



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

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Queensland

# Education (Capital Assistance) Act 1993

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# Education (Capital Assistance) Act 1993

**An Act relating to the grant of capital assistance for capital projects to certain non-State schools, and for other purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Education (Capital Assistance) Act 1993*.

### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### 3 Definitions

In this Act—

*approved authority*, of an eligible non-State school, means the governing body of the school.

*CAA* means a corporation whose nomination under section 7 is acceptable to the Minister.

*capital assistance* means the provision of an amount under section 22.

*Capital Assistance Fund* of a CAA means the fund established by the CAA under section 12.

*capital project* has the meaning given by section 4.

*due day*, for part 5, see section 21A.

*eligible non-State school* means a non-State school that is—

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- (a) a school, the governing body of which is eligible for government funding for the school under the *Education (Accreditation of Non-State Schools) Act 2017*; and
- (b) listed with a CAA for the purposes of this Act.

*initial application*, for part 5, see section 21A.

*non-State school* means a school that is accredited under the *Education (Accreditation of Non-State Schools) Act 2017*.

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

#### 4 Meaning of *capital project*

- (1) A *capital project* is a project that consists of work for—
  - (a) educational facilities for students; or
  - (b) boarding facilities for students including accommodation in the facilities for persons supervising students in the facilities; or
  - (c) residential accommodation for teachers in a remote area of the State.
- (2) A project mentioned in subsection (1)(c) is a capital project only if the Minister approves the particular project.
- (3) A capital project, consisting of work for facilities or accommodation as mentioned in subsection (1), may include the following—
  - (a) work relating to equipment or furniture to the extent the equipment or furniture is part of the facilities or accommodation;  
*Example—*
    - work for the installation of information or communication technology equipment, or air-conditioning
  - (b) work for the purpose of complying with any conditions imposed by the local government for the area in which the relevant non-State school is located, or is to be relocated, as part of the local government's approval

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relating to the capital project, whether the work is undertaken on the school's land or other land;

*Example—*

Work relating to bus stops, bus shelters, or areas for students to be set-down or picked-up, located or to be located, outside of the school's land.

- (c) the payment of an amount to the local government for the area in which the relevant non-State school is located, or is to be relocated, as part of the local government's approval relating to the capital project.

*Example—*

an amount for the provision of water supply or sewerage services, or for environmental protection

- (4) In this section—

***relevant non-State school*** means the non-State school to which the capital project relates.

***work*** means planning, construction, alteration, extension, renovation, relocation or upgrading.

## 5 Meaning of granting application *in part*

A reference in section 16, 17 or 18 to the granting of an application ***in part*** includes granting the application in relation to any of the following—

- (a) a part of the project concerned;  
(b) a part of the capital assistance sought.

## Part 2 Capital assistance authorities

### 7 CAAs

- (1) The Queensland Catholic Education Commission may nominate a corporation to be a capital assistance authority.

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- (2) The Association of Independent Schools of Queensland Inc. may nominate a corporation to be a capital assistance authority.
- (3) A nomination must be in writing and given to the Minister.
- (4) A nomination is effective only if the nominee is acceptable to the Minister.

## **8 Funding of CAAs for administrative costs**

- (1) The Minister may pay amounts to a CAA on account of the administrative costs expected to be incurred by the CAA in performing its functions under this Act.
- (2) The amounts are to be paid from the amounts appropriated by the Parliament for the purposes of this Act.
- (3) The CAA may pay the administrative costs out of the amounts.
- (4) Interest earned by a CAA on amounts paid under subsection (1) (including any interest on that interest) may only be used by the CAA—
  - (a) to pay the administrative costs; or
  - (b) to provide capital assistance.

## **9 Functions**

The functions of a CAA are—

- (a) to receive and assess applications for capital assistance from approved authorities of eligible non-State schools listed with the CAA for the purposes of this Act (*listed schools*) and to make recommendations to the Minister in relation to the applications; and
- (b) to make payments under this Act to approved authorities of listed schools from amounts standing to the credit of the CAA's Capital Assistance Fund; and
- (c) to carry out the other functions conferred on the CAA by this Act.

