

EDUCATION (MISCELLANEOUS AMENDMENTS) BILL 2002

EXPLANATORY NOTES

SHORT TITLE OF THE BILL

The short title of the Bill is the Education (Miscellaneous Amendments) Bill 2002.

POLICY OBJECTIVES OF THE BILL AND REASONS FOR THOSE OBJECTIVES

The Education (Miscellaneous Amendments) Bill 2002 amends eleven Acts relating to different areas of the Queensland education portfolio. It does not create a new legislative regime. As a result there are a number of unrelated primary policy objectives of the Bill.

The first primary policy objective of the Bill is to remedy costly and impractical arrangements in the current processes for filling casual vacancies on the governing bodies of Queensland universities.

The second primary policy objective of the Bill is for the Department of Education to assist the Queensland Government in meeting its commitment to the National Competition Principles Agreement. This will be achieved by amending the *Education (General Provisions) Act 1989* to remove a restriction on competition that has been identified during a review of all education legislation.

The third primary policy objective of the Bill is to amend the *Education (Overseas Students) Act 1996* to enable the Department of Education to meet certain obligations prescribed at a Federal level as part of a nationally consistent scheme to regulate the education and training industry for overseas students.

The fourth primary policy objective of the Bill is to extend the inquiry power of the Board of Teacher Registration (the Board) to increase the Board's power to inquire into events during a teacher's prior registration. The extension of this investigative power will enable the Board to commence an inquiry irrespective of how many years have passed since the

registration ended to establish whether or not a person is fit for restoration to the register. This policy is in the interests of protecting children from harm and protecting the integrity of the Queensland teacher register.

The fifth primary policy objective of the Bill is to address the need for change in the structure and organisation of Griffith University. Currently the University has several Colleges of the University in separate locations. These Colleges are to be incorporated as part of the overarching University structure.

The sixth primary policy objective of the Bill is to ensure that the new accreditation and funding regime applying to non-state schools in Queensland preserves in full the entitlements of non-state schools secured under previous legislative arrangements and that the Non-State Schools Accreditation Board can administer the regime in an efficient and responsive manner.

The seventh policy objective of the Bill is to ensure that the parents of children participating in the 2003 preparatory year trial will not be in breach of the compulsory attendance provisions of the *Education (General Provisions) Act 1989* in those cases where children will turn six during the course of their participation in the trial.

The Department of Education considers that these primary policy objectives will facilitate:

- an enhancement in the corporate governance fabric of Queensland universities, in particular the transparency of processes for filling casual vacancies on the governing bodies of the universities;
- progress towards the Queensland Government's compliance with the Competition Principles Agreement, endorsed under the National Competition Policy arrangements, which committed the Queensland Government to review and reform, if necessary, any legislation that restricts competition;
- recognition of Queensland's commitment to the coordinated regulation of the education and training industry for overseas students through the interaction of complementary State and Commonwealth law, to ensure the continuing benefits that the education and training export industry brings to Australia;
- the conduct of investigations, not limited by any time constraints, for the purpose of investigating events that occurred during a teacher's former registration to add support to the department's

commitment to the protection of children and the integrity of the Queensland teacher register;

- the resolution of unequal representation currently experienced by staff and students of the Griffith University Colleges with respect to the University Council and for students of the Griffith University Colleges with respect to the University student council and the integration of the Griffith University Colleges as campuses of Griffith University;
- a smooth transition for non-state schools to a new regulatory environment and clarified procedures to apply to the Non-State Schools Accreditation Board and non-state schools; and
- a successful preparatory year trial that does not place parents whose children participate in the preparatory year trial at risk of breaching their legislative obligations in respect of compulsory school attendance and that is not administratively onerous for parents and schools participating in the trial.

In addition, the Bill makes minor amendments to the *Queensland University of Technology Act 1998*, the *University of the Sunshine Coast Act 1998* and the *Education (General Provisions) Act 1989*. The amendment to the *Queensland University of Technology Act 1998* recognises the large number of part-time academic and general staff employed by the university by extending them the right to vote in, and stand for, elections of the university Council. The amendment to the *University of the Sunshine Coast Act 1998* clarifies that part-time and full-time academic and general staff are eligible to vote in, and stand for, elections of the university Council. The other minor amendments amend the universities legislation to bring consistency to terminology used. The *Education (General Provisions) Act 1989* is amended to correct an inconsistency in section numbering identified by the Office of Queensland Parliamentary Counsel (OQPC). On the recommendation of OQPC the Bill also amends each of the Acts being amended by the Bill to define the term indictable offence more accurately.

HOW THE POLICY OBJECTIVES WILL BE ACHIEVED

The first primary policy objective of the Bill will be achieved by inserting new provisions into each of the University Acts relating to the way in which casual vacancies on the governing bodies of the universities are to be filled. The new provisions whilst similar for each act are not identical due to the fact that the universities have requested specific

arrangements to suit their particular needs and circumstances. Generally the amendments allow for the filling of casual vacancies by providing for the University Council to appoint the candidate who came second in the most recent ballot for the vacant office. The intention of these amendments is to make the filling of casual vacancies on the governing bodies of the universities more efficient and cost-effective and to ensure that representation on the governing bodies of the universities is maintained through swifter appointment processes.

The Department of Education's National Competition Policy (NCP) review identified section 144 of the *Education (General Provisions) Act 1989* as being anti-competitive. The NCP review identified that the section deters new entrants to the market for overseas curriculum because it does not set out the conditions that must be met before an approval to operate will be granted. Currently the Governor in Council may set conditions on an approval. But the NCP review recommended that some conditions upon which the approval of the Governor in Council will be based should be publicly available. The second primary policy objective of the Bill will be achieved by amending section 144 of the *Education (General Provisions) Act 1989* to include matters that the Minister must consider, in relation to an application to operate, before the Minister may recommend the new entrant to the Governor in Council for approval to operate. The amendment to section 144 will also prescribe conditions of which the Governor in Council must be satisfied, before approving the establishment and operation of a provider of overseas curriculum.

The Governor in Council will retain the power to set further conditions on an IEI's approval where an application to operate indicates that further conditions may be necessary for the efficient and sustained operation of the institution.

The third primary policy objective will be achieved by amending the *Education (Overseas Students) Act 1996* to insert a power allowing the inspection of the premises of providers of education and training to overseas students and a power to charge a fee for the inspection. In 2000 the Commonwealth passed the *Education Services for Overseas Students Act 2000* (C'th) (the ESOS Act). Part 4, sections 33-44 of the ESOS Act prescribe the development of a National Code. In accordance with the ESOS Act the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* (the National Code) was developed in consultation with State and industry representatives and came into effect on 4 June 2001. The National Code requires that State registering authorities, responsible for approving providers for registration, must inspect the premises in which a provider

delivers, or intends to deliver, its courses. There is no head of power in the *Education (Overseas Students) Act 1996* (Qld) providing for the Queensland registering authority (the Department of Education) to conduct inspections of providers' premises. The advice of Crown Law was sought in relation to this matter. Crown Law advised that amendment of the Act was necessary to enable the registering authority to fulfil its obligations under the National Code.

