

Education and Training Legislation (Skills Queensland) Amendment Bill 2010

Explanatory Notes

Short Title

The short title of the Bill is the Education and Training Legislation (Skills Queensland) Amendment Bill 2010.

Objective of the Bill

The primary objectives of the Bill are to:

- establish an industry led skills commission in Queensland called Skills Queensland; and
- to strengthen the child protection measures within the teaching environments in Queensland.

Reasons for the Bill

Skills Queensland

The Queensland Government is committed to delivering a world-class education and training system that will position the State as a premium place to live, work and learn in 2020. This is outlined in the Smart Ambition under *Towards Q2: Tomorrow's Queensland (Q2)*. A skilled workforce is a critical enabling factor for both high productivity and sustainable employment. Q2 has set a target to have three in four Queenslanders aged between 25 to 64 years of age with trade, training or tertiary qualifications by 2020.

The challenge for Queensland is to ensure that approaches to skills and workforce development keep pace with the demands of a rapidly growing economy and are responsive to economic factors impacting on the State. Targeted workforce development that is responsive to current and emerging industry and community needs is critical to raising productivity, stimulating innovation and achieving global competitiveness. It is essential that government is able to respond to emerging issues in a timely way.

Queensland's current skills system supports training providers by directly allocating resources through prescriptive and relatively inflexible contractual arrangements. In the future, the clients of the system, both industry and individuals, need more say in how training resources are spent to best meet their needs. Queensland is already reforming the way the vocational education and training sector is funded, for example, by providing clients with greater choice as to who delivers their training and what training they engage in, to make the system more demand driven. As an important first step, since 1 July 2010, all funding for apprentices and trainees have been based on training delivered, rather than pre-allocating places to training providers. The Queensland Government is also giving TAFE institutes more autonomy in funding arrangements to respond to the needs of local labour markets and communities.

Funding reforms will reduce much of the inflexibility associated with current purchasing arrangements. However, Queensland needs to ensure that the finite resources available to the vocational education and training sector are targeted to the needs of the industry, communities and the economy.

Meeting these new challenges requires a new approach to the issue of responsibility for the skills system. Currently, skills and workforce development are primarily the responsibility of employers whereas responsibility for the skills system has traditionally rested with government. Reform within the skills system over recent years has included a much greater emphasis on government engaging with industry.

It is important for industry to take a lead role in informing and influencing priorities for the skills and workforce development investment that underpins sustainable economic growth in Queensland. This is supported by Skills Australia, the Australian Government industry advisory body, which has recommended that a greater industry engagement in state and national skills investment decisions is required with governance arrangements to reflect this.

Queensland College of Teachers

The Queensland College of Teachers (the College) has raised two technical issues with the *Education (Queensland College of Teachers) Act 2005* (QCT Act) regarding the definition of excluded person and the process for notification by employing authorities of investigations of teachers in relation to allegations of harm caused or likely to be caused to a child.

The QCT Act provides a process for teacher registration and creates two categories of persons who cannot apply for registration or permission to teach, 'relevant excluded persons' and 'excluded persons'.

A person who is an approved teacher, or holds a permission to teach, who is convicted of a disqualifying offence and sentenced to an imprisonment order becomes an excluded person and may never apply again for registration. However, if that same person surrendered their registration or permission to teach or allowed their registration or permission to teach to lapse before being convicted and sentenced to an imprisonment order, they may apply again for registration.

When an employing authority starts to investigate one of its teachers in response to an allegation of harm caused or likely to be caused to a child, the employer must notify the College. Section 77 of the QCT Act sets out the circumstances in which the employer must notify the College about a termination of an investigation. Notification must be provided to the College when a teacher resigns during or after an investigation or a teacher is dismissed after an investigation.

However, investigations may end for reasons other than the resignation or dismissal of the teacher. For example, if the teacher's fixed term contract expires during the investigation there is no requirement to notify the College of the outcome of the investigation. As not all teachers are employed on permanent contracts, the current provision is not effective in all cases.

The information provided by employing authorities under section 77 allows the College to consider whether it should suspend the teacher's registration, commence disciplinary proceedings against the teacher or commence its own investigation. Where a teacher is alleged to have caused harm, or to be likely to cause harm to a child, it is important for the College to receive information about the investigation so that it can assess whether the person is suitable to continue to hold teacher registration.

Achievement of the Objective

Skills Queensland

On 9 July 2010, the Premier and Minister for the Arts announced the proposal to establish an industry led skills commission to drive training and skills in Queensland into the future. The aim is for the body to be operational by 1 January 2011.

The Bill will amend the *Vocational Education, Training and Employment Act 2000* (the VETE Act) to establish the new skills commission, to be called Skills Queensland. Skills Queensland will advise and make recommendations to the Queensland Government about skills and workforce development priorities to ensure that the needs of the Queensland economy and the skills and workforce development requirements of industry and communities are met.

The Bill will provide for the new statutory body to advise and make recommendations to government about skills and workforce development, skilled migration and other matters referred to it by the Minister for Education and Training (the Minister). This includes recommendations about vocational education and training, employment programs and government funding arrangements to deliver on the priorities for skills and workforce development. Skills Queensland will also have functions to promote and encourage industry investment in vocational education and training.

In the provision of its advice and recommendations, Skills Queensland must also have regard to economic factors impacting on the State; the skills and workforce development needs of industry and the community; and the needs of individual learners.

