

# Education and Training Legislation Amendment Bill 2009

## Explanatory Notes

### General Outline

#### Short Title

The short title of the Bill is the Education and Training Legislation Amendment Bill 2009.

#### Policy Objectives of the Legislation

The principal objectives of the Bill are to make:

- (a) minor amendments to legislation administered by the Department of Education and Training (DET) to remove redundant provisions, correct deficiencies or omissions and clarify existing provisions. These Acts include the:
  - *Education (Capital Assistance) Act 1993*;
  - *Education (Queensland College of Teachers) Act 2005*;
  - *Education (Queensland Studies Authority) Act 2002*;
  - *Grammar Schools Act 1975*;
  - *James Cook University Act 1997*; and the
  - *Vocational Education, Training and Employment Act 2000*.
- (b) amendments to the *Education (General Provisions) Act 2006* to –
  - enable the Minister to provide, or assist in providing, a pre-preparatory learning program at certain State and non-State schools for children aged at least 3½ years of age; and
  - prohibit a licensed child care provider from using a term that indicates, or could reasonably be understood to indicate, that the licensee is purporting to offer education in the preparatory year of schooling.

## **Reasons for the Bill**

### **Minor and technical amendments**

DET administers 21 Acts. A miscellaneous provisions Bill is generally required every year to make minor amendments to the education and training portfolio of legislation to ensure that it works in the manner intended.

### **Amendments to the *Education (General Provisions) Act 2006***

The provision of pre-preparatory learning programs through schools in the form of two years of preschool has been occurring in Indigenous communities for a number of years. State preschools ceased operation in December 2006 and were replaced with the preparatory year, from January 2007. With the introduction of the preparatory year, what formerly had been the provision of two years of preschool in the relevant communities, has now become the pre-preparatory year and the preparatory year.

Prior to the commencement of the preparatory year, the *Child Care Act 2002* defined and put beyond doubt that ‘preschool education’ means education provided by a school to children in the year immediately before Year 1. The effect of this definition was that while preschool education was not a child care service for the purposes of the *Child Care Act 2002*, the year below preschool was captured.

As part of the review of the *Education (General Provisions) Act 1989* during 2004-2006 (EGPA review), consideration was given to the inclusion of a discretionary provision that would enable the delivery of programs and services to children below the compulsory school age, other than the preparatory year. The initial intention was to capture services provided to children with a disability and pre-preparatory services for children in identified Indigenous communities.

However, only the proposal in relation to children with a disability was included in the new *Education (General Provisions) Act 2006* (EGPA) because policy deliberations about the provision of the pre-preparatory year in Indigenous communities had not been concluded. Section 420(2) of the EGPA presently enables the Minister to provide special education to a person with a disability who is below compulsory school age. The provision of this special education service is excluded from the requirements of the *Child Care Act 2002*.

Subsequent to the EGPA review, thorough investigations and assessment have identified that the provision of a pre-preparatory learning program in

Indigenous communities using licensed services under the *Child Care Act 2002* is not a viable option for all the communities. Delivery of the pre-preparatory learning program in these Indigenous communities through schools (and regulated under the EGPA) is necessary as there is limited capacity or viability for non-school providers to deliver sustainable services in all communities. Schools in many of these discrete Indigenous communities are one of the few community sites to have significant physical, human and social infrastructure from which the pre-preparatory learning program could be leveraged. The investigations demonstrated that leveraging the provision of pre-preparatory learning program from the school infrastructure within these communities, where the early childhood education and care market has failed to provide consistent quality services, is the only cost effective approach at this time.

Section 429A of the EGPA prohibits the use of certain terms by child care providers. The intention of the prohibition is to distinguish the preparatory year from child care, and to limit confusion for parents because the use of those terms by a child care provider could lead to an assumption on the part of parents that the child care provider is able to provide education in the preparatory year of schooling.

However, since its introduction, it has become clear that the prohibition as it stands is not sufficiently broad enough to achieve this policy intention. Therefore, the Bill will amend the EGPA to expand this prohibition and ensure that child care providers must not describe the care they provide in any manner which may suggest that they are providing preparatory year education.

## **Achieving the Objectives**

The Bill achieves the principal policy objectives by amending the legislation as explained below.

### **Minor and technical amendments**

#### ***Education (Capital Assistance) Act 1993***

The *Education (Capital Assistance) Act 1993* establishes a legislative framework for the provision of capital assistance to non-State schools. Under the Act, an ‘approved authority’ applies for, and may be granted, capital assistance. Currently, the Act requires the Minister to declare a person or body as the approved authority.

The method of determining the ‘approved authority’ under the Act preceded the framework established by the *Education (Accreditation of Non-State Schools) Act 2001* (ANSS Act), whereby accredited non-State schools must each have a governing body. In practice, since the commencement of the ANSS Act the ‘approved authority’ is always the school’s governing body. Therefore, it is no longer necessary for the Minister to declare the ‘approved authority’.

*Education (Queensland College of Teachers) Act 2005 (QCT Act)*

The Bill also incorporates amendments to the QCT Act suggested by the Queensland College of Teachers (College). The College has been in operation for three years and has identified a number of provisions that require clarification or where operational or administrative inconveniences have arisen.