The fourth primary policy objective concerns the protection of children in Queensland schools from harm and will be achieved by amending the *Education (Teacher Registration) Act 1988*. The *Education (Teacher Registration) Act 1988* establishes the Board of Teacher Registration (the BTR) and provides for its functions and powers. The BTR is responsible for registering teachers wishing to obtain employment in state and non-state schools. The Criminal Justice Commission Report, *Safeguarding Students: Minimising the Risk of Sexual Misconduct* (the Report) recommended an amendment to section 50 of the *Education (Teacher Registration) Act 1988*. The recommendation was to amend section 50(3) to extend the BTR's power of inquiry into former registrants from one year after their registration has ceased, to two years. However, it is recognised that relevant information about events during a teacher's registration may only become known to the BTR many years after the teacher's registration has ended. In recognition of this the amendment extends indefinitely the time in which an inquiry may be commenced in excess of the two years recommended in the Report. This extension is justified in the interests of providing mechanisms to protect children from harm. Any inquiry conducted by the Board under section 50(3) into a previously registered teacher must be within the parameters set by section 50(2) and the events must have occurred during the time the person was a registered teacher and must be in the public interest.

The fifth primary policy objective will be achieved by making a number of amendments to the *Griffith University Act 1998*. Currently the University is made up of the Griffith University Nathan campus, the Mt Gravatt campus, the Logan campus and three Colleges of the University. The University wishes to consolidate its identity by dissolving the Colleges so that they operate as campuses of the University rather than having separate identities as Colleges. Students and staff of the Colleges will no longer be excluded from voting in University Council elections nor from standing for office. Further, Griffith University wishes to recognise the communities that support the three separate locations of the University campuses. To achieve this the functions of Griffith University as prescribed under the *Griffith University Act 1998* are being amended to

reflect the University's special interest in, and commitment to, the cities of Brisbane, Logan and the Gold Coast.

The sixth primary policy objective will be achieved by aligning planning approvals granted under the legislation which previously regulated this area with the accreditation and funding status of non-State schools under the *Education (Accreditation of Non-State Schools) Act 2001* and by ensuring that non-State schools are given sufficient time to take up these entitlements. This sixth primary policy objective will also be achieved by making modifications to the public notification requirements attached to making applications for eligibility for Government funding status, the processes involved in the alteration and cancellation of provisional accreditations, or accreditations, and the assessment of sites added to a non-State school.

The final primary policy objective will be achieved by amending the *Education (General Provisions) Act 1989* to alter the affect of section 114 so that parents whose children participate in the Queensland preparatory trial year are not in breach of their legislative obligations in respect of compulsory attendance.

ALTERNATIVE METHOD OF ACHIEVING THE POLICY OBJECTIVES

There are no appropriate or reasonable alternative ways of achieving the policy objectives.

ESTIMATED COST FOR GOVERNMENT IMPLEMENTATION

Implementation of the proposed amendments will not result in any additional costs to the Department of Education that cannot be met from within the existing budget. There will be no additional costs to government.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The amendment to section 144 of the *Education (General Provisions) Act 1989* raises a Fundamental Legislative Principle issue. The amendment to section 144 will create an inconsistency between the *Education (General Provisions) Act 1989* and the *Criminal Law (Rehabilitation of Offenders) Act 1986*. The definition of "criminal history" for the purposes of section

144 is defined to include a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act and a charge made against a person for an offence. The infringement is justified on the grounds that it is necessary to have additional safeguards where an adult is charged with the supervision of children to minimise any risk of harm to children. The benefits of employing a careful screening approach on people who will be in regular contact with children far outweighs the infringement of liberties.

All of the amendments to the transition provisions in the *Education (Accreditation of Non-State Schools) Act 2001* will apply retrospectively from 1 January 2002. These amendments will confer rights upon applicants rather than remove rights and therefore their retrospective nature is justifiable.

CONSULTATION

Consultation on the Bill has been undertaken with the following key stakeholders:

- Queensland University of Technology
- University of Queensland
- James Cook University
- Griffith University
- University of the Sunshine Coast
- Central Queensland University
- University of Southern Queensland
- Board of Teacher Registration.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement of the Act.

PART 2—AMENDMENT OF CENTRAL QUEENSLAND UNIVERSITY ACT 1998

Clause 3 specifies that this part of the Bill is to amend the *Central Queensland University Act 1998*.

Clause 4 inserts a new section 20A (Additional member's term of office) of the Act. The new section 20A (Dealing with casual vacancy in office of an elected member) provides new processes for dealing with casual vacancies in the office of elected members of the University Council. Section 20A only applies to casual vacancies, where an elected member is unable to complete their term of office.

Under the new section 20A(2) if a casual vacancy arises in the office of an elected member the Council of the University must appoint a new person to the office who was a candidate at the previous ballot, was not elected, received the next highest number of votes, is eligible under the Act for membership and is willing to be a member. In other words, the candidate that came second in the most recent ballot will be appointed to fill the vacancy if that candidate is eligible, willing and able to accept the appointment.

Subsection 20A(3) provides that if there is not a person eligible for appointment under the provisions of section 20A(2), then subsection 20A(4) will apply which prescribes that a ballot must be held to elect a person to the vacant office. Paragraphs (a) and (b) of subsection 20A(5) create an exception to subsection 20A(4) to provide for student and convocation members to be appointed by the Council of the student union and the convocation respectively, rather than being elected by ballot. These exceptions currently exist under section 15 of the Act. The effect of

repeating these provisions in the new section 20A achieves internal consistency of the Act. Repeating these provisions in section 20A is also consistent with the policy objective to reduce the costly, time consuming process of filling casual vacancies which is of particular issue in relation to the students and convocation because of the size of these electing bodies. Subsection 20A(6) provides for persons appointed under section 20A(2) and (5) to be taken to have been elected.

It is possible for members of the convocation to also be members of the academic or general staff or to be a member of the student body because any of these members could also be past students of the University. Section 20A(7) provides that these persons may not be appointed to the University Council to represent the convocation. This is to prevent vote stacking, for example, a convocation representative on the University Council may also be a member of the academic staff of the University and could vote in the interests of staff rather than in the interests of the convocation which the office holder represents.

Clause 5 amends section 21 (Failure to elect or appoint elected members) of the Act. Section 21 currently provides for the Minister to appoint members to the University Council in the situation where an entity has failed to elect a replacement member by a date specified by the University Council. *Clause 5* inserts a new sub-section (1A) to enable the Minister to seek nominations from the University Council thus enabling a swift appointment process where the electing body has not elected a member.

The clause renumbers section 21(1a) to (3), to 21(2) to (4).

The clause inserts a new subsection 21(5) to clarify that in section 21 references to the “entity” do not include the University Council.

PART 3—AMENDMENT TO EDUCATION (ACCREDITATION OF NON-STATE SCHOOLS) ACT 2001

Clause 6 specifies that this part of the Bill is to amend the *Education (Accreditation of Non-State Schools) Act 2001*.

Clause 7 amends section 6 (Meaning of ‘non-State school’) of the Act. The clause removes “and primary education” from the type of education of

preschool education. The types of education of preschool education and primary education have been separated to facilitate amendments to section 12 (Type of education), section 63 (Grounds for cancellation) and section 70 (Grounds for cancellation). Non-State schools will continue to be unable to be accredited for preschool education only due to an amendment to section 12 (2) and sections 63 and 70.

Clause 7 also amends subsection 6(2) by clarifying that an international educational institution with approval under section 144 of the *Education (General Provisions) Act 1989* is not a non-State school for the purposes of the Act. International educational institutions are approved to deliver the curriculum of a foreign country, and this amendment will clarify that the non-State schools accreditation regime will not apply to such an institution. Note that Part 4 of this Bill amends the approval regime applying to such institutions by amending section 144 of the *Education (General Provisions) Act 1989*.

