

Education and Training Legislation Amendment Bill 2011

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Education and Training Legislation Amendment Bill 2011.

Policy Objectives of the Legislation

The Bill aims to protect the safety and wellbeing of Queensland students through amendments relating to reporting of sexual abuse and cancellation of teacher registration and makes other minor and technical amendments.

The Bill will amend the *Education (General Provisions) Act 2006* (EGPA) to:

- (i) extend the mandatory requirements regarding the reporting of sexual abuse to include reporting where a staff member becomes aware, or reasonably suspects a student (who is a child or a student with a disability) has been sexually abused by any person, or reasonably suspects a student is likely to be sexually abused by any person;
- (ii) allow directors of non-state school governing bodies to delegate their function to make and receive reports about sexual abuse under the EGPA; and
- (iii) promote timely reporting by requiring principals to report allegations of sexual abuse or a likelihood of sexual abuse directly to the police.

Also, the Bill will amend the *Education (Queensland College of Teachers) Act 2005* (QCT Act) to:

- (i) provide for the automatic cancellation of teacher registration or permission to teach where a person is convicted, after commencement

of part 4 of the Bill, of a serious offence, irrespective of whether the person is sentenced to imprisonment;

- (ii) permanently prevent a person, including a former teacher whose registration has lapsed, from applying for teacher registration or permission to teach if they are convicted of a serious offence after commencement of part 4 of the Bill;
- (iii) enable a person who is prohibited from applying for registration or permission to teach to seek, in limited circumstances, an eligibility declaration, which if granted, will enable the person to then make a separate application to the Queensland College of Teachers (QCT) to apply for registration or permission to teach; and
- (iv) enable the Queensland Civil and Administrative Tribunal (QCAT) to make disciplinary orders to prohibit a person from applying for registration or permission to teach for a stated period of time or for life.

In addition to these child protection measures, the Bill will:

- (i) reduce restrictions on Queensland universities regarding the leasing of land dedicated as reserve or granted in trust (trust land) and to provide clarity about the permitted use of certain trust land; and
- (ii) make other minor and technical amendments.

Reasons for the Bill

Mandatory reporting of sexual abuse to police

The Queensland Government is committed to protecting children and young people from sexual abuse or the likelihood of sexual abuse.

Sections 365 and 366 of the EGPA currently place an obligation on staff in state and non-state schools to report suspected sexual abuse of certain classes of students when perpetrated by an employee of the school. The reporting obligations applies to suspicions relating to children in the preparatory year of schooling, students under 18 years of age and students with a disability who are being provided special education. Failure to report attracts a maximum penalty of \$2000.

In addition, state schools are required to report harm or risk of harm to students by any person (including harm from sexual abuse) under operational policy. Non-state schools are also required to have policies about the appropriate conduct of its staff and wellbeing of its students to

maintain their accreditation. All schools owe a common law duty of care to students under which there is a positive obligation to take all reasonable steps to minimise the risk of foreseeable harm.

The legislative reporting requirements will be expanded to require reporting of suspected sexual abuse, or a risk of sexual abuse that has been or is likely to be perpetrated by any person, not just an employee of the school.

This proposal aligns with the current procedure in state schools. It embeds in legislation what is already established in student protection policy – namely that staff members are obliged to report sexual abuse, or risk of sexual abuse, of any students by any person. It is also supported by recommendations of a 2010 Queensland University of Technology report titled *Teachers reporting child sexual abuse: Towards evidence-based reform of law, policy and practice* (QUT Report).

Expanding the statutory reporting requirements acknowledges the profound damage that is caused to children and young people by sexual abuse. The proposed changes reinforce the duty of care that schools have to report and prevent sexual abuse. The amendments will raise Queensland's threshold for reporting risk of sexual abuse to be equivalent to, or higher than, requirements in other jurisdictions.

Delegation of the duty to report sexual abuse

Section 366 of the EGPA places as an obligation on directors of non-state school governing bodies to receive reports from school staff members about alleged sexual abuse and to report the allegations to the police.

Opportunities for improvements in the operation of the provision have been identified to ensure that such reports are made as efficiently as possible. This is especially the case for governing bodies that are large entities with responsibilities in addition to those relating to the schools. Some of these entities operate through a sole director.

The obligation under the current provision is a personal one without express provision for the flexibility usually available to a person making administrative decisions under an enactment. Sole directors with many and varied duties require more administrative flexibility to be able to meet their obligation to receive and make reports about sexual abuse in a timely manner.

Teacher registration

Currently, a person can apply for teacher registration or permission to teach under the QCT Act, unless they are an excluded person. An 'excluded person' is defined in the QCT Act as:

- a teacher whose registration or permission to teach has been automatically cancelled;
- a person prohibited from reapplying for registration or permission to teach by a disciplinary order of QCAT;
- a former teacher (such as a person whose registration has lapsed) who has been convicted of a disqualifying offence after 1 January 2006 and sentenced to imprisonment; and
- any person who has been made subject to sexual offender obligations or orders under the *Child Protection (Offender Reporting) Act 2003*, the *Child Protection (Offender Prohibition Order) Act 2008* or the *Dangerous Prisoners (Sexual Offenders) Act 2003* (referred to as 'supervision orders' in this document).

Chapter 2 part 6 division 3 of the QCT Act provides for the cancellation of teacher registration by the QCT. The QCT must cancel a teacher's registration or permission to teach where an approved teacher has been convicted of a disqualifying offence and the court makes an imprisonment order in relation to the conviction, or where the person is subject to a supervision order or disqualification order issued by the court.

If a teacher is convicted of a disqualifying offence but not subject to an imprisonment order, the person may maintain their registration unless it is cancelled through disciplinary proceedings initiated by the QCT in QCAT. Also, a former teacher who has been convicted of a disqualifying offence but not subject to an imprisonment order would be entitled to seek registration or permission to teach, unless prevented from doing so by a disciplinary order of QCAT.

Under the QCT Act there is a presumption against the granting of registration or permission to teach to a person who has been convicted of a serious offence. However, the QCT may grant their registration or permission to teach in exceptional cases where it would not harm the best interests of children to do so.

To maintain the highest standard for Queensland's teaching profession, it is proposed to automatically cancel a teacher's registration upon conviction for a serious rather than disqualifying offence, irrespective of whether an

order of imprisonment has been imposed. It is also proposed that any person who is convicted of a serious offence from the commencement of the QCT Act amendments in the Bill will be prevented from making an application for teacher registration or permission to teach.