Skills Queensland will be required to submit a skills and workforce development investment plan for approval by the Government each year. It will be a five year plan, which has a ten year whole of economy outlook. The plan will be a key mechanism for the industry led body to influence and drive government priorities for investment in skills, qualifications and workforce development for Queensland. It will be a key mechanism for industry to influence reform to government funding arrangements to deliver better skills and workforce development outcomes, particularly in response to emerging industry opportunities or regional or global economic issues.

Initially, Skills Queensland will focus on developing and implementing industry engagement mechanisms to establish an identity amongst industry stakeholders and support its advisory functions and the development of the inaugural skills and workforce development investment plan. It will also start to identify opportunities to increase the contribution of industry to vocational educational and training.

In its first year, Skills Queensland is expected to have the confidence and support of industry and to then undertake a strategic purchasing role in

order to leverage funding from industry through co-investment. Subject to the Government's approval, a quantum of funding held by departments responsible for training and employment will be redirected to strategic priorities identified by Skills Queensland, primarily through their skills and workforce development investment plan.

With the Government's approval, Skills Queensland may, in the future, take an active role in the development or delivery of initiatives to deliver on the skills and workforce development priorities outlined in the plan. For example, Skills Queensland may take a role in engaging providers to develop or deliver a training course that meets the needs of an emerging industry, or respond to structural changes to an industry as a result of economic downturn. This may be one mechanism the Government may adopt in the future to react quickly to emerging and urgent issues, without being tied to existing funding programs.

The Government has already embarked on such initiatives as evidenced by the Coal Seam Gas/Liquefied Natural Gas fund. This fund was a collaboration between industry, the Government and Energy Skills Queensland whereby the Government's investment has been matched dollar for dollar by industry. With industry leading such initiatives through Skills Queensland, it is anticipated that the new body will be well placed to broker such arrangements with industry partners in the future, taking a whole of economy approach to skills.

Skills Queensland will be comprised of the Directors-General of the departments responsible for training and employment and a maximum of seven other members with direct industry experience, experience in the education, training or employment sectors, or other relevant experience.

It is intended that the establishment of Skills Queensland will create a genuine partnership between government and industry that will empower industry to lead improvements to Queensland's skills base and the employability and productivity of Queenslanders. Industry leaders bring to the partnership commercial acumen and understanding of the economics and investment drivers for business, as well as contemporary knowledge of emerging industries, new developments and technologies impacting on industry and supply and demand priorities for skilled labour.

Establishment of Skills Queensland will significantly strengthen industry leadership of, and investment in, skills and workforce development in Queensland. The presence of recognised industry leaders with influence over the direction of government funding will help to create the level of

confidence required for complementary industry investment. By giving industry a greater say in the allocation of training resources to meet their needs, it is expected that clients of the system will be more willing to pay for a product that they both own and value.

The Department of Education and Training (DET) will retain accountability for the vocational education and training system including establishing the level of vocational education and training funding available for investment and ensuring that government priorities, such as Q2 targets, are achieved. DET will retain responsibility for managing the vocational education and training budget, including purchasing skills in line with the Skills Queensland's approved skills and workforce development investment plan, as well as contract and performance management.

The Department of Employment, Economic Development and Innovation will maintain responsibility for the *Skilling Queenslanders for Work* initiative and for negotiating the Queensland Skills Migration Plan. Skills Queensland will inform both of these initiatives through the skills and workforce development investment plan and other advice to the Ministers responsible for training, employment and skilled migration.

The establishment of Skills Queensland will enable the Queensland Government to make sound policy decisions concerning investment in skills and workforce development that is informed by industry intelligence and experience.

Queensland College of Teachers

The Bill will amend the definition of 'excluded person' in the QCT Act to include persons who have previously held teacher registration, been convicted of a disqualifying offence and sentenced to an imprisonment order. This amendment will only apply to convictions made from 1 January 2006 consistent with the existing provisions about disqualifying offences in the Act.

The Bill will extend the requirement in section 77 of the QCT Act for employing authorities to notify the College about the outcome of an investigation where the investigation, relating to an allegation of harm caused or likely to be caused, to a child because of the conduct of a teacher, ceases for any reason.

Minor and technical consequential amendments arising out of the amendments to the QCT Act in the *Criminal History Legislation Amendment Act 2010* are also included in the Bill.

Alternative ways of achieving the policy objectives

Skills Queensland

Establishment of Skills Queensland is the preferred approach to ensuring Queensland's skills system meets the needs of a growing and diversifying Queensland economy and the skills and workforce development requirements of industry and communities.

Other options considered included:

- retaining the status quo, whereby the departments responsible for training and employment determine skills and workforce development priorities in consultation with industry; and
- establishing an industry advisory body to advise government on these matters.

Both options were rejected. Neither option would have delivered on the increased industry ownership, participation and contribution to investment in skills and workforce development and neither option aligned with the recommendations of Skills Australia.

Queensland College of Teachers

Legislative amendment to the QCT Act is the preferred option for achieving the policy objectives.

The QCT Act does not treat persons convicted of disqualifying offences and sentenced to imprisonment consistently. A person can avoid the consequences of the Act by surrendering their registration before the conviction is made. The only effective solution to this problem is to amend the QCT Act.

The QCT Act currently requires notifications about the results of an investigation about a teacher who is alleged to have harmed or likely to have caused harm to a child in very limited circumstances. The information contained in notifications is private and sensitive. Employing authorities can legitimately refuse to provide such information unless it is required by the QCT Act. It is necessary to amend the QCT Act to ensure that the College receives this information.