The Bill:-

- clarifies the terminology in sections 8 and 9 which sets out the eligibility criteria for full registration and provisional registration of a teacher respectively;
- inserts a head of power to charge a fee for a replacement registration card, as approximately 200 registration cards are re-issued each year due to the card being lost, stolen, destroyed or damaged;
- amends section 80 of the QCT Act to require the prosecuting authority (either the Commissioner of Police or the Director of Public Prosecutions) to notify the College about a disqualification order imposed by a Court;
- amends the QCT Act to provide a power for the Professional Practice and Conduct Committee (PP&C committee) to refer a matter to the Queensland Civil and Administrative Tribunal (QCAT) in situations where there is a possibility, due to the severity of the allegations, that the type of disciplinary action warranted may be beyond the PP&C committee’s powers;
- clarifies sections 103 and 161 of the QCT Act, so that if a person was an approved teacher at the beginning of a disciplinary proceeding, but ceases to be an approved teacher during the disciplinary proceeding, QCAT can continue the disciplinary proceeding and take action against the person as a former approved teacher;

- makes other minor amendments.

*Education (Queensland Studies Authority) Act 2002 (QSA Act)*

The Bill includes a technical amendment to the QSA Act updating the reference from the Adelaide Declaration on National Goals for Schooling in the Twenty-First Century to the Melbourne Declaration on Educational Goals for Young Australians.

*Grammar Schools Act 1975 (GS Act)*

The GS Act was amended in 2003 following a review of the Act. One amendment implemented was that in order to be eligible to vote or participate in the elections for the Board, a donor or subscriber must demonstrate an ongoing commitment to the Grammar School by way of donations.

In September 2005, the Grammar Schools Act Review Steering Committee (Steering Committee) was reconstituted in response to a request from the Grammar Schools of Queensland Association. The Steering Committee's terms of reference included assessing the adequacy and effectiveness of the GS Act in the context of the 2003 amendments.

As a result of the recommendations of the Steering Committee, the Bill allows a donor or subscriber to voluntarily relinquish their status as a donor or subscriber by notifying the Board in writing.

*James Cook University Act 1997 (JCU Act)*

The Bill will amend the JCU Act to:

- streamline James Cook University's processes relating to the election of convocation members of the council of the university, whilst safeguarding the rights of convocation members to vote should they opt to do so;
- extend the maximum term of office of the chairperson of the academic board from two years to three years;
- clarify that the powers of both authorised persons and security officers may be limited under a condition of appointment, or by written notice of the vice-chancellor given to the authorised person or security officer; and
- make other minor amendments.

*Vocational Education, Training and Employment Act 2000 (VETE Act)*

Under the VETE Act, one of the functions of the Training and Employment Recognition Council (TERC) is to regulate the issuing of qualifications and statements of attainment. As part of this function, from time to time TERC encounters situations where qualifications or statements of attainment have been issued in an inappropriate manner. This may occur for example, when a registered training organisation (RTO) has issued the qualification or statement of attainment outside the scope of its registration. That is, the qualification or statement of attainment related to training which the RTO was not registered to provide.

Therefore, the Bill amends the VETE Act to:

- give TERC power to cancel a qualification or statement of attainment issued in these circumstances;
- give TERC the necessary powers to investigate, if it reasonably believes that a qualification or statement of attainment may have been issued in inappropriate circumstances;
- require TERC to issue a public notification about its decision to cancel a qualification or statement of attainment, to ensure that this information is disseminated to persons and bodies that may be affected (e.g. employers); and
- enable a party aggrieved by a decision of TERC to appeal to the Queensland Industrial Relations Commission (QIRC). A party to the appeal will be able to appeal against the QIRC's decision to the Industrial Court on a question of law only.

The following offence provisions will be created with a maximum penalty of 40 penalty units:-

- a person must return their cancelled qualification or statement of attainment;
- a person who has had their qualification or statement of attainment cancelled must not continue to rely on it (i.e. by holding out as having the qualification when in fact the person does not have it).

*Amendments to the Education (General Provisions) Act 2006 (EGPA)*

The Bill also amends the EGPA to enable the Minister to provide, or assist in providing, a pre-preparatory learning program in certain State and non-State schools. The program will focus on literacy and numeracy, and

will be provided to pre-preparatory age children (i.e. children who are at least 3½ years old).

In addition, the Bill makes minor consequential amendments to the *Child Care Act 2002* to provide that the provision of a pre-preparatory learning program is not child care for the purposes of that Act.

In addition, the Bill clarifies the application of the EGPA to children undertaking the pre-preparatory learning program, as well as pre-preparatory aged children who are provided with special education.

The Bill also amends the EGPA to strengthen the prohibition on the use of certain terms by child care providers, to ensure that child care providers can not describe the care they provide in any manner which may suggest that they are providing preparatory year education.

## **Administrative costs**

### **Minor and technical amendments**

Implementation of the minor and technical amendments is not expected to result in any additional administrative costs to the Government.

