—

*omit, insert—*

‘surplus’.

**46 Amendment of s 218Y (Dividend payment for financial year in which TAFE institute becomes a statutory TAFE institute)**

- (1) Section 218Y, heading, ‘Dividend’—

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*omit, insert—*

**‘Return’.**

- (2) Section 218Y, ‘dividend’—

*omit, insert—*

‘return’.

**47 Amendment of s 218Z (Interim dividend for financial year in which TAFE institute becomes a statutory TAFE institute)**

Section 218Z, ‘dividend’—

*omit, insert—*

‘return’.

**48 Amendment of s 219B (Notice of suspected insolvency because of notice or direction)**

- (1) Section 219B, heading, ‘suspected insolvency’—

*omit, insert—*

**‘concern about financial viability’.**

- (2) Section 219B(1)(b), ‘suspects that it will or may become insolvent’—

*omit, insert—*

‘is concerned about its financial viability’.

- (3) Section 219B(1)(c), ‘the suspected insolvency’—

*omit, insert—*

‘its concern’.

- (4) Section 219B(2), (4)(a)(i) and (5), ‘suspicion’—

*omit, insert—*

‘concern’.

[s 49]

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## **49 Amendment of sch 3 (Dictionary)**

Schedule 3—

*insert—*

***‘return***, for a surplus of a statutory TAFE institute, means a part of the institute’s surplus.’.

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