Disqualifying offences are prescribed in schedules 4 and 5 of the *Commission for Children and Young People and Child Guardian Act 2000* (CCYPCG Act) and are generally serious sexual offences committed against children. Serious offences are set out in schedules 2 and 3 of the CCYPCG Act. Serious offences include sexual and other violent and drug related offences. Teachers or former teachers, who are convicted of such offences, should not be able to retain or reapply for teacher registration. In addition, people convicted of such offences should not be permitted to enter the profession.

The existing requirement for the QCT to bring disciplinary proceedings before QCAT to cancel the registration of a teacher who is convicted of a disqualifying offence but not sentenced to an order of imprisonment is inconsistent with community expectations about the standard of conduct expected of teachers and is not in the best interests of children.

Disciplinary orders of QCAT

In the matter of *MacNeil v Queensland College of Teachers* [(2011) QCAT 260], QCAT raised concerns about the limitations on its ability to prohibit a teacher or former teacher from applying for registration or permission to teach for a maximum of five years. In that matter, Mr MacNeil (a former teacher) was convicted of offences relating to the disposal of a body of a person and making false statements. As the offences are not disqualifying offences under the CCYPCG Act, QCAT could only prohibit Mr MacNeil from applying for registration or permission to teach for five years, the maximum time available under the QCT Act.

Even after the amendments, convictions for such offences will not result in automatic cancellation and a ban on applying for registration because the offences are not serious offences under the CCYPCG Act. The Bill will remove the limitation on QCAT's powers to make disciplinary orders to ensure the Tribunal can make orders of a length that are appropriate in such circumstances.

University land held in trust

Queensland universities hold land under various tenures, including freehold land and state land held under a deed of grant in trust or dedicated

as reserve (trust land) under the *Land Act 1994* (the Land Act). Historically, land has been dedicated as reserve or granted in trust to universities for various operational purposes, including for an educational institution, university and college purposes. This is not current practice. More recently, land has been given to universities as freehold tenure. The Sunshine Coast University campus, the Gold Coast campus of the Griffith University and the Cairns campus of the James Cook University are examples of this.

Universities currently face significant restrictions about how they can utilise trust land that they do not face over their freehold land. Under the various university Acts, a university may grant an interest in trust land only by way of lease and the terms of each lease must not be for more than 25 years. This restriction reduces opportunities for universities to enter into joint ventures with external entities as the private sector does not consider a lease of 25 years to be commercially viable. This has the effect of reducing the capacity of universities to attract capital.

Universities have suggested that the sometimes narrow interpretation of the scope of the purpose for which trust land may be used has affected their ability to provide facilities for ancillary student services (such as banking or hairdressing services), or to take advantage of joint ventures with external entities for commercial purposes that would provide considerable benefit to the university (such as development collaborative research facilities).

Minor amendments

Recognised schools

Chapter 2A of the EGPA enables students in overseas schools that are approved as a 'recognised school' to obtain Queensland senior school qualifications. Applications for recognised school status are assessed against the minimum eligibility requirements prescribed in section 47E(2) of the EGPA. Under section 47F of the EGPA, it is a ground for cancellation of recognised school status if the Minister considers the school is failing to meet the minimum eligibility criteria.

One of the eligibility criteria for obtaining recognised school status is that the school has entered into an agreement (a licensing agreement) for the use of syllabuses approved by the Queensland Studies Authority. The licensing agreement includes terms regarding the school's educational program, financial viability, facilities and student welfare structures.

Before entering into a licence agreement, the Department of Education and Training conducts an assessment of an overseas school to determine if it is capable of delivering an approved syllabus and meeting the terms of the licensing agreement. However, the existing minimum eligibility criteria do not allow consideration of the school's financial position, legal structure and capacity to deliver an educational program when deciding whether to grant an overseas school recognised school status, or whether there is a ground for cancellation of recognised school status.

Statutory TAFE institutes

The *Vocational Education Training and Employment Act 2000* (VETE Act) provides for the establishment of statutory TAFE institutes as statutory authorities. The objective of statutory TAFE institutes is to provide more flexible, cost effective and autonomous governance arrangements to enhance TAFE institutes' capacity to grow the commercial component of their business in a competitive vocational education and training market.

There are two statutory TAFE institutes prescribed under the *Vocational Education, Training and Employment Regulation 2000* - Southbank Institute of Technology and Gold Coast Institute of TAFE.

Statutory TAFE institutes have some commercial functions and objectives. Like universities, statutory TAFE institutes are able to exploit commercially any intellectual property they create or any resources they control. These commercial activities help statutory TAFE institutes fund their service delivery and to provide training opportunities that benefit the community. However, it was always intended that statutory TAFE institutes operate as not-for-profit entities.

Amendments are proposed to the VETE Act to reduce any potential for there to be an unintended interpretation that statutory TAFE institutes possess a for-profit character.

Minor QCT Act amendment

A minor drafting error has been identified in section 9(3) of the QCT Act.

Achieving the Objectives

Mandatory reporting of sexual abuse to police

The Bill will expand the reporting requirements under sections 365 and 366 of the EGPA to require reporting where staff members of state and non-state schools become aware, or reasonably suspect that a relevant

student has been sexually abused by any person or reasonably suspects a relevant student is likely to be sexually abused by any person.

Staff members reporting allegations of sexual abuse or a likelihood of sexual abuse will be afforded indemnity from liability (civil, criminal or under administrative process). Currently, school staff members do not receive protection when making reports to police of allegations of sexual abuse or a risk of sexual abuse where the perpetrator is not an employee of the school.

The existing penalty for failing to report suspected sexual abuse of a student by an employee of a school is being retained and a penalty for failing to report sexual abuse perpetrated by any person will be introduced. This will provide a strong deterrent to the cover up of sexual abuse within schooling systems and school communities and ensure timely responses to concerns about sexual abuse. The Bill does not prescribe a penalty for failing to report a likelihood of future sexual abuse. This aims to mitigate risks that a new penalty would increase reporting of inappropriate low level concerns.

Delegation of the duty to report sexual abuse

The Bill will enable the director of a non-state school governing body to delegate their duty to receive and make reports about the suspected sexual abuse of a student under section 366 to an appropriately qualified individual. Where a governing body is comprised of multiple directors, the Bill provides that a delegation of the function of receiving and making reports under section 366 may only be made by the unanimous resolution of all of the directors.

The Bill provides that the making of a delegation does not relieve a director from their duty to exercise the function of receiving and making the reports. Where a staff member chooses to report a matter to a director, rather than a delegate, the director must still ensure that the report is forwarded to the police. For example, a staff member may choose to report to a director rather than the delegate, if the delegate is the person the staff member suspects has perpetrated, or is likely to perpetrate the sexual abuse.

