

# **Youth Participation in Education and Training and Another Act Amendment Bill 2005**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the Youth Participation in Education and Training and Another Act Amendment Bill 2005.

#### **Policy Objectives of the Legislation**

The objective of the Bill is to make the necessary legislative amendments to ensure the effective operation of the *Youth Participation in Education and Training Act 2003* from 1 January 2006 when substantive parts of the Act commence.

The *Youth Participation in Education and Training Act 2003* supports the implementation of the Education and Training Reforms for the Future (ETRF) of the Senior Phase of Learning. These reforms were announced in the Queensland the Smart State Education and Training Reforms for the Future – A White Paper in November 2002. The reforms are aimed at ensuring that young people leave the education and training system better equipped for future success. The reforms will raise the school leaving age from 15 to 16 years of age or when the young person has completed year 10, whichever comes first. Young people will then be required to continue to participate in education or training, or work, for another 2 years, or until they have achieved a senior certificate or a certificate III vocational education qualification. The requirement will cease once the young person turns 17.

The Bill will also amend the *Education (General Provisions) Act 1989* to create a head of power for the making of a regulation about fees that are payable by persons who are enrolled in a program of distance education at a State school.

## **Reasons for the Bill**

### Amendments to the *Youth Participation in Education and Training Act 2003*

The amendments will enable the *Youth Participation in Education and Training Act 2003* to be successfully implemented in relation to the opening and management of student accounts, and will also allow for effective planning for the compulsory participation phase and enable the re-engagement of disengaged young people.

The student account has two purposes under the *Youth Participation in Education and Training Act 2003*. Firstly to provide aggregated information to enable the chief executive to perform the planning and re-engagement functions of the Act and secondly, to support the Queensland Studies Authority (QSA) certification function.

These amendments need to be in place for the start of the 2006 school year, to enable student accounts to be opened and to facilitate the banking of credits.

### Amendments to the *Education (General Provisions) Act 1989*

Section 24 of the *Education (General Provisions) Act 1989* (the EGPA) currently provides that the cost of instruction in State schools will be defrayed by the State, for those children whose parents reside in Queensland. In general, this remains the Government's policy position. However, it is becoming evident that the Government may need to recover some of the costs of instruction for distance education programs offered by State schools, in certain circumstances.

Schools of distance education were originally established to meet the needs of students who, due to geographic isolation, are unable to access State education by attendance at a local school. However, they now also meet the needs of other students who are unable to attend their local school, including students with medical conditions, and children of itinerant workers. There are also parents who choose to send their children to schools of distance education, even though they could attend a local school.

The cost of providing services to students enrolled at schools of distance education is significantly higher than for students who attend mainstream State schools. This is due to the costs associated with the production of distance learning materials, enhanced services such as scheduled lessons by telephone, and the provision of the teaching component. The teacher to

student ratio is necessarily lower than that for a normal face-to-face classroom.

Given the higher cost of these services, it is proposed to charge a fee for the provision of distance education but only in certain circumstances. The fee will only be payable in those circumstances where people choose to enrol at State schools providing distance education, even though they could attend a local State school.

Those who enrol at State schools providing distance education because they have only a limited choice about doing so will not be charged the fee. This includes students who cannot attend a mainstream State school due to factors such as geographical isolation; a medical condition; having been issued with a negative notice under section 26AE of the EGPA (i.e. adults who had intended to enrol as mature age students); and exclusions under sections 36 or 36E of the EGPA (where no other local State school is accessible). The costs of instruction will continue to be met by the State for these students.

## **Achieving the Objectives**

### Amendments to the Youth Participation in Education and Training Act 2003

The Youth Participation in Education and Training and Another Act Amendment Bill 2005 will amend the *Youth Participation in Education and Training Act 2003* as well as amending other pieces of legislation.

The amendments to the *Youth Participation in Education and Training Act 2003* will remove anomalies within the Act in respect to how information is provided to the Queensland Studies Authority (through removing the requirement to provide information in approved forms).

The amendments also allow for the collection of additional information to ensure the objectives of Act are able to be achieved in relation to effective planning and re-engagement. The additional information to be collected includes basic demographic information (e.g sex, indigenous status and non-English speaking background) and more detailed information on the eligible options a young person is undertaking.

The amendments also clarify access to a student's learning account to ensure students have easy access to information about their progress and allow for the closing of student accounts when a young person has died.

