Education and Other Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the Education and Other Legislation Amendment Bill 2014.

Policy objectives and the reasons for them

The primary policy objectives of the Education and Other Legislation Amendment Bill 2014 (the Bill) are to support school autonomy by enhancing localised decision-making, support school safety, improve educational outcomes and reduce red tape. The Bill also aims to ensure the portfolio's legislation is contemporary and meets the current operational needs of the Department of Education, Training and Employment (DETE) and its education and training stakeholders.

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

The *Education (General Provisions) Act 2006* (EGPA) provides the legislative framework for the provision of education to Queensland children and young people. The EGPA outlines the responsibilities of parents and the State in relation to the education of children and young people, and the establishment and management of state educational institutions as safe, supportive and productive learning environments. It also provides for a number of matters relevant to non-state schools, including payment of allowances, annual reporting requirements and directions or orders about conduct or movement of persons at non-state schools.

The Queensland Government accepted the Queensland Commission of Audit recommendation to adopt a strategic direction for education in Queensland. This involves a focus on high achievement and enhancing student performance in every school, including supporting school autonomy to generate innovative school-based solutions balanced by strong accountability frameworks. This is consistent with the *Great teachers = Great results* policy direction for education.

A discrete review of the EGPA was undertaken to identify opportunities to further the objectives of supporting school autonomy by enhancing local decision-making, supporting school safety, improving educational outcomes, and reducing red tape. The Bill is in part the result of this review, particularly amendments to:

- strengthen power for schools to deal with 'hostile' persons;
- provide non-state school principals with the power to grant exemptions from compulsory schooling or compulsory participation phase requirements in certain circumstances;
- restrict mature age student enrolments to age appropriate settings;
- permit the chief executive of DETE to obtain information from the Queensland Police Service about charges and convictions to assist principals with disciplinary decisions;

- enable the DETE chief executive to delegate the power to commence prosecutions against parents for the offences of failing to comply with compulsory schooling and compulsory participation requirements;
- provide that interstate students who live near a state school in their own State or Territory are not entitled to free distance education in Queensland, and to clarify the ability of the DETE chief executive to cancel enrolment in distance education if fees are not paid;
- free international educational institutions from unnecessary regulatory burden by removing the requirement for these entities to be approved by Governor in Council before operating in Queensland; and
- create clearer exemptions to the confidentiality provision in the EGPA for the release of information for research and law enforcement purposes.

Other amendments to the EGPA in the Bill are designed to ensure that existing provisions are meeting contemporary operational requirements and to give effect to necessary minor and technical amendments.

Special assistance schools

Non-state schools are established and operate in Queensland under the *Education (Accreditation of Non-State Schools) Act 2001* (the Accreditation Act).

The Accreditation Act establishes and provides for the operation of the independent Non-State Schools Accreditation Board (Accreditation Board), which is responsible for the accreditation of non-state schools. This involves assessing the suitability of a school's governing body and whether a school meets the prescribed criteria for accreditation (for example, financial viability, educational program, student protection). The Accreditation Act also establishes a regime for deciding whether governing bodies of non-state schools are eligible for government funding. The Minister for Education, Training and Employment (Minister) is the decision-maker for government-funding eligibility applications.

Special assistance schools are accredited non-state schools that cater specifically for children and young people who have disengaged from mainstream education and are not participating in vocational education and training or employment. Special assistance schools do not charge tuition fees. They generally attract a higher level of funding per-student than other schools. The demand for special assistance schools has grown in recent years from nine in 2006 to 20 in 2014.

The current approval process for deciding whether a non-state school is categorised as a special assistance school requires streamlining. Categorisation as a special assistance school involves the Accreditation Board assessing the school against the requirements in the Accreditation Act before granting provisional accreditation as a non-state school. Subsequently, the Minister must assess the school against the requirements set out in a Ministerial policy, made under section 369 of the EGPA, to decide whether to grant special assistance status.

The current policy and legislative frameworks do not give mainstream non-state schools and special assistance schools the required level of flexibility to effectively respond to identified needs of the local community, in providing educational and social support to children and young people who have exited the schooling system and are not participating in vocational education and training, education or employment.

The Queensland Government is developing strategies to better support young people who are

disengaged or at risk of disengaging in education, and to ensure there is a suitable, high quality educational program available to disengaged youth. The amendments proposed around special assistance schools aim to improve educational outcomes for disengaged youth by streamlining and simplifying the ways in which non-state schools are able to deliver services to vulnerable young people.

The amendments will enhance the Accreditation Board's powers to ensure that special assistance schools comply with accreditation criteria and deliver a quality education program while at the same time providing added flexibility to respond to the needs of disengaged youth.

Governing bodies of non-state schools established by letters patent

Amendments to the Accreditation Act are necessary to support governance arrangements for the governing bodies of non-state schools established by letters patent under the *Religious Educational and Charitable Institutions Act 1861* (letters patent schools) and to provide certainty to schools and the Accreditation Board about who the directors of these entities are.

The Accreditation Board has a statutory obligation to determine that a director of a non-state school's governing body is suitable to be a director of the governing body. For the purposes of assessing suitability, the identity of all of the directors of a school's governing body must be known by the Accreditation Board.

There are a number of letters patent schools in Queensland. Letters patent cannot be amended so, unlike other non-state schools, letters patent schools cannot change the officeholders of their governing body to reflect changes in arrangements over time. However, some letters patent schools have purported to nominate persons in addition to the officeholders in the letters patent as directors of the governing body for the purposes of accreditation. This impacts on the ability of the Accreditation Board to monitor suitability of directors and leaves the schools uncertain as to who is legally a director of the governing body for the purposes of the Accreditation Act.

Miscellaneous amendments to DETE portfolio Acts

The Bill contains amendments to other Acts within the DETE portfolio. The amendments also align with the policy objectives of reducing the regulatory burden and ensuring provisions meet contemporary operational requirements, as well as removing duplication and ensuring consistency across DETE portfolio legislation, and with other legislation. For example, the Bill:

- amends civil liability indemnity provisions in certain DETE portfolio Acts to remove duplication with the recently revised civil liability indemnity provisions in the *Public Service Act 2008* (Public Service Act);
- removes the requirement for the Queensland College of Teachers (QCT) to provide applicants for renewal or restoration of teacher registration and permission to teach, police information that has previously been provided to the applicant where the information will not affect the QCT's decision;
- aligns the notice periods under the *Education and Care Services Act 2013* (ECS Act) with those under the *Education and Care Services National Law* (National Law); and
- standardises provisions relating to disqualification and criminal history screening and processes for significant appointments to DETE portfolio statutory bodies.

Achievement of policy objectives

The Bill achieves the objectives by providing for the following amendments.

EGPA amendments

Directions to 'hostile' persons

The Bill amends the EGPA to give state and non-state school principals the power to give a verbal direction to a hostile person to immediately leave and not re-enter the premises for 24 hours. Directions can be given when a hostile person is, for example, threatening the safety of students, damaging property or disrupting the good order and management of the school. Currently, a principal can give a direction but this must be in writing. This is an often impractical response in the circumstances, as threats can arise in emergent situations. The ability to issue a verbal direction will overcome this issue.

The Bill amends the EGPA to give state and non-state school principals the power to give a written direction to prohibit a person from the premises for up to 60 days. Currently, this is the reserve of the DETE chief executive or non-state school's governing body. These amendments recognise that principals are best placed to manage their school and make decisions that take into account the expectations of their local community.

The Bill allows the DETE chief executive or a non-state school's governing body to impose a ban of 60 days to one year without application to the Queensland Civil and Administrative Tribunal (QCAT) as is currently required. These bans are generally sought in circumstances where there has been significant physical or verbal abuse, threats or acts of harm to persons, damage to property, or disruption to the school's operations. This change is proposed because applications to QCAT are time-consuming and costly. Decisions by the chief executive or non-state school governing body will be reviewable by QCAT.

Power to grant exemptions

Queensland students are encouraged to attend school on every school day. However, it is sometimes necessary for a student to be absent from school for periods of time such that their parents do not meet their compulsory schooling or participation obligations. Circumstances where this may occur include for medical, family or travel reasons or because of the student's involvement in the arts or sport at the state, national, or international level.

The DETE chief executive's power to grant exemptions for state schools is delegated to state school principals. However, principals in non-state schools must apply to the departmental delegate of the DETE chief executive in relation to absences in non-state schools. The Bill amends the EGPA to give non-state school principals the power to grant exemptions from the compulsory schooling, or the compulsory participation phase requirements, for up to 110 school days (i.e. two school terms) in a calendar year. Exemption applications for longer periods (over 110 school days) will continue to be decided by the DETE chief executive or their delegate.

Enrolment of mature age students

The Bill makes amendments to the EGPA to restrict mature age student enrolments to mature age state schools prescribed in a regulation or to distance education. It also removes existing requirements for principals of state schools to enrol mature age students who do not have an unacceptable criminal history.

Adult students are currently able to enrol in any state school, provided they have a positive mature age student notice, which declares the person to be suitable to be a student of the

school. The notice is issued after consideration of the person's criminal history. This causes issues for state schools that are not appropriately equipped to provide education to adults and can disrupt education and pose risks to the safety and wellbeing of other students at the school. At present, Queensland is the only jurisdiction with a legislative impost to enrol mature age students at any state school.

Prescribed mature age student schools will include the schools located in the South East, North Queensland and Metropolitan Regions, commonly referred to as Centres for Continuing Secondary Education (CCSE). CCSEs, unlike mainstream state secondary schools, are specifically set up to cater to adult students.

This reform will support aims to improve educational outcomes of children and mature aged students and create safe environments in state schools. Data indicates that the majority of mature age students attend CCSEs (73% of mature age students were enrolled in CCSEs in 2013). A mature age student who cannot access a mature age state school will be able to enrol in a state school of distance education. Alternatively, TAFE institutes offer vocational education and training courses that can provide the knowledge and skills required for employment, or a pathway to further study at university. Queensland Studies Authority data from 2012 also indicates that adult learner completion rates are higher in CCSEs (approximately 80%) than in mainstream schools (approximately 50%).