The Bill also provides that both the delegate and the director who makes the delegation will be held liable for any offence committed against section 366 of the EGPA (failure to report). However, it will be a defence for a director to prove that they took all reasonable steps to ensure their delegate complied with the reporting requirements. Ensuring that directors continue to be personally liable for failure to report suspected sexual abuse to the

police is consistent with the role of governing bodies of non-state schools to take an active interest in the performance of obligations under section 366 within their organisation and uphold the interests and protection of children in the non-state schooling system.

The Bill also amends the reporting requirements under the EGPA to ensure that principals of state and non-state schools report directly to the police in relation to allegations of sexual abuse, or a likelihood of sexual abuse where the principal is the first person to suspect the sexual abuse. These proposals are intended to act as a safeguard in ensuring that concerns about sexual abuse are reported to the police in a timely manner.

Teacher registration

The Bill amends the QCT Act to provide for the automatic cancellation of registration or permission to teach where a teacher is convicted of a serious offence, irrespective of whether the person is sentenced to an order of imprisonment.

The Bill amends the definition of ‘excluded person’ to include a person who is convicted of a serious offence. This change to the definition is intended to permanently prevent people who are convicted of a serious offence from applying for teacher registration.

The amendments operate prospectively to apply only to a person convicted of a serious offence from the date of commencement of part 4 of the Bill (the QCT Act amendments). A teacher or former teacher convicted of an offence prior to commencement will be subject to the existing cancellation and prohibition provisions of the QCT Act.

The Bill also introduces a process to enable a person convicted of a serious offence to seek, in limited circumstances, an eligibility declaration. If a person is issued an eligibility declaration, the person may then make a separate application for registration despite being an excluded person. A person will be prevented from seeking an eligibility declaration if they have been sentenced to imprisonment or subject to a supervision order.

Under the proposed eligibility declaration process, the QCT will consider whether there are exceptional circumstances in which it would not harm the best interests of children to grant an eligibility application. The Bill prescribes the information upon which the QCT must make its decision and the matters it needs to consider when assessing an application.

The introduction of the eligibility declaration process acknowledges that despite the very serious nature of serious offences, there may sometimes be

mitigating circumstances that the QCT ought to have the discretion to consider. An example could be where, as a 17 year old male, a person is convicted of unlawful carnal knowledge of a person under 16 in relation to a consensual relationship with his then 15 year old girlfriend. This offence is classified as both a serious and disqualifying offence. This may be considered to be an exceptional case if, when the eligibility application is made, some years later, the person has not been convicted of a further serious offence. The Bill lists this 'Romeo and Juliet' situation as an example of the type of scenario the QCT may consider under the eligibility declaration process.

Disciplinary orders of QCAT

The Bill amends the QCT Act to enable QCAT to make disciplinary orders to prohibit a person from applying for registration or permission to teach for a stated period of time or for life. The capacity to make such an order will only apply where a ground for a disciplinary action arises after the commencement of part 4 of the Bill.

University trust land

The Bill amends a number of the university Acts to permit the lease or sublease of trust land held subject to an operational reserve or an operational deed of grant in trust for a period of up to 100 years. Operational reserve and operational deed of grant in trust relates to land dedicated or granted for a purpose other than a community purpose under the Land Act, such as university or educational purposes. The Bill also clarifies that where land has been granted in trust or dedicated as reserve for a purpose relating to educational institution, university or college purposes, the purpose is to include any purpose consistent with the functions of the university.

University functions are generally consistent across the university Acts and include the provision of ancillary services for the wellbeing of staff and students and the commercial exploitation of a facility or resource of the university, including, for example, study, research or knowledge, or the practical application of study, research or knowledge, belonging to the university, whether alone or with someone else.

The procedures prescribed in the Land Act for leasing trust land continue to apply to trust land held by the universities. This includes obtaining the approval of the Minister for Environment and Resource Management to lease the trust land, unless the Minister exempts them from this process under section 64 of that Act.

Minor amendments

Recognised schools

The Bill will amend the EGPA to enable the Minister to consider whether the governing body of an overseas school is complying with the licensing agreement for use of syllabuses approved by the Queensland Studies Authority when deciding whether to approve an application for recognition of the school. This amendment will provide the Minister with the ability to consider a broader range of factors when making their decision. Failure to comply with the licensing agreement will also be a ground for cancellation of recognised school status.

Statutory TAFE institutes

The Bill seeks to make minor technical amendments to the VETE Act to clarify that statutory TAFE institutes are intended to operate as not-for-profit entities by replacing terms which are often associated with for profit activities.

Minor QCT Act amendment

The Bill seeks to amend section 9(3) of the QCT Act to correct an inconsistency with section 8. The effect of the amendment is that the QCT will have the ability to consider all the factors listed in section 9(1)(a) to (d) when considering whether a person meets the eligibility requirements for provisional teacher registration.

Alternatives to the Bill

Apart from the amendments regarding university held trust land, the policy objectives can only be achieved by legislative enactment. The alternative option for clarifying the use of trust land held by universities for educational, university or college purposes would be to amend the purpose for which the land may be used under administrative processes established in the Land Act. This is not considered appropriate, because the intention of the amendments is not to broaden the purpose, but rather to clarify the existing purposes.

Administrative costs

Government costs associated with the implementation of the Bill will be met within existing agency budgets.

Fundamental Legislative Principles

Regard has been had to the fundamental legislative principles prescribed in the *Legislative Standards Act 1992* during preparation of the Bill. A number of provisions within the Bill may impact on fundamental legislative principles. Justification for the potential breaches is provided below.

Mandatory reporting of sexual abuse to police

Clauses 9 and 11 of the Bill expand the requirements regarding reporting of sexual abuse to include reports about the likelihood of sexual abuse. It is arguable that the proposed amendments may breach section 4(2)(a) of the *Legislative Standards Act 1992* in that it may not have sufficient regard to the rights and liberties of individuals.

Specifically, the proposed amendment may be inconsistent with section 4(3)(k) which provides that in assessing whether legislation has sufficient regard to the rights and liberties of individuals consideration should be given to whether provisions are unambiguous and drafted in a sufficiently clear and precise way. Forming a 'reasonable suspicion' about 'likelihood of sexual abuse' is a subjective assessment. It is arguable that it might be difficult for individuals to determine the scope of the reporting requirement and when they must report.

This potential breach is justified on the grounds that all state school staff are currently subject to administrative reporting requirements to report risk of harm, including a risk of sexual abuse. School staff members are provided training on the implementation of the respective policies and teachers, in particular, are a professional class of people who are trained to observe relevant factors in children and to use analytical skills to form conclusions.

All schools (state and non-state) owe a common law duty of care to students under which there is a positive obligation to take all reasonable steps to minimise the risk of foreseeable harm. Also, all regulated businesses (that is, those involving children) are required under the CCYPCG Act to have risk management strategies in place regarding the wellbeing and protection of children. These are to include training materials to help identify risk of harm and how to handle disclosures about risk of harm. A likelihood of sexual abuse is foreseeably a matter schools ought to be considering in development of any risk management strategies, policies or procedures aimed at ensuring their common law duties are met.