Clause 8 amends section 12 (Type of education) of the Act. The clause removes “and primary education” from the type of education of preschool education. The types of education of preschool education and primary education have been separated to facilitate amendments to section 63 (Grounds for cancellation) and section 70 (Grounds for cancellation), that is, to allow for cancellation of accreditation for preschool education while leaving in place accreditation for primary education. The clause also amends section 12(2) to ensure that non-State schools will continue to be unable to be provisionally accredited, or accredited, for preschool education only. That is, unless a school provides primary education, the school cannot provide preschool education. The amendments to section 63 will make it clear that a ground for cancellation of accreditation to provide preschool education is if the school ceases to provide primary education. Please refer to clause 21 of the Bill.

Clause 9 inserts a new section 12A (Provisional accreditation, or accreditation, is for 1 type of education) into the Act. The new section makes it clear that separate provisional accreditations, and accreditations, are granted for each type of education. As noted, this amendment also facilitates corresponding amendments to sections dealing with cancellation. The new section also makes it clear that a school may be provisionally accredited, or accredited, to provide more than one type of education.

Clause 10 inserts a new subsection 23 (4) into the Act. The new subsection provides for a certificate of provisional accreditation to include

more than one type of education. This new subsection aligns with the new section 12A.

Clause 11 inserts a new subsection 35 (4) into the Act. The new subsection provides for a certificate of accreditation to include more than one type of education. This new subsection aligns with the new section 12A.

The amendments in clause 10 and 11 have the effect of enabling the Board to issue consolidated certificates, so that even though a school is required to be provisionally accredited or accredited separately for each type of education, one certificate may provide for all of the types of education.

Clause 12 inserts a new subdivision heading under division 3, part 2, chapter 2 of the Act. The new subdivision heading deals with the assessment of schools when schools start to operate within a sector of schooling.

Clause 13 amends section 36 (Application of div 3) of the Act. The clause omits ‘div 3’ and “division” and inserts “subdiv 1’ and ‘subdivision”. This amendment facilitates the creation of two subdivisions under division 3.

Clause 14 inserts a new subdivision into the Act. The subdivision deals with the assessment of schools when schools start to operate within a sector of schooling at a new site. The subdivision provides for not more than two assessments to be undertaken in relation to the provision of education within a sector of schooling at the new site and for an assessor to prepare a report for the Non-State Schools Accreditation Board following the assessment. The maximum of two assessments is the same number as for schools starting to operate within a sector of schooling where the school has only one site. The amendment is to ensure that when a school commences at a new site, the Board has a clear power to assess the school at the new site.

Clause 15 amends section 42 (Demonstration of compliance) of the Act. The clause omits ‘documents’ and inserts ‘information or a document’. The clause provides for the consistency of the use of the term ‘information or a document’ throughout the Act and broadens the type of evidence that the Non-State Schools Accreditation Board can request under section 42.

Clause 16 amends the heading of division 2, part 3, chapter 2 of the Act. The clause inserts ‘on application by the school’s governing body’. The clause provides for a distinction between division 2 and the new division 2A.

Clause 17 inserts a new division 2A into the Act. The division provides for the Non-State Schools Accreditation Board to change a school's attribute of provisional accreditation if the Board reasonably believes the attribute of provisional accreditation has changed without the school having made an application about the change. The new section 58A enables the Board to institute a show cause process by delivering a show cause notice.

The new section 58B provides that the school may make representations in writing about the show cause notice. Section 58C enables the Board to end the show cause process without further action if after considering the representations, the Board no longer believes that there has been a change. Section 58D provides that if the Board still believes the attribute has changed; the Board may change that attribute and give an information notice about the decision to the school. Section 58E mandates that if the Board has decided to change an attribute, the governing body of the school must return the certificate of provisional accreditation within 14 days after the decision takes effect, unless the governing body has a reasonable excuse. Once the certificate has been returned, the Board must issue a replacement certificate, stating the details of the change. Section 58F provides that the school's application for accreditation is automatically changed to reflect the Board's decision.

Clause 18 amends section 59 (Application of div 2) of the Act. The clause omits 'div 2' and inserts 'divs 2 and 2A'. The clause has the effect of applying the new division 2A above to schools with accreditation.

Clause 19 amends the heading of part 4, chapter 2 of the Act. The clause inserts 'and surrender' into the heading. This amendment facilitates the amendment made in clause 22 below.

Clause 20 amends section 63 (Grounds for cancellation) of the Act. The clause omits 'accreditation' and inserts 'accreditation for a type of education'. The clause provides for the Non-State Schools Accreditation Board to cancel a type of education for a school. The clause also inserts a new ground for cancellation of accreditation for a type of education; that is, that a school has not provided a type of education for at least 4 consecutive months. A school has 'not provided' a type of education if the school has not enrolled students for the type of education and delivered education to these students. The clause also inserts a new subsection 63(2) containing grounds for cancelling the type of education of preschool if a school ceases to provide primary education for years 1 to 3. This new subsection aligns with the amendment made in clause 8.

Clause 21 amends section 70 (Grounds for cancellation) of the Act. The clause omits ‘accreditation’ and inserts ‘accreditation for a type of education’. The clause will enable the Non-State Schools Accreditation Board to cancel provisional accreditation for a type of education for a school. The clause also inserts a new ground for cancellation of provisional accreditation for a type of accreditation, that is, that a school has not provided a type of education for at least 4 consecutive months. Finally, the clause inserts a new subsection 70(2) inserting grounds for cancelling the type of education of preschool if a school ceases to provide primary education for years 1 to 3. This new subsection aligns with the amendment made in clause 8.

Clause 22 inserts a new division into the Act. The division provides for the surrender of accreditations or provisional accreditations. The new division comprises section 70A, which provides that a school may surrender the school’s accreditation or provisional accreditation. The surrender will take effect on the date stated in the notice of surrender provided by the school. If the school does not specify a date, the surrender will take effect 7 days after the notice is given. The seven day period will ensure a timely termination to a school’s accreditation or provisional accreditation once it has been surrendered.

Clause 23 amends section 76 (Public notifications) of the Act. The clause inserts a new subsection providing for the Non-State Schools Eligibility for Government Funding Committee to waive compliance with some or all of the public notice requirements attached to making an application for eligibility for Government funding status specified in section 76 in relation to a second application for eligibility for Government funding status if the committee is satisfied the second application is substantially similar and that the public notification requirements have previously been complied with within a period of one year. The amendment will give the Committee discretion to dispense with the public notice requirement where a second public notice would achieve little.

Clause 24 amends section 77 (Required content of catchment area notice) of the Act. The clause changes the submission period from ‘at least 30 days after the publication of the catchment area notice’ to ‘at least 35 days after making the application. This amendment is necessary as, following the amendment to section 76, the committee may have waived the requirement that an applicant publish a catchment area notice under section 76.

Clause 25 amends section 78 (Notice of compliance or non-compliance with notice requirements) of the Act. The clause replaces the requirement

that the Non-State Schools Eligibility for Government Funding Committee be satisfied that an applicant has complied with the public notification requirements specified in section 76 with the requirement that the committee be satisfied either that an applicant has complied with the requirements specified in section 76 or that the requirement or requirements not complied with have been waived by the Board. This amendment facilitates the amendment in Clause 23.

Clause 26 amends section 84 (Substantial compliance with notice requirements may be accepted) of the Act. The clause inserts ‘to the extent they apply to the applicant’ after the statement in section 84 (1) indicating that the committee must consider whether it is satisfied that the applicant has complied with the notice requirements under section 76. This amendment is necessary as, following the amendment to section 76, the committee may have waived all or some of the notice requirements under section 76.

Clause 27 inserts a new section 99A into the Act. The section provides for the automatic withdrawal of eligibility for Government funding status for an aspect of a school’s operation if the provisional accreditation, or accreditation, for an attribute corresponding to the aspect is cancelled. This amendment supports the inclusion of the new Division 2A of Chapter 2, Part 3 to enable the Board to change an attribute (please refer to Clause 17).