### **Amendments to the *Education (General Provisions) Act 2006***

The 2006-07 State Budget provided funding of \$23.1 million over four years to enhance the provision of the pre-preparatory year. A further \$24.4 million over two years was provided in the 2008-09 State Budget.

## **Fundamental Legislative Principles**

The Bill is generally consistent with fundamental legislative principles.

The Bill inserts a definition of “prescribed State school” in new section 419A(5). The first limb of the definition limits the provision of the pre-preparatory learning program to those State schools that are providing the program immediately before commencement of this section and the learning program has been approved for that particular school. The second limb of the definition allows further State schools to be prescribed under a regulation.

This provision is contrary to the fundamental legislative principles as a Bill must have regard to the institution of Parliament so that a Bill authorises the amendment of an Act only by another Act. This breach is considered necessary in the interests of continuing a pre-preparatory learning program

in the unlikely event that a private provider in a remote discrete Indigenous community, which provided the program at commencement were unable to continue to run the program in the longer term and an alternative private provider could not pick up the program. The school in these communities could be the only realistic alternative provider.

## **Consultation**

### **Minor and technical amendments**

The Queensland College of Teachers has been consulted on the QCT Act amendments.

The Grammar Schools Association has been consulted on the amendments to the GS Act.

The James Cook University has been consulted on the JCU Act amendments.

The Vice-President of the QIRC, the President of the Industrial Court and the Australian Council for Private Education and Training have been consulted on the VETE Act amendments.

A consultation draft of the Bill was also sent to the following stakeholders:-

- Peak bodies representing the three school sectors, namely Education Queensland, the Queensland Catholic Education Commission (QCEC) and Independent Schools Queensland;
- Employing authorities, specifically the Catholic Education Offices in Brisbane, Cairns, Rockhampton, Toowoomba and Townsville, Christian Schools Australia, the Grammar Schools of Queensland Association Inc, Lutheran Education Queensland, the Presbyterian and Methodist Schools Association, Seventh Day Adventist Schools (Northern Australia) Ltd, Seventh Day Adventist School (South Queensland) and the Anglican Schools Office;
- Teacher education institutions, specifically the Australian Catholic University, University of Queensland, Queensland University of Technology, James Cook University, Central Queensland University, Griffith University, the University of Southern Queensland and the Christian Heritage College;
- Teacher unions, namely the Queensland Teachers' Union (QTU) and Queensland Independent Education Union;

- Principals' associations, specifically the Association of Heads of Independent Schools of Australia, Association of Special Education Administrators Queensland, Queensland State P-10/12 School Administrators' Association, Queensland Association of State School Principals Inc, Queensland Secondary Principals' Association, Catholic Primary Principals' Association, and Catholic Secondary Principal's Association; and
- Peak bodies representing parents, namely the Queensland Council of Parents and Citizens Association, Federation of Parents and Friends Associations of Queensland, Queensland Independent Schools Parents Council, and the Isolated Children's Parents' Association of Australia.

The Departments of Premier and Cabinet, Justice and Attorney-General, Employment and Industrial Relations, Communities, Mines and Energy, Housing, Public Works and the Queensland Police Service, Queensland Health, Environmental Protection Agency, Queensland Transport and Queensland Treasury have been consulted.

#### **Amendments to the *Education (General Provisions) Act 2006***

The Departments of Premier and Cabinet and Communities and Queensland Treasury were consulted with respect to all of the proposed amendments to the EGPA.

The QCEC, Crèche and Kindergarten Association of Queensland, QTU and the Queensland Association of State School Principals were consulted in relation to the pre-preparatory amendments.

The Department of Child Safety, Disability Services Queensland, the Queensland Association of Primary School Principals, the QTU and the Association of Special Education Administrators Queensland were also consulted regarding the amendments relating to special education for children with a disability.

## Notes on Provisions

### Part 1 Preliminary

#### Short title

Clause 1 establishes the short title of the Act as the *Education and Training Legislation Amendment Act 2009*.

#### Commencement

Clause 2 states that the *Education and Training Legislation Amendment Act 2009* commences on a day to be fixed by proclamation.

### Part 2 Amendment of Education (Capital Assistance) Act 1993

#### Act amended

Clause 3 provides that this part amends the *Education (Capital Assistance Act) 1993*.

#### Amendment of s 3 (Definitions)

Clause 4 provides for a new definition of “approved authority” of an eligible non-State school to mean the governing body of the school.

Section 3 of the *Education (Capital Assistance Act) 1993* currently defines an “approved authority” for an eligible non-State school to mean the person or body declared under section 6 to be the approved authority of the school. Under section 6, the Minister may declare that a person or body is the approved authority of one or more eligible non-State schools.

The current method of determining the “approved authority” under section 3 preceded the framework established by the *Education (Accreditation of Non-State Schools) Act 2001* (ANSS Act), whereby accredited non-State schools must each have a governing body. In practice, since the

commencement of the ANSS Act the “approved authority” is always the school’s governing body. Therefore, it is no longer necessary for the Minister to declare the “approved authority”.