Other Queensland legislation, such as the *Child Protection Act 1999* and the *Public Health Act 2005*, contains similar obligations. Other Australian jurisdictions, apart from the Australian Capital Territory and Western Australia, include an obligation on a wide class of people to report suspected risk of harm, which includes sexual abuse.

Clauses 8 to 11 may also be inconsistent with section 4(2)(a) of the *Legislative Standards Act 1992* on the ground listed in section 4(3)(h), that is, that the legislation expands the coverage of the immunity from prosecution because the immunity will apply in a broader range of circumstances. This is because the provisions extend the scope of the existing reporting requirement to include sexual abuse by any person, not just an employee of the school and to include likelihood of sexual abuse.

These provisions also extend requirements for principals of state and non-state schools to report directly to the police. These reports will attract immunity from liability under the provisions. These amendments therefore arguably expand the existing immunity from proceedings or prosecution afforded to reporters under the existing provisions.

These potential breaches of fundamental legislative principles are justified because of the need to promote and protect the interests of children and to ensure the enforceability of the criminal sanction. There are many existing examples on the statute book of legal protections being provided to reporters on this basis.

Providing legal protection to people who report suspicions or concerns about the safety of children makes it more likely that individuals will act in the interests of children by referring matters to an appropriate authority. Sections 365 and 366 of the EGPA impose criminal sanctions for failure to report relevant matters to relevant authorities. The immunity clause therefore reduces the potential for a person who fails to report a concern about the sexual abuse of a student from justifying their actions on the grounds that they would be criminally, civilly or administratively liable for sharing information as required under the legislation.

The expansion of the requirement to report suspected sexual abuse of a student by an employee of a school to suspected abuse or a likelihood of sexual abuse by any person may be inconsistent with an individual's right to privacy. The impact on the right to privacy is justified on the grounds that the overriding objective of the provision is the protection of children from sexual abuse, that a reasonable suspicion must be formed before

information is shared and that information may only be shared with the police to enable further enquiries to be made.

Delegation of the duty to report sexual abuse

Clause 11 of the Bill also seeks to insert a new section 366B into the EGPA. This provision will enable the director of a governing body of a non-state school to delegate their function of receiving and giving a copy of the report to a police officer under sections 366 and 366A about the suspected sexual abuse of students.

New section 366B provides that a director is to be held liable for a failure of their delegate to discharge the function. Therefore if the delegate commits an offence against section 366(4), the director would also commit an offence. However, it would be a defence for the director to prove that they took all reasonable steps to ensure that the delegate discharged the function.

Ordinarily the party making an accusation bears the onus of proving that the act or omission constituting the offence has been committed by the person accused. The new section 366B reverses the ordinary onus of proof by providing that a director must prove that they took all reasonable steps to ensure that the delegate discharged the function. This is inconsistent with section 4(3)(d) of the *Legislative Standards Act 1992*, which provides that legislation must have sufficient regard to the rights and liberties of individuals including where legislation reverses the onus of proof in criminal proceedings without adequate justification.

This potential breach of legislative standards is justified on the basis that directors will have a choice as to whether to make a delegation. By making a delegation, a director or governing body will be voluntarily assuming liability for the actions of their delegate.

It is also considered important for directors to continue to be held responsible for the discharge of their function to receive and make reports under sections 366 and 366A of the EGPA. This will assist in ensuring that the governing bodies of non-state schools continue to view the handling of reports about the suspected sexual abuse of students as a serious matter which needs to be actively monitored by directors.

Automatic cancellation of teacher registration

Clause 21 of the Bill seeks to provide for the automatic cancellation of teacher registration or permission to teach and a prohibition from applying for registration or permission to teach for life where a teacher is convicted of a serious offence, irrespective of whether the person is sentenced to an order of imprisonment. This only applies to a person convicted after commencement of part 4 of the Bill.

The automatic cancellation of teacher registration may be inconsistent with the principles of natural justice and may be a breach of section 4(3)(a) of the *Legislative Standards Act 1992*. This section provides that rights and liberties or obligations should only be dependent on the exercise of administrative power where the power is sufficiently defined and subject to appropriate review. The automatic and administrative nature of registration cancellation and the lack of appeal or review mechanisms may be viewed as inconsistent with this standard.

The automatic cancellation provision may also be inconsistent with section 4(3)(g) of the *Legislative Standards Act 1992* because it will apply to a person who is convicted of a serious offence after commencement, even if the act or omission that led to the person being charged happened prior to commencement.

The potential breaches of the fundamental legislative principles are justified on the grounds that the best interests of children are of paramount importance and that the need to protect children from the risk posed by people who have committed serious offences outweighs the negative impacts on individuals whose registration is cancelled. The proposal also upholds the standard of the teaching profession in Queensland and aims to maintain public confidence in the profession. By providing for automatic cancellation, the Queensland Government is sending a clear message about the standard of conduct which is expected of Queensland teachers.

The automatic cancellation of teacher registration depends on whether or not the person is convicted of a serious offence. Therefore individuals have the opportunity to defend themselves against the automatic cancellation of their teacher registration through criminal proceedings. If the conviction under which registration was cancelled is overturned on appeal the person will no longer be subject to the automatic cancellation provision.

The Bill will provide that from commencement, a person who has been convicted of a serious offence will be prohibited from applying for registration or permission to teach. Clause 14 of the Bill introduces a

process for a person convicted of a serious offence to seek, in limited circumstances, an eligibility declaration, allowing the person to subsequently apply for registration or permission to teach, despite being an excluded person.

The Bill enables the QCT to issue an eligibility declaration if satisfied it is an exceptional case in which it would not harm the best interests of children to do so. As for applications for registration and permission to teach, the Bill will:

- empower the QCT to obtain criminal history reports, police investigative information and other information in relation to an applicant for an eligibility declaration; and
- override the application of the *Criminal Law (Rehabilitation of Offenders) Act 1986* to enable the QCT to access and consider the full criminal history of an applicant for an eligibility declaration, including all convictions and charges regardless of when they may have occurred (see the proposed new section 12C).

This is a potential breach of fundamental legislative principles as these measures reduce an individual's right to privacy. Given the on-going community interest in issues of child protection, this potential breach of fundamental legislative principles is considered appropriate. To determine whether there are exceptional circumstances relating to the person it is imperative that the QCT be able to access the applicant's full criminal history (including information about 'spent' convictions and charges).