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## 10 Listing with CAA

- (1) It is the responsibility of each non-State school that is a school, the governing body of which is eligible for Government funding under the *Education (Accreditation of Non-State Schools) Act 2017*, to become listed with a CAA.
- (2) A CAA must give the Minister written notice of each non-State school listed with it for the purposes of this Act.
- (3) The notice must be given as soon as practicable after the listing happens.
- (4) A non-State school may be listed with only 1 CAA for the purposes of this Act.

## 11 Change of listing

- (1) An eligible non-State school may change its listing from one CAA to the other CAA for the purposes of this Act only if the Minister has approved the change.
- (2) An eligible non-State school may apply to the Minister for an approval under subsection (1) only if—
  - (a) the application is made not less than 12 months before 1 January of the year for which the school is seeking the change of listing to be effective; and
  - (b) all amounts granted to the approved authority of the school for capital assistance for a proposed capital project at the school have been paid to the school; and
  - (c) before making its application, the school gives written notice of its intention to apply for approval to change its listing, including the reasons for the proposed change, to each CAA.
- (3) The application must be in writing.
- (4) Before deciding the application, the Minister must seek the views of each CAA about the application.
- (5) The Minister may grant or refuse the application after considering any views of the CAAs.

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- (6) If the Minister approves the application, the Minister must determine the year from which the change of listing becomes effective.
- (7) The change of listing becomes effective on 1 January in that year.
- (8) The Minister must inform the applicant and each CAA in writing of the Minister's decision on the application.
- (9) If the Minister refuses the application, the Minister must give the applicant written reasons for the decision.

## **12 CAAs to establish Capital Assistance Funds**

- (1) Each CAA must establish a fund called the (name of CAA) Capital Assistance Fund.
- (2) Each CAA must pay into its Capital Assistance Fund—
  - (a) amounts paid to the CAA under section 13; and
  - (b) interest mentioned in section 8 that is to be used to provide capital assistance; and
  - (c) amounts of capital assistance returned to the CAA by an approved authority under an agreement mentioned in section 22; and
  - (d) interest earned on the amounts in the fund.
- (3) A CAA must deposit the amounts standing to the credit of its Capital Assistance Fund with—
  - (a) a financial institution; or
  - (b) a person, body or fund approved by the Treasurer.
- (4) The CAA must keep the deposits separate from its other deposits with the financial institution or the person, body or fund.
- (5) Amounts received by a CAA that are required to be paid into its Capital Assistance Fund are held by the CAA on behalf of the State.

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- (6) Amounts standing to the credit of a CAA's Capital Assistance Fund may be used by the CAA only to provide capital assistance.

## **12A CAAs to notify schools of relevant dates**

- (1) Each CAA must give written notice to the approved authority of each of the eligible non-State schools listed with the CAA of the day (the *relevant day*) before which applications for capital assistance for a year may be made under section 15.
- (2) The written notice—
- (a) must be given to each approved authority before the day prescribed under a regulation; and
  - (b) may provide for different relevant days for capital assistance for different types of capital projects.
- (3) Each CAA must have at least 1 relevant day in each year for each type of capital project.

## **Part 3 Funding for capital assistance**

### **13 Minister may provide funds**

- (1) The Minister may pay amounts to a CAA for the purpose of enabling the CAA to provide capital assistance.
- (2) The amounts are to be paid from amounts appropriated by the Parliament for the purposes of this Act.

### **14 Certain projects must not be funded**

- (1) Capital assistance must not be provided for—
- (a) the acquisition of land; or
  - (b) the planning, construction, alteration, extension, renovation, relocation or upgrading of—

- (i) a facility that has religious worship as its sole or principal purpose; or
    - (ii) a facility of a type not provided by the State in State schools; or
  - (c) a capital project related to a temporary site at which special assistance is provided, or proposed to be provided, by an eligible non-State school under the *Education (Accreditation of Non-State Schools) Act 2017*, chapter 2, part 4.
- (2) Subsection (1)(b)(ii) does not apply to the provision of boarding facilities for students at an eligible non-State school including accommodation in the facilities for persons supervising students in the facilities if—
- (a) the facilities are to be or are situated in the school grounds; or
  - (b) the Minister approves the provision of the facilities.
- (3) For the purpose of subsection (1)(b)(ii), a facility is to be taken to be provided by the State only if the whole of its cost is borne—
- (a) by the State or the Commonwealth; or
  - (b) partly by the State and the Commonwealth.
- (4) Capital assistance must not be provided for a capital project if—
- (a) a contract for the project has been entered into; or
  - (b) site work or other building work for the project has been started;
- before the Minister grants an application for capital assistance for the project.