Clause 28 amends section 186 (School in receipt of subsidy under General Provisions Act) of the Act. The clause provides for a school accredited under section 179 or provisionally accredited under section 180 to be taken to be eligible for Government funding for the same aspects of the school’s operation as were included in the school’s planning approval immediately before commencement of the Act. This amendment will rectify the situation where a school’s entitlements under the previous regime have not been effectively transitioned in the Act.

Clause 29 amends section 187 (Existing application for categorisation as a school in receipt of subsidy) of the Act. The clause provides for the situation where a school’s application for categorisation as a school in receipt of subsidy has been decided after commencement of the Act, and the school is then accredited under section 179 or provisionally accredited under section 180. The school will be taken to be eligible for Government funding for the same aspects of the school’s operation as were included in the school’s planning approval immediately before commencement of the Act. This amendment will rectify the situation where a school’s entitlements under the previous regime have not been effectively transitioned in the Act.

Clause 30 replaces section 194 (Application of div1) of the Act. The new section 194 removes the restriction on the application of division 1 in respect of schools which were non-State schools, or schools in receipt of subsidy, under the General Provisions Act immediately before commencement of the Act. This amendment will facilitate the alignment of eligibility for Government funding status and planning approval involved in the amendments made in clauses 26 and 27.

Clause 31 amends section 197 (Application to change attribute of provisional accreditation) in the Act. The clause omits '6 months' and inserts '18 months'.

Clause 32 amends section 198 (Application to change attribute of accreditation) in the Act. The clause omits '6 months' and inserts '18 months'.

Clause 33 amends section 200 (Application for accreditation) in the Act. The clause omits '6months' and inserts '18 months'.

Clauses 31 to 33 will give schools transitioned from the previous regime to the new regime with an active planning approval to change a type of education longer to apply for accreditation without losing their entitlement to eligibility for Government funding for the new type of education. No schools with an active planning approval for a change to a type of education have applied for accreditation for the type of education within the six month period. The six month period is therefore being extended to 18 months to ensure schools' entitlements under the previous regime are effectively transitioned to the new regime.

Clause 34 inserts a new chapter into the Act. The chapter deals with transitional arrangements relating to amendments to section 12 (Type of Education).

Section 218 inserts definitions for this chapter. The definitions deal with issues of timing and are designed to enable the transition of certain type of education mention in section 12 of the Act to other types of education once the amendment commences.

Section 219 provides for schools with provisional accreditation for preschool and primary education immediately before the commencement of this amendment to be taken to be provisionally accredited for preschool education and primary education separately after the commencement of the amendment.

Section 220 provides for schools with accreditation for preschool and primary education immediately before the commencement of this

amendment to be taken to be accredited for preschool education and primary education separately after the commencement of the amendment.

Section 221 provides for applications for accreditation of a school for preschool education and primary education which immediately before the commencement of this amendment have not been decided to be taken to be applications for preschool education and primary education separately after commencement of this amendment.

PART 4—AMENDMENT OF EDUCATION (GENERAL PROVISIONS) ACT 1989

Clause 35 specifies that this part of the Bill amends the *Education (General Provisions) Act 1989*.

Clause 36 amends section 144 (Restriction on establishment of places for teaching overseas curriculum). The clause inserts two new definitions into subsection (1) of section 144 which currently sets out definitions relevant to the section.

A definition for an “approved entity” is inserted and defined to mean an entity of a country that the Minister reasonably believes ordinarily authorises persons to teach primary or secondary curriculums of the country. The term “approved entity” is used in a new section 3A(a) inserted by clause 36, and would create ambiguity in the new section if not defined.

A definition of “criminal history” is inserted and defined to include a conviction for which the rehabilitation period under the Criminal Law (Rehabilitation of Offencers) Act 1986 has expired. The definition also includes a charge made against a person for an offence. People teaching at an IEI are likely to be teaching in small classroom environments and it is essential that the suitability of these persons for teaching children be carefully assessed.

Currently, subsection (2) of section 144 provides that a person must not establish or operate an IEI without the approval of the Governor in Council. The clause inserts subsection 2A which stipulates that the Minister must have regard to the financial viability of an IEI before recommending that the Governor in Council give approval to establish or conduct an IEI. Subsection 2B provides that the matters the Minister may have regard to in

deciding whether or not to recommend an IEI to the Governor in Council for approval are not limited to the matter stipulated in subsection 2A.

Currently, subsection 3 of section 144 stipulates that the Governor in Council may impose conditions on the approval for an IEI. The clause inserts a new subsection 3A to set conditions that apply to an approval for an IEI. Subsection 3A provides that it does not limit subsection 3.

Four conditions are set out in subsection 3A to apply to an approval. The first condition provides that a person who teaches at the institution must be authorised, under a law of the country, or by an approved entity, in which the curriculum being offered by the IEI is normally taught, to teach the curriculum. As the Queensland Board of Teacher registration is unable to assess whether or not a person intending to teach in Queensland the curriculum of another country is appropriately skilled to do so it is necessary to ensure the professional capacity of teachers at the IEI.

The second condition provides that a person must not teach at the institution if the Minister considers the person may pose a risk to the safety of children at the IEI. This condition is intended to ensure that teachers at the IEI are suitable persons to be teaching children attending the IEI.

The third condition provides that the IEI must ensure that a student who successfully completes the IEI's overseas curriculum must be eligible to receive an academic award from the country in which the curriculum is ordinarily offered. This condition is intended to ensure that a relevant, quality service is provided to children attending the IEI.

The fourth condition provides that the IEI must have written guidelines about the appropriate conduct of its staff and students that accord with legislation in the State about the care or protection of children. This condition is intended to support the protection of children from harm by ensuring that there are appropriate mechanisms in place to support this policy.

The effect of "conditions applying to an approval" as stated in subsection 3A is that the IEI must uphold the conditions to avoid the approval lapsing.

The new subsection 3B provides that any other conditions that are to apply an approval must be stated on the approval.

New subsections 3C and 3D are inserted, providing the Minister with the power to ask for and receive from, the commissioner of the Police Service, a criminal history report in relation to a person who teaches at an

international educational education. The commissioner of the Police Service must provide the Minister with the relevant criminal history report.

The Minister requires these powers to enable further inquiries to be made as to the suitability of persons to teach at these institutions.

Clause 37 inserts a new Part 12 – Transitional Provision for Compulsory Education, which remedies an unintended consequence of conducting a preparatory trial year of instruction. The Act currently provides that parents must cause their children to be enrolled at and attend school when the children are of the age of compulsory attendance—between the ages of six and 15 years – unless the parents receive a dispensation from the Minister.

Some children involved in the Queensland preparatory trial year of instruction may be six to 12 months older than traditional preschool students and some will turn six during the trial year.

The part provides that a parent whose child is enrolled in, and attending, a school that is involved in the trial, is complying with section 114 of the Act. This compliance only extends to the parents of those children attending a school prescribed by regulation as participating in the trial, and which is utilising the program of instruction specifically developed for the trial year by the Queensland Studies Authority.

The preparatory trial year of instruction is defined to relate to the program of instruction under a preschool guideline being developed by the Queensland Studies Authority. This program of instruction is designed to prepare children for primary education.

The State and non-State schools participating in the trial will be prescribed in the *Education (General Provisions) Regulation 2000*.

The preparatory year trial will be assessed during, and at the completion of the trial. An amendment of a more permanent nature will be considered when it is decided whether or not a preparatory year will be entrenched as part of the Queensland education system.

PART 5—AMENDMENT OF EDUCATION (OVERSEAS STUDENTS) ACT 1996

Clause 38 specifies that this part of the Bill amends the *Education (Overseas Students) Act 1996*.