Applicants will have access to information about how their criminal history details will be used. The QCT Act requires the QCT to keep guidelines regarding its use of information obtained under the Act and make the guidelines available, upon request, to applicants, for an eligibility declaration.

A person may re-apply for an eligibility application if the first decision was made on wrong or incomplete information. However, there is no right of appeal from a decision to refuse an eligibility declaration.

The lack of appeal rights in relation to the eligibility declaration decision is a breach of the fundamental legislative principles under section 4(3)(a) of the *Legislative Standards Act 1992* that administrative power should be sufficiently defined and subject to review. This breach of fundamental legislative principles is considered justified because the matters the QCT must consider when deciding an eligibility declaration application are

sufficiently defined and decisions are subject to judicial review. Also, seeking an eligibility declaration is a voluntary application available in limited circumstances to people convicted of sexual, violent or drug related offences. People convicted of such offences would, if they were a teacher, be subject to automatic cancellation without appeal. Applicants seeking a declaration will be aware that the QCT decision is final.

Consultation

The Queensland Teachers Union, Queensland Independent Education Union, QCT, Independent Schools Queensland, Queensland Catholic Education Commission and relevant Queensland universities have been consulted on relevant amendments.

Uniform or complementary with legislation of the Commonwealth or another State

The Bill is not part of a scheme of nationally uniform or complementary legislation.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the Act is the Education and Training Legislation Amendment Act 2011.

Commencement

Clause 2 provides for commencement of the Act. Parts 2 and 5 to 10, which amend the university legislation and the VETE Act, commence on assent. The remaining provisions commence on a date fixed by proclamation.

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

Act Amended

Clause 3 provides that this part amends the *Central Queensland University Act 1998*.

Amendment of s 49 (Application of Land Act 1994)

Clause 4 amends section 49 of the *Central Queensland University Act 1998* to enable the university to enter into a lease or sublease of trust land that is subject to an operational reserve for a maximum term of 100 years. The term ‘operational reserve’ has the meaning given to it by the Land Act.

The clause also clarifies that where land has been dedicated to the university as reserve under the Land Act for a purpose of educational institution or university, the purpose is taken to include anything that is consistent with the functions of the university as prescribed under section 5 of the *Central Queensland University Act 1998*. This provision applies irrespective of whether the interest was dedicated prior to commencement.

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

Act Amended

Clause 5 provides that this part amends the EGPA.

Amendment of s 47E (Decision on application)

Clause 6 amends section 47E to insert an additional minimum eligibility requirement the Minister may consider when deciding whether to grant or refuse an application by an overseas school to become a recognised school.

Section 47E(2) lists the minimum eligibility requirements. One requirement is for the governing body of the school to have entered into an agreement with the State under which the governing body is authorised to

implement Queensland Studies Authority approved syllabuses for years 11 and 12 (a licence agreement).

Clause 6 adds the minimum eligibility requirement that the governing body is complying with the licence agreement. The amendment enables the Minister to consider compliance with the terms of the licence agreement when deciding whether to grant or refuse the application for the school to be a recognised school. The licensing agreements include requirements that:

- the affairs of the school are competently managed;
- structures exist to support the wellbeing of students; and
- school facilities are adequate to support the delivery of the educational programs.

Failure to comply with the licence agreement will also become a ground for cancellation of a school as an approved school under section 47F.

Amendment of s 364 (Definition for pt 11)

Clause 7 omits section 364 from the EGPA and replaces it with a new section. The new section corrects a minor error in the section heading and inserts a definition for ‘director of a non-state school’s governing body’.

The current definition of ‘employee’ has been amended to apply only to an employee of a state school. The definition is no longer required for the provisions regarding reporting in the non-state school sector.

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

Clause 8 amends section 365 of the EGPA to extend the obligation on staff members of state schools to report on suspected sexual abuse where the staff member becomes aware or reasonably suspects a relevant student (a child or student with a disability) has been sexually abused by any person. The Bill clarifies that the obligation only applies where the staff member becomes aware or forms a suspicion during the course of their employment at the school. The obligation is not to apply where the person forms a suspicion about a possible sexual abuse in a situation not related to their employment at the school.

The clause amends the reporting procedures to require that where the principal is the first person to suspect sexual abuse, the principal, must

report directly to the police. The clause also requires the principal, or principal's supervisor to give a copy of reports made to them directly to the police, rather than the nominee of the chief executive. This aims to ensure the timely provisions of reports to the police.

Where the suspected sexual abuse has been perpetrated by an employee of the school, the principal or their supervisor must also immediately give a copy of the report given to the police to the nominee of the chief executive. This enables the department to initiate internal disciplinary action in relation to an employee against whom an allegation of sexual abuse is made. The obligation on the chief executive's nominee to report to the police has been removed, in lieu of the obligation placed on the principal or their supervisor to make the report to the police directly.

Insertion of new s 365A

Clause 9 inserts a new section 365A (Obligation to report likely sexual abuse of person under 18 years at State school) into the EGPA. The section inserts an obligation on State school staff members to report where the staff member reasonably suspects a relevant student is likely to be sexually abused by any person. As under section 365, the obligation only applies where the staff member forms a suspicion during the course of their employment at the school.

The new provision mirrors the reporting procedures prescribed under section 365, as amended by the Bill. However, there is no penalty for failing to report under this section.

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

Clause 10 amends section 366 of the EGPA to extend the obligation on staff members of non-state schools to report about suspected sexual abuse where the staff member becomes aware or reasonably suspects a relevant student has been sexually abused by any person. As under section 365, the obligation only applies where the staff member becomes aware or forms a suspicion during the course of their employment at the school.

The clause also amends section 366 to provide that where the principal of the non-state school is the first person to become aware or reasonably suspect that sexual abuse has occurred, the principal must report directly to the police. The principal in this situation must also immediately give a

copy of the written report given to the police to a director of the school's governing body.

The amendments to the reporting procedures aim to ensure the timely provisions of reports to the police. They also ensure a school's governing body is informed of allegations and, where appropriate, can initiate internal disciplinary action against a teacher against whom the allegations are made.

The clause removes the definition of 'director' in section 366(7) as the definition is included in section 364.

Insertion of new ss 366A and 366B

Clause 11 inserts a new section 366A (Obligation to report likely sexual abuse of person under 18 years at non-State school) into the EGPA. The section inserts an obligation on non-state school staff members to report suspected sexual abuse where the staff member reasonably suspects a relevant student is likely to be sexually abused by any person. As under section 366, the obligation only applies where the staff member forms a suspicion during the course of their employment at the school.

The new provision mirrors the reporting procedures prescribed under section 366, as amended by the Bill. However, there is no penalty for failing to report under this section.