### **Omission of s 6 (Declaration of approved authority)**

Clause 5 omits section 6 as it is redundant following the amendment to the definition of “approved authority” in section 3 as outlined above.

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

### **Act amended**

Clause 6 provides that this part amends the *Education (General Provisions) Act 2006* (EGPA).

### **Amendment of s 50 (State education to be free)**

Clause 7 amends section 50 to provide that a pre-preparatory age child being provided with a pre-preparatory learning program in a State school must have the program provided for free.

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

Clause 8 amends section 51 to provide that the chief executive may charge a fee for the program in certain circumstances which are set out in the EGPA.

### **Amendment of s 355 (Definitions for pt 6)**

Clause 9 of the Bill amends the definition of “exempt person” in section 335 of the EGPA so that Part 6 (Directions and orders about conduct or movement at, or entry to, premises of State instructional institutions) does not apply to students and pre-preparatory age children who:-

- are registered in a pre-preparatory learning program at the institution; or

- a person with a disability who, under section 420(2), is being provided with special education at the institution and is not enrolled in the preparatory year at the institution.

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

Clause 10 replaces the heading to section 365 of the EGPA with a new heading ‘Obligation to report sexual abuse of a person under 18 years at State school’.

Subclause (2) amends subsection 365(1) of the EGPA to extend a staff member’s obligation to report sexual abuse or suspected sexual abuse, so that it includes not only a student under 18 years attending the school, but also a pre-preparatory age child being provided with a pre-preparatory learning program at the school and a child below preparatory age who is being provided with special education at the State school.

The extension of this obligation is necessary because children undertaking a pre-preparatory learning program at a State school and the children below preparatory age being provided with special education at a State school are not ‘students’ of the school. Therefore, the obligation in section 365 would not apply with respect to them, but for the amendment.

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

Clause 11 amends the heading to section 366 by omitting the existing heading and substituting the new heading ‘Obligation to report sexual abuse of person under 18 years at non-State school’.

Subclause (2) amends subsection 366(1) of the EGPA to extend the obligation to report sexual abuse or suspected sexual abuse of a pre-preparatory age child being provided with a pre-preparatory learning program at the school and a child below preparatory age who is being provided with special education at the non-State school.

Note that children attending pre-preparatory programs are not ‘students’ for the purposes of the EGPA, nor will they be provided with a form of education delivered by schools under the EGPA (i.e. primary, secondary, special education). Consequently, only a select number of the provisions of the EGPA will apply to these children.

## **Insertion of new ch 19, pt 1 and part 2 hdg**

Clause 12 inserts a new Part 1 in Chapter 19 which provides for a process of registration of pre-preparatory aged children for a pre-preparatory learning program.

The clause inserts a new section 419A into the EGPA allowing for pre-preparatory learning programs to be provided to children older than three years and six months at schools providing the program at commencement of the section and approved by the Minister.

Subsection 419A(1) provides that the Minister may approve a program focused on literacy and numeracy, for preparing a child for education in the preparatory year, to be a pre-preparatory learning program for a prescribed State school or non-State school.

Subsection 419A(2) confers a discretion on the Minister to provide, or assist in providing a pre-preparatory learning program at a prescribed State school or non-State school, to a pre-preparatory age child.

Subsection 419A(3) provides that a pre-preparatory child, provided with a pre-preparatory learning program, is not a student of the school or enrolled at the school. This is to ensure that some of the provisions of the EGPA that are not appropriate to apply to this cohort, such as the full range of behaviour management provisions, do not apply.

Subsection 419A(4) requires that the Minister must review the operation of this section within 5 years after its commencement, to decide whether the section remains relevant and necessary.

Subsection 419A(5) defines the terms *pre-preparatory age child*, *prescribed non-State school* and *prescribed State school*.

The new section 419B outlines what information and documentation is required for an application for registration in a pre-preparatory learning program.

The new section 419C provides that the principal must consider an application for registration. The principal may register the child if the principal is satisfied that it is in the child's best interests to do so, even if the application does not comply, or fully comply with section 419B. The principal may refuse to register the child if the child's registration has been cancelled at another prescribed State school or a prescribed non-State school pursuant to section 419D.

New section 419D enables a principal of a prescribed State school or prescribed non-State school to cancel the registration of a child in a pre-preparatory learning program, if the principal is satisfied that the child is too mature for the learning program and would be better served educationally by being enrolled in the preparatory year. This is not a punitive cancellation provision, but would be in the best educational interests of the child.

### **Amendment of s 420 (Special education)**

Clause 13 amends section 420 to make it clear that a child to whom this section applies is not a student of the school or enrolled at the school. This is for the same reasons as those outlined with respect to new 419A(3).

### **Amendment of s 426 (Confidentiality)**

Clause 14 of the Bill amends section 426(1)(b) of the EGPA so that the confidentiality provisions that protect the provision of information about students, prospective students or former students of State schools also apply to pre-preparatory age children who are, may be or have been provided with pre-preparatory learning programs at State Schools. The provisions will also apply to a person with a disability who is enrolled under section 420(2) and is being provided with special education at a State school and is not enrolled in the preparatory year at the school.