Clause 39 amends section 8 (Statutory Conditions). The clause inserts a new section 8(1A). The new subsection inserts a condition to enable the chief executive to conduct an inspection of the premises at which courses for overseas students are conducted, or will be conducted. The National Code for regulating the provision of education and training services to overseas students stipulates that the registering authority of a State must conduct both scheduled and unscheduled inspections. The new subsection provides for this obligation by stipulating that an inspection can be conducted at any reasonable time.

Clause 40 inserts a new part 2, division 6 of the Act, “Division 6 – Inspection of Places”. The clause inserts a new section to follow section 17 titled, “Inspection of particular places”. Subsection 17(1) prescribes that the section applies specifically to a place at which a registered provider delivers, or intends to deliver, courses. Paragraphs (a) and (b) of subsection 17(2) provide that the purpose for conducting these inspections is to ensure that the place is suitable for delivering a course and that the staffing and resources are adequate for delivering a course.

Subsection 17(3) provides for a fee to be charged for the inspection and for such a fee to be prescribed under a regulation.

PART 6—AMENDMENT OF EDUCATION (TEACHER REGISTRATION) ACT 1988

Clause 41 specifies that this part of the Bill is to amend the *Education (Teacher Registration) Act 1988*.

Clause 42 amends section 50 (Board may conduct inquiry about certain persons) of the Act. The clause omits from subsection 50(3) all wording following the words ‘only if’, which includes the omission of the current paragraphs (a) and (b) of subsection 50(3).

Clause 42 inserts new paragraphs (a) and (b) that provide for the Board to conduct an inquiry about a person if the Board is reasonably satisfied that it is in the public interest to conduct the inquiry and the events which are to be the subject of the inquiry occurred while the person was registered. The current provision has the same purpose but restricts the conduct of an inquiry to not more than one year since the registration ended. The effect of the amendment to subsection 50(3) is to remove the time constraints around when an inquiry may be conducted into events that occurred while a person was a registered teacher. The purpose of such an inquiry would be to determine whether or not person would be fit to be restored to the register.

PART 7—AMENDMENT OF GRIFFITH UNIVERSITY ACT 1998

Clause 43 specifies that this part of the Bill is to amend the *Griffith University Act 1998*.

Clause 44 amends section 5 (Functions of university) of the Act.

Clause 44 omits the current section 5(b) and inserts a new subsection 5(b) and a new subsection 5(ba).

The current section 5(b) provides for the University to provide facilities for study and research and for study and research to be encouraged.

The new subsection 5(b) provides for one of the University's functions to be the provision of facilities for study and research generally but in particular to provide those facilities for people in the cities of Brisbane, Gold Coast and Logan.

The new subsection 5(ba) provides for one of the University's functions to be to encourage study and research.

Clause 44 also inserts additional wording after the word 'community' in the current subsection 5(d).

The current section 5(d) provides that one of the University's functions is to provide courses of study or instruction to meet the needs of the community.

The additional words inserted after 'community' in the current subsection 5(d) will provide for this function to be performed for the

community generally and in particular for the people in the cities of Brisbane, Gold Coast and Logan.

The intention of the amendments to the functions of Griffith University is to recognise the diverse and particular locations of the Griffith University campuses.

Clause 45 amends section 14 (Appointed members) of the Act. The clause increases the number of appointed members on the University Council from 6 to 8. Appointed members are drawn from the community and appointed by the Governor in Council rather than being elected from within the University population of academic staff, general staff, students and convocation. The amendment is intended to enhance the independence of the University Council and raise the University's profile within the community.

Clause 46 amends section 15 (Elected members) of the Act. The clause omits from subsection (1) the number 14 and inserts in its place the number 12. This reduces the total number of elected members from 14 to 12.

The clause omits from subsection (2)(d) the references to members described by subsections (b) (general staff), (c) (students) or (e) (Gold Coast college's advisory council) and re-inserts members described by subsections (b) or (c).

Currently, subsection (2)(d) provides for 3 persons to be elected as members of the University Council but stipulates that the 3 persons cannot be members of the academic staff, the general staff, the students or the Gold Coast college's advisory council. The clause removes the reference to members described by subsection (2)(e) (members of the Gold Coast college's advisory council).

The clause omits from section 15, subsection (2)(e). The new arrangements for Griffith University will no longer provide for an advisory council for the Gold Coast college and subsection (2)(e) is therefore obsolete.

The clause omits from section 15, subsections (4) and (5).

The current subsection (4) provides for elected members described in 15(2)(e) (members of the Gold Coast college's advisory council) to be appointed by the Gold Coast college advisory council. Subsection (4) becomes obsolete under the new arrangements for Griffith University which will no longer provide for the appointment of an advisory council for the Gold Coast college.

The current subsection (5) excludes staff and students, working and studying at the Gold Coast college from being elected to the University Council and from voting in elections for the University Council. Omitting subsection (5) provides students and staff studying and working at all campuses of the University with equal rights to fully participate in elections for the University Council, whether that be voting or standing for election.

Clause 47 inserts a new section 20A (Additional member's term of office) of the Act. The new section 20A (Dealing with casual vacancy in office of an elected member) provides new processes for dealing with casual vacancies in the office of elected members of the University Council. Section 20A only applies to casual vacancies, where an elected member is unable to complete their term of office.

Under the new section 20A(2) if a casual vacancy arises in the office of an elected member the Council of the University must appoint a new person to the office who was a candidate at the previous ballot, was not elected, received the next highest number of votes, is eligible under the Act for membership and is willing to be a member. In other words, the candidate that came second in the most recent ballot will be appointed to fill the vacancy if that candidate is eligible, willing and able to accept the appointment.

Subsection 20A(3) provides that if there is not a person eligible for appointment under the provisions of section 20A(2), then subsection 20A(4) will apply which prescribes that the vacancy will be filled by the University Council appointing to the vacant office a person who is eligible to be elected to the office under section 15 of the Act. Subsection 20A(5) provides for persons appointed under section 20A(4) to be taken to have been elected.

Clause 48 amends section 21 (Failure to elect or appoint elected members) of the Act. The clause amends the heading of section 21 by removing the words, 'or appoint', subsection (1) by removing the words, 'or appoint' and subsection (2) by removing the words, 'or appointed'. The references to the 'appointed' elected members are no longer necessary as the removal of the Gold Coast college Advisory Council members from section 15, who were 'appointed' elected members, means that the references to 'appointed' elected members are obsolete.

Section 21 currently provides for the Minister to appoint to the University Council as many members as is necessary to comply with section 15 (Elected members), which prescribes the number of elected members required to be elected to the University Council, if the entity

permitted to elect the members does not do so by a day fixed by the University Council. Further *Clause 48* inserts a new sub-section (1A) to enable the Minister to seek nominations from the University Council thus enabling a swift appointment process where the electing body has not elected a member.

The clause renumbers section 21(1A) and (2), to 21(2) and (3).

Clause 48 also omits subsection (3) of section 21.

The current subsection 3 clarifies that the provisions of section 21 apply to periodic elections or appointment of elected members and an election or appointment required because of a casual vacancy. This clarification is no longer necessary due to the fact that other amendments to the Act mean that there are no longer any elected members who may be appointed and further that this Bill inserts a new section into the Act that deals specifically with casual vacancies. Therefore the omission of subsection 3 achieves consistency in the Act.

Clause 49 replaces section 35 (Composition) of the Act with a new section 35.

The current section 35 deals with the composition of the University student council and provides that students other than students eligible to be members of a College student body are eligible to be members of the University student council.