Clause 11 also inserts a new section 366B (Delegation of director's reporting function under sections 366 or 366A) into the EGPA. The new provision enables the director of a non-state school governing body to delegate their function to both receive and give a copy of a report to a police officer under sections 366 and 366A to an appropriately qualified individual. It is intended that a single delegation must encompass the function of receiving and making reports. It is not intended that a director exercise a delegation over one element of the function only, for example to receive reports only.

Where the governing body has more than one director, the clause provides that the directors may only delegate their functions by a unanimous resolution of all the directors. A resolution passed by a minimum quorum of directors would not be sufficient.

The clause uses the term 'individual' to exclude a delegation being made to a body corporate or another, non-natural, body. The delegation could

however, be made to an individual holding a certain position within the governing body's organisation, or school hierarchy from time to time.

The clause defines appropriately qualified, for the purpose of receiving and making reports, to mean having the qualifications, experience, or standing appropriate to perform the function.

The new section also provides that if the person to whom the function is delegated commits an offence under section 366(4), for failing to give a copy of a report to a police officer, the delegator also commits the offence. However, the clause provides that it is a defence for the delegator to prove they took all reasonable steps to ensure the delegation was complied with.

Amendment of sch 4 (Dictionary)

Clause 12 amends the definition of 'director' in the dictionary to refer to the new definition of the term in section 364.

Part 4 Amendment of the Education (Queensland College of Teachers) Act 2006

Act Amended

Clause 13 provides that this part amends the QCT Act.

Amendment of s 9 (Eligibility for provisional registration)

Clause 14 makes a minor technical amendment to section 9 of the QCT Act.

Insertion of new ch 2, pt 1A

Clause 15 inserts a new part 1A (Eligibility declarations) into chapter 2 of the QCT Act.

Division 1 Preliminary

- Section 12B – Purpose of pt 1A

New section 12B outlines that the purpose of part 1A is to allow certain persons (eligibility applicants) to apply to the QCT for a declaration that the person is not an excluded person and is eligible to apply for registration or permission to teach under chapter 2.

- Section 12C – Application of part 1A

New section 12C excludes the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986* in relation to eligibility declaration applications.

- Section 12D – Definitions for pt 1A

New section 12D inserts a definition for the term ‘eligibility applicant’ for part 1A. An eligibility applicant is a person eligible to apply for an eligibility declaration. A person is an eligibility applicant and may apply to be issued an eligibility declaration if the person:

- has after the relevant commencement, been convicted of a serious offence, which has not been overturned on appeal;
- was not subject to an imprisonment order for the offence; and
- is not a ‘relevant excluded person’.

Division 2 Eligibility application

- Section 12E– Application for eligibility declaration

New section 12E provides that a person may apply for an eligibility declaration and prescribes the process for making the application. The new section provides that a person may not make an eligibility application within two years after making a previous eligibility application that has been refused, unless the decision to refuse the previous application was based on wrong or incomplete information.

The application must be in the approved form; signed by the applicant; and accompanied by the prescribed fees and other documents required in the approved form that are reasonably required by the QCT. The approved form may require disclosure of police information about the applicant.

- Section 12F – Decision on eligibility application

New section 12F prescribes how the QCT is to decide an eligibility application, including the documents and other matters the QCT must consider when considering an application.

The new section provides that an eligibility application must be refused unless the QCT is satisfied it is an exceptional case in which it would not harm the best interests of children to issue the declaration.

The new section provides that when deciding whether there is an exceptional case, the QCT may consider police and other information, which may be obtained about the person under sections 14 to 15D of the QCT Act as if the application were an application for registration or permission to teach. This includes:

- police and other information about the person's Queensland and interstate criminal history;
- information about the person's criminal history from the Director of Public Prosecutions;
- information from the chief executive responsible for corrective services about sexual offender orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*; and
- information obtained from the Commissioner for Children and Young People and Child Guardian.

The new section provides that the QCT must consider the following matters in relation to the criminal history of the eligibility applicant:

- when the offence was committed, is alleged to have been committed or may possibly have been committed;
- the nature of the offence and its relevance to the duties of a teacher; and
- any penalty imposed by the court and the court's reasons for the penalty.

The new section also provides for the QCT to have regard to the following information:

- documents or information contained in the application;
- if the eligibility applicant has been refused registration in another jurisdiction, or has held registration in another jurisdiction that has

been suspended or cancelled - the reason for the refusal, suspension or cancellation; and the way in which the refusal, suspension or cancellation relates to the applicant's suitability to teach;

- if the eligibility applicant has had their employment terminated by an employing authority for a school for a reason relating to the applicant's suitability to teach - the reason for the termination; and
- anything else the QCT considers relevant in deciding whether an exceptional case exists.
- Section 12G – Grant or refusal to grant eligibility application

New section 12G prescribes the process to be followed when a decision is made by the QCT to grant or refuse an eligibility application. If the eligibility application is granted, the QCT must issue an eligibility declaration to the eligibility applicant. If the application is refused, the QCT must give the eligibility applicant a notice stating the reasons for the refusal. The clause provides there is no right of review or appeal from this decision.

If the QCT considers the applicant has not been convicted of a serious offence, the QCT must issue a notice to the applicant stating:

- an eligibility declaration can only be issued if the applicant has been convicted of a serious offence;
- that the QCT does not consider the applicant has been convicted of a serious offence;
- that, if the applicant is not an excluded person for another reason, they may apply for registration or permission to teach; and
- that the eligibility application will not be further dealt with.

Division 3 Withdrawal of eligibility application

- Section 12H – Withdrawal by notice

New section 12H enables an eligibility applicant to withdraw an application by a signed notice given to the QCT at any time before the QCT issues an eligibility declaration or gives the applicant a notice under section 12G(2) or (3).

- Section 12I – Deemed withdrawal - identity of eligibility applicant not established

New section 12I provides for the withdrawal of an eligibility application where the applicant's identity cannot be established with certainty by the QCT.

- Section 12J – Deemed withdrawal - notice not complied with

New section 12J provides for the withdrawal of an eligibility application if the applicant does not comply with a request from the QCT for stated information or a consent relevant to the application.

- Section 12K – Deemed withdrawal — other circumstances

New section 12K provides for the withdrawal of an eligibility application if the applicant is charged with a serious offence or becomes an excluded person.

Division 4 Miscellaneous

- Section 12L – Revocation of decision to refuse eligibility declaration

New section 12L enables the QCT to revoke a decision to refuse an eligibility declaration if the QCT is satisfied that the decision was based on wrong or incomplete information; and based on the correct or complete information, the QCT may issue the eligibility declaration. This process may be initiated by the QCT on its own motion, or by application of the eligibility applicant.