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A further amendment to the *Youth Participation in Education and Training Act 2003* will remove doubt concerning transitional arrangements for young person not in the compulsory participation phase if the person turned 15 or completed year 10 before the commencement of 1 January 2006.

Amendments to the *Education (General Provisions) Act 1989*

The amendments will create a head of power to enable the Governor in Council to make a regulation prescribing the fee that must be paid for the provision of distance education to a person enrolled in a program of distance education at a State school.

The amendments will also provide that the fee is not payable in the circumstances prescribed under a regulation. When students enrol in a State school providing distance education because they are unable to attend their local State school for a particular prescribed reason, they will not be liable to pay the prescribed fee. This will include students who are geographically isolated from a mainstream State school; those who have a medical condition that prevents them from attending their local school; those who have been issued with a negative notice under section 26AE of the EGPA (i.e. adults who had intended to enrol as mature age students); and those who have been excluded under sections 36 or 36E of the EGPA (where no other local State school is accessible).

**Administrative costs**

The Department provides budget allocations for the implementation of the ETRF, where required. The proposed amendments to the *Youth Participation in Education and Training Act 2003* will not result in the further requirement of funding.

**Fundamental Legislative Principles**

There are no matters in the Bill that infringe upon fundamental legislative principles.

## **Consultation**

### Amendments to the *Youth Participation in Education and Training Act 2003*

A range of consultation meetings were held with key stakeholders in September 2005 including non-state school authorities, principals' associations, unions, and relevant Government agencies including the Department of Employment and Training, Queensland Studies Authority, Department of Aboriginal and Torres Strait Islander Policy, Queensland Treasury, Department of Premier and Cabinet, Department of Justice and Attorney-General and the Department of State Development, Trade, and Innovation.

### Amendments to the *Education (General Provisions) Act 1989*

A range of consultation meetings was held during September and October 2004 with all Schools of Distance Education, the Isolated Children's Parents' Association (ICPA), the Queensland Council of Parents and Citizens' Associations (QCPCA) and the Schools of Distance Education Alliance (SODEA).

Queensland Treasury, the Commission for Children and Young People and Child Guardian, and the Department of Premier and Cabinet have also been consulted about the proposed amendments to the *Education (General Provisions) Act 1989*.

## **Notes on Provisions**

### **Part 1 – Preliminary**

#### **Clause 1 Short title**

Clause 1 establishes the short title of the amendment Act as the *Youth Participation in Education and Training and Another Act Amendment Act 2005*.

## **Clause 2 Commencement**

Clause 2 provides that sections 22 and 23 commence on a day to be fixed by proclamation.

## **Part 2 – Amendment of Youth Participation in Education and Training Act 2003**

### **Clause 3 Act amended in pt 2 and schedule**

Clause 3 provides that part 2 and the schedule amend the *Youth Participation in Education and Training Act 2003*.

### **Clause 4 Replacement of s 40 (How an account is opened)**

Clause 4 replaces the original section 40, primarily to remove the requirement for the notice that is given to the QSA when opening a student account for a young person to be in the approved form. The removal of “approved form” allows for the range of ways in which this information may be provided, including through electronic means.

With the removal of the requirement for an approved form, the information now required to be given to the QSA when opening the student account is generally specified in the section, with the original subsections (a) – (e) being replicated (though renumbered) in the amended clause. The additional information contained in the clause will assist in the chief executive’s planning and re-engagement activities.

Clause 4 also inserts a new section 40A, which allows a person opening a student account under section 40 to give a notice to the QSA advising of the young person’s telephone number. The number may only be provided to the QSA if the young person has consented to the giving of the notice to the QSA. It is intended that consent need not be given in writing. Subclause (3) requires the QSA to record the information in the student’s account as soon as practicable after receiving the notice.

The purpose of including the student’s telephone number is twofold: to assist the chief executive in the chief executive’s re-engagement activities and to provide the QSA with additional administrative flexibility in relation to contacting a student about their account.

### **Clause 5 Replacement of s 42 (Obligation to notify enrolment)**

Clause 5 replaces the original section 42, primarily to remove the requirement for the notice that is given to the QSA when a young person enrolls with a provider to be in the approved form. The removal of “approved form” allows for the range of ways in which this information may be provided, including through electronic means.