The Bill will provide that the principal of the mature age state school, rather than the DETE chief executive, will consider the adult's suitability for enrolment at the school taking into account the adult's criminal history (if any). In addition to considering the criminal history, principals will consider enrolment applications for mature age students in accordance with section 156 of the EGPA, which applies to all students. Under this provision, if the principal believes the prospective mature age student would pose an unacceptable risk to the safety or wellbeing of members of the school community, the principal must refer the enrolment application to the DETE chief executive to determine. The DETE chief executive has not delegated this power.

Transitional arrangements proposed in the Bill will ensure existing mature age students will be able to continue their education at their current state school. Students who turn 18 while enrolled at a state school, or who are 18 but return to attend a state school within 12 months, are not subject to the proposed new mature age student enrolment regime. They may attend any state school if they have an entitlement to enrol (i.e. are deemed to have a remaining allocation of state education and live in the catchment area of the intended school). This continues the current position in the EGPA regarding this cohort.

Criminal history information

In January 2014, school disciplinary powers were enhanced to give principals of state schools and the DETE chief executive stronger disciplinary powers to respond to situations where a student is charged with or convicted of a criminal offence. Under the enhanced powers, a student can be suspended if they have been charged with a serious offence; or any other offence if it would not be in the best interests of students and staff at the school for the student to attend the school while the charge is pending. Students can also be excluded if they have been convicted of a criminal offence and it would not be in the best interests of other students or staff for the student to be enrolled at the school.

To fully utilise these new school discipline measures, the Bill permits the DETE chief executive to obtain confirmation from the Queensland Police Service that a student has been charged with, or convicted of, an offence and to obtain a brief statement of the circumstances of the charge or conviction. This information may only be sought when the DETE chief

executive reasonably suspects that a student has been charged with or convicted of an offence, and the principal or the chief executive requires confirmation of the charge or conviction for the purpose of making a disciplinary decision under the under chapter 12, part 3 of the EGPA. Use of the information obtained from Queensland Police Service will be limited to disciplinary decisions under chapter 12, part 3 of the EGPA. To be clear, these powers do not apply to student enrolment decisions.

Power to commence proceedings

Under the EGPA, parents may be prosecuted for failing to ensure their child is enrolled and attending school in the compulsory schooling phase (section 176); or meeting the requirements of the compulsory participation phase (section 239).

The Bill amends the EGPA to enable the DETE chief executive to delegate the power to commence prosecutions, and to consent to the bringing of prosecutions, to appropriately qualified officers within DETE. The intention is that this power will be delegated to regional directors. Regional directors, in consultation with principals, are best placed to make decisions about prosecution processes as they have access to detailed knowledge about the student and family circumstances that impact on school attendance.

School attendance is a complex issue that requires multiple approaches. The amendment is one of a number of strategies, including intensive case management, and utilisation of remote student attendance officers, being adopted to improve state school attendance. Prosecutions are an action of last resort to encourage a student to re-engage in education. The EGPA will continue to require that prior to commencing prosecutions, parents are notified in writing of their obligations and, where possible, a meeting is held with parents to discuss their child's absenteeism.

Distance education – fees and cancellation of enrolment

Section 52 of the EGPA provides that a person enrolled in a program of distance education, or a person, other than a state school student, enrolled in a component of a program of distance education at a state school, must pay the fee prescribed under a regulation. Section 69 of the *Education (General Provisions) Regulation 2006* presently provides that the fee for a person enrolled in a program of distance education is $1261.90. Different fees apply to components of a program of distance education.

Section 53 of the EGPA sets out the circumstances when the fee for distance education is not payable. This includes where a person lives in a remote area, has an itinerant lifestyle or a medical condition. Section 54 allows the chief executive to waive fees in limited circumstances.

Section 49 of the EGPA defines 'remote area' by reference to the distance between the person's principal place of residence and the nearest applicable school. 'Nearest applicable school' is defined in section 48 to mean the nearest state school with the required year level for the person. 'State school' is defined in the schedule 4 dictionary to mean an educational institution established under section 13 of the EGPA, that is, a Queensland state school.

Queensland state schools of distance education have enjoyed a good reputation and are attractive to some students from other Australian jurisdictions. The effect of the current fee provisions creates a loophole that prevents DETE from charging interstate students wishing to access distance education from the Queensland state schools of distance education even where they live near a state school in their own jurisdiction. This is because they will almost always meet the criteria of living in a remote area as they live the required distance from a Queensland state school. This puts interstate students on a different footing from Queensland

students.

To address this issue, the Bill amends the definition of 'nearest applicable school' in section 48 to mean, for a person, the nearest state school, or equivalent of a state school under a corresponding law, with the required year level for the person. This will ensure that interstate students who live near a state school in their own State or Territory are not entitled to free distance education in Queensland. Interstate students living in remote areas in their own State or Territory, in accordance with the definition of 'remote area' under the EGPA, will be entitled to free distance education in Queensland on the same basis as Queensland students.

The Bill also amends the EGPA to enable a person's enrolment in distance education to be cancelled if the fee for distance education is not paid. Currently, if the fee payable under section 52(2) of the EGPA is not paid the provision of the distance education may be ended. This occurs administratively through removal of access rights to lessons, websites and staff. However, students officially remain enrolled at the school of distance education and are marked absent, as the EGPA does not allow the enrolment to be cancelled.

The Bill makes a technical amendment to clarify the ability of the DETE chief executive to cancel the enrolment if fees are not paid. This is similar to the current section 51(7) of the EGPA which enables the chief executive to cancel the enrolment of a person who is not an Australian citizen or permanent resident, or their child, if the applicable fee is not paid for the education of the person at a state school.

The ability to cancel a person's enrolment will assist in the monitoring and re-engagement of these students into other parts of the education system. The power will not be exercised without first notifying the student and their parents of their obligation to pay.

International educational institutions

International educational institutions are private businesses that offer a primary or secondary school curriculum of another country. There are currently no international educational institutions operating in Queensland.

Chapter 18 of the EGPA provides that a person can only operate an international educational institution if approved by the Governor in Council. A maximum penalty of 100 penalty units applies.

The Bill will repeal chapter 18 of the EGPA. This will not impact on the ability for an international educational institution to operate in Queensland, but rather will recognise that international educational institutions should be free from unnecessary regulatory burden to operate as commercial entities, particularly as their courses have no bearing on educational outcomes for Queensland and overseas students. International educational institutions will continue to be regulated under the Corporations Act and child protection legislation.

This red tape reform will not impact on the high standard of education provided to overseas students studying in Queensland or confidence in Queensland's international education market. International students, studying in Queensland under student visas through the Commonwealth Government are only able to study with approved providers offering approved Australian courses. Approved providers can include state or non-state schools, registered training organisations or universities.

Education services to overseas students are regulated under the Queensland *Education (Overseas Students) Act 1996* and the Commonwealth *Education Services for Overseas Students Act 2000* and the *National Code of Practice for Providers of Education and*

Training to Overseas Students. The scheme aims to ensure the safety of international students and protect the reputation of Australia's curriculum products available to overseas students.

Confidentiality

Section 426 of the EGPA provides that it is an offence for a person who has gained, or has access to, personal information to make a record of, use or disclose the information to anyone, subject to exceptions such as where disclosure is in the public interest or is necessary to assist in averting serious risk to the life, health or safety of a person.

DETE has primarily relied on the public interest exception in section 426 of the EGPA in relation to use and disclosure of personal information requested by individuals and organisations for research purposes, or personal information requested by law enforcement agencies. Principals have found the application of a public interest test to such requests problematic and difficult to apply.

The Bill amends section 426 to provide two specific exceptions modelled on the Information Privacy Principles (IPP) contained in the *Information Privacy Act 2009* to allow:

- disclosure of personal information for research, or the compilation or analysis of statistics, where the use does not include the publication of all or any of the personal information in a form that identifies any particular individual; and
- disclosure of personal information to law enforcement agencies if satisfied on reasonable grounds that the disclosure is necessary for the prevention, detection, investigation, prosecution or punishment of criminal offences.

By aligning with the IPPs, the amendments will promote greater consistency in decision-making across the DETE portfolio and allow decision-makers to utilise the guidelines on interpretation published from time to time by the Office of the Information Commissioner.

Minor and technical amendments to the EGPA

Other amendments to the EGPA in the Bill are designed to ensure that existing provisions are meeting contemporary operational requirements and to give effect to necessary minor and technical amendments. For example, the Bill includes amendments to:

- reflect the current position that the Minister can approve three separate policies defining criteria for determining a person is 'a person with a disability' for the purposes of state school students, students of special education in a non-state school, and providing special education to persons below the compulsory school age;
- facilitate proof of a state educational institution for prosecution purposes by enabling the DETE chief executive to sign an evidentiary certificate;
- clarify that an investigation of a complaint about the administration, management or operation of a state educational institution may be conducted by appropriately qualified persons within DETE at the discretion of the chief executive;
- ensure that a student on indefinite suspension because of a charge for a criminal offence may access free distance education;
- extend the confidentiality provision protections to a child who is or has been provisionally registered, or registered, for home education (or for whom an application for provisional registration or registration has been made);

- allow a child to be eligible for provisional registration, or registration, for home education at the beginning of the year in which the child will be of at least the compulsory school age (which aligns with arrangements for enrolment in Year 1 in a state school); and
- consolidate certain stand-alone review provisions into chapter 15 of the EGPA to reduce unnecessary duplication throughout the EGPA.

Special Assistance Schools

The Bill amends the Accreditation Act to enable the Accreditation Board to:

- specifically recognise and approve the establishment and operations of special assistance schools;
- enable mainstream schools to operate a special assistance site; and
- enable special assistance schools to operate for a limited period of time from temporary sites to re-engage disengaged youth from the local community into education and training.

The amendments will enable criteria specific to delivery of education in a special assistance school setting to be prescribed in a regulation. This will include criteria for the operation of temporary sites and the limits on provision of education at temporary sites.