Clause 14 also amends section 426(2)(b) of the EGPA to apply to a pre-preparatory age child who has been provided with a pre-preparatory learning program at the school, the present confidentiality provisions that apply to an employee or former employee of a relevant non-State school who has access to personal information about a former student or continuing student of the school, contained in a transfer note for the former student or continuing student. These provisions will also apply to a child with a disability who is enrolled under section 420(2) and is being provided with special education at a State school and is not enrolled in the preparatory year at the school.

### **Amendment of s 428 (Collection of demographic information)**

Clause 15 of the Bill amends section 428 of the EGPA so that the chief executive may collect demographic information about pre-preparatory age children (and their parents) who are, may be or have been provided with pre-preparatory learning programs at State Schools and children who are

being provided with special education at State schools (and their parents) to give effect to or manage an education funding arrangement.

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

Clause 16 of the Bill amends section 429A of the EGPA to prevent the use of any names, initials, words or descriptions that might suggest that a licensee under the *Child Care Act 2002* is offering education in the preparatory year.

This amendment covers acronyms and other terminology that might be used to circumvent the existing prohibition in section 429A and so minimise possible confusion for parents.

### **Amendment of ch 20, pt 3, hdg**

Clause 17 of the Bill amends the heading of Chapter 20, part 3.

### **Insertion of new ch 20, pt 4**

Clause 18 of the Bill inserts the transitional provision for the pre-preparatory learning program. The effect of the transitional provision is to recognise the provision of the pre-preparatory learning program that was provided by a prescribed State school or prescribed non-State school and which was approved by the Minister for the school, immediately before commencement.

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

Clause 19 of the Bill amends the dictionary by including definitions of *pre-preparatory age child*, *pre-preparatory learning program*, *prescribed non-State school*, and *prescribed State school* as follows:-

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

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

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

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

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

### **Act amended**

Clause 20 provides that this part amends the *Education (Queensland College of Teachers) Act 2005* (QCT Act) to implement amendments suggested by the Queensland College of Teachers (College). The College has been in operation for three years and the Office of the College has identified a number of provisions that require clarification or where operational or administrative inconveniences have arisen.

### **Amendment of s 8 (Eligibility for full registration)**

Clause 21 amends section 8(1)(a)(ii) to remove the requirement to show a “contribution to education” and instead provide that the person must show “demonstrated abilities, experience, knowledge and skills”.

Section 8 of the QCT Act presently sets out the eligibility criteria for full registration of a teacher including the person’s “abilities, experience and contribution to education”.

The College advises that references in section 8(1)(a)(ii) to “contribution to education” as a separate eligibility component is potentially misleading as this component is integral to demonstration against the professional standards.

The term “contribution to education” is a notion that can be interpreted very broadly. For example, it could include a wide range of achievements in academia, administration, policy, and resource and performance management. However, the “contribution” that is relevant for registration or approval with the College is the specific knowledge and skills required to be an effective teacher.

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

Clause 22 amends section 9(1)(a)(ii) to provide that a person must show they have “demonstrated abilities, experience, knowledge and skills” in order to meet the eligibility criteria for provisional registration.

Section 9 of the QCT Act presently sets out the eligibility criteria for provisional registration of a teacher including the person's "abilities, experience and contribution to education".

This amendment is made in line with the amendments to section 8(1)(a)(ii) in clause 21.

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

Clause 23 amends section 62 to provide that a teacher may apply for a replacement of their registration card. Section 62(2) operates to enable the College to charge a fee under the Regulation.

The College requested an amendment to the QCT Act to allow a teacher to apply for a replacement of their registration card. It also requested that a head of power be inserted into the QCT Act to charge a fee under the *Education (Queensland College of Teachers) Regulation 2005*. Approximately 200 registration cards are re-issued per year due to the card being lost, stolen, destroyed or damaged.

### **Renumbering of ss 62 and 63**

Clause 24 renumbers sections 62 and 63 as sections 63 and 62.

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

Clause 25 amends section 80 to include a requirement that a prosecuting authority must, in addition to providing information about a penalty for a conviction of a teacher for an indictable offence, also provide information to the College about a disqualification order. A "disqualification order" may be made by a Court under section 58 of the QCT Act and provides that the teacher may never be granted registration or permission to teach.

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

Clause 26 corrects a minor drafting error by inserting a new heading for section 110, changing "authorise" to "authorises".

### **Insertion of new section 111A**

Clause 27 inserts a new section 111A to implement the policy intention that the PP&C committee can refer a matter to the QCAT but without the need to conduct a disciplinary hearing or authorising an investigation into the matter.

This would only occur if the PP&C committee believes that, due to the seriousness of the matter, the disciplinary action could result in an order that only the QCAT has power to make.

### **Amendment of s 115 (Functions of PP&C committee).**

Clause 28 amends section 115 of the QCT Act to clarify the functions of the PP&C committee in light of the new section 111A. The new section provides that the functions of the PP&C committee in relation to a relevant disciplinary matter are:-

- to authorise an investigation into the matter;
- to refer the matter to the QCAT with or without authorising an investigation into the matter or hearing the matter;
- to hear and decide the matter with or without authorising an investigation into the matter.