With the removal of the requirement for an approved form, the information now required to be given to the QSA by the provider is specified in the Act.

The subclauses set out the information required to be given by the provider to the QSA. The information will assist: in identifying the student, in determining that the student is participating in an eligible option, the QSA in their certification function, and assist the chief executive in the chief executive’s planning and re-engagement functions.

### **Clause 6 Amendment of s 43 (Obligation to open an account)**

Clause 6 omits and replaces the original subsection 43(3), primarily to remove the requirement for the notice that is given to the QSA when a provider opens the young person’s account to be in the approved form. The removal of “approved form” allows for the range of ways in which this information may be provided, including through electronic means.

With the removal of the requirement for an approved form, the information now required to be given to the QSA by the provider when opening the student account is specified in the section. As the student account has not actually been opened, as would usually occur under section 40, much of the information required to be given by the provider virtually replicates the basic information required to open and establish the student account. Subsections (a) to (c) replicate the information that would have been given to the QSA had the student account been opened under section 40. Subsections (b) and (c) have been slightly reworded from those in section 40 to remove the prospective nature of the section 40 provisions. Subsection (d) requires the provider to give the QSA information about the other eligible options in which the young person is, or has been, participating since starting the participation phase. The inclusion of this information will fill in any deficit of student information that may not have otherwise been provided to the QSA on the student’s participation prior to the opening of the student’s account.

### **Clause 7 Insertion of new s 43A**

Clause 7 inserts a new section 43A, which allows a person opening a student account under section 43(3) to give a notice to the QSA advising of the young person's telephone number. The number may only be provided to the QSA if the young person has consented to the giving of the notice to the QSA. It is intended that consent need not be given in writing. Subclause (3) requires the QSA to record the information in the student's account as soon as practicable after receiving the notice.

The purpose of including the student's telephone number is twofold: to assist the chief executive in the chief executive's re-engagement activities and to provide the QSA with additional administrative flexibility in relation to contacting a student about their account.

### **Clause 8 Amendment of s 44 (Obligation to notify other matters)**

Clause 8 contains two subclauses. Subclause (1) omits and replaces section 44(2), primarily to remove the requirement for the notice that is given to the QSA to be in the approved form. The removal of "approved form" allows for the range of ways in which this information may be provided, including through electronic means.

The new subsection (2) remains relatively unamended from that contained in the current Act. Providers will still have to give notice of certain matters to the QSA at the times prescribed under a regulation. The new subsection (2)(a) is unamended from the current provision. Subsection (2)(b) is amended to provide additional clarity and to use more appropriate language around the ending of enrolment. Under the new subsection a provider will only have an obligation to notify the QSA under this subsection when the young person stops being enrolled with that provider. A new subsection (2)(c) is included to require a provider to notify the QSA if the young person has died. This provision is included to enable the QSA to be better informed of events surrounding the young person that effect the continuation of the student account. As the provider has the relationship with the student the QSA is reliant on the provider to be informed of such information.

The note to the provision is retained, unamended.

Subclause (2) merely updates the reference in relation to the information provided to the QSA to open a student account under section 40. The



information to which 44(2)(a) does not apply continues to be information about the eligible option in which the person proposes to participate.

### **Clause 9 Amendment of s 46 (Use and disclosure by the QSA)**

Clause 9 contains four subclauses, all of which amend section 46. Subclause (1) amends section 46(5) to expand the categories of person that the chief executive may ask for information about to a stated young person or all young persons, who meet the criteria for re-engagement under section 46(5)(a) to (c). The expansion makes it clear that the chief executive is not limited to asking for information about a specific young person. The criteria for re-engagement under section 46(5)(a) to (c) are amended to take account of the amended language in relation to all young persons.

Subclause (2) renumbers the current section 46(6) as 46(7).

Subclause (3) inserts a new section 46(6) that requires the QSA to give a person access to the information recorded in that person's student account. The intent of the provision is that the access that may be given to the person is very broad and may include giving the person a password by which to access the information via electronic means. Access via traditional means will also be available to the person.

Subclause (4) amends section 46(7), as renumbered by subclause (2), to replace the definition of "prescribed information". The definition of "prescribed information" is expanded to include a broader range of information recorded in the young person's student account than is in the current provision. This broader range of information is considered essential to enable the chief executive to properly carry out the chief executive's re-engagement activities.