Estimated Cost for Government Implementation

Skills Queensland

It is estimated that the costs for establishing Skills Queensland, including staffing, fleet management and accommodation and corporate service costs and remuneration for appointed members at category C2 for the 2010-11 financial year will be approximately \$1.93M. The ongoing operational costs will be approximately \$3.58M per annum.

Queensland College of Teachers

The College will not incur any additional costs to implement the amendments. The amendments will improve the operation of existing processes.

It is not anticipated that employing authorities will incur any significant additional costs to advise the College about the outcome of the investigation where an investigation conducted by the employing authority ceases for any reason.

Consistency with Fundamental Legislative Principles

Skills Queensland

The Bill is consistent with the fundamental legislative principles prescribed in the *Legislative Standards Act 1992*. The Bill will enable the Minister to obtain a criminal history report about proposed nominees for appointment as an appointed member or the chief executive officer of Skills Queensland. Criminal history reports may also be obtained about current appointed members and the appointed chief executive officer of Skills Queensland.

The Bill requires appointed members and the chief executive officer to notify the Minister about changes to their criminal history. Failing to do so will be an offence, attracting a maximum penalty of \$10,000. This is commensurate with existing offences in the VETE Act for members of statutory TAFE institutes and other Queensland legislation, including the *Education (Queensland College of Teachers) Act 2005*.

The right to privacy has generally been identified by the Scrutiny of Legislation Committee as relevant to considerations of whether legislation has sufficient regard to individual rights and liberties.

The Bill provides that a person may not be appointed or continue as an appointed member or chief executive officer if they have been convicted of an indictable offence and the conviction is not a spent conviction. This is

subject to the discretion of the Minister. This disqualifying provision is appropriate because of the nature of the work of the proposed body. It will have responsibility for making recommendations to the Minister about the expenditure of government funds and managing the expenditure of Skills Queensland's funds.

The ability to obtain a criminal history report about a proposed or current appointed member or chief executive officer, and the requirement for disclosure of criminal histories is necessary to enable the Minister to confirm whether or not the person is disqualified from appointment, or from continuing their appointment as an appointed member or chief executive officer of Skills Queensland.

The Bill provides for the usual safeguards around obtaining and dealing with criminal history reports. For example, the person's consent will be required before obtaining the report and the report will not contain spent convictions. There will be a requirement to destroy the report as soon as practicable after the process is completed.

The Bill establishes an offence for a person to disclose the criminal history information, obtained during the performance of their functions under the VETE Act, other than as provided for under the Bill. As an example, disclosure is permitted in the exercise of functions under the Act; where the person to whom the information relates consents to the disclosure; or where the disclosure is otherwise permitted by law. The offence attracts a maximum penalty of \$10,000. This is commensurate with existing offences relating to disclosure of criminal history information in the VETE Act and in other Queensland legislation.

Queensland College of Teachers

The proposed amendment to the QCT Act in relation to excluded persons corrects an anomaly in the existing sections of the Act. The amendment will ensure that former teachers and teachers who are convicted of a disqualifying offence and sentenced to an imprisonment order are treated consistently.

To the extent that the amendment extends the operation of the existing provisions it will impact on the rights and liberties of a small number of former teachers. Teachers who surrendered their registration or permission to teach or allowed their registration or permission to teach to lapse before being convicted of a disqualifying offence since 1 January 2006 will now become an excluded person. As a result they will no longer be permitted to apply for registration or permission to teach or renewal or restoration of

their registration or permission to teach. Where the exclusion applies, no right of appeal is available to a teacher or former approved teacher convicted of a disqualifying offence. This may impact on that person's ability to earn an income.

Another potential breach of fundamental legislative principles is that the amendments may be perceived to operate retrospectively in that they will apply to former teachers who have been convicted of disqualifying offences (and sentenced to an imprisonment order) since 1 January 2006. The proposed amendments will remove the current expectation of those former teachers who have received a disciplinary order and are able to apply for registration after the order prohibiting them from applying for teacher registration (of up to five years) expires.

These potential breaches of fundamental legislative principles are justified in order to uphold the best interests and welfare of children and meet the community expectations that high-level screening of teachers will result in the protection of children. Furthermore this amendment seeks to maintain a high level of standards in the teaching profession and reflect the serious nature of disqualifying offences and the impact this has on a former teacher's suitability to work a teacher.

The Bill extends the requirements for an employing authority to notify the College of the outcome of any investigation. This provision may impact on the relevant teacher's right to privacy because the notification will include information such as the name of the relevant teacher and the outcome of the investigation.

The QCT Act already includes safeguards to ensure that information received by the College is used appropriately. Section 283 makes it an offence to disclose information acquired about another person in performing the functions under the Act without authorisation. The College will use notifications from employing authorities to determine whether to suspend registration, start disciplinary action or authorise a College investigation under the Act. As part of suspension and disciplinary proceedings, teachers or former teachers will have an opportunity to respond to the notification information employing authorities provide to the College.

Consultation

Skills Queensland

Consultation has taken place with relevant Queensland Government departments, the Premier's Employment Taskforce and key industry stakeholders. Industry stakeholders were sent a copy of a draft Bill and invited to attend workshops to discuss the proposed establishment of Skills Queensland.

Consultation has also been undertaken with the Queensland Public Service Union in relation to staffing and workforce management. Staff of the departments responsible for training and employment, who are likely to be affected by the establishment of Skills Queensland have also been briefed about the proposal and its impact on their positions.