### **Amendment of s 130 (Application of div 2).**

Clause 29 amends section 130 to include a reference to the new subsection 111A(2). The purpose of the amendment is to apply Chapter 6, Part 2, Division 2, which applies to disciplinary proceedings conducted by the QCAT, to matters referred by the PP&C committee under section 111A(2) or 123(2)(b).

### **Amendment of s 175 (Appointment).**

Clause 30 inserts an additional provision in subsection 175(1) of the QCT Act that the College may appoint another person the College considers appropriate as an investigator. Section 175(2) of the QCT Act will still apply to the appointment of an external investigator, that is, the College may only appoint the person as an investigator if it is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

Section 175 currently provides that the College may appoint either a member of staff of the office of the College or a member of the board as an investigator. The College advises that the current provision is too restrictive given the small size of the College's staffing establishment and has requested an amendment to enable the College to appoint another person that the College considers appropriate to be appointed as an investigator, that is, a person who is not a member of the board or the office staff.

### **Amendment of s 211 (Review committee).**

Clause 31 amends section 211 of the QCT Act. Under section 211(5) of the QCT Act the review committee is obliged to allow the person a reasonable time to make a submission about the review. However, the QCT Act is silent about the period of time in which the submission can be made. The amendment therefore provides that the review committee must give the applicant a notice stating that the applicant may make oral or written submissions about the original decision to the committee within 21 days after the notice is given.

### **Amendment of s 213 (Notice of review decision).**

Clause 32 amends section 213 of the QCT Act. Section 213 of the QCT Act provides that the College must as soon as practicable after making a review decision give the applicant a notice of the review decision including the reasons for the decision and the applicant's appeal rights. Section 213(3) provides that if the College does not provide the review notice within 45 days after the application is made, it is taken to have made a review decision confirming the original decision.

The College advises that the current time limit of 45 days to provide a review notice does not allow enough time, given the procedures involved in reviewing the original decision. Requiring an applicant to provide their submission within 21 days of a notice being sent by the Review Committee (in accordance with the amended section 211) and extending the period for finalising the review to 60 days would provide for a more streamlined process and a more reasonable amount of time for the Review Committee to complete its processes.

The amendment therefore replaces the 45 day time limit in section 213(3) with a 60 day time limit.

### **Amendment of s 264 (Delegation).**

Clause 33 amends section 264(1) of the QCT Act which currently provides that the board may delegate the board's powers under the QCT Act to a member of the board, a committee of the board or the Director. The College advises that section 264 is too restrictive given that it is not feasible for the Director to personally undertake all actions required to carry out the Board's powers.

Subsection 264(1) is therefore being amended to enhance operational convenience for the College by enabling the board's powers to be delegated to an appropriately qualified member of the office's staff. A new subsection 264(4) provides that **“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

The provision is modelled on section 55 of the *Education (Queensland Studies Authority) Act 2002* i.e. the authority may delegate its powers under the Act to a member, an authority committee, the Director or an appropriately qualified member of the office's staff.

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

Clause 34 amends the definitions of “former holder of permission to teach” and “former registered teacher”. The clarification is intended to assist with disciplinary proceedings, for example to clarify that if a person was an approved teacher at the start of a disciplinary proceeding but ceases to be an approved teacher during the disciplinary proceeding, the QCAT can continue the proceeding and take action against the person as a former approved teacher.

## **Part 5                      Amendment of Education (Queensland Studies Authority) Act 2002**

### **Act amended**

Clause 35 provides that this part amends the *Education (Queensland Studies Authority) Act 2002*.

### **Amendment of sch 2 (Dictionary)**

Clause 36 amends the definition of “school studies” to update the reference from the Adelaide Declaration on National Goals for Schooling in the Twenty-First Century to the Melbourne Declaration on Educational Goals for Young Australians, as the declaration of goals committed to by all Australian Education Ministers decided at the Ministerial Council on Education, Employment, Training and Youth Affairs meeting on 5 December 2008.

## **Part 6                      Amendment of Grammar Schools Act 1975**

### **Act amended**

Clause 37 provides that this part amends the *Grammar Schools Act 1975* (GS Act).

### **Omission of s 3 (Notes)**

Clause 38 omits the notes to section 3 as it is no longer drafting convention to include notes in the section.

### **Omission of s 44 (Register of donors and subscribers)**

Clause 39 amends the GS Act to enable a donor or subscriber to voluntarily relinquish their status as a donor or subscriber by notifying the board in writing. A decision to voluntarily relinquish status as a donor or subscriber will not entitle the person to a refund (in whole or in part) of the electoral eligibility amount paid by the person.

In September 2005, the Minister reconstituted the Grammar Schools Act Review Steering Committee (Steering Committee) in response to a request from the Grammar Schools of Queensland Association. The Steering Committee’s terms of reference included assessing the adequacy and effectiveness of the GS Act in the context of amendments made to the Act in 2003. The Steering Committee has requested an amendment to allow a donor or subscriber to voluntarily relinquish their status by notifying the board in writing.