The new section 35 provides that the persons eligible to be members of the University student council are the persons eligible for membership under the student council's constitution and under graduate students, other than students studying at the Gold Coast Campus.

Clause 50 amends Part 4 (Bodies connected with the University) of the Act. The clause omits the current division 3 (Colleges) of the Act and inserts a new division 3 (Gold Coast Student Guild).

The current division 3 provides for the University to establish colleges of the University and student body's for any colleges established.

The omission of division 3 is consistent with the intention to fully integrate the University and there is no intention on the part of the University to create any colleges in the future. All future developments will be consistent with a single Griffith University identity.

The new division 3 inserts a new section 39 of the Act that establishes the Gold Coast Student Guild, an independent student body for the Gold Coast campus students to ensure that the special needs of the Gold Coast

campus students, arising from the geographical location of the campus and its particular identity, are adequately addressed.

The new division 3 inserts new sections 40, 40, 42, and 43.

The new section 40 provides for membership of the student guild to consist of those persons eligible for membership under the guild's constitution and students studying at the Gold Coast campus.

The new subsections 41(1) and (2) provide for the student guild to have the role and powers stated in its constitution, in addition to those decided by the University Council. Subsection 41(3) clarifies that the student guild is not the agent or employee of the University Council.

The new section 42 provides for the general powers of the student guild to include all the powers of an individual, without limiting section 41.

The new subsection 43(1) provides for the student guild to have a written constitution of the Student Guild. Subsection 43(2) and (3) prescribe that the constitution and any amendments to the constitution must be approved by the University Council and will have no effect until receiving that approval.

Clause 51 amends section 44A (Excluded matters for Corporations legislation) of the Act. The clause omits the reference 44A(1) to "colleges" which is no longer relevant given the other amendments to the Act. The clause also updates a reference in the section to a college student body to refer to the student guild.

Clause 52 amends section 61 (Making of university statutes). The clause omits subsection paragraph 2(g) of section 61 and orders the renumbering of the section accordingly.

The omission of subsection 2(g) removes the power of the University Council to make statutes to establish colleges.

Clause 53 amends section 63 (University statutes affecting university student council or college student body) of the Act. The clause omits all references in section 63 to "college student body's" and replaces those references with references to the student guild established by this Bill.

Clause 54 inserts a new Part 8 (Transitional provisions for *Education (Miscellaneous Amendments) Act 2002*) into the Act.

The clause inserts five divisions as follows:

- *Division 1 (Preliminary)* provides for definitions for the part.

- *Division 2 (Provisions about the council)* provides for a ballot for elected members of the council to be conducted as soon as possible after commencement to enable all students and staff to participate in an election for University Council membership. The division provides for the term of office of current members to end at the end of the day that the new member who is to succeed the current member's office is elected under the ballot. The division also provides for membership of the University Council members drawn from the Gold Coast college advisory council to cease on commencement.
- *Division 3 (Provisions about Gold Coast student body)* provides for the Gold Coast student body to be continued as the student guild, for the student guild to be the successor in law of the Gold Coast student body and for the Gold Coast student body's constitution to continue as the constitution of the student guild until the student guild's constitution is approved.

The division provides for members and office holders of the Gold Coast student body to continue as members and office holders of the student guild. Further, the division provides for assets and liabilities of the Gold Coast student body to become those of the student guild. The division provides for contracts, guarantees, undertakings and securities entered into, or given, by the Gold Coast student body to be taken to be entered into, or given, by the student guild and for any proceedings taken by, or against the Gold Coast student body or its office holders to be continued and finished by or against the student guild.

In addition, where the context permits, the division provides for any references in an Act or document to the Gold Coast student body to be taken as a reference to the student guild.

- *Division 4 (Provision about colleges)* provides for colleges of the University to be dissolved on commencement.

Clause 55 omits, from Schedule 2 (Dictionary) of the Act, definitions relating to "college", "college student body" and "Gold Coast college" and inserts a definition of "student guild". The clause also omits from the definition of "elected member", the words 'or appointed' to achieve consistency of the Act.

PART 8—AMENDMENT OF JAMES COOK UNIVERSITY ACT 1997

Clause 56 specifies that this part of the Bill amends the *James Cook University Act 1997*.

Clause 57 inserts a new section 20A (Additional member's term of office) of the Act. The new section 20A (Dealing with casual vacancy in office of an elected member) provides new processes for dealing with casual vacancies in the office of elected members of the University Council. Section 20A only applies to casual vacancies, where an elected member is unable to complete their term of office.

Under the new section 20A(2) if a casual vacancy arises in the office of an elected member the Council of the University must appoint a new person to the office who was a candidate at the previous ballot, was not elected, received the next highest number of votes, is eligible under the Act for membership and is willing to be a member. In other words, the candidate that came second in the most recent ballot will be appointed to fill the vacancy if that candidate is eligible, willing and able to accept the appointment.

Subsection 20A(3) provides that if there is not a person eligible for appointment under the provisions of section 20A(2), then subsection 20A(4) will apply which prescribes that a ballot must be held to elect a person to the vacant office. Paragraphs (a) and (b) of subsection 20A(5) create an exception to subsection 20A(4) to provide for student and convocation members to be appointed by the Council of the student union and the convocation respectively, rather than being elected by ballot. These exceptions currently exist under section 15 of the Act. The effect of repeating these provisions in the new section 20A achieves internal consistency of the Act. Repeating these provisions in section 20A is also consistent with the policy objective to reduce the costly, time consuming process of filling casual vacancies which is of particular issue in relation to the students and convocation because of the size of these electing bodies. Subsection 20A(6) provides for persons appointed under section 20A(2) and (5) to be taken to have been elected.

It is possible for members of the convocation to also be members of the academic or general staff or to be a member of the student body because any of these members could also be past students of the University. Section 20A(7) provides that these persons may not be appointed to the University Council to represent the convocation. This is to prevent vote stacking, for

example, a convocation representative on the University Council may also be a member of the academic staff of the University and could vote in the interests of staff rather than in the interests of the convocation which the office holder represents.

Clause 58 amends section 21 (Failure to elect or appoint elected members) of the Act. Section 21 currently provides for the Minister to appoint members to the University Council in the situation where an entity has failed to elect a replacement member by a date specified by the University Council. Further *Clause 58* inserts a new sub-section (1A) to enable the Minister to seek nominations from the University Council thus enabling a swift appointment process where the electing body has not elected a member.

The clause renumbers section 21(1A) to (3), to 21(2) to (4).

The clause inserts a new subsection (5) to clarify that in section 21 references to the “entity” do not include the University Council.

PART 9—AMENDMENT OF QUEENSLAND UNIVERSITY OF TECHNOLOGY ACT 1998

Clause 59 specifies that this part of the Bill is to amend the *Queensland University of Technology Act 1998*.

Clause 60 amends section 15 (Elected members) of the Act. The clause inserts the words ‘and part-time’ after the words ‘full-time’ in section 15(2)(a) and (b) and (3)(a) and (b). The purpose of this amendment is to allow the participation of full and part time members of the academic and general staff to participate in, and stand for, elections for the University Council. There is no intention to afford casual staff the same rights to vote in, and stand for, elections to the University Council.

Clause 61 inserts a new section 20A (Additional member’s term of office) of the Act. The new section 20A (Dealing with casual vacancy in office of an elected member) provides new processes for dealing with casual vacancies in the office of elected members of the University Council. Section 20A only applies to casual vacancies, where an elected member is unable to complete their term of office.