Queensland College of Teachers

Consultation has taken place with the College, the Commission for Children Young People and Child Guardian and the Departments of Justice and Attorney-General, Communities and the Premier and Cabinet in preparing the amendments to the QCT Act.

Consultation has taken place with the Queensland Independent Education Union, Queensland Teachers' Union, Queensland Catholic Education Commission and Independent Schools Queensland.

Consistency of Bill with legislation of another jurisdiction

Skills Queensland

South Australia and Victoria have established bodies with similar functions to those proposed for Skills Queensland.

Queensland College of Teachers

Victoria, Western Australia and the Northern Territory provide for mandatory cancellation of teacher registration if a teacher is convicted of a sexual offence. However, these jurisdictions do not exclude these persons from reapplying for teacher registration.

Notes on Provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Act is the Education and Training Legislation (Skills Queensland) Amendment Act 2010.

Clause 2 provides for the commencement of the Act. Part 3, division 1 will commence on assent. The remaining provisions will commence on a date fixed by proclamation.

Part 2 Amendment of the Vocational Education, Training and Employment Act 2000

Clause 3 provides that part 2 and the schedule amend the VETE Act.

Clause 4 amends the objectives of the VETE Act to make the objectives relevant to the establishment of Skills Queensland and its aims.

Clause 5 amends the heading of chapter 5 of the VETE Act to include reference to Skills Queensland.

Clause 6 inserts a new part 2 into chapter 5 of the VETE Act, which contains the new provisions regarding Skills Queensland, as detailed below.

Part 2 Skills Queensland

Division 1 Establishment

- Section 146 - Establishment of Skills Queensland

Section 146 provides for the establishment of Skills Queensland as a legal entity and provides that it is a body corporate, has a common seal and may sue and be sued in its corporate name.

- Section 147 - Skills Queensland represents the State

Section 147 provides that Skills Queensland represents the State and has the status, privileges and immunities of the State.

- Section 148 – Application of other Acts

Section 148 provides that Skills Queensland is a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

Division 2 Functions and powers

- Section 149 – Functions

Section 149(1) provides for Skills Queensland's functions, which are:

- (a) to advise and make recommendations to the Minister about:
 - (i) skills and workforce development;
 - (ii) skilled migration in Queensland; and
 - (iii) any other matters referred to Skills Queensland by the Minister;
- (b) to advise and make recommendations to the Minister about the matters referred to in (a), including, for example, about the delivery of quality vocational education and training or employment programs.
- (c) to develop a skills and workforce development investment plan;
- (d) to take action approved by the Minister under the skills and workforce development investment plan;
- (e) to promote and encourage industry investment in vocational education and training;
- (f) to undertake and promote research on matters relating to its functions;
- (g) to inform the public about matters relating to its functions; and

- (h) to carry out any other functions given to Skills Queensland under this or another Act.

Section 149(2) clarifies the broad range of matters Skills Queensland must have regard to when performing its functions. These are: economic factors impacting on the State; the skills and workforce development needs of industry and the community; and the needs of individual learners.

- Section 150 – Skills and workforce development investment plan

Section 150 requires Skills Queensland to develop a skills and workforce development investment plan and prescribes the content and approval process for the plan, as follows.

The plan must identify priorities for government investment in skills, qualifications and workforce development. In making recommendations on these priorities, Skills Queensland may make recommendations about the delivery of quality vocational education, training and employment programs and government funding arrangements for workforce development, including vocational education and training. The plan may also include other recommendations about its functions that Skills Queensland considers appropriate.

The plan may recommend that Skills Queensland take action on a priority or recommendation mentioned in the plan. This enables Skills Queensland to recommend to the Minister that Skills Queensland take a lead role in, for example, delivering on an identified priority for skills needs in the State.

In accordance with section 149(2), Skills Queensland must have regard to economic factors impacting on the State and the skills and workforce development needs of industry when preparing the plan. In relation to the plan, this requirement aims to ensure that recommendations about priorities for skills and workforce development aim to support or exploit economic growth opportunities for Queensland or to respond to social and economic factors impacting on the State's economic growth.

The plan will have a ten year outlook and cover at least a five year period. It must be reviewed annually and submitted to the Minister for approval by 30 November each year. The Bill will enable the Minister to fully or conditionally approve recommendations under the plan, including actions Skills Queensland proposes to take itself to deliver on skills and workforce development priorities.

- Section 151 – Powers

Section 151 prescribes the powers of Skills Queensland. Skills Queensland has the powers of an individual and may, for example: enter into contracts; acquire, hold, dispose of, and deal with, property; appoint agents and attorneys; engage consultants; produce documents in performing its functions; charge for advertising in the documents; fix charges, and other terms, for services and other facilities it supplies; and all things necessary or convenient for performing its functions.

The section provides that Skills Queensland may only enter into agreements about real property, including, for example, leasing premises for its accommodation, with the approval of the Minister.

The section provides that Skills Queensland may exercise its powers both inside and outside of Queensland and Australia.

- Section 152 – Delegation

Section 152 enables Skills Queensland to delegate its functions or powers to an appropriately qualified member of Skills Queensland, a committee established by Skills Queensland, the chief executive officer or an appropriately qualified staff member of Skills Queensland or to an appropriately qualified entity such as the departments responsible for training or employment.

Division 3 Membership

- Section 153 – Members

Section 153 provides that Skills Queensland consists of the following members:

- the chief executive officers of the departments responsible for training and employment policies and programs; and
- a maximum of seven other members appointed by the Governor in Council (the appointed members).