The Bill requires the governing bodies to notify the Accreditation Board of the operation of temporary sites. The Accreditation Board will be able to examine compliance with the specific requirements for these centres (e.g. time limit, nature of students attending, suitability of the place), as well as the usual matters monitored by the Accreditation Board (i.e. educational program, staffing, available educational facilities and materials, student welfare and protection), in order to ensure students are receiving a quality education program and safe experience.

Letters patent schools

The Bill provides that the persons named as officeholders in the letters patent, or their successors, may nominate additional persons as directors of the governing body of a non-state school for the purpose of the Accreditation Act. The school's governing body will be required to advise the Accreditation Board of any nominated directors, enabling the Accreditation Board to monitor the suitability of all directors of the governing body. These provisions will be optional, so that any governing body established by letters patent may choose to maintain its existing directors and not nominate additional persons as directors.

Miscellaneous amendments to DETE portfolio Acts

The Bill contains amendments to other Acts within the DETE portfolio. The amendments also align with the policy objectives outlined above, of reducing the regulatory burden and ensuring provisions meet contemporary operational requirements, as well as removing duplication and ensuring consistency across DETE portfolio legislation, and with other legislation. The amendments meet the policy objectives as explained below.

Civil liability indemnity

The Bill amends existing civil liability indemnity provisions in the ECS Act, the EGPA and the *Further Education and Training Act 2014* (FET Act) to remove duplication with the civil liability indemnity arrangements under the Public Service Act. Amendments were made to the Public Service Act to provide primary and standardised protection to 'State employees'

and ensure that civil liability does not attach to State employees when they are acting in an official capacity and performing duties in good faith and without gross negligence. The new indemnity arrangements commenced on 31 March 2014.

The Bill will remove references to persons who are State employees from the civil liability indemnity provisions in these Acts. Where the DETE legislation provides protection from civil liability for categories of persons who may or may not be State employees, depending on the circumstances, the Bill will provide that the indemnity provision in the relevant DETE Act does not apply if the person is a State employee. This is appropriate as the Public Service Act provides standardised protection for State employees in a broader range of circumstances than currently provided for by the DETE provisions.

QCT disclosure of police information

The *Education (Queensland College of Teachers) Act 2005* (QCT Act) requires the QCT to obtain police information to determine the suitability of an applicant for teacher registration or permission to teach; or renewal or restoration of registration or permission to teach. Section 16 of the QCT Act requires the QCT to disclose the police information to the applicant before using the information to decide whether the person is suitable to teach. This provides the applicant with the opportunity to make representations in relation to the information before the QCT makes its decision.

The requirement to disclose police information, in circumstances where it has previously been disclosed to the applicant and will not impact on the QCT's decision about the applicant's suitability to teach, imposes a resource burden on the QCT and raises anxiety for applicants, with no appreciable benefit.

The amendments in the Bill only apply to applications for renewal and restoration of a teacher's registration or permission to teach. The amendments will require the QCT to disclose police information that has previously been provided to the applicant only if the QCT proposes to refuse the application or impose conditions on the teacher registration or permission to teach and the police information is relevant to that decision.

The amendments do not affect the disclosure requirements in relation to initial applications for teacher registration or permission to teach, or for renewal or restoration where there is police information that has not been previously obtained by the QCT and disclosed to the applicant.

Notice of incidents at Queensland education and care services

The vast majority of education and care services in Queensland, approximately 2500 services, are regulated under the National Law. These services include long day care centres, kindergartens, outside school hours care, family day care and pre-Prep services. The National Law requires approved providers to notify the Regulatory Authority (for Queensland, the DETE chief executive) within 24 hours of any incident that requires the provider to temporarily close or reduce operating capacity. An example is a flood or fire that causes the provider to close the service while repairs are undertaken.

The Queensland ECS Act regulates Queensland education and care services (QEC services) excluded from the National Law. These include limited hours care services funded by the Queensland Government, occasional care services, education and care services that are also disability services and Budget Based Funded services not in receipt of Commonwealth Child Care Benefit. There are approximately 66 QEC services.

The ECS Act requires approved providers of QEC services to notify the DETE chief

executive of certain incidents within a particular time after the provider becomes aware of the incident.

The Bill amends the ECS Act to ensure consistency with the National Law by requiring QEC services to notify DETE within 24 hours of any incident that results in the approved provider having to close, or reduce the number of children attending the service for a period, as well as existing requirements to notify about serious incidents and complaints about children safety, health or wellbeing. The Bill prescribes a maximum penalty of 20 penalty units for failure to comply with this requirement.

Disqualification and criminal history screening

The Bill standardises provisions relating to criminal history checks and the criteria for disqualification from membership of DETE portfolio statutory bodies. Consistent with other DETE statutory bodies, the Bill achieves this objective by amending the QCT Act and the Accreditation Act to provide that a person is disqualified from becoming or continuing as a member of the board if convicted of an indictable offence where a conviction is recorded and is not spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than through legislative amendment.

Estimated cost for government implementation

Any costs from implementation will be met from within existing resources.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. The following aspects of the Bill may potentially breach the following fundamental legislative principles.

1. Legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, sections 4(2)(a) and 4(3)).

The following aspects of the Bill potentially breach this fundamental legislative principle.

a) Allowing access to criminal history

The Bill includes provisions that allow for the obtaining of criminal history information in prescribed circumstances. These amendments potentially breach the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.

Mature age students

Currently under the EGPA, the chief executive may obtain the criminal history of applicants seeking a mature age student notice; holders of a positive student notice; and mature age students enrolled at a school. The criminal history information is used to assess if the person is suitable to be a student at a school or whether their attendance poses an unacceptable risk to other students and staff.

Amendments in the Bill will remove the requirement for mature age students to obtain a mature age student notice from the DETE chief executive and instead provide the principal of the prescribed mature age state schools with the power to decide the application for enrolment at first instance. As a result, principals of the mature age state school require the power to obtain the criminal history of prospective and current mature age student. For these purposes, the definition of criminal history in the Bill includes all charges and convictions, despite the provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

It is appropriate that principals have this power as they are best placed to make enrolment decisions applicable to their school. In relation to decisions about enrolment, the Bill maintains the right of review to the DETE chief executive and ultimately QCAT.

The Bill includes a number of safeguards to protect the individual's criminal history information such as:

- the confidentiality obligations in section 426 of the EGPA;
- for individuals applying for enrolment as a mature age student, the person must first give consent for the criminal history to be obtained;
- limiting the principal's use of criminal histories for the purposes of chapter 8, part 1, division 1 (enrolment of mature age student) and chapter 12, part 3, division 2 or 3 (provisions relating to suspension and exclusion); and
- the criminal history must be destroyed as soon as it is no longer needed for the purpose for which it was obtained.

Disciplinary decisions

Chapter 12, part 3 of the EGPA provides for the suspension, exclusion and cancellation of a student's enrolment by the school principal or DETE chief executive on certain grounds including:

- that the student has been changed with a serious offence (section 282(1)(f));
- the student has been charged with an offence other than a serious offence and the principal is reasonably satisfied it would not be in the best interests of other students or staff for the student to attend while the charge is pending (section 282(2)); and
- the student has been convicted of an offence and the principal is reasonably satisfied it would not be in the best interests of other students or staff for the student to be enrolled at the school (section 292(2)).

In order for the principal or DETE chief executive to determine whether the student's attendance at the school will pose an unacceptable risk to other students or staff, the principal and chief executive must be able to consider information about the student's charges and convictions held by the Queensland Police Service. Allowing the DETE chief executive to seek confirmation from the Queensland Police Service that a student has been charged with or convicted of an offence and to obtain a brief statement of the circumstances of the charges or conviction and in turn provide this information, as necessary, to principals to assist with the disciplinary decisions under chapter 12 is essential to ensure the safety and security of the school. It is appropriate that a student's right to education at a state school be balanced against the rights of other students, staff and the broader school community to access and attend a safe learning environment.

The Bill includes a number of safeguards to protect the student's information provided to the chief executive for the purpose of disciplinary matters such as:

- the confidentiality obligations in section 426 of the EGPA;
- the chief executive may only request the information in circumstances where the chief executive reasonably suspects the student has been charged with or convicted of a criminal offence and the principal is considering disciplinary action under chapter 12;
- limiting the use of criminal history for the purposes of chapter 12, part 3, divisions 2 or 3 of the EGPA (decisions about suspensions and exclusions); and
- the criminal history must be destroyed as soon as it is no longer needed for the purpose for which it was obtained.

DETE will implement rigorous controls around access to the criminal history information obtained through these new powers.

Obtaining criminal histories of members of DETE statutory bodies

The Bill aligns the criminal history screening processes for significant appointments to DETE statutory bodies across legislation in the DETE portfolio. As part of these amendments, the definition of criminal history will align with the definition of criminal history in *Criminal Law (Rehabilitation of Offenders) Act 1986*.

The Bill includes amendments to the Accreditation Act to include the power for the Minister to obtain criminal history information about prospective and current board members. The power is similar to the Minister's powers to obtain the criminal history information about prospective and current board members under the QCT Act.

The power to obtain a person's criminal history potentially breaches the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals. However, the power for the Minister to obtain criminal history information is considered necessary to ensure the suitability of individuals appointed to boards within the DETE portfolio. DETE portfolio boards provide an important role in the regulation and oversight of education in Queensland.

The Bill includes a number of safeguards to protect the individual's criminal history information such as:

- the criminal history may only be obtained with consent of the individual;
- providing the information may only be used to determine a person's eligibility to be a member of a board;
- requiring the criminal history be destroyed as soon as it is no longer needed for the purpose for which it was obtained; and
- for criminal history information obtained under the Accreditation Act – confidentiality arrangements in section 173 of the Accreditation Act.

b) Discrimination on the grounds of age and specifically overriding the *Anti-Discrimination Act 1991*

The Bill provides that an adult may only apply for enrolment at a mature age state school, or as a student in a program of distance education. The Bill specifically overrides the *Anti-Discrimination Act 1991* (Qld) so that it is clear that it is the intention of Parliament to limit the enrolments of mature age students to specific mature age state schools.