Under the new section 20A(2) if a casual vacancy arises in the office of an elected member the Council of the University must appoint a new person to the office who was a candidate at the previous ballot, was not elected, received the next highest number of votes, is eligible under the Act for membership and is willing to be a member. In other words, the candidate that came second in the most recent ballot will be appointed to fill the vacancy if that candidate is eligible, willing and able to accept the appointment

Subsection 20A(3) provides that if there is not a person eligible for appointment under the provisions of section 20A(2), then subsection 20A(4) will apply which prescribes that a ballot must be held to elect a person to the vacant office. Paragraphs (a) and (b) of subsection 20A(5) create an exception to subsection 20A(4) to provide for student and alumni members to be appointed by the Council of the student guild and the alumni respectively, rather than being elected by ballot. These exceptions currently exist under section 15 of the Act. The effect of repeating these provisions in the new section 20A achieves internal consistency of the Act and is also consistent with the policy objective to reduce the costly, time consuming process of filling casual vacancies which is of particular issue in relation to the students and convocation because of the size of these electing bodies. Subsection 20A(6) provides for persons appointed under section 20A(2) and (5) to be taken to have been elected.

It is possible for members of the alumni to also be members of the academic or general staff of to be a member of the student body because any of these members could also be past students of the University. Section 20A(7) provides that these persons may not be appointed to the University Council to represent the alumni. This is to prevent vote stacking, for example, an alumni representative on the University Council may also be a member of the academic staff of the University and could vote in the interests of staff rather than in the interests of the alumni which the office holder represents.

Clause 62 amends section 21 (Failure to elect or appoint elected members) of the Act. Section 21 currently provides for the Minister to appoint members to the University Council in the situation where an entity has failed to elect a replacement member by a date specified by the University Council. Further *Clause 62* inserts a new sub-section (1A) to enable the Minister to seek nominations from the University Council thus enabling a swift appointment process where the electing body has not elected a member.

The clause renumbers section 21(1A) to (3), to 21(2) to (4).

The clause inserts a new subsection (5) to clarify that in section 21 references to the “entity” do not include the University Council.

PART 10—AMENDMENT OF UNIVERSITY OF QUEENSLAND ACT 1998

Clause 63 specifies that this part of the Bill amends the *University of Queensland Act 1998*.

Clause 64 amends section 15 (Elected members) of the Act. The clause omits subsection 15(4) because this subsection provides for vacancies arising under section 24 of the Act and will not be necessary with the new arrangements for filling casual vacancies to be inserted into the Act by this Bill.

The clause omits from subsection 15(5), the words ‘Also, despite’ and inserts the word ‘Despite’ as the omission of subsection 15(4) makes the use of the word ‘also’ redundant.

The clause renumbers the current subsection 15(5) to subsection 15(4).

Clause 65 inserts a new section 20A (Additional member’s term of office) of the Act. The new section 20A (Dealing with casual vacancy in office of an elected member) provides new processes for dealing with casual vacancies in the office of elected members of the University Senate. Section 20A only applies to casual vacancies, where an elected member is unable to complete their term of office.

Under the new section 20A(2) if a casual vacancy arises in the office of an elected member the Senate of the University must appoint a new person to the office who was a candidate at the previous ballot, was not elected, received the next highest number of votes, is eligible under the Act for membership and is willing to be a member. In other words, the candidate that came second in the most recent ballot will be appointed to fill the vacancy if that candidate is eligible, willing and able to accept the appointment.

Subsection 20A(3) provides that if there is not a person eligible for appointment under the provisions of section 20A(2), then subsection 20A(4) will apply which prescribes that the vacancy will be filled by the University Senate appointing to the vacant office a person who is eligible to

be elected to the office under section 15 of the Act. Subsection 20A(5) provides for persons appointed under section 20A(4) to be taken to have been elected.

Clause 66 amends section 21 (Failure to elect or appoint elected members) of the Act. The clause amends the heading of section 21 by removing the words, 'or appoint', subsection (1) by removing the words, 'or appoint' and subsection (2) by removing the words, 'or appointed'. These references are no longer relevant in relation to other amendments being made to the Act.

Section 21 currently provides for the Minister to appoint to the University Senate as many members as is necessary to comply with section 15 (Elected members), which prescribes the number of elected members required to be elected to the University Senate, if the entity permitted to elect the members does not do so by a day fixed by the University Senate. Further, *Clause 66* inserts a new sub-section (1A) to enable the Minister to seek nominations from the University Senate thus enabling a swift appointment process where the electing body has not elected a member.

The new subsection provides for the Minister to seek nominations for such appointments from the University Senate.

Clause 66 also omits subsection (3) of section 21.

The current subsection 3 clarifies that the provisions of section 21 apply to periodic elections or appointment of elected members and an election or appointment required because of a casual vacancy. This clarification is not necessary due to the fact that there are no elected members under section 15 of the Act who may in fact be appointed and this Bill inserts a new section into the Act that deals specifically with casual vacancies. Currently, in the case of convocation members an elected member under section 15 of the Act may be appointed, but only if a vacancy arises under section 24 of the Act. Therefore the omission of subsection 3 achieves consistency in the Act.

The clause renumbers section 21(1A) and (2), to 21(2) and (3).

PART 11—AMENDMENT OF UNIVERSITY OF SOUTHERN QUEENSLAND ACT 1998

Clause 67 specifies that this part of the Bill amends the *University of Southern Queensland Act 1998*.

Clause 68 inserts a new section 20A (Additional member's term of office) of the Act. The new section 20A (Dealing with casual vacancy in office of an elected member) provides new processes for dealing with casual vacancies in the office of elected members of the University Council. Section 20A only applies to casual vacancies, where an elected member is unable to complete their term of office.

Under the new section 20A(2) if a casual vacancy arises in the office of an elected member the Council of the University must appoint a new person to the office who was a candidate at the previous ballot, was not elected, received the next highest number of votes, is eligible under the Act for membership and is willing to be a member. In other words, the candidate that came second in the most recent ballot will be appointed to fill the vacancy if that candidate is eligible, willing and able to accept the appointment.

Subsection 20A(3) provides that if there is not a person eligible for appointment under the provisions of section 20A(2), then subsection 20A(4) will apply which prescribes that a ballot must be held to elect a person to the vacant office. Subsection 20A(5) creates an exception to subsection 20A(4) to provide for student members to be appointed by the Board of the student guild, rather than being elected by ballot. This exception currently exists under section 15 of the Act. The effect of repeating this provision in the new section 20A achieves internal consistency of the Act and is also consistent with the policy objective to reduce the costly, time consuming process of filling casual vacancies which is of particular issue in relation to the students because of the size of the electing body. Subsection 20A(6) provides for persons appointed under section 20A(2) and (5) to be taken to have been elected.

Clause 69 amends section 21 (Failure to elect or appoint elected members) of the Act. Section 21 currently provides for the Minister to appoint members to the University Council in the situation where an entity has failed to elect a replacement member by a date specified by the University Council. Further, *Clause 69* inserts a new sub-section (1A) to enable the Minister to seek nominations from the University Council thus

enabling a swift appointment process where the electing body has not elected a member.

The clause renumbers section 21(1A) to (3), to 21(2) to (4).

The clause inserts a new subsection (5) to clarify that in section 21 references to the “entity” do not include the University Council.

PART 12—AMENDMENT OF UNIVERSITY OF THE SUNSHINE COAST ACT 1998

Clause 70 specifies that this part of the Bill amends the *University of the Sunshine Coast Act 1998*.

Clause 71 amends section 15 (Elected members) of the Act. The clause inserts the words ‘full-time and part-time’ before the words ‘academic staff’. The purpose of this amendment is to clarify the categories of staff that are able to be elected to the University Council and to vote in those elections.

In addition the clause omits subsections (4) and (5) of section 15 as these subsections are superseded by the new arrangements for filling casual vacancies to be inserted by this Bill.