The section provides that the appointed members are appointed under the VETE Act and not the *Public Service Act 2008*.

- Section 154 – Eligibility for appointment

Section 154 provides for the eligibility requirements for appointed member of the Skills Queensland. The requirements are that

- the person has direct industry experience or direct experience in the education, training or employment sectors; or

- the Minister considers that the person has other knowledge, experience or standing appropriate for the effective performance of Skills Queensland's functions.

The section provides that a member of Parliament or local government councilor is not eligible for appointment as an appointed member of Skills Queensland.

- Section 155 – Chairperson of Skills Queensland

Section 155 provides for the Governor in Council to appoint an appointed member as chairperson. The section provides for the term of appointment as chairperson to be no longer than the person's term of appointment as an appointed member. The section provides that a vacancy in the office of chairperson occurs if the chairperson resigns from the office by signed notice to the Minister or ceases to be an appointed member. The person can continue as an appointed member even if they cease to be the chairperson.

- Section 156 – Deputy chairperson of Skills Queensland

Section 156 provides that Skills Queensland may appoint an appointed member, other than the chairperson, as the deputy chairperson. The deputy chairperson is to hold office for a term of no longer than the person's term of appointment, as determined by Skills Queensland. The section provides that a vacancy in the office of deputy chairperson occurs if the deputy chairperson resigns from the office by signed notice to Skills Queensland or ceases to be an appointed member. The person can continue as an appointed member even if they cease to be the deputy chairperson.

The section provides for the deputy chairperson to act as chairperson during a vacancy in the office of chairperson and during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.

- Section 157 – Term of appointment

Section 157 provides that an appointed member is appointed for the term, of no more than four years, stated in the instrument of appointment.

- Section 158 – Conditions of appointment

Section 158 provides that an appointed member is to be paid the remuneration and allowances and holds office on the terms and conditions, not stated in the Act, that are decided by the Governor in Council.

- Section 159 – Disqualification as appointed member

Section 159 provides that a person may not be appointed or continue as an appointed member if the person has a conviction for an indictable offence, and the conviction is not a spent conviction, or if the person is an insolvent under administration. This is subject to the discretion of the Minister. Also, a person may not become, or continue as an appointed member if the person refuses to consent to the Minister obtaining their criminal history report.

The Minister may permit a person to be appointed or restored as an appointed member despite a conviction or insolvency if the Minister thinks it reasonable having regard to the circumstances of the offence or the circumstances under which the person became insolvent.

For a person who is being considered for appointment as an appointed member, the section provides for the Minister to give the person written approval to become a member despite the conviction or insolvency if the Minister decides to exercise the discretion. If the person is an appointed member at the time they were convicted or became insolvent, the section provides for the Minister to give a notice to the chairperson and the person if the Minister has decided the person may be restored as an appointed member.

The section provides that the person is restored as an appointed member on the day the notice is received by the chairperson. If another person has been appointed to fill the vacancy in the meantime, that person's appointment ends. The member's term of office continues to end when it would have ended if the person had not been disqualified.

The section also provides that a person cannot become an appointed member if the person does not consent to the Minister requesting a criminal history report.

- Section 160 – Termination of appointment

Section 160 provides for the Governor in Council to terminate the appointment of an appointed member if:

- the person becomes incapable of performing their functions because of physical or mental incapacity;
- the Minister considers the person is performing the member's duties carelessly, incompetently or inefficiently;
- the person is guilty of misconduct that could warrant dismissal from the public service if they were an officer of the public service;

- the person fails to disclose a change in the person's criminal history; or
- the person ceases to meet the eligibility criteria for appointment.
- Section 161 – Resignation

Section 161 provides that an appointed member may resign their office by giving a signed notice of resignation to the Minister. The resignation becomes effective on the date the notice is received, or a later date specified in the notice.

- Section 162 – Vacancy of office

Section 162 provides that the office of an appointed member becomes vacant if:

- the person is disqualified from membership;
- the person's appointment is terminated;
- the person resigns; or
- the person is absent, without Skills Queensland's permission, from three consecutive meetings of which proper notice has been given (this does not apply to a person absent under a leave of absence approved by the Minister).
- Section 163 – Leave of absence

Section 163 provides for the Minister to approve the leave of absence for an appointed member and to appoint someone to act in their position during the leave of absence. The section provides that if the approved absence is for the deputy chairperson, Skills Queensland may appoint another appointed member to act in the position while the deputy chairperson is on leave. The section also clarifies that the power of the Minister or Skills Queensland to appoint a person to act in the office of an absent member does not limit the Governor in Council's powers under section 25(1)(b)(v) of the *Acts Interpretation Act 1954*.

Division 4 Business

- Section 164 – Conduct of business
- Section 165 – Times and places of meetings
- Section 166 – Quorum

- Section 166A – Presiding at meetings
- Section 166B – Participation of chief executive officer in meetings of Skills Queensland
- Section 166C – Attendance by proxy
- Section 166D – Conduct of meetings
- Section 166E - Minutes

Sections 164 to 166 and 166A to E provide for the conduct of business of Skills Queensland, including: meetings times and places; quorum required; who is to preside at meetings; attendance of the chief executive officer of Skills Queensland at meetings; attendance by proxies, conduct requirements; and keeping of minutes.

Division 5 Chief executive officer

- Section 166F Appointment of chief executive officer

Section 166F provides for the appointment of the chief executive officer of Skills Queensland by the Governor in Council. The appointment may be for a maximum term of five years. The section provides that the chief executive officer is appointed under the VETE Act, not the *Public Service Act 2008*.