These provisions potentially breach the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.

Currently under the EGPA, the ability for a mature age student with a positive notice to enrol in any Queensland state school has raised considerable issues for state schools that are not appropriately equipped (e.g. through their learning environment and pedagogy) to provide education to adults. It has also caused concern for principals who do not have access to information required to make a determination on whether the enrolment is likely to affect the good order and management of the school.

For adults that are not able to access a mature age state school, the Bill provides that an adult with a remaining entitlement may access free distance education. Alternatively, a person can enrol in a TAFE institution that provides vocational education and training courses which can provide the knowledge and skills required for employment, or a pathway to further study at university.

The amendments in the Bill respect the rights of mature age students to undertake secondary studies in an age-appropriate setting; and are consistent with the approach taken in other jurisdictions, where there are typically specific criteria for adults to be eligible to enrol in state schools.

c) Creation of new offences

The Bill includes the creation of new offences. These provisions potentially breach the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals as they impose a penalty upon the person for breach of the provision.

Record of exemption decisions for non-state school students

Sections 176 and 239 of the EGPA impose an obligation on parents to ensure their child is enrolled and attending school, or meeting the requirements of the compulsory participation phase. Failure of a parent to meet these obligations is an offence with a maximum penalty of 6 penalty units for the first offence and 12 penalty units for the second offence.

The proposed amendments to the EGPA will provide non-state school principals with the power to grant exemptions for up to 110 school days from the compulsory schooling and participation requirements in section 176 and 239 of the EGPA.

The Bill creates an offence for the governing body of a non-state school to fail to keep a record of exemption decisions (new sections 197A and 251AA of the EGPA). The maximum penalty attached to the offence is 20 penalty units. The penalty amount is similar to other penalties imposed on a school's governing body under the Accreditation Act (e.g. section 58E for failing to return a certificate of provisional accreditation and section 167 for failing to notify of a change in circumstances such as closure of the school).

It is appropriate to create an offence for failure to keep a record of exemptions given that

offence provisions apply to a parent if the child has not sought an exemption. Non-state schools will be required to provide the record of exemptions to the DETE chief executive on request. This will support the chief executive to make review decisions about exemptions and ensure that exemptions are being granted appropriately.

Failing to disclose changes in criminal history

The amendments in the Bill will align the disqualification and criminal history screening processes for significant appointments across legislation in the DETE portfolio, including appointments to the Accreditation Board and the Board of the QCT. As a result of the amendments, board members will be required to disclose changes in criminal history where they have been convicted of an indictable offence that has not been heard summarily.

The Bill amends the Accreditation Act to make it an offence to fail to disclose the change in the criminal history, consistent with provisions in other DETE Acts in relation to board members failing to disclose a change in criminal history. The offence under the Accreditation Act carries a maximum penalty of 100 penalty units to align with the penalty amount prescribed under the QCT Act and the *Education (Queensland Curriculum and Assessment Authority) Act 2014*. The penalty amount is appropriate given the important role these boards play in regulating and overseeing the provision of education to students in Queensland.

Failing to report a temporary closure incident

The Bill expands the existing requirement for approved providers of QEC services to notify the DETE chief executive of certain incidents. The amendments will require approved providers of QEC services to notify DETE within 24 hours of any temporary closure incident that results in the approved service provider having to close or reduce the number of children attending the service for a period. The amendments will make it an offence to fail to notify within the time period and prescribe a maximum penalty of 20 penalty units for this offence.

This provision mirrors the requirements for service providers registered under the National Law and the existing penalty provisions for failing to notify DETE of other incidents within a specified time period.

The inclusion of an offence provision will encourage compliance with the notification requirements. Ensuring approved providers promptly notify DETE of any temporary closure incidents will enable DETE to publish on the DETE website details of the closures in circumstances such as severe weather or natural disasters. This benefits communities, services and approved providers.

Failing to notify the Accreditation Board of nomination of additional directors

The Bill will provide that a governing body of a letters patent school must give the Accreditation Board a written notice signed by each of the current declared directors advising the Accreditation Board that it has nominated an additional director under new section 7AA(b)(ii). The Bill creates an offence for failing to provide the notice within 14 days of the nomination.

The maximum penalty attached to the offence is 20 penalty units, which is the same as the existing penalty for failing to notify the Accreditation Board of other matters, contained in section 167(2) of the Accreditation Act. One of the Accreditation Board's functions is to assess the suitability of a school's governing body, which includes consideration of factors

such as the conflicts of interest affecting directors and the conduct of the governing body's directors relative to the operation of the school. It is therefore appropriate the Accreditation Board be promptly notified where additional persons are nominated as directors.

d) Freedom of movement

Directions about entry to premises of state and non-state schools

The Bill makes amendments to the statutory regime contained in chapter 12, parts 5 and 6 of the EGPA relating to the powers of principals, the DETE chief executive and corresponding persons in the non-state sector to issue directions to persons to leave school, or about their conduct and movement at the school in certain circumstances.

These provisions were originally inserted by the *Education (General Provisions) Amendment Act 2003* (the Amendment Act) into the now repealed *Education (General Provisions) Act 1989* and are included in the EGPA. The Amendment Act's accompanying Explanatory Notes outlined that while the regime may adversely affect the rights and liberties of individuals, particularly in terms of freedom of movement, any potential breach was justified by the still relevant objective of the Act: to make schools safe places.

Principal's power to prohibit a person from entering premises

The Bill gives principals the authority to ban hostile persons from entering school premises for up to 60 days through written direction. This is currently the reserve of the DETE chief executive or, in the case of non-state schools, the school's governing body.

The Bill also gives the DETE chief executive or governing body of a non-state school the authority to ban hostile persons from entering school premises for more than 60 days but not more than one year through the issue of a written direction. The provisions currently require the chief executive or governing body to apply to QCAT for an order prohibiting a person for this timeframe.

In both instances, the current criteria for issuing such a direction will continue to apply.

This change of decision-maker may give rise to concerns of a breach of the principle that the delegation of administrative power should be to appropriate persons. However, in relation to the bans of up to 60 days, granting the powers to principals is justified on the basis that principals are best placed to manage their schools as safe places and need to make decisions that take into account local circumstances and the expectations of the local community. Any written directions given will also be subject to internal and external review processes.

Similarly, granting power to the DETE chief executive and non-state school governing body in relation to bans of over 60 days and up to one year is justified on the basis that the chief executive and governing body are best placed to make decisions in relation to school operations. Further, the proposed change will assist in reducing costs and time involved in making an application to QCAT.

These types of bans are reserved for more serious incidents that require quick responses. The DETE Annual Report 2012-2013 shows that no applications were made by the chief executive and only one application was by a non-state school governing body. Any written directions given by the chief executive or governing body will be able to be externally reviewed by QCAT.

e) Allowing for the disclosure of personal information

Research exemption

The Bill allows for the disclosure of personal information necessary for research, or the compilation or analysis of statistics, where the use does not include the publication of all or any of the personal information in a form that identifies any particular individual.

Currently, to release information for genuine research purposes, including releasing data to the Commonwealth and the Australian Bureau of Statistics under national minimum data sets, DETE relies on the public interest exception in section 426 of the EGPA. Applying the public interest test to allow for the disclosure, use and recording of information for research purposes can be problematic. Many factors can be relevant to the public interest and it can vary over time.

A clear exemption to the confidentiality provisions in the EGPA to allow DETE to release personal information for research purposes would allow DETE to fully participate in worthwhile and valuable research that can enhance the provision of educational services to Queenslanders.

The Bill maintains adequate safeguards around the recording, use or disclosure of information for research purposes by providing that the recording, use or disclosure does not include the publication of all or any of the information in a form that identifies a person to whom the information relates and the chief executive is reasonably satisfied that the person to whom the information is disclosed will not disclose the information to anyone else.

Law enforcement exemption

The Bill will allow for the disclosure of personal information to law enforcement agencies if the chief executive is satisfied on reasonable grounds that the disclosure is necessary for the prevention, detection, investigation, prosecution or punishment of criminal offences.

Currently, to disclose information to law enforcement agencies DETE relies on either the public interest test or the exception in section 426(4)(e)(i) of the EGPA that allows the chief executive (or delegate) to disclose information if reasonably satisfied that the recording, use or disclosure is necessary to assist in averting a serious risk to the life, health or safety of a person. The public interest exemption is commonly relied upon for release of information for law enforcement purposes.

Again, using the public interest test to determine whether to disclose information to law enforcement agencies has been problematic and difficult to apply. The public interest test does not provide clear boundaries on when the information may or may not be released to law enforcement agencies.

The amendment maintains controls around the release of information for law enforcement purposes – the chief executive (or delegate) must be reasonably satisfied it must be necessary for the prevention, detection, investigation, prosecution or punishment of criminal offences. This allows principals to assess whether it is necessary to provide the information for law enforcement purposes rather than determining whether the release is in the public interest.

These two exemptions align with the IPPs in the *Information Privacy Act 2009* and are justified because they balance the protection of the individual's personal information against the public interest that the information be disclosed in certain circumstances including where

it is to be used for research and law enforcement. By aligning with the IPPs, the amendments will create greater consistency in decision-making across the DETE portfolio and allow decision-makers to utilise the guidelines on interpretation published from time to time by the Office of the Information Commissioner.

f) Cancellation of enrolment for non-payment of distance education fees

The Bill includes a provision to cancel the enrolment of a person for the non-payment of distance education fees. This will adversely affect the rights of affected students and their parents. Section 4(3)(a) of the *Legislative Standards Act 1992* (Legislative Standards Act)provides that if a person's right or liberty is dependent upon an administrative power it is to appropriately defined and subject to appropriate review.