The additional information able to be asked for by the chief executive includes:

- (b) - the young person's telephone number;
- (d) - the actual date the young person stopped being enrolled with the provider;
- (e) and (f) - any eligible option in which the young person is participating and the components of that option. This information relates to the situation where a young person has been enrolled in more than one of eligible option and has not ceased enrolment in all options;

- (g) – the eligible option/s and the components of the option/s that the young person was participating in immediately before the person stopped being enrolled with the provider;
- (h) – details of the provider for the eligible option mentioned in (g).

### **Clause 10 Insertion of new s 48A**

Clause 10 inserts a new section 48A before part 5 of the Act.

The new section 48A requires the QSA to close a student's account as soon as practicable after the QSA becomes aware of the student's death. The section only applies if the QSA has an open student account for the person and the person dies.

### **Clause 11 Amendment of s 58 (Consultation about proposed regulations)**

Clause 11 updates a reference from section 40(d) to 40(i) in relation to the information prescribed under a regulation in that section and the consultation that must occur.

### **Clause 12 Amendment of s 59 (Aggregated information)**

Clause 12 amends section 59(2) to update the section reference amended by clause 9(2) of the Bill. The new section reference is 46(7).

### **Clause 13 Amendment of s 60 (Transitional)**

Clause 13 amends section 60, which is a transitional provision dealing with the issue of which young persons enter the compulsory participation phase. The amendments clarify the position that a young person is not in the compulsory participation phase if the young person has turned 15 years or has completed year 10 before the commencement of section 11. Section 11 is scheduled to commence on 1 January 2006.

The amendment is made to put beyond doubt that a person, regardless of their age, who has completed year 10 before 1 January 2006, is not in the compulsory participation phase. The provision also puts beyond doubt that a person who has turned 15 years before 1 January 2006, is not in the compulsory participation phase.

The amended provision, when read together with the new section 166E of the *Education (General Provisions) Act 1989*, is crucial to determining the person's and their parents' obligations.

The effect of these provisions is that:

- a person who is 15 years before 1 January 2006 (regardless of what year level they have completed) is not in the compulsory participation phase and has completed their compulsory schooling obligations;
- a person who has completed year 10 before 1 January 2006 and is less than 15 years before 1 January 2006 is not in the compulsory participation phase and must continue to meet their compulsory schooling obligations until they turn 15 years;
- a person who has not turned 15 years before 1 January 2006 and who has not completed year 10 before 1 January 2006 will be in the compulsory participation phase when they are eligible.

### **Clause 14 Amendment of s 61 (Confidentiality)**

Clause 14 amends section 61(2) to remove redundant wording from the section. The definition of "disclose" in section 61(4) currently includes "give access to the information", and the repeating of this meaning is redundant.

### **Clause 15 Replacement of s 91 (Insertion of new s 166E of Act No. 30 of 1989)**

Clause 15 replaces the current section 91, which inserted a new section 166E into the *Education (General Provisions) Act 1989*. Section 166E is a transitional provision.

The new section 166E(1) deals with those persons who were at least 15 years on 31 December 2005. The provision declares that these persons are not of compulsory school age, despite section 4A(1) of the *Education (General Provisions) Act 1989*, which from 1 January 2006, amends the compulsory school age to 16 years. The effect of the provision is that if a person has turned 15 before the end of 2005, the person has met their compulsory schooling obligations and may leave school.

The new section 166E(2) provides that subsection (3) applies to certain persons. The persons to whom subsection (3) applies were less than 15

years on 31 December 2005 and had completed year 10 before 1 January 2005.

The new section 166E(3) declares that the persons mentioned in subsection (2) are of compulsory school age while they are less than 15 years and that these persons are no longer of compulsory school age when they turn 15 years. The effect of the provision is that a person who has completed year 10 and who has not yet turned 15 on 31 December 2005 must continue to meet their compulsory schooling obligations until they turn 15. Essentially, the pre-2006 current compulsory school age applies to these persons and they may leave school once they have turned 15.

### **Clause 16 Amendment of s 98 (Insertion of new s 18A of Act No. 1 of 2002)**

Clause 16 contains two subclauses that amend section 98, which amends the *Education (Queensland Studies Authority) Act 2001*. Subclause (1) amends the section 98 heading to allow for the inclusion of a new section 18B.