The amendments provide a means of streamlining the roll of eligible electors and reducing costs to the schools. In addition, in the case where a person no longer wants a relationship with the school, usually because they no longer have a child enrolled at the school, the proposed amendments will minimise unnecessary correspondence or requests to the person.

## **Part 7                      Amendment of James Cook University Act 1997**

### **Act amended**

Clause 40 provides that this part amends the *James Cook University Act 1997* (JCU Act).

### **Amendment of s 15 (Elected members)**

Clause 41 amends subsection 15(3)(d) of the JCU Act. Subsection 15(3)(d) currently provides that all the members of the convocation may vote. Presently the University is required to send voting material to all convocation members regardless of whether they wish to vote. This imposes significant costs on the University.

By inserting the words ‘eligible under a university statute’ after the word ‘convocation,’ the amendment will provide that each convocation member of council is to be elected by a ballot at which all the persons eligible under a university statute may vote. A statute will then provide that only those convocation members who indicate that they wish to be an active member of the convocation for the purpose of receiving voting papers are eligible to vote. The amendment, in conjunction with the amendment to subsection 57(2)(e) in this Bill will reduce the costs of conducting convocation elections, whilst safeguarding the right of convocation members to vote should they opt to do so.

### **Amendment of s 31 (Deputy chancellor)**

Clause 42 replaces subsection 31(4) of the JCU Act to clarify that the deputy chancellor is to act as chancellor when there is a vacancy in the office of the chancellor or the chancellor cannot perform the functions of the office.

### **Amendment of s 40A (Chairperson of academic board)**

Clause 43 amends subsection 40A(3) to provide that the chairperson of the academic board holds office for the term, not longer than 3 years, decided by the council. The longer term will be consistent with the three year academic plan cycle and otherwise optimise the effective contribution of the chairperson. The proposal for a term not longer than three years is also consistent with the equivalent term for most other Queensland university academic boards.

### **Amendment of s 57 (Making of university statutes)**

Clause 44 amends section 57(2)(e) of the JCU Act by inserting the words ‘and the voting rights of its members’ after the word ‘convocation’ to clarify that the council may make a university statute about the membership of the convocation and the voting rights of members of the convocation. This amendment and the amendment to subsection 15(3)(d) in this Bill will materially align the JCU Act with the authorising Acts for the other two Queensland universities that elect graduate members onto their governing bodies, namely the Queensland University of Technology and the University of Queensland.

### **Amendment of Schedule 1 (Control of traffic and conduct on university land)**

Clause 45 inserts a new section 1A (Limitation of authorised person’s or security officer’s powers) in Schedule 1 the JCU Act to provide that the powers of an authorised person or a security officer may be limited under a condition of appointment or by notice of the vice-chancellor given to the authorised person or security officer. Authorised persons and security officers are empowered under Schedule 1 to control traffic and conduct on university land respectively.

The amendment will make the provisions, other than the form of notice, of the JCU Act consistent with *Queensland University of Technology Act 1998* and the *University of Queensland Act 1998*.

### **Amendment of Schedule 2 (Dictionary)**

Clause 46 replaces the definition of the term *general staff* in Schedule 2 of the JCU Act to clarify that the term means staff of the university including professional and technical staff but does not include academic staff.

## **Part 8**                      **Amendment of Vocational Education, Training and Employment Act 2000**

### **Act amended**

Clause 47 provides that this part amends the *Vocational Education, Training and Employment Act 2000* (VETE Act).

Under the VETE Act one of the functions of the Training and Employment Recognition Council (TERC) is to regulate the issuing of qualifications and statements of attainment. As part of this function, from time to time, TERC encounters situations where qualifications or statements of attainment have been issued in an inappropriate manner. For instance, where a Registered Training Organisation (RTO) has issued the qualification or statement of attainment, but outside its scope of registration.

Therefore, part 8 amends the VETE Act to give TERC power to cancel a qualification or statement of attainment issued in inappropriate circumstances. Show cause provisions and appeal rights are also included in part 8 of the Bill.

### **Amendment of s 45 (Cancellation of qualification or statement of attainment)**

Clause 48 amends section 45 of the VETE Act. Section 45 enables an RTO to cancel a qualification or statement of attainment issued by it in certain circumstances. Section 45 is updated to reflect modern drafting practice, as contained in the new section 45A (see below).

The new subsection 45(2) provides for an additional requirement that if the RTO decides not to cancel the qualification or statement of attainment, the RTO must give written notice to the person to whom the qualification or statement of attainment was issued (the *holder*) that no further action will be taken. This purpose of this provision is to provide the holder with notice of a positive outcome.

The new subsection 45(3) is similar in effect to the current section 45(2) i.e. that if the RTO decides to cancel the qualification or statement of attainment, the RTO must, as soon as practicable after deciding, give an information notice to the holder.

The new subsection 45(4) reflects current drafting practice and clarifies when a decision takes effect.

The new subsection 45(5) clarifies when the holder must return the cancelled qualification or statement of attainment to the RTO i.e. within 21 days after the decision has effect unless the holder has a reasonable excuse.