To date non-payment of distance education fees has been dealt with administratively by removing access rights to lessons, websites and staff. However, the student officially remains enrolled at the school of distance education. A clear power to cancel the enrolment of a distance education student for failure to pay fees will allow for clear and accurate records and DETE processes to be established for re-engagement of the student with mainstream schooling. The amendments do not limit the chief executive's power to consider waiving fees before making a decision to cancel, nor do they prevent re-enrolment in distance education. Administrative practices will be put in place to support parents to meet the payment obligations and support the ongoing enrolment of these students where possible before enrolment is cancelled. This process of cancellation is not prescribed in the Bill as it can be a seesawing one whereby payment plans are entered into and revised over time. Confusion may result if the prescribed notice process does not align with the practice of encouraging payment. However, for students enrolled at state schools of distance education, upon the commencement of the amendments, the Bill includes a requirement for a notice to be given to the student, or their parent, of the intention to cancel enrolment should the fees not be paid within at least 14 days.

Therefore, cancellation of the enrolment will enable better management of students and services and it is considered justified in the circumstances.

The Bill does not include a right to review a decision to cancel the enrolment, which is also a potential breach of the principle that administrative power is subject to appropriate review rights. This potential breach is also justified given the ability to have the fee waived and the other options available to pursue education through accessing conventional classroom education settings.

g) Authorising certain matters to be proved by way of evidentiary certificates

The Bill amends section 407 of the EGPA (Other evidentiary aids) to include a new set of matters that can be included in an evidentiary certificate. Section 407 provides that where the chief executive has signed a certificate stating any of the matters listed in the section, then the certificate becomes evidence of the matter stated. The amendment will be of utility in a proceeding for an offence under the EGPA (such as wilful disturbance or trespass on a state school site) where a certificate signed by the DETE chief executive is evidence of certain matters, for example, that at the time of the offence the site was a state educational institution.

In conjunction with section 44 of the *Evidence Act 1977*, the amendment dispenses with the ordinary rules of proof in that the certificate is presumed to be authentic and proves the facts that it asserts.

Provisions relating to evidentiary certificates potentially breach the principle that legislation should be consistent with the principles of natural justice and procedural fairness (see section 4(3)(b) of the Legislative Standards Act). The former Scrutiny of Legislation Committee expressed the view that provisions authorising evidence to be admitted by a certificate should be limited to technical and non-contentious matters.

The amendments in the Bill allow the evidentiary certificate to provide proof that on a stated day an institution was a state educational institution. Whether or not an institution is or was a state educational institution is not a contentious matter and it is appropriate that the chief executive of the department with administrative responsibility for state education provide evidence of this fact. Further, this type of provision is considered justified as the evidence is not conclusive and can be challenged by the defence. Evidentiary aids such as these also benefit the administration of justice by potentially saving time and costs rather than requiring witnesses to appear and give evidence.

Other amendments to section 407 provide that a certificate signed by the principal of a non-state school stating certain matters relating to the granting of an exemption becomes evidence of the matters stated. This amendment is consequential to amendments in the Bill that give non-state school principals the power to grant exemptions from the compulsory schooling or the compulsory participation requirements in the EGPA. These amendments reflect the current evidentiary provisions relating to the granting of exemptions that apply to state schools.

h) Delegation of power to commence prosecutions

Section (4)(3)(c) of the Legislative Standards Act provides that a delegation of administrative power should only be allowed in appropriate cases and to appropriate persons. The Bill enables the chief executive to delegate to DETE officers the power to commence prosecutions against parents for failing to ensure their child is enrolled and attending school, or meeting the requirements of the compulsory participation phase. Currently proceedings can only be brought by the chief executive or with the chief executive's consent.

Enabling DETE officers, such as regional directors, to instigate prosecutions could potentially infringe the principle that administrative power only be delegated in appropriate cases and to appropriate persons. This is considered to be an appropriate circumstance in which to delegate the prosecution power, as regional directors, in consultation with principals, are best placed to make decisions about prosecution processes as they have access to detailed knowledge about the student and family circumstances that impact on school attendance.

To address potential concerns, the Bill limits delegation of the chief executive's prosecution powers to appropriately qualified DETE officers and it is DETE's intention to delegate the power to Regional Directors. Delegated officers will be provided with training and guidance to ensure that the power to commence prosecutions is exercised in appropriate cases. Importantly, the EGPA will continue to provide that prosecutions cannot commence unless notice has been given to the parent about their obligations and at least one meeting has occurred with the parent or the parent has been given a warning notice before prosecution is commenced.

i) Entry by an assessor onto special assistance school using temporary site

Entry by an assessor onto special assistance school using temporary site

The Bill will enable the Accreditation Board to assess whether a special assistance school that is providing special assistance at a temporary site is complying with the prescribed temporary site criteria. In order to make any such determination, an assessment of the temporary site can be conducted by an assessor who can enter the temporary site.

These provisions may impact upon an individual's rights and liberties. Section 4(3)(e) of the Legislative Standards Act requires legislation to confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The breach of this principle is justified as determining whether there is compliance with the temporary site criteria is essential to the role of the Accreditation Board and the objectives of ensuring the proper operation of the school at the site. There is even greater imperative to ensure compliance in this circumstance where the temporary site has not itself been assessed as part of the accreditation application. The power to enter premises without a warrant for assessment and auditing purposes currently exists within the Accreditation Act.

Numerous safeguards on the exercise of these powers are currently contained in the Accreditation Act, for example, the powers can only be exercised by authorised persons, and entry to the premises requires a notice of entry outlining the purpose and proposed date of entry.

2. Legislation has sufficient regard to the institution of Parliament (Legislative Standards Act, section 4(2)(b)).

Matters to be prescribed in regulation

The Bill proposes that certain matters to support the operation of the amendments in relation to special assistance schools will be prescribed in the *Education (Accreditation of Non-State Schools) Regulation 2001* (Accreditation Regulation). For example, prescribing criteria to operate a temporary special assistance school site and the timeframes a special assistance school operating at a temporary site needs to comply with.

The ability to amend the Act by regulation in this way may have the potential to breach the principle that legislation has sufficient regard to the institution of Parliament. It is considered justified in this instance to put matters of detail into the Accreditation Regulation as it is consistent with the overall operation of the accreditation scheme within the Accreditation Act, which prescribes other accreditation criteria in this way. It will also provide flexibility, as the scheme is implemented, to respond to emerging issues regarding operation of special assistance schools not identified at the time of drafting.

Transitional regulation-making power

Clause 21 provides for a transitional regulation-making power under the Accreditation Act to allow for the making of a regulation of a saving or transitional nature. Any regulation made under this power expires one year after the Bill commences.

The ability to amend an Act by regulation may infringe the principle that legislation should have sufficient regard to the institution of Parliament. The provision is necessary so that any transitional issues not yet identified relating to the special assistance schools amendments can

be effectively redressed. The Bill has sufficient regard to the institution of Parliament by specifically prescribing when the regulation made under the power expires.

Consultation

Principal associations, P&Cs Queensland, Independent Schools Queensland (ISQ) and Queensland Catholic Education Commission (QCEC) were consulted on the policy proposals in the Bill.

ISQ, QCEC, the Accreditation Board, QCT, DETE Regional Directors, providers of QEC services, the Queensland Teachers Union and governing bodies of letters patent schools were consulted on draft amendments in the Bill relevant to the stakeholder.

Consistency with legislation of other jurisdictions

The amendments to the ECS Act will ensure the ECS Act more closely aligns with the National Law. The remainder of the Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Act is the *Education and Other Legislation Amendment Act 2014.*

Clause 2 provides that part 2, division 3; part 4; and part 5, division 3 of the Bill commence on proclamation.

Part 2 Amendment of Education (Accreditation of Non-State Schools) Act 2001

Division 1 Preliminary

Clause 3 provides that part 2 amends the Accreditation Act.

Division 2 Amendments commencing on assent

Clause 4 omits section 6(2)(aa) of the Accreditation Act, as it provides a non-state school does not include an international educational institution within the meaning of section 414 of the EGPA. Chapter 18 of the EGPA, which provides for the establishment of international educational institutions, is being repealed by the Bill. Clause 4 instead inserts new section 6(2)(g) to refer to a place used only to offer a curriculum that is, or is a variation of, the whole or part of the primary or secondary curriculum of a foreign country. This ensures these entities continue to not be regulated under the Accreditation Act.

Clause 5 inserts new section 7AA, which defines 'director' for the purposes of the Accreditation Act. New section 7AA(b)(i) provides that if the school's governing body is incorporated under the repealed *Religious Educational and Charitable Institutions Act 1861* (RECI Act corporation), a director is a declared director of the governing body. The Bill defines a 'declared director' in the schedule 3, dictionary as a person named in the letters patent for the governing body or their successor. New section 7AA(b)(ii) provides that a person will also be a director for a governing body of a RECI Act corporation if the person is nominated by all of the current declared directors.

New section 7AA retains the definition of 'director' (currently contained in the schedule 3, dictionary) where the school's governing body is a company under the Corporations Act, or where the school's governing body is neither a company under the Corporations Act or a RECI Act corporation.

Clause 6 amends section 39 to insert the definitions of 'convicted' and 'indictable offence' currently contained in the schedule 3, dictionary. This is consequential to the amendments aligning the disqualifying offences and criminal history screening for appointments to statutory bodies across the DETE portfolio. This clause ensures the status quo is retained in relation to suitability requirements of directors of non-state school governing bodies.

Clause 7 amends section 113 to provide that a person is only disqualified from membership of the Accreditation Board if the person is, or has been, convicted of an indictable offence and the conviction is not a spent conviction. Clause 7 also inserts a new definition for 'convicted' for the purpose of disqualification to exclude unrecorded convictions.

Clause 8 inserts new sections 114A, 114B and 114C.

New section 114A provides that, with the written consent of the person, the Minister may ask the commissioner of the police service for a written report about the person's criminal history and a brief description of a conviction mentioned in the report. The criminal history report must be destroyed as soon as practicable after it is no longer required.

New section 114B provides that criminal history information is confidential. Disclosure, except as permitted under section 144B(2), is an offence with a maximum penalty of 100 penalty units.

New section 114C requires a member of the Accreditation Board to immediately disclose any changes in criminal history to the Minister. Failing to give notice of the change in criminal history without a reasonable excuse is an offence with a maximum penalty of 100 penalty units.