- Section 12M – Automatic revocation of eligibility declaration

New section 12M provides for the expiry of an eligibility declaration issued to an applicant if, after it is issued, the person is charged with a serious offence or becomes an excluded person.

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

Clause 16 amends section 48 of the QCT Act to provide for the suspension of an approved teacher's registration or permission to teach if the teacher is charged with a serious offence, after the relevant commencement.

The current section will continue to apply to a teacher charged with a disqualifying offence during the relevant period. Clause 30 inserts a definition of 'relevant period' into the dictionary in schedule 3 of the QCT

Act. It means the period starting on 1 January 2006 and ending immediately before the relevant commencement (that is, commencement of part 4 of the Bill).

Amendment of ch 2, pt 6, div 3 (Cancellation)

Clause 17 inserts a subdivision heading in chapter 2, part 6, division 3 of the QCT Act – ‘Subdivision 1 Convictions, obligations or order within relevant period’. This is required in order to separate provisions relating to cancellation of teacher registration and permission to teach for convictions occurring during the relevant period and conviction occurring after the relevant commencement.

Amendment of s 56 (Cancellation in particular circumstances)

Clause 18 amends section 56(1) of the QCT Act to provide that the provision applies to a person convicted of a disqualifying offence during the relevant period. The clause amends section 56(2) of the QCT Act to provide that the provision also applies to a person who is subject to a supervision order before the end of the relevant period. The clause also amends section 56(3) to ensure that the QCT must also cancel a teacher’s registration or permission to teach under section 56 when the court has made a disqualification order in relation to the person under section 58.

These amendments restrict the application of the section 56 cancellation provisions to convictions occurring, or supervision orders made, prior to commencement of part 4 of the Bill. After commencement, the new subdivision 2 is to apply.

Omission of ch 2, pt 6, div 4, hdg

Clause 19 omits the heading for division 4 (Disqualification order).

Amendment of s 58 (Disqualification order)

Clause 20 amends section 58 of the QCT to limit the application of the section to convictions occurring during the relevant period. The court will not need to make a disqualification order in relation to an approved teacher convicted of a serious or disqualifying offence after commencement of part 4 of the Bill as such persons will be subject to the new automatic cancellation regime in section 58A.

Insertion of new ch 2, pt 6, div 3, sdiv 2

Clause 21 inserts a new subdivision 2 (Conviction after relevant commencement) after section 58 of the QCT Act.

- Section 58A – Cancellation for conviction for serious offence

New section 58 provides that the QCT must cancel the registration or permission to teach of an approved teacher if the person is convicted, after the relevant commencement of a serious offence or becomes a relevant excluded person because the person becomes subject to a supervision order.

The new section provides that there is no right of appeal from a decision of the QCT to cancel the person's registration or permission to teach under the new section.

The new section provides for the QCT to give the person a notice advising of the cancellation and specifies the matters the notice must state, including that the person has no right of appeal in relation to the cancellation of the teacher's registration or permission to teach under this section. The QCT is also required to provide a copy of the notice to the employing authority for the teacher and the principal of the school at which the person is employed.

- Section 58B –Effect of appeal on cancellation

New section 58B provides that the cancellation of a teacher's registration or permission to teach under the new section 58A remains in effect during an appeal in relation to the conviction or the making of a supervision order. The section also provides that the person is no longer an excluded person if the conviction is overturned on appeal or the supervision order was not made for a conviction for a serious offence and is overturned on appeal.

Amendment of s 92 (Grounds for disciplinary action)

Clause 22 amends section 92 to provide that the ground for disciplinary action specified in section 92(1)(a) only applies if the person is convicted of a serious offence during the relevant period. If a person is convicted of a serious offence after commencement of part 4 of the Bill, their registration or permission to teach will be cancelled under the new section 58A. No disciplinary action will be required in this instance.

The clause also amends section 92(2) to refer to disqualifying and serious offences. This is required because, section 92(2) refers to a person whose registration or permission to teach is suspended under section 48. After

commencement of part 4 of the Bill, a teacher's registration or permission to teach will be suspended if they are charged with either a disqualifying or serious offence.

Amendment of s 95 (PP&C matters)

Clause 23 makes a minor technical amendment to section 95(1)(a)(ii) to remove an incorrect reference to section 92(2)(c).

Amendment of s 101 (QCAT to give show cause notice)

The Bill amends part 2, chapter 5 of the QCT Act to enable QCAT to make disciplinary orders to prohibit a person from applying for registration or permission to teach for a stated period of time or indefinitely where the ground for the disciplinary action arises after the commencement of part 4 of the Bill. If the ground for the disciplinary action arises prior to commencement, the existing limitation will continue to apply. That is, QCAT will only be able to order that the person is prohibited from applying for registration or permission to teach for a maximum of five years.

Clause 24 amends the definition of 'specified order' to reflect the expanded scope of QCAT's disciplinary orders.

Amendment of s 102 (Disciplinary action by QCAT—approved teachers)

Clause 25 amends section 102 of the QCT Act to reflect the expanded scope of QCAT's disciplinary orders.

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

Clause 26 amends section 160 of the QCT Act to reflect the expanded scope of QCAT's disciplinary orders.

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

Clause 27 amends section 161 of the QCT Act to reflect the expanded scope of QCAT's disciplinary orders.

Amendment of s 285A (College must give information about the status of a teacher's registration to children's commissioner in particular circumstances)

Clause 28 amends section 285A of the QCT Act to ensure the QCT is required to inform the Commission for Children and Young People and Child Guardian if an approved teacher has their registration or permission to teach cancelled under the new section 58A.

Insertion of new ch 12, pt 13

Clause 29 inserts a new chapter 12 part 13 (Transitional provisions for Education and Training Legislation Amendment Act 2011) into the QCT Act.

- Section 342 – Existing applications by new excluded persons

New section 342 ensures that where before the relevant commencement, a person applies for teacher registration or permission to teach, renewal of registration or permission to teach, or restoration of full registration but the application has not been decided or withdrawn as at the relevant commencement, the application must be dealt with under the QCT Act as in force prior to the relevant commencement.

- Section 343 – QCAT show cause notice given before relevant commencement

New section 343 provides that chapter 5, part 2 of the QCT Act as in force immediately before the relevant commencement continues to apply in relation to a notice given under section 101 of the QCT Act immediately before the relevant commencement.

Amendment of sch 3 (Dictionary)

Clause 30 amends the dictionary in schedule 3 of the QCT Act to insert definitions for the terms eligibility applicant, eligibility application, eligibility declaration, relevant commencement and relevant period and makes a minor technical amendment to the definition of serious offence.

'Relevant commencement' is defined to mean the commencement of part 4 of the Bill.

'Relevant period' is defined to mean the period starting on 1 January 2006 and ending immediately before the relevant commencement.