Subclause (2) inserts the new section 18B. The section requires the QSA to record information given to the QSA about a student in the student's account. The QSA must record this information as soon as practicable after receiving the information. Subsection 18B(1) qualifies the requirement on the QSA to the extent that there is an open account for the student under part 4 of the *Youth Participation in Education and Training Act 2003* and the QSA has received information about the student under section 18A of the *Education (Queensland Studies Authority) Act 2001*.

### **Clause 17 Replacement of s 102 (Amendment of s 7 (Definitions) of Act No. 42 of 1992)**

Clause 17 omits sections 102 and replaces the section with a new section 102.

The new section 102 amends the *Freedom of Information Act 1992* to exclude from the application of that Act "educational agencies" in relation to aggregated information as defined under section 46(7) of the *Youth Participation in Education and Training Act 2003*. This is achieved through two amendments. Subsection (1) inserts a new subsection 11(1)(y)(viii) into the *Freedom of Information Act 1992*. This amendment includes aggregated information, as defined under section 46(7) of the *Youth Participation in Education and Training Act 2003*, within the list of

matters for which educational agencies are excluded from the application of the *Freedom of Information Act 1992*.

Subsection (2) inserts a new subsection 11(4)(c) into the *Freedom of Information Act 1992*. The subsection inserts a new limb to the definition of “education agencies” to refer to the department in which the *Youth Participation in Education and Training Act 2003* is administered. The effect of these provisions is to remove the administering department and the aggregated information from the application of the *Freedom of Information Act 1992*.

**Clause 18 Omission of s 103 (Amendment of s 11 (Act not to apply to certain bodies etc.) of Act No. 42 of 1992)**

Clause 18 omits section 103. The effect of section 103 is replicated by the new section 102.

**Clause 19 Amendment of sch 2 (Dictionary)**

Clause 19 amends the definition of “registered teacher” in the dictionary to update the reference to the term in the dictionary of the new *Education (Queensland College of Teachers) Act 2005*.

**Part 3 – Amendment of Education (General Provisions) Act 1989**

**Clause 20 Act amended in pt 3**

Clause 20 provides that part 3 amends the *Education (General Provisions) Act 1989*.

**Clause 21 Amendment of s 2 (Interpretation)**

Clause 21 amends part (a) of the definition of “school of distance education” in section 2, so that it means “a State school providing distance education”. Part (a) had previously specified that a school of distance education meant “a State educational institution, other than a State school, offering distance education”. However, legal advice about the definition concluded that a school at which primary, secondary or special education is provided by the State, by way of distance education, is still a State school

for the purposes of the *Education (General Provisions) Act 1989*. The circular nature of this definition has caused confusion about the use of the term and its application in the *Education (General Provisions) Act 1989*. The amendment clarifies the definition and resolves the confusion created by the previous definition.

### **Clause 22 Amendment of s 24 (Instruction to be free)**

Clause 22 inserts a new subsection (2) in section 24 so that it applies subject to new section 24A.

### **Clause 23 Insertion of new s24A**

Clause 23 inserts the new section 24A (Fee for distance education provided by a State school).

Subsection (1) states that the section applies to a person enrolled in a program of distance education at a State school.

Subsection (2) provides that the person must pay the fee prescribed under a regulation for the provision of distance education to the person under the program.

Subsection (3) provides that the fee is not payable in circumstances prescribed under a regulation. The regulation will set out the categories of persons not liable to pay the fee.

### **Clause 24 Amendment of s 152 (Regulation-making power)**

Clause 24 amends section 152(2)(a) to provide that the Governor in Council may make a regulation about the refunding of fees.

## **Schedule – Other amendments of the Youth Participation in Education and Training Act 2003**

The schedule makes minor amendments to address a typographical error and errors in the terminology used in section 17 and schedule 2 of the Act.

Item 1 of the schedule replaces subsection 17(2), including the note to the provision, to:

- remove a capital “E” from “State Educational institution”; and
- amend “educational program” to “education program” to align with the terminology used in section 30 of the *Education (General Provisions) Act 1989*.

Item 2 of the schedule amends the definition of “external program” in the dictionary in schedule 2 to replace “educational program” with “education program” to align with the terminology used in section 30 of the *Education (General Provisions) Act 1989* and the amended terminology of section 17 of the Act.