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## Part 4 Applications for capital assistance and review

### Division 1 Applications for capital assistance

#### 15 Application

- (1) The approved authority of an eligible non-State school may, before the relevant day for a year, apply to the Minister for capital assistance for a proposed capital project to be carried out at the school during the year or either or both of the 2 following years.
- (2) Despite subsection (1), an application for capital assistance may be made by the approved authority of an eligible non-State school after the relevant day for the year if the CAA with which the school is listed considers that there are exceptional circumstances.
- (3) The application must be made in writing through the CAA with which the school is listed.
- (4) The application must specify the amount of capital assistance sought.
- (5) The application must contain, or be accompanied by, the information that may be required by regulation.
- (6) In this section—  
*relevant day*, for a year, means—
  - (a) the day notified, under section 12A, to the approved authority of an eligible non-State school by the CAA with which the school is listed for the making of applications for capital assistance of the type concerned for the year; or
  - (b) if the CAA fails to notify the approved authority of an eligible non-State school listed with it of the day under section 12A, the day prescribed under a regulation as the

day for the making of applications for capital assistance of the type concerned for the year.

## **16 Action by CAA**

- (1) On receipt of an application under section 15, the CAA must—
  - (a) assess it, having regard to—
    - (i) the criteria prescribed under a regulation; and
    - (ii) other applications for the same type of capital assistance received by the CAA in relation to the same relevant day; and
  - (b) recommend to the Minister whether it should be granted in whole or in part or refused.
- (2) The recommendation must be in writing, give reasons for the recommendation and be given to the Minister by the day prescribed by regulation for the relevant year.

## **17 Minister to decide application**

- (1) On receipt of the recommendation and the application to which it relates, the Minister may grant the application in whole or part or refuse the application.
- (2) In deciding the application, the Minister may have regard solely or principally to the CAA's recommendation.
- (3) The Minister must inform the applicant and the CAA in writing of the decision.
- (4) If the Minister grants the application only in part or refuses the application, the Minister must give the CAA written reasons for the decision.
- (5) The CAA must give a copy of the reasons to the applicant.

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## **Division 2                      Applications for review**

### **18            Making of application**

- (1) If an application for capital assistance is granted by the Minister (whether in whole or part), the approved authority of the eligible non-State school concerned may apply to the Minister to have the application reviewed with a view to having the amount of capital assistance increased.
- (2) The application must be made in writing through the CAA with which the school is listed.
- (3) The application must specify—
  - (a) the amount of the increase; and
  - (b) the reasons for which the increase is sought.

### **19            Action by CAA on a review**

- (1) On receipt of an application under section 18, the CAA must—
  - (a) assess it having regard to the criteria prescribed by regulation; and
  - (b) recommend to the Minister whether—
    - (i) the amount of capital assistance previously granted should be increased by the amount sought or a lesser amount; or
    - (ii) the application should be refused.
- (2) The recommendation must be in writing, give reasons for the recommendation and be given by the CAA to the Minister as soon as practicable after the CAA decides the recommendation.

### **20            Power of Minister on a review**

- (1) On receipt of the recommendation and the application to which it relates, the Minister may—

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- (a) approve that the amount of capital assistance previously granted be increased by the amount sought or a lesser amount; or
  - (b) refuse the application.
- (2) In deciding the application, the Minister may have regard solely or principally to the CAA's recommendation.
  - (3) The Minister must inform the applicant and the CAA in writing of the decision.
  - (4) If the Minister approves that the amount of capital assistance previously granted be increased by less than the amount sought or refuses the application, the Minister must give the CAA written reasons for the decision.
  - (5) The CAA must give a copy of the reasons to the applicant.