Clause 72 inserts a new section 20A (Additional member’s term of office) of the Act. The new section 20A (Dealing with casual vacancy in office of an elected member) provides new processes for dealing with casual vacancies in the office of elected members of the University Council. Section 20A only applies to casual vacancies, where an elected member is unable to complete their term of office.

Under the new section 20A(2) if a casual vacancy arises in the office of an elected member the Council of the University must appoint a new person to the office who was a candidate at the previous ballot, was not elected, received the next highest number of votes, is eligible under the Act for membership and is willing to be a member. In other words, the candidate that came second in the most recent ballot will be appointed to fill the vacancy if that candidate is eligible, willing and able to accept the appointment.

Subsection 20A(3) provides that if there is not a person eligible for appointment under the provisions of section 20A(2), then subsection

20A(4) will apply which prescribes that a ballot must be held to elect a person to the vacant office. Subsection 20A(5) creates an exception to subsection 20A(4) to provide for student and convocation members to be appointed by the Board of the student guild or a quorum of the convocation respectively, rather than being elected by ballot. This exception currently exists under section 15 of the Act. The effect of removing these provisions from section 15 and inserting them into section 20A achieves internal consistency of the Act as the provisions sit more appropriately within the new casual vacancy section. Inserting these provisions into section 20A is also consistent with the policy objective to reduce the costly, time consuming process of filling casual vacancies which is of particular issue in relation to the students because of the size of the electing body. Subsection 20A(6) provides for persons appointed under section 20A(2) and (5) to be taken to have been elected.

It is possible for members of the convocation to also be members of the academic or general staff or to be a member of the student body because any of these members could also be past students of the University. Section 20A(7) provides that these persons may not be appointed to the University Council to represent the convocation. This is to prevent vote stacking, for example, a convocation representative on the University Council may also be a member of the academic staff of the University and could vote in the interests of staff rather than in the interests of the convocation which the office holder represents.

Clause 73 amends section 21 (Failure to elect or appoint elected members) of the Act. The clause amends the heading of section 21 by removing the words, 'or appoint', subsection (1) by removing the words, 'or appoint' and subsection (2) by removing the words, 'or appointed'. In addition, section 21 currently provides for the Minister to appoint members to the University Council in the situation where an entity has failed to elect a replacement member by a date specified by the University Council. *Clause 73* inserts a new sub-section (1A) to enable the Minister to seek nominations from the University Council thus enabling a swift appointment process where the electing body has not elected a member.

Clause 73 also omits subsection (3) of section 21.

The current subsection 3 clarifies that the provisions of section 21 apply to periodic elections or appointment of elected members and an election or appointment required because of a casual vacancy. This clarification is not necessary due to the fact that the amendments being progressed by this Bill remove from section 15 of the Act any provisions to appoint elected members. The clarification in relation to casual vacancies is also no longer

necessary as this Bill inserts a new section into the Act that deals specifically with casual vacancies. Therefore the omission of subsection 3 achieves consistency in the Act.

The clause renumbers section 21(1A) to (3), to 21(2) to (4).

PART 13—OTHER AMENDMENTS

Clause 74 specifies that the schedule of the Bill makes minor and consequential amendments to the Acts it mentions.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

CENTRAL QUEENSLAND UNIVERSITY ACT 1998

- 1 *amendment to section 22*— inserts the word ‘casual’ in front of the word ‘vacancy’ in the body of the section to achieve consistency in the Act.
- 2 *amendment to Schedule 2*—amends the definition of ‘indictable offence’.

EDUCATION (ACCREDITATION OF NON-STATE SCHOOL) ACT 2001

- 1 *amendment to section 75(3)*—corrects an error of referencing in the Act.

- 2 *amendment to chapter 7 heading*—inserts ‘For Original Act (No.60 of 2001)’ into heading to distinguish the original transitional provision from transitional provisions being added by this Bill.
- 3 *amendment to Schedule 3*—omits definitions of ‘accepted representations’, ‘show cause notice’ and ‘show cause period’.
- 4 *amendment to Schedule 3*—inserts definitions of ‘accepted representations’, ‘show cause notice’ and ‘show cause period’ to include new section references. Inserts new definitions for ‘indictable offence’ and ‘type of education’.
- 5 *amendment to Schedule 3*—amends definition of ‘certificate of accreditation’ to add a new section reference.
- 6 *amendment to Schedule 3*—amends definition of ‘certificate of provisional accreditation’ to add a new section reference.
- 7 *amendment to Schedule 3*—inserts ‘the’ into definitions referring to other Acts.

EDUCATION (GENERAL PROVISIONS) ACT 1989

- 1 *amendment to section 2(1)*—amends the definition of ‘indictable offence’.
- 2 *amendment to section 13*—omits from section 13(1) a reference to section 2(2) to correct an error in referencing in the Act.
- 3 *amendment to section 61*—replaces the reference to section 64(8) with a reference to section 64 to correct an error in referencing in the Act.

EDUCATION (TEACHER REGISTRATION) ACT 1988

- 1 *amendment to section 10(b)*—replaces the words ‘indictable offence’ with the words ‘indictable offence, whether on indictment or summarily’.

- 2 *amendment to section 44B(3)*—replaces the words ‘indictable offence’ with the words ‘indictable offence, whether on indictment or summarily’.

GRIFFITH UNIVERSITY ACT 1998

- 1 *amendment to section 19*—omits a reference in section 19(2) to ‘or (e)’ to correct an error in referencing in the Act.
- 2 *amendment to section 19*—omits from section 19(3)(a) the words ‘or reappointed’ as these terms are no longer relevant in the context of other changes to the Act.
- 3 *amendment to section 22*—inserts the word ‘casual’ in front of the word ‘vacancy’ in the body of the section to achieve consistency in the Act.
- 4 *amendment to Schedule 2*—amends the definition of ‘indictable offence’.

JAMES COOK UNIVERSITY ACT 1997

- 1 *amendment to section 22*—inserts the word ‘casual’ in front of the word ‘vacancy’ in the body of the section to achieve consistency in the Act.
- 2 *amendment to Part 8*—removes from the heading the words ‘AND TRANSITIONAL’ as they are no longer relevant in the context of other changes to the Act.
- 3 *amendment to Schedule 2*—amends the definition of ‘indictable offence’.

QUEENSLAND UNIVERSITY OF TECHNOLOGY ACT 1998

- 1 *amendment to section 22*—inserts the word ‘casual’ in front of the word ‘vacancy’ in the body of the section to achieve consistency in the Act.
- 2 *amendment to Schedule 2*—amends the definition of ‘indictable offence’.

UNIVERSITY OF QUEENSLAND ACT 1998

- 1 *amendment to section 22*—inserts the word ‘casual’ in front of the word ‘vacancy’ in the body of the section to achieve consistency in the Act.
- 2 *amendment to section 52*—amends a reference in the section that would otherwise be inaccurate in light of other amendments to the Act.
- 3 *amendment to Schedule 2*—amends the definition of ‘indictable offence’.

UNIVERSITY OF SOUTHERN QUEENSLAND ACT 1998

- 1 *amendment to section 22*—inserts the word ‘casual’ in front of the word ‘vacancy’ in the body of the section to achieve consistency in the Act.
- 2 *amendment to Schedule 2*—amends the definition of ‘indictable offence’.

UNIVERSITY OF THE SUNSHINE COAST ACT 1998

- 1 *amendment to section 22*—inserts the word ‘casual’ in front of the word ‘vacancy’ in the body of the section to achieve consistency in the Act.
- 2 *amendment to Schedule 2*—amends the definition of ‘indictable offence’.