- Section 166G Conditions of appointment

Section 166G provides for the remuneration and allowances and terms and conditions, not prescribed under the VETE Act, to be decided by the Governor in Council.

- Section 166H Functions of chief executive officer

Section 166H provides that, subject to direction from the chairperson of Skills Queensland, the chief executive officer is to control Skills Queensland and is responsible for its efficient and effective administration and operation.

- Section 166I Delegation

Section 166I enables the chief executive officer to delegate their functions or powers to an appropriately qualified member of staff of Skills Queensland.

- Section 166J – Disqualification as chief executive officer

Section 166J provides that a person may not be appointed or continue as the chief executive officer if the person has a conviction for an indictable offence, and the conviction is not a spent conviction, or the person is an insolvent under administration. This is subject to the discretion of the Minister. Also, a person may not become, or continue as the chief executive officer if the person refuses to consent to the Minister obtaining their criminal history report.

The Minister may permit a person to be appointed or restored as the chief executive officer despite a conviction or insolvency if the Minister thinks it reasonable having regard to the circumstances of the offence or circumstances under which the person became insolvent.

For a person who is being considered for appointment as the chief executive officer, the section provides for the Minister to give the person written approval to be appointed despite the conviction or insolvency. Where the person is the chief executive officer at the time they were convicted or became insolvent, the section provides for the Minister to give a notice to the chairperson of Skills Queensland and the person if the Minister has decided the person may be restored as the chief executive officer.

The section provides that the person is restored as the chief executive officer on the day the notice is received by the chairperson. If another person has been appointed to fill the vacancy in the meantime, that person's appointment ends. The chief executive officer's term of office continues to end when it would have ended if the person had not been disqualified.

- Section 166K – Termination of appointment

Section 166K provides for the Governor in Council to terminate the appointment of the chief executive officer of Skills Queensland if:

- the person becomes incapable of performing their functions because of physical or mental incapacity;
- the Minister considers the person is performing their duties carelessly, incompetently or inefficiently;
- the person is guilty of misconduct that could warrant dismissal from the public service if they were an officer of the public service; or
- the person fails to disclose a change in their criminal history.

- Section 166L – Resignation

Section 166L provides that the chief executive officer may resign by giving a signed notice of resignation to the Minister. The resignation becomes effective on the date the notice is received, or a later date specified in the notice.

- Section 166M – Vacancy of office

Section 166M provides that the office of the chief executive officer becomes vacant if:

- the person is disqualified from membership;
- the person's appointment is terminated; or
- the person resigns.

- Section 166N – Leave of absence

Section 166N provides that the Minister may approve the leave of absence for the chief executive officer and may, in consultation with Skills Queensland, appoint someone to act in their position during the leave of absence. The section also clarifies that the power of the Minister to appoint a person to act in the office of the chief executive officer does not limit the Governor in Council's powers under section 25(1)(b)(v) of the *Acts Interpretation Act 1954*.

- Section 166O – Preservation of rights

Section 166O provides that if a public service officer is appointed as the chief executive officer, the person retains and is entitled to all rights that have accrued, or that would accrue in the future, because of their employment as a public service officer, as if service as the chief executive officer were a continuation of their service as a public service officer.

The section ensures that at the end of the person's appointment as chief executive officer, the person is entitled to be employed as a public service officer. The person must be employed on the classification level and remuneration that the Public Service Commission or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression, if the person had continued in employment as a public service officer. The person's service as chief executive officer is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

The section provides that the person appointed as chief executive officer continues to be eligible to be a member of the State Public Sector

Superannuation Scheme, if they were a member of that scheme immediately prior to their appointment as the chief executive officer.

Division 6 Other staff

- Section 166P – Other staff

Section 166P provides for other staff to be employed by Skills Queensland under the *Public Service Act 2008*.

- Section 166Q – Administrative support

Section 166Q provides that the chairperson or chief executive officer of Skills Queensland may arrange with the chief executive of the department or another public sector unit, for the services of officers or employees of the department or other unit to be made available to Skills Queensland. The arrangement may include a provision for a reasonable amount to be paid for the services.

Division 7 Criminal history

- Section 166R – Report about person’s criminal history

Section 166R enables the Minister to obtain a criminal history report in relation to an appointed member or the chief executive officer of Skills Queensland or a person being considered for appointment as an appointed member or the chief executive officer. This is necessary to enable the Minister to confirm whether or not the person is disqualified for appointment.

The section contains appropriate safeguards around obtaining criminal history reports, including:

- a requirement for the Minister to obtain the written consent of the person to whom the report would relate; and
 - a requirement that the Minister destroy the criminal history report as soon as practicable after it is no longer needed.
- Section 166S – Criminal history is confidential document

Section 166S provides that it is an offence for a person who possesses a criminal history report, or information in the report, to directly or indirectly disclose the report or information, except as provided for under this section. The section permits disclosure of a criminal history report or information if: it is necessary to perform the person’s functions under the Act; it is authorised under this or another Act or is otherwise required or permitted by law; the person to whom the information relates consents; it

does not disclose the identity of the person to whom the information relates; or the information is, or has been, lawfully accessible to the public. The offence attracts a maximum penalty of \$10,000.

- Section 166T – Requirement to disclose changes in criminal history

Section 166T places an obligation on appointed members and the chief executive officer to immediately disclose changes to their criminal history to the Minister, unless they have a reasonable excuse. The section clarifies that acquiring a criminal history constitutes a change to a person's criminal history. Failing to comply with this requirement attracts a maximum penalty of \$10,000.