## **Division 3 Available funds**

### **21 CAA to have regard to available funds**

- (1) In making a recommendation to the Minister about an application under section 15 or 18 for capital assistance for a proposed capital project, a CAA must have regard to—
  - (a) the amount the Minister has advised the CAA is available to provide capital assistance to eligible non-State schools listed with the CAA; or
  - (b) if the Minister has advised the CAA that different amounts are available for different types of capital projects—the amount that is available to provide capital assistance to eligible non-State schools listed with the CAA for capital projects of that type.
- (2) Subsection (1) does not apply to making a recommendation about an application for capital assistance for a capital project to the extent it includes work or a payment mentioned in section 4(3)(b) or (c).

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## Part 5 Provision of capital assistance

### Division 1 Definitions

#### 21A Definitions for pt 5

In this part—

*due day*, for an initial application for payment of the amount, or part of the amount, granted for a capital assistance project, means—

- (a) the day that is 2 years after the day of the Minister's grant of the application for capital assistance for the project; or
- (b) the later day decided by the Minister under section 22D(4)(b).

*initial application* see section 22A(a).

### Division 2 Provision of capital assistance

#### 22 CAA may provide capital assistance

- (1) If the Minister grants an application by the approved authority of an eligible non-State school for capital assistance for a proposed capital project, the CAA with which the school is listed must provide the approved authority with the amount granted for the project.
- (2) However, the CAA must not provide the amount until—
  - (a) the CAA and the approved authority have entered into a written agreement for the project; and
  - (b) at least 25% of the value of the works relating to the project has been completed; and
  - (c) the approved authority has applied, under section 22A, for payment of the amount, or part of the amount.

[s 22A]

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- (3) The agreement must be in the form approved by the Minister for the project.

## **22A Application for payment of amount granted for project**

If the Minister grants an application by the approved authority of an eligible non-State school for capital assistance for a proposed capital project, the approved authority must—

- (a) apply (an *initial application*) to the CAA with which the school is listed for payment of the amount, or part of the amount, granted for the project before the due day; or
- (b) apply, under section 22B, for an extension of time.

## **22B Extension of time for making initial application for payment**

- (1) If an approved authority of an eligible non-State school that has been granted capital assistance for a proposed capital project can not make an initial application before the due day, the approved authority may apply to the Minister for an extension of time before which the initial application must be made.

*Example of when initial application can not be made before the due day—*

at least 25% of the value of the works relating to the project has not been completed in accordance with section 22(2)(b)

- (2) The application must—
  - (a) be made in writing through the CAA with which the school is listed; and
  - (b) give reasons for the proposed extension of time; and
  - (c) be given to the CAA before the due day.
- (3) More than 1 application may be made under this section by an approved authority about the same capital project.

## **22C Action by CAA**

- (1) On receipt of an application under section 22B, the CAA must assess it and recommend to the Minister whether it should be granted or refused.
- (2) The recommendation must be in writing, give reasons for the recommendation and be given to the Minister together with the application within 28 days after receipt of the application by the CAA.

## **22D Minister to decide application**

- (1) On receipt of the recommendation and the application to which it relates, the Minister may grant the application or refuse the application.
- (2) In deciding the application, the Minister may have regard solely or principally to the CAA's recommendation.
- (3) The Minister must give the approved authority and the CAA written notice of the Minister's decision.
- (4) The Minister's notice must state the following—
  - (a) whether the Minister has granted the application or refused the application;
  - (b) if the Minister granted the application—the day by which the initial application must be made;
  - (c) if the Minister refused to grant the application—the reasons for the refusal.

## **22E Revocation of grant of application**

- (1) This section applies if the Minister has granted an application by an approved authority of an eligible non-State school for capital assistance for a proposed capital project (the *original grant*) and—
  - (a) neither—
    - (i) an initial application for payment of capital assistance has been made before the due day; nor

[s 22F]

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- (ii) an application by the approved authority for an extension of time in which to make the initial application has been received before the due day by the CAA through which it must be made; or
  - (b) an application by the approved authority for an extension of time in which to make the initial application has been received before the due day by the CAA through which it must be made and has been refused under section 22D.
- (2) The original grant is revoked and, if the capital assistance is still required by the school, a fresh application must be made under section 15.