Clause 9 amends section 167 to require a governing body that is a RECI Act corporation to notify the Accreditation Board within 14 days after nominating a director under new section 7AA(b)(ii) of the name of the person nominated, and the date of their nomination. Failure to notify is an offence with a maximum penalty of 20 penalty units. Clause 9 also amends section 167 to require that notifications under section 167 be in writing.

Clause 10 amends section 169 to insert definitions of 'convicted' and 'indictable offence', currently contained in the schedule 3, dictionary. This amendment is consequential to the amendments aligning the disqualifying offences and criminal history screening for appointments to the statutory bodies across the DETE portfolio. Clause 11 omits these definitions from the schedule 3, dictionary. Clause 10 ensures the wider definitions continue to apply in relation to directors of governing bodies of non-state schools.

Clause 11 amends the schedule 3, dictionary of the Accreditation Act.

Division 3 Amendments commencing on proclamation

Clause 12 inserts a new section 13A into the Accreditation Act, which provides that a school provisionally accredited, or accredited, to provide primary or secondary education may be provisionally accredited, or accredited, to provide special assistance. Provision of special assistance is the provision of primary or secondary education to relevant students and without tuition fees. 'Relevant students' is defined in new section 13A(4).

Clause 13 inserts a new paragraph (j) in section 16(3) of the Accreditation Act to provide that the approved form for an application for accreditation of a school must, if the school is to provide special assistance, require the inclusion of the details of the attribute of the sites at which special assistance is to be provided.

Clause 13 also inserts a new subsection 16(3A), which provides that a site must not be an attribute for the purposes of the new section 16(3)(j) if the school is to provide education other than special assistance at the site. The purpose of this provision is to make it clear that a school cannot offer special assistance and mainstream education at the same site. The site for special assistance nominated in paragraph (j) can only be for special assistance.

Clause 14 inserts new chapter 2, part 2, division 3, subdivision 3.

New section 38D provides that this subdivision applies to a special assistance school that is providing special assistance at a temporary site.

New section 38E provides that the Accreditation Board may assess the special assistance school to decide whether it is complying with the temporary site criteria.

New section 38F provides that to assess the special assistance school under section 38E the Accreditation Board must obtain a written report from an assessor about whether the school is complying with the temporary site criteria. The assessor may exercise the assessor's powers under chapter 5, part 3.

Clause 15 inserts new chapter 2, part 3A. New section 60A provides that the purpose of part 3A is to enable a special assistance school to provide, on a temporary basis, special assistance at a temporary site.

New section 60B defines certain terms for the purposes of part 3A.

New section 60C provides that a special assistance school that provides special assistance at a temporary site must comply with the criteria prescribed by a regulation in relation to the site (the temporary site criteria). A regulation may limit the period for which a special assistance school may provide special assistance at a temporary site.

New section 60D sets out the process for a governing body of a special assistance school to notify the Accreditation Board of the intention to start providing special assistance at a temporary site or if the governing body stops providing assistance at the site.

New section 60E applies if a special assistance school provides special assistance at a temporary site and complies with the temporary site criteria. Subsection (2) provides that the governing body is not required to seek accreditation of the site, and provision of special assistance at the site is not a change in attribute of accreditation or a change that would affect the governing body's eligibility for government funding.

Clause 16 inserts new grounds in section 63 for cancelling a school's accreditation as a result of new part 3A.

Clause 17 inserts new grounds in section 70 for cancelling a school's provisional accreditation as a result of new part 3A.

Clause 18 replaces sections 85(3)(c) and (4)(c) to provide that these criteria for eligibility for government funding are about the minimum enrolments at a site, rather than for a school. The minimum enrolment requirements, which will be prescribed in the regulation, will differ depending on which type of site it is. This is a consequence of recognising special assistance

schools within the Accreditation Act, as it is unlikely that a special assistance school, because of their student base, will be able to meet the minimum enrolment provisions that apply to mainstream schools. This is also necessary because the reforms enable a school to offer mainstream education at some sites and offer special assistance education at another site.

Clause 19 inserts a new section 141(i) to provide that an assessor has the function of finding out whether a special assistance school providing special assistance at a temporary site is complying with the temporary site criteria. Existing powers of assessors will enable the Accreditation Board to monitor a special assistance school's compliance with accreditation criteria at accredited sites.

Clause 20 amends section 150 to include new section 38F, which provides for a written report from an assessor about whether the school is complying with the temporary site criteria. Section 150 states that the purpose of part 3, division 4 is to provide for the assessor's powers that are necessary to be exercised for preparing a report mentioned under the specified sections, including section 38F.

Clause 21 inserts new chapter 8, part 5 in the Accreditation Act to provide for the transitional arrangements for the *Education and Other Legislation Amendment Act 2014*.

New section 253 provides that, upon commencement, a school assessed as a special assistance school under a policy made under section 369 of the EGPA is taken to be provisionally accredited, or accredited at the site for which the school operated immediately before the commencement. Subsection (3) makes it clear that this does not constitute a change in an attribute of provisional accreditation or an attribute of accreditation applying to the school or a change to an aspect of the school's operation affecting the governing body's eligibility for Government funding for the purposes of chapter 2, part 3.

New section 254 allows for an application for assessment as a special assistance school under a policy made under section 369 of the EGPA that is undecided on commencement to continue to be decided by the Minister under the policy as if the *Education and Other Legislation Amendment Act 2014* had not been enacted. If the application is granted, the school is taken to be provisionally accredited, or accredited to provide special assistance at the site from which the school operated immediately before the commencement. Subsection (4) makes it clear that this does not constitute a change in an attribute of provisional accreditation, or an attribute of accreditation, applying to the school or a change to an aspect of the school's operation affecting the governing body's eligibility for Government funding for the purposes of chapter 2, part 3.

New section 255 inserts a transitional regulation-making power into the Accreditation Act. New section 255 and any transitional regulation made expire 1 year after the day of the commencement.

Clause 22 inserts new definitions into the schedule 3, dictionary.

Part 3 Amendment of Education and Care Services Act 2013

Clause 23 provides that part 3 amends the ECS Act.

Clause 24 replaces section 127 of the ECS Act. New section 127 provides that an approved provider must notify the DETE chief executive of serious incidents, temporary closure incidents or complaints alleging that a child's health, safety or wellbeing has been compromised or the ECS Act has been contravened. The approved provider must notify the chief executive within 24 hours of becoming aware of the incident or complaint. An approved provider must also notify the chief executive of any other matter prescribed by regulation within 7 days after becoming aware of the matter. Failure to notify the chief executive as required under section 127 is an offence with a maximum penalty of 20 penalty units.

Clause 25 amends section 241, which provides that prescribed persons are protected from civil liability, to remove references to the chief executive or another public service officer or employee. The chief executive and other public service officers or employees are State employees afforded protection under section 26C of the Public Service Act.

New subsection (3) provides that section 241 does not apply to a prescribed person who is a State employee within the meaning of section 26B(4) of the Public Service Act. The effect of this provision is to ensure prescribed persons who are State employees are afforded indemnity under the Public Service Act. Other prescribed persons will continue to be afforded protection under the ECS Act. These amendments are consequential to the amendments to the Public Service Act which provide standardised protection from civil liability for State employees.

Clause 25 also clarifies that a 'prescribed person' includes an authorised person within sections 130 and 221 of the ECS Act.

Part 4 Amendment of Education (Capital Assistance) Act 1993

Clause 26 states that part 4 amends the *Education (Capital Assistance) Act 1993* (Capital Assistance Act).

Clause 27 amends section 14 of the Capital Assistance Act to insert a new subsection (1)(c) to provide that capital assistance under the Capital Assistance Act must not be provided for 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 Accreditation Act.

Part 5 Amendment of Education (General Provisions) Act 2006

Division 1 Preliminary

Clause 28 provides that part 5 amends the EGPA.

Division 2 Amendments commencing on assent

Clause 29 replaces section 46 of the EGPA. New section 46 provides that in certain circumstances the chief executive must investigate a complaint, or cause the complaint to be investigated by an appropriately qualified officer of DETE.

Clause 30 amends section 53 to insert a new ground of exemption from payment of the distance education fee, that is, where the person is suspended from a state school under chapter 12, part 3, division 2 on a charge-related ground.

Clause 31 amends section 62 to provide that a principal's decision about a student's initial remaining allocation must be accompanied by an information notice about the decision. A person who is given an information notice and is dissatisfied with the decision may apply for a review of the decision under chapter 15 of the EGPA.

Clause 32 amends section 66 to provide that a principal's decision about granting extra semesters must be accompanied by an information notice about the decision. A person who is given an information notice and is dissatisfied with the decision may apply for a review of the decision under chapter 15 of the EGPA.

Clause 33 omits chapter 4, part 4 because the Bill provides that review of these decisions is under chapter 15 of the EGPA.

Clause 34 amends section 72 to insert a note to refer to the operation of chapter 15, part 4, which provides for external review of certain decisions by QCAT.

Clause 35 amends section 117, which protects members of a school council from civil liability. New subsection (3) provides that section 117 does not apply to a member of a school council who is a State employee within the meaning of section 26B(4) of the Public Service Act.

Clause 36 amends section 141, which protects members of a parents and citizens association from civil liability. New subsection (3) provides that section 141 does not apply to a member of an association who is a State employee within the meaning of section 26B(4) of the Public Service Act.

The amendments in clauses 35 and 36 are consequential to the amendments to the Public Service Act which provide standardised protection from civil liability for State employees.

Clause 37 amends section 154 to insert a note to refer to the operation of chapter 15, part 4, which provides for external review of certain decisions by QCAT.

Clause 38 amends the definition of 'person with a disability' in section 165 to clarify that it applies to chapter 8, part 1, division 3, which deals with enrolment at a state special school. In general, the definition provides that a person with a disability is a person who is decided under a policy approved by the Minister as a person who is unlikely to attain the levels of development of which the person is capable unless the person receives special education. The term 'person with a disability' is also used in section 420 of the EGPA which deals with special education at a non-state school and special education for a person who is below compulsory school age. As currently drafted the policy approved under section 165 for enrolment at a state school applies to all three schooling circumstances. This amendment, in conjunction with amendments to section 420 of the EGPA, will provide a clear head of power for the Minister to make three policies to address each schooling circumstance. This amendment does not reflect a policy change but aligns the provisions in the EGPA with current departmental practice.