### **Insertion of new ss 45A-45C**

Clause 49 inserts a new section 45A (Cancellation of qualification or statement of attainment by council).

The new section 45A(1) provides that the council may cancel a qualification or statement of attainment, by fair procedures prescribed under a regulation, if—

- (a) the qualification or statement of attainment was issued by—
  - (i) an entity that is not an RTO; or
  - (ii) an RTO acting outside the scope of its registration; or
- (b) the RTO that issued the qualification or statement of attainment—
  - (i) did not provide, or fully provide, the training or assessments for the issue of the qualification or statement of attainment; or
  - (ii) did not, in issuing the qualification or statement of attainment, comply with the condition mentioned in section 26(2)(a) i.e., that the training organisation must comply with requirements applying to an RTO under the national standards.

The new subsection 45A(2) provides that the council has power to make whatever inquiries the council considers necessary to help the council decide whether to cancel the qualification or statement of attainment.

The new subsection 45A(3) provides that if the council decides not to cancel the qualification or statement of attainment, the council must give written notice to the person to whom the qualification or statement of attainment was issued (the *holder*) and to the RTO or other entity that issued the qualification or statement, that no further action will be taken. The purpose of this provision is to provide notice of a positive outcome.

The new subsection 45A(4) provides that the council must give a holder and the RTO or other entity that issued the qualification or statement of attainment notice of a decision to cancel the qualification or statement of attainment.

The new subsection 45A(5) clarifies when the decision takes effect.

The new subsection 45A(6) provides that the holder must return the cancelled qualification or statement of attainment to the council within 21 days after the decision has effect unless the holder has a reasonable excuse.

Clause 49 also inserts a new section 45B (Public notice of cancellation of qualification or statement of attainment).

The new section 45B provides that the council must establish and make publicly available a list of qualifications and statements of attainment cancelled by the council under section 45A. The council may make the list available, for example, by publishing the list on the council's website.

The council may also give notice of the cancellation of a qualification or statement of attainment by publishing a notice about the cancellation in a newspaper circulating in the State, or giving written notice of the cancellation to other registering bodies or industry bodies to whom the information is relevant.

Clause 49 also inserts the new section 45C (Offence to falsely claim to hold qualification or statement of attainment).

The new section 45C provides that it is an offence for a person whose qualification or statement of attainment is cancelled under section 45A to claim to hold the qualification or statement of attainment. The offence is punishable by a maximum penalty of 40 penalty units, i.e. \$4000.

### **Amendment of s 83 (Prohibited employers)**

Clause 50 amends section 83 to attain consistency with other notice provisions in the Act. For a positive outcome a "written notice" is only required, however if a decision has a negative outcome and the person has a right to appeal, an "information notice" must be given. "Information notice" is defined in Schedule 3 the Dictionary.

### **Amendment of s 84 (Revocation of declaration as prohibited employer)**

Clause 51 amends section 84 to attain consistency with other notice provisions in the Act. For a positive outcome a "written notice" is only required, however if a decision has a negative outcome and the person has a right to appeal, an "information notice" must be given. "Information notice" is defined in Schedule 3 the Dictionary.

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

Clause 52 amends subsection 230(1) to include a right to appeal to the Queensland Industrial Relations Commission against a decision of the council to cancel a qualification or statement of attainment under section 45A(1).

### **Amendment of s 244 (Appeal to Industrial Court)**

Clause 53 amends section 244 of the Act. Under section 244 a party to an appeal to the Queensland Industrial Relations Commission may appeal against the commission's decision to the Industrial Court on a question of law only.

The clause inserts subsection 244(2) to clarify that the *Industrial Relations Act 1999* applies, with any necessary changes, to a proceeding on appeal before the Industrial Court brought under section 244(1).

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

### **Regulation amended**

Clause 54 provides that this part amends the *Vocational Education, Training and Employment Regulation 2000*. The provision clarifies that the amendment of the regulation in this Part does not affect the power of the Governor in Council to further amend the regulation or repeal it.

### **Amendment of sch 5 (Dictionary)**

Clause 55 amends definitions in the *Vocational Education, Training and Employment Regulation 2000* that are consequential to the amendments to the principal Act in this Bill.

## **Part 10**                      **Amendment of *Child Care Act 2002***

### **Act amended**

Clause 56 provides that this part amends the *Child Care Act 2002*.

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

Clause 57 of the Bill amends section 5 of the *Child Care Act 2002* by renumbering the existing subsection 5(1)(b) as 5(1)(a) and inserting a new subsection 5(1)(b). Present subsection 5(1) contains a number of exclusions from the definition of a *child care service*.

An amendment to section 5 inserts subsection 5(1)(b), which has the effect of excluding from the definition of a *child care service*, a service that provides a pre-preparatory learning program at a prescribed State or non-State school to a pre-preparatory age child.

The Bill further amends section 5 by inserting definitions of *pre-preparatory age child*, *pre-preparatory learning program*, *prescribed non-State school*, and *prescribed State school* as follows:-

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

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

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

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