## **22F CAA may provide additional capital assistance**

- (1) This section applies if the Minister grants an application by the approved authority of an eligible non-State school for capital assistance for a proposed capital project.
- (2) The CAA with which the school is listed may provide an additional amount of capital assistance (*additional capital assistance*) to the approved authority for the proposed capital project.
- (3) However, the CAA may provide the additional capital assistance only if there has been a variation in the cost of the proposed capital project that was not reasonably foreseeable at the time the application for capital assistance was made by the approved authority.
- (4) The additional capital assistance must be not more than 10% of the amount granted by the Minister for the proposed capital project.
- (5) The CAA may provide the additional capital assistance only from an amount in its Capital Assistance Fund that is—
  - (a) interest mentioned in section 12(2)(b) or (d); or
  - (b) another amount that is not required to be paid to an approved authority under section 22, including—

- (i) an amount returned to the CAA by an approved authority under an agreement mentioned in section 22; and
  - (ii) an amount remaining in the fund because of a revocation under section 22E.
- (6) If a CAA provides additional capital assistance to an approved authority it must give the Minister a written notice about the provision of the additional capital assistance, including the amount of the additional capital assistance provided.

## Part 6                      Miscellaneous

### 23      **Inspection of records kept by CAAs for approved applications for capital assistance**

- (1) A CAA must permit an approved person—
- (a) to inspect, without fee, a record kept by the CAA for an approved application for capital assistance; and
  - (b) to take a copy of, or extract from, the record without fee.
- (2) Before inspecting a record kept by the CAA, the approved person must produce a copy of the approved person's approval to the person in charge of the CAA for that person's inspection.
- (3) The approved person must, as soon as practicable after inspecting the record, give a report to the Minister about the record's contents.
- (4) In this section—

***approved person*** means a person approved by the Minister, in writing, for this section.

***record***, for an approved application for capital assistance, means any document kept by the CAA about the capital project for which the application for capital assistance was granted.

## **24 Return by CAA**

- (1) A CAA must, by the day prescribed by regulation for each year, give to the Minister a written return for the previous year (the *previous year*)—
  - (a) containing an audited statement of the amounts received by it under section 8 in the previous year, interest received on the amounts and the expenditure of the amounts; and
  - (b) containing an audited statement of its Capital Assistance Fund showing details of the amounts paid to and from the fund in the previous year and the financial position of the fund at the beginning and end of the previous year; and
  - (c) giving the following details for each capital project for which the approved authority of an eligible non-State school listed with the CAA received or retained capital assistance in the previous year—
    - (i) a description of the project;
    - (ii) whether or not the project was completed in the previous year;
    - (iii) the amount spent on the project as at the end of the previous year;
    - (iv) the amount, if any, held on account of the project at the end of the previous year;
    - (v) the amounts, and sources of the amounts, used to fund the project; and
  - (d) containing an assessment of the scheme provided for by this Act including the effectiveness of the assessment criteria mentioned in sections 16(1)(a) and 19(1)(a); and
  - (e) stating any other information prescribed by regulation.
- (2) The audit mentioned in subsection (1) must be carried out by a person registered as an auditor under Part 9.2 of the Corporations Act and approved by the Minister.

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## 24A Power of entry

- (1) This section applies if the Minister grants an application by the approved authority of an eligible non-State school for capital assistance for a proposed capital project for the school.
- (2) A person (the *nominated person*) nominated by the Minister, in writing, may enter the school at any reasonable time to inspect the capital project for which the application for capital assistance was granted.
- (3) Before entering the school, the nominated person must give the school's principal reasonable notice that the nominated person intends to enter the school.
- (4) Before inspecting the capital project, the nominated person must produce to the school's principal a copy of the nomination for the principal's inspection.