Clause 39 amends section 179 to enable the DETE chief executive to delegate the power to commence, or consent to the commencement of, prosecutions under section 179(1). It is intended that this power be delegated to regional directors.

Clause 40 amends section 206 to allow a child to be eligible for provisional registration, or registration, for home education at the beginning of the year in which the child will be of at least the compulsory school age, rather than needing to be of compulsory school age at enrolment. This aligns with arrangements for enrolment in Year 1 in a state school under section 16 of the *Education (General Provisions) Regulation 2006*.

Clause 41 amends section 242 to enable the DETE chief executive to delegate the power to commence, or consent to the commencement of, prosecutions under section 179(1). It is intended that this power be delegated to regional directors.

Clause 42 omits section 251E, which currently enables delegation of the chief executive's powers under chapter 10. The Bill makes amendments to section 432 of the EGPA to ensure the chief executive's powers under chapter 10 can continue to be delegated.

Clause 43 amends section 280 to omit the definition of 'charge' which is to be included in the schedule 4 dictionary and insert a definition of 'police commissioner'.

Clause 44 inserts a new chapter 12, part 3, division 1A, which relates to information about students' charges and convictions.

New section 280A provides that division 1A applies despite the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 5 to the extent it relates to charges.

New section 280B provides that, for the purpose of division 1A, the chief executive may give information to the police commissioner about whether a person is a student of a state school and the name of the person and other identifying information about the person, including the person's date and place of birth. Information given to the police commissioner under this section may only be used for the purpose of division 1A.

New section 280C provides that, if the chief executive reasonably suspects that a student enrolled at a state school has been charged with, or convicted of, an offence and the principal of the school or the chief executive requires confirmation of the charge, or conviction for the exercise of a function under chapter 12, part 3 relating to disciplinary action, the chief executive may ask the police commissioner whether the student has been charged with, or convicted of the offence, and if applicable, a brief description of the circumstances of the charge or conviction.

New section 280D provides that the police commissioner must comply with the request made by the chief executive under section 280C.

New section 280E limits the use of the criminal history information obtained under the division.

New section 280F provides that the chief executive must ensure that information obtained from the police commissioner under the division must be destroyed as soon as practicable after it is no longer needed for the purpose for which it may be used under section 280E.

Clause 45 amends section 302 to insert a note to refer to the operation of chapter 15, part 4, which provides for the external review of certain decisions by QCAT.

Clause 46 amends section 309 to insert a note to refer to the operation of chapter 15, part 4, which provides for external review of certain decisions by QCAT.

Clause 47 amends section 364 to replace the definition of 'director' of a non-state school's governing body. This reflects the amendments made to the Accreditation Act regarding letters patent schools.

Clause 48 amends section 366B, which enables delegation of a director's reporting function under sections 366 or 366A, to omit the definition of 'appropriately qualified'. 'Appropriately qualified' is defined in schedule 1 of the *Acts Interpretation Act 1954*.

Clause 49 replaces section 389, which currently provides protection from civil liability for state and non-state school principals. The clause removes references to state school principals from section 389 and inserts a note referring to section 26C of the Public Service Act in relation to protection against civil liability for state school principals. This amendment is consequential to the amendments to the Public Service Act, which provide standardised protection from civil liability for State employees.

Clause 50 makes a consequential amendment to the heading of chapter 15, part 4 to remove the reference to section 69. Review decisions regarding reviewing initial remaining allocation and extra semester decisions will now be dealt with under chapter 15, parts 1 and 2.

Clause 51 amends section 401 by omitting paragraph (a). This is a result of the repeal of chapter 4, part 4 contained in the Bill. Review decisions regarding reviewing initial remaining allocation and extra semester decisions will now be dealt with under chapter 15, parts 1 and 2. An amendment is also made to correctly identify the decision that can be reviewed in section 72.

Clause 52 amends section 407 to insert new paragraph (h) that includes a set of new matters that can be included in an evidentiary certificate.

Clause 53 omits chapter 18 from the EGPA.

Clause 54 replaces the heading for chapter 19, part 2.

Clause 55 amends the heading of section 420 to clarify that the section applies to a 'person with a disability' enrolled at a non-state school or below compulsory school age, and inserts a new definition of 'person with a disability' for section 420 to provide that a 'person with a disability' for section 420 is a person decided under a policy approved by the Minister under section 420A(1). Currently in the EGPA, a person with a disability is a person who is decided in accordance with a policy approved by the Minister under section 165(1). Section 165 relates to the enrolment of a person at a state special school. As currently drafted the policy approved by the Minister for determining enrolment in a state special school applies when determining the provision of special education to a person with a disability enrolled in at a non-state school or who is below compulsory school age. This amendment, in conjunction with amendments to section 165 of the EGPA, will provide a clear head of power for the

three policies that address each schooling circumstance. This amendment does not reflect a policy change but aligns the provisions in the EGPA with current departmental practice.

Clause 56 inserts new section 420A, which provides that the Minister must approve a policy about the criteria to be considered in deciding whether a person is a 'person with a disability' who is enrolled at a non-state school and a 'person with a disability' who is below compulsory school age. This reflects the current practice that the Minister approves two separate policies about the criteria for people enrolled at a non-state school and for people below compulsory school age. The new section provides that the policy is to be available free of charge to a person on request.

Clause 57 inserts a new heading, chapter 19, part 3, General.

Clause 58 amends section 426 to provide that the confidentiality obligations apply to a child who is provisionally registered or registered for home education, or has applied for provisional registration or registration.

Clause 58 also inserts new sections 426(4)(e) and 426(4A) to provide that a person may, in certain circumstances, make a record of, use or disclose information necessary for research or for law enforcement. Clause 58 also expands the definition of 'employee' to include a volunteer 'for the school at any place'.

Clause 59 amends section 431, which enables the Minister to delegate functions, to omit the definition of 'appropriately qualified'. 'Appropriately qualified' is defined in schedule 1 of the *Acts Interpretation Act 1954*.

Clause 60 amends section 432, which enables the chief executive to delegate functions under the EGPA. The amendments will ensure the chief executive's functions under chapter 10 can continue to be delegated to appropriately qualified officers or employees of DETE, as well as to appropriately qualified officers or employees of the department in which the FET Act is administered, as currently provided for in section 251E.

The chief executive's functions under chapter 10 may be delegated to a broader range of officers and employees than other functions under the EGPA because chapter 10 deals with compulsory participation in training as well as education.

The amendments will provide that the chief executive's power to commence prosecutions under section 242 may only be delegated to an appropriately qualified officer of DETE, to align with the delegation power for most functions under the EGPA. It is appropriate that delegation of the chief executive's prosecution powers be limited to appropriately qualified officers of DETE.

Clause 61 inserts new chapter 20, part 8, which provides for the transitional provisions for the *Education and Other Legislation Amendment Act 2014*.

New section 527 inserts relevant definitions for new part 8.

New section 528 contains transitional provisions for decisions reviewable under chapter 4, part 4. Chapter 4, part 4 is omitted by the Bill. In order to ensure student review rights are not

affected, the pre-amended EGPA continues to apply in the circumstances outlined in subsection (1).

New section 529 provides for the cancellation of any Governor in Council approval to operate an international educational institution under chapter 18 on commencement. Only one approval of this nature has been made and it is understood the entity is no longer providing international education. The entity will be advised about the effect of this Bill.

Clause 62 amends the schedule 4, dictionary.

Division 3 Amendments commencing on proclamation

Clause 63 amends the definition of 'remaining allocation' in section 11 of the EGPA to correctly refer to an exemption from compliance with section 176(1)(a).

Clause 64 omits chapter 2, part 5, which relates to mature age students because the provisions relating to mature age students are dealt with elsewhere in the EGPA through amendments made by this Bill.

Clause 65 inserts new definitions for chapter 3. The definition of 'nearest applicable school' in section 48 is amended to mean, for a person, the nearest state school, or equivalent of a state school under a corresponding law, with the required year level for the person. This will ensure that interstate students who live near a state school in their own State or Territory are not entitled to free distance education in Queensland. Interstate students living in remote areas in their own State or Territory, in accordance with the definition of 'remote area' under the EGPA, will be entitled to free distance education in Queensland on the same basis as Queensland students.

Clause 66 amends section 52 to enable cancellation of the enrolment of a person in a program of distance of education for non-payment of fees.

Clause 67 replaces section 53(1)(h) to provide for an exemption from payment of distance education fees for mature age students in certain circumstances.

Clause 68 amends section 155 to insert a new subsection (4), which provides that an application for enrolment by a mature age student to a mature age state school must also comply with section 155B, inserted into the EGPA by this Bill.

Clause 69 inserts new sections 155A and 155B. New section 155A provides that an adult with a remaining allocation of State education may only apply for enrolment at a mature age state school; or as a student in a program of distance education. Subsection (2) ensures this restriction on enrolment does not apply to a student who was previously enrolled as a child in a either a state or non-state school and has returned to complete their schooling not more than 12 months after the day they last attended (e.g. a student who turns 18 while at school and returns the following year to complete their schooling).

New section 155B provides for the additional requirements for application for enrolment as a mature age student. The additional requirements include providing consent for the principal of the school to obtain the prospective student's criminal history and any further information

the principal needs to establish the prospective student's identity. This is consistent with the current requirements in the EGPA relating to mature age student enrolments.

Clause 70 amends section 156 to provide that, when considering the application of a mature age student, the principal must consider any conviction or charge against the prospective mature age student.

Clause 71 inserts new chapter 8A, criminal histories of mature age students.

New section 175A provides the definitions for chapter 8A.

New section 175B replicates current section 26 and provides that chapter 8A applies to a relevant mature age student despite the *Criminal Law (Rehabilitation of Offenders) Act 1986.*

New section 175C provides that the principal of a mature age state school may give certain information about mature age students to the police commissioner, for the purposes of obtaining information about the prospective or current mature age student's criminal history.