The clause also amends the definition of excluded person. The amendments ensure that a person is an excluded person if:

- the person is a relevant excluded person other than a person mentioned in section 57(3) or 58B(3);
- the person has previously held registration or permission to teach that was cancelled because section 56(1)(b)(i) or (2), other than a person mentioned in section 57(3);
- the person is prohibited from applying for registration or permission to teach by a disciplinary order of QCAT;
- the person has previously held registration as a teacher or permission to teach and during the relevant period the person has been convicted of a disqualifying offence for which an imprisonment order was imposed; or
- after the relevant commencement, the person has been convicted of a serious offence and the person is not a person mentioned in new section 58B.

Part 5 Amendment of the Griffith University Act 1998

Act Amended

Clause 31 provides that this part amends the *Griffith University Act 1998*.

Amendment of s 53 (Application of Land Act 1994)

Clause 32 amends section 53 of the *Griffith University Act 1998* to enable the university to enter into a lease or sublease of trust land that is subject to an operational deed of grant in trust for a maximum term of 100 years. The term 'operational deed of grant in trust' has the meaning given to it by the Land Act.

The clause also clarifies that where land has been granted in trust to the university under the Land Act for a university purpose, the purpose is taken to include anything that is consistent with the functions of the university as prescribed under section 5 of the *Griffith University Act 1998*. This

provision applies irrespective of whether the interest was granted prior to commencement.

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

Act Amended

Clause 33 provides that this part amends the *James Cook University Act 1997*.

Amendment of s 49 (Application of Land Act 1994)

Clause 34 amends section 49 of the *James Cook University Act 1997* to enable the university to enter into lease or sublease of trust land held subject to operational reserve or an operational deed of grant in trust for a maximum term of 100 years. The terms ‘operational reserve’ and ‘operational deed of grant in trust’ have the meanings given to them by the Land Act.

The clause also clarifies that where land has been dedicated as reserve or granted in trust to the university under the Land Act for a university or university and college purpose, the purpose is taken to include anything that is consistent with the functions of the university as prescribed under section 5 of the *James Cook University Act 1997*. This provision applies irrespective of whether the interest was dedicated or granted prior to commencement.

Part 7 **Amendment of the Queensland University of Technology Act 1998**

Act Amended

Clause 35 provides that this part amends the *Queensland University of Technology Act 1998*.

Amendment of s 48 (Application of Land Act 1994)

Clause 36 amends section 48 of the *Queensland University of Technology Act 1998* to enable the university to enter into a lease or sublease of trust land held subject to an operational reserve or an operational deed of grant in trust for a maximum term of 100 years. The terms ‘operational reserve’ and ‘operational deed of grant in trust’ have the meanings given to them by the Land Act.

The clause also clarifies that where land has been dedicated as reserve or granted in trust to the university under the Land Act for an educational institution or technical college purpose, the purpose is taken to include anything that is consistent with the functions of the university as prescribed under section 5 of the *Queensland University of Technology Act 1998*. This provision applies irrespective of whether the interest was dedicated or granted prior to commencement.

Part 8 Amendment of the University of Queensland Act 1998

Act Amended

Clause 37 provides that this part amends the *University of Queensland Act 1998*.

Amendment of s 44 (Application of Land Act 1994)

Clause 38 amends section 44 of the *University of Queensland Act 1998* to enable the university to enter into a lease or sublease of trust land held subject to an operational reserve or an operational deed of grant in trust for a maximum term of 100 years. The terms ‘operational reserve’ and ‘operational deed of grant in trust’ have the meanings given to them by the Land Act.

The clause also clarifies that where land has been dedicated as reserve or granted in trust to the university under the Land Act for a university or university and college purpose, the purpose is taken to include anything that is consistent with the functions of the university as prescribed under section 5 of the *University of Queensland Act 1998*. This provision applies

irrespective of whether the interest was dedicated or granted prior to commencement.

Part 9 Amendment of the University of Southern Queensland Act 1998

Act Amended

Clause 39 provides that this part amends the *University of Southern Queensland Act 1998*.

Amendment of s 48 (Application of Land Act 1994)

Clause 40 amends section 48 of the *University of Southern Queensland Act 1998* to enable the university to enter into a lease or sublease of trust land held subject to an operational reserve for a maximum term of 100 years. The term 'operational reserve' has the meaning given to it by the Land Act.

The clause also clarifies that where land has been dedicated to the university as reserve under the Land Act for a university purpose, the purpose is taken to include anything that is consistent with the functions of the university as prescribed under section 5 of the *University of Southern Queensland Act 1998*. This provision applies irrespective of whether the interest was dedicated prior to commencement.

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

Part 10 makes amendments to the terminology used in the VETE Act in relation to statutory TAFE institutes to clarify that statutory TAFE institutes operate on a not-for-profit basis, despite the fact the institutes are encouraged to operate in a commercial way. The proposed changes to terminology that could be interpreted to have commercial connotations aim

to reduce the potential for statutory TAFE institutes being considered to have a for-profit character.

Act Amended

Clause 41 provides that this part amends the VETE Act.

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

Clause 42 provides that in performing its functions, the principal objective of a statutory TAFE institute is to be efficient and effective in providing vocational education and training services. Being commercially successful is also defined as an objective but will no longer be considered a ‘key’ objective. This amendment supports the interpretation of statutory TAFE institutes as not-for-profit entities.

It is considered important for statutory TAFE institutes to retain a commercially successful objective. This object is important in meeting Queensland’s obligations under the National Competition Policy with respect to the competitive neutrality of government business activities.

Amendment of ch 6A, pt 3, div 4 hdg

Clause 43 omits the term ‘dividend’ from the heading and replaces it with the term ‘returns’.

Amendment of s 218W (Payment of dividends)

Clause 44 omits the terms ‘dividend’ or ‘dividends’ from section 218W and replaces the terms with ‘return’ or ‘returns’. The clause also replaces the term ‘profits’ with ‘surpluses’.

Amendment of s 218X (Interim dividends)

Clause 45 seeks to omit the terms ‘dividend’ or ‘dividends’ from section 218X and replaces the terms with ‘return’ or ‘returns’. The clause also replaces the term ‘profit’ with the term ‘surplus’.

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

Clause 46 omits the term ‘dividend’ from the heading and body of section 218Y and replaces the term with ‘return’.

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

Clause 47 omits the term ‘dividend’ from section 218Z and replaces it with the term ‘return’.

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

Clause 48 replaces terminology relating to insolvency with the references to terminology relating to the adverse effect on financial viability in the heading and body of section 219B.

Amendment of schedule 3 (Dictionary)

Clause 49 inserts a definition of the term ‘return’ into the dictionary of the VETE Act.