## 24B Guidelines

- (1) The Minister may issue guidelines for this Act.
- (2) Without limiting subsection (1), a guideline may give guidance about—
  - (a) administrative matters relevant to applications under this Act; or
  - (b) how an applicant should deal with issues involved in the proper formulation of the application; or
  - (c) how funds will be allocated and paid to a CAA, and how a CAA may use the funds; or
  - (d) the information to be kept by a CAA about capital projects for which applications for assistance have been granted.
- (3) A guideline may be replaced or varied by a later guideline issued under this section.
- (4) The chief executive must keep a copy of a guideline, issued under this section, available for inspection and permit a person—

- (a) to inspect the guideline without fee; and
  - (b) to take extracts from the guideline without fee.
- (5) For subsection (4)—
- (a) a copy of the guideline—
    - (i) must be kept at the head office of the department; and
    - (ii) may be kept at any other place the chief executive considers appropriate; and
  - (b) the copy kept under paragraph (a) must be available for inspection during office hours on business days for the office or place.
- (6) Also, the chief executive must keep a copy of a guideline, issued under this section, available for supply to a person and permit a person to obtain a copy of the guideline, or a part of the guideline, without fee.
- (7) In addition, the chief executive must keep a copy of a guideline, issued under this section, posted on the department's website on the internet.

## **25 Regulations**

The Governor in Council may make regulations for the purposes of this Act.

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## **Part 7                      Validating and transitional provisions**

### **Division 1                Validation of certain payments for Act No. 37 of 1993**

#### **26        Validation etc.**

- (1) Amounts paid before the commencement of this section in relation to non-State schools under the schemes known as the Interest Assistance to Non-State Schools Scheme and the Capital Assistance Scheme are taken to be, and always to have been, lawfully paid.
- (2) The Minister may continue to pay amounts under the schemes to meet commitments existing under the schemes at the commencement of this section.
- (2A) An amount paid under subsection (2) may be increased by not more than the GST payable for a supply made by the recipient of the amount relating directly to the payment of the amount.
- (3) Amounts mentioned in subsection (2), including the amounts as increased under subsection (2A), may be paid out of amounts appropriated by the Parliament for the purposes of this Act.

#### **27        Certain other parts do not apply**

Parts 2 to 6 do not apply to an amount paid under section 26.

### **Division 1A              Validation of other payments etc.**

#### **27A      Capital project involving work of the type mentioned in section 4(3)**

- (1) Subsection (2) applies if an amount was paid, before the commencement of this section, by a CAA to the approved

authority of an eligible non-State school as capital assistance for a proposed capital project that involved work of the type mentioned in section 4(3) (*other works*).

- (2) The following is taken to be, and always to have been, lawfully granted, paid and used—
  - (a) the grant of the application for capital assistance for the proposed capital project;
  - (b) the payment of the amount;
  - (c) the use of the amount for other works.
- (3) Subsection (4) applies if, before the commencement of this section—
  - (a) the Minister granted an application for capital assistance for a proposed capital project that involved other works; and
  - (b) the capital assistance has not been provided.
- (4) The application is taken to have been lawfully granted and provision of the capital assistance may be made under section 22.

## **Division 2                      Transitional provisions for Education and Other Legislation Amendment Act 1999**

### **28            References to affiliation with a CAA**

- (1) A non-State school affiliated with a CAA immediately before the commencement of this section is taken to be listed with the CAA.
- (2) If a non-State school applied to the Minister to change its affiliation from one CAA to another CAA and the Minister had not made a decision about the application before the commencement of this section, the application may be dealt with by the Minister as an application to change the school's listing.

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## Division 3                      Transitional provision for Education Legislation Amendment Act 2004

### 29      Sections 22(2)(c) and 22A to 22E not applicable to pre-existing capital assistance

- (1) This section applies if—
  - (a) before the commencement, the Minister has granted an application by the approved authority of an eligible non-State school for capital assistance for a proposed capital project; and
  - (b) immediately before the commencement, the CAA with which the school is listed has not, under section 22, provided the approved authority with the amount granted for the project.
- (2) On the commencement, section 22 continues to apply to the payment of the amount by the CAA to the approved authority as if section 22(2)(c) had not commenced and sections 22A to 22E do not apply to the payment.
- (3) In this section—

***commencement*** means commencement of this section.