Division 8 Miscellaneous provisions

- Section 166U – Skills Queensland may establish committees

Section 166U enables Skills Queensland to establish committees to assist it in the performance of its functions and exercise of its powers. Skills Queensland may decide on: committee functions; membership matters, including number of members, the chairperson and the qualifications and experience necessary for appointment; conduct of committee meetings; and reporting arrangements.

- Section 166V – Remuneration for committee members

Section 166V provides that a member of a committee is entitled to be paid the remuneration and allowances decided by the Governor in Council.

- Section 166W – Ministerial direction

Section 166W provides that, except in relation to the formation of advice and reports, the Minister may give Skills Queensland a written direction about the performance of Skills Queensland's functions or exercise of its powers. The section requires that Skills Queensland comply with any direction given under this section.

Clause 7 amends section 282 (Disclosure of interests by member of disclosure body) of the VETE Act to include Skills Queensland in the definition of 'disclosure body'. This ensures that section 282, as well as section 283 (Voting etc. by interested member of disclosure body), applies to members of Skills Queensland.

Section 282 requires members of disclosure bodies to disclose any direct or indirect conflicts of interest to a meeting of the body as soon as practicable after the facts come to their knowledge. Failure to do so attracts a maximum penalty of \$5,000. The disclosure must be recorded in the

minutes of the meeting of the body. Section 283 of the VETE Act prescribes the voting rights where a person has disclosed a material personal interest to the disclosure body. This section will apply to members of Skills Queensland by virtue of the amendment to the definition of 'disclosure body' in section 282.

Clause 8 amends section 284 (Other disclosure of interests) of the VETE Act to ensure the provision applies to the chief executive officer of Skills Queensland. The amendments ensure that the chief executive officer notifies the chairperson of Skills Queensland of any conflicts of interest with the exercise of a power or performance of a function of Skills Queensland. Failure to do so attracts a maximum penalty of \$5,000. The amendments also ensure that the chairperson may by signed notice require the chief executive officer to take reasonable action, to resolve the conflict. The chief executive officer must comply with the notice, unless the chief executive officer has a reasonable excuse. Failure to do so attracts a maximum penalty of \$4,000.

Section 284 will also apply to appointed members of Skills Queensland, who will need to disclose any conflict of interest with the exercise of a power or performance of a function of Skills Queensland to the Director-General of DET.

Clause 9 amends section 289 (Evidentiary provisions) of the VETE Act. The amendments ensure that in proceedings under the VETE Act, it is not necessary to prove the appointment of the chief executive officer or appointed members of Skills Queensland or members of a committee established by Skills Queensland, unless a party requires the proof by reasonable notice of at least seven days. The amendments also ensure that a document published by Skills Queensland is evidence that the document and things stated in the document are authorised by Skills Queensland.

Clause 10 amends section 290 (Protection from liability) of the VETE Act. Section 290 provides indemnity from civil liability for an 'indemnified person' for acts done or omissions made honestly and without negligence under the VETE Act. This clause will amend the definition of 'indemnified person' to include the chief executive officer, members of Skills Queensland, members of a committee established by Skills Queensland and staff of Skills Queensland.

Clause 11 inserts a new part 6 into chapter 10 of the VETE Act containing the following transitional provisions for the *Education and Training Legislation (Skills Queensland) Amendment Act 2010*.

Part 6 Transitional provisions for Education and Training Legislation (Skills Queensland) Amendment Act 2010

- Section 345 Amendment of Regulations

Section 345 provides for the first skills and workforce development investment plan to be given to the Minister for approval by 30 November 2011.

Section 346 clarifies that although the Bill amends various regulations, it does not affect the power of the Governor in Council to amend the regulations, or to repeal them.

Clause 12 inserts definitions for the terms ‘appropriately qualified’, ‘chief executive officer’ and ‘appointed members’ into the dictionary in schedule 3 of the VETE Act.

Part 3 Other amendments

Division 1 Amendment of Education (Queensland College of Teachers) Act 2005

Clause 13 provides that this division amends the *Education (Queensland College of Teachers) Act 2005*.

Clause 14 amends section 56 to make minor and technical consequential amendments arising out of the amendments to the QCT Act in the *Criminal History Legislation Amendment Act 2010*, which allowed a sentencing court the option to make a disqualification order for a specified period rather than for life. The intended effect of the amendments to section 58 of the QCT Act, by section 183 of the *Criminal History Legislation Amendment Act 2010* was that a person subject to a disqualification order for a specified period was not permanently excluded from registration, renewal or restoration of teacher registration or permission to teach.

Subclause (1) amends section 56(5)(b) to include a reference to a disqualification order against an approved teacher for a specified period under section 58(2)(a).

Subclause (2) amends section 56(5) to clarify that where a disqualification order against an approved teacher is for a specified period under section 58(2)(a) the person can apply for registration or permission to teach at the end of the period stated in the disqualification order.

Clause 15 amends paragraph (a) of the definition of ‘prosecutor’ in section 58(5) to make it consistent with the definition of ‘prosecutor’ in section 357 in the *Commission for Children and Young People and Child Guardian Act 2000*. This amendment is consequential to the *Criminal History Legislation Amendment Act 2010* amendments to the QCT Act to ensure that disqualification orders under the QCT Act and the *Commission for Children and Young People and Child Guardian Act 2000* are consistent.

Clause 16 omits section 77 of the QCT Act and inserts a new section 77. The new section 77 describes the requirements for employing authorities to notify the College when an investigation into an allegation of harm caused, or likely to be caused, to a child because of the conduct of a relevant teacher of the prescribed school, ends for any reason.

Subclause (1) provides that this section applies if the employing authority for a prescribed school has commenced an investigation mentioned in section 76(1).

Subclause (2) provides that the employing authority must, as soon as practicable after the investigation ends, give notice to the College of the outcome of the investigation. This provision seeks to ensure that the College receives notice about the outcome of all investigations regardless of the reason for the investigation ending. The maximum penalty for failure to comply with this requirement is 40 penalty units.

Subclause (3) describes that the notice must include:

- the name of the employing authority and the prescribed school (if different to the name of the employing authority)
- the name of the relevant teacher
- the day the investigation ended
- the allegation, particulars of the allegation and any other relevant information
- the findings made by the employing authority
- the outcome of the investigation and the reasons for the outcome (for example, the reasons given by the employing authority for the dismissal or by the relevant teacher for resigning); and

- if relevant, the employing authority's decision and the reasons for their decision.

Clause 17 makes amendments consequential to the insertion of a new section 77.

Subclause (1) amends the heading of section 78 to remove the word 'other.' Section 78 is now the only section that requires notice about specific dismissals. Section 77, which was previously about dismissals, now requires notice about the outcome of all investigations where the investigation ends.

Subclause (2) amends 78(1)(b) to provide that employing authorities are only required to give notice of dismissals where the relevant teacher was dismissed in circumstances that in the opinion of the employing authority called into question the teacher's competency to be employed as a teacher, if a notice was not already required under sections 76 and 77.

Clause 18 inserts a new part 12 into chapter 12 of the Act dealing with transitional provisions.

Part 12 Transitional provisions for Education and Training Legislation (Skills Queensland) Amendment Act 2010

New section 340 provides for how existing applications for full or provisional teacher registration, permission to teach, renewal of full registration or permission to teach and restoration of full registration will be treated at the commencement of this section. A person described in section 340(1) will become an excluded person under the amendments in this Bill. If at commencement these new excluded persons have made an application which has not been decided or withdrawn, section 340 provides that their application is taken to be withdrawn and that the College must give notice of the withdrawal to the person.

New section 341 provides for notices given under section 77. The new section 77 will only apply to an investigation that ends after the commencement of the new section 77. Investigations that ended before the new section 77 commenced will only be subject to notification requirements in section 77 as it was before being amended.

Clause 19 amends the definition of 'excluded person' in Schedule 3 (Dictionary).

Subclause (1) inserts a new paragraph (b) of the definition of 'excluded person' in Schedule 3 to make a minor and technical consequential amendment arising out of the amendments to the QCT Act in the *Criminal*

History Legislation Amendment Act 2010 which allowed a sentencing court the option to make a disqualification order for a specified period rather than for life.

The new paragraph (b) of the definition of ‘excluded person’ in Schedule 3 clarifies that a person is only an ‘excluded person’ under paragraph (b) if they are:

- an approved teacher convicted of a disqualifying offence where the court imposes an imprisonment order; or
- an approved teacher who is or becomes a relevant excluded person because the teacher is or becomes subject to offender reporting obligations, a final offender reporting order, a *Child Protection (Offender Prohibition Order) Act 2008* disqualification order or a final sexual offender order.

This amendment ensures that the original intention of the *Criminal History Legislation Amendment Act 2010* is achieved. A person subject to a disqualification order for a specified period will not be permanently excluded from registration, renewal or restoration of teacher registration or permission to teach. A person who is subject to a disqualification order is a ‘relevant disqualified person’ for the term of the period stated in the disqualification order and therefore will fall within paragraph (a) of the definition of ‘excluded person’ in Schedule 3.

Subclause (2) inserts a new paragraph (d) to the definition of ‘excluded person’ in Schedule 3 to extend the definition of an ‘excluded person’ to include a person who has previously held registration as a teacher or permission to teach and has been convicted of a disqualifying offence on or after 1 January 2006 and had an imprisonment order imposed for the conviction.

Division 2 Amendment of Industrial Relations Regulation 2000

Clause 20 provides that this division amends the *Industrial Relations Regulation 2000*.

Clause 21 amends the Regulation to include Skills Queensland in schedule 7A (Employers declared not to be national system employers). Together with the endorsement of the Commonwealth Minister responsible for the

Fair Work Act 2009, this amendment ensures that staff of Skills Queensland come under the State industrial relations system rather than the Commonwealth industrial relations system.

Division 3 Amendments of Public Service Act 2008

Clause 22 provides that this division amends the *Public Service Act 2008*.

Clause 23 amends schedule 1 (Public Service Offices and their heads) to provide that Skills Queensland is a public service office within the meaning of that Act, and the chief executive officer of Skills Queensland is the head of the public service office.

Division 4 Amendments of Statutory Bodies Financial Arrangements Regulation 2007

Clause 24 provides that this division amends the *Statutory Bodies Financial Arrangements Regulation 2007*.

Clause 25 amends schedule 1 (Statutory bodies allocated category 1 investment powers) to provide that Skills Queensland has category 1 investment powers. Category 1 investment powers are prescribed in part 6 of the *Statutory Bodies Financial Arrangements Act 2007*.

Schedule Minor amendments of Vocational Education, Training and Employment Act 2000

This schedule makes minor amendments to the VETE Act, including amendments to remove a reference to a repealed Commonwealth Act and to correct minor drafting errors.

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