New section 175D provides that the principal of a mature age state school must, before deciding an application for enrolment as a mature age student, ask the police commissioner for a written report about the applicant's criminal history.

New section 175E provides that the principal may, at any time, ask the police commissioner for a written report about the criminal history of a mature age student.

New section 175F provides that if the principal of the mature age school has requested a report about a mature age student's criminal history, the principal may also ask the police commissioner for a brief description of the circumstances of an offence or the outcome of a charge.

New section 175G provides that the police commissioner must comply with requests made under new sections 175D to 175F.

New section 175H limits the use of the criminal history information obtained under chapter 8A.

New section 175I provides that a person who receives criminal history information under chapter 8A must ensure the information is destroyed as soon as practicable after it is no longer needed for the purpose for which it may be used.

New section 175J provides that if the police commissioner reasonably suspects that a person who is charged with an offence is a mature age student, the police commissioner may notify the principal of the mature age state school about the charge.

New section 175K provides that if there is a change in a mature age student's criminal history, the student must give the principal of the school a criminal history change notice before the student next attends the school. A maximum penalty of 20 penalty units applies for failure to notify of a change in criminal history.

New section 175L provides that a relevant mature age student must not give criminal history information under part 8A that the student knows is false or misleading. The section provides that a maximum penalty of 20 penalty units applies for the giving of false or misleading information under the part.

Clause 72 amends section 180 to provide that the chief executive may ask the principal of a non-state school for information about exemption decisions made under section 189.

Clause 73 replaces section 184 to provide a new definition of 'exemption' to include exemptions granted by a principal of a non-state school.

Clauses 72 and 73 are consequential to amendments enabling non-state school principals to grant certain exemptions.

Clause 74 replaces the heading for chapter 9, part 3, division 2.

Clause 75 amends the heading for section 185 and inserts new subsections (2) and (3), which clarify that the chief executive retains the power to grant an exemption for an indefinite period and that the chief executive may not grant an exemption for a period of less than 110 school days for a child enrolled at a non-state school.

Clause 76 inserts new section 185A, which provides that, for a child enrolled at the non-state school, the non-state school principal may grant an exemption from attendance at the non-state school for a period of not more than 110 school days in a year.

Clause 77 replaces section 186 to provide that the parent of a child enrolled in a non-state school may apply to the principal of a non-state school for an exemption from attendance if the period of exemption is for less than 110 school days; or to the chief executive if the exemption for a longer period. New section 186 retains the current application process for students of state schools.

Clause 78 amends section 187 consequential to the amendments made to section 186.

Clause 79 amends section 188 to provide that the obligation in section 176(1)(b) does not apply to a parent of a child at a non-state school until 14 days after the principal gives notice to the applicant or, in the alternate, the application lapses.

Clause 80 amends section 189 to apply the section to decisions by both the chief executive and the principal of a non-state school. The clause also replaces the word 'application' with 'exemption' to ensure consistent terminology.

Clause 81 amends section 190 so that the requirements for the contents of an exemption also apply to an exemption granted by the principal of a non-state school.

Clause 82 amends section 191 so that both relevant decision-makers (the chief executive or the principal of a non-state school) may impose conditions that are relevant and reasonable when granting an exemption.

Clause 83 amends section 192 to provide that both relevant decision-makers may grant an exemption for a lesser period that that applied for by the applicant.

Clause 84 amends section 193 to replace the word 'issue' with 'grant' to ensure consistent terminology across the exemption provisions.

Clause 85 amends section 194 so that the show cause process applies to the decision of the relevant decision-makers to cancel the exemption.

Clause 86 amends section 195 to replace references to 'chief executive' with 'relevant decision-maker' so that the provision also applies to the principal of a non-state school.

Clause 87 amends section 196 to replace references to 'chief executive with 'relevant decision-maker' so that the provision also applies to the principal of a non-state school.

Clause 88 amends section 197 to replace references to 'chief executive' with 'relevant decision-maker' so that the section also applies to a principal of a non-state school.

Clause 89 inserts new division 5.

New section 197A requires the governing body of a non-state school to keep a record of each exemption decision made by the principal of the school for a period of 5 years. A maximum penalty of 20 penalty units applies for failing to keep a record of each decision.

Clause 90 amends the note in section 201 consequential to the amendments relating to exemptions and standardising of terminology.

Clause 91 replaces the heading for chapter 10, part 5, division 1.

Clause 92 replaces section 243. Current section 243 provides an explanation for the division. The section is being removed because it is an unnecessary provision and reflects an outdated drafting style. New section 243 provides a definition for part 5.

Clause 93 inserts a new division heading for chapter 10, part 5, division 1A.

Clause 94 amends section 244 to insert new subsection (3), which clarifies that the chief executive does not grant the exemption for a young person participating in an eligible option at a non-state school if the period of the exemption would not exceed 110 school days in a year. Clause 94 also clarifies that the chief executive must be reasonably satisfied of the matters in section 244(1)(a) and (b) before granting the exemption.

Clause 95 inserts new section 244A, which provides that for a student enrolled at the non-state school, the non-state school principal may issue an exemption from participation in the eligible option at the non-state school for a period of not more than 110 school days in a year.

Clause 96 renumbers chapter 10, part 5, division 1A and 2 to chapter 10, part 5, division 2 and 3 consequential to the insertion of new division 1A.

Clause 97 replaces section 245 to provide that a young person or a parent of a young person may apply to the principal of a non-state school for an exemption from attendance if the period of exemption is for less than 110 school days; or to the chief executive if the exemption is to be for a longer period. The section also provides for the matters which must

be included with the application. New section 245 retains the current application process for students of a state school.

Clause 98 amends section 246 to replace the term 'chief executive' with 'relevant decision-maker' consequential to the amendments to allow for the principal of a non-state school to grant exemptions in certain circumstances.

Clause 99 amends section 247 to provide that the temporary exemption from the obligation in section 239 granted under section 247 also applies when the principal of the non-state school is the relevant decision-maker.

Clause 100 amends section 248 to apply the section to the decisions of both the chief executive and the principal of a non-state school.

Clause 101 amends section 249 to provide that the requirements for the contents of an exemption also apply to an exemption granted by the principal of a non-state school.

Clause 102 amends section 250 so that both relevant decision-makers (the chief executive or the principal of a non-state school) may impose conditions that are relevant and reasonable when granting an exemption. The clause also replaces the word 'issue' with 'grant' to ensure consistent terminology is used across the exemption provisions.

Clause 103 amends section 251 to provide that both relevant decision-makers (the chief executive or the principal of a non-state school) may impose conditions that are relevant and reasonable when granting an exemption. The clause also replaces the word 'issue' with 'grant' to ensure consistent terminology is used across the exemption provisions

Clause 104 inserts new division 4, Miscellaneous and new sections 251AA, 251AB and 251AC.

New section 251AA requires the governing body of a non-state school to keep a record of each exemption decision made by the principal of the school for a period of 5 years. A maximum penalty of 20 penalty units applies for failing to keep a record of each decision.

New section 251AB enables the chief executive to request, by giving a written notice, that the principal of a non-state school provide information about exemption decisions.

New section 251AC protects the principal of a non-state school from civil liability for an act done, or omission made, honestly and without negligence when complying with the request of the chief executive made under section 251AB. The liability attaches instead to the non-state school's governing body.

Clause 105 amends section 337 to provide that a direction given under the section about conduct and movement is reviewable by the chief executive.

Clause 106 amends section 338 to allow for review of a direction given under section 337 to the chief executive and also prescribes the procedure and timeframes for the review.

Clause 107 amends section 339 to enable a state instructional institution's principal to give an oral direction to leave and not re-enter the institution's premises for a period of 24 hours. It is

an offence to fail to immediately comply with the oral direction. A maximum penalty of 20 penalty units applies.

Clause 108 amends section 340 to allow a state instructional institution's principal to give a written direction to a person not to enter the premises of the institution for up to 60 days if reasonably satisfied that unless the direction is given the person is likely to do certain prescribed things. An information notice is required to accompany the written direction; this enlivens the review provisions contained in chapter 15. It is an offence to fail to comply with the direction. A maximum penalty of 30 penalty units applies.

Clause 109 inserts new section 340A, which enables the chief executive to exercise the power to give a written direction under section 340 if the state instructional institution's principal or chief executive reasonably believes it would be appropriate to do so. An example is provided in the section, i.e. in circumstances where the principal was prevented from doing so because of bias.

Clause 110 replaces existing section 341. New section 341 enables the chief executive to give a person a written direction not to enter the premises of a state instructional institution for more than 60 days up to 1 year if reasonably satisfied that unless the direction is given the person is likely to do certain prescribed things. It is an offence to fail to comply with the direction. A maximum penalty of 40 penalty units applies. A person who is given a direction under new section 341 may apply to QCAT for a review of the direction under chapter 15, part 3.

Clause 111 makes a minor correction to the heading of section 343 and states the definition of 'review body' for part 6 is in new section 343A.

Clause 112 inserts new section 343A. New section 343A provides a definition of review body of a non-state school. This definition was previously found in section 345.

Clause 113 omits section 345 due to the insertion of new section 343A by this Bill.

Clause 114 amends section 347 to prescribe the procedure and timeframes for review of a direction given under section 346.

Clause 115 amends section 348 to enable a non-state school's principal to give an oral direction to leave and not re-enter the school's premises for a period of 24 hours. It is an offence to fail to immediately comply with the oral direction. A maximum penalty of 20 penalty units applies.

Clause 116 amends section 349 to allow a non-state school's principal to give a written direction to a person not to enter the premises of the institution for up to 60 days if reasonably satisfied that unless the direction is given the person is likely to do certain prescribed things. It is an offence to fail to comply with the direction. A maximum penalty of 30 penalty units applies. A direction given under section 349 can be reviewed under new section 349B. Further review to QCAT is available under chapter 15, part 3 of the EGPA.

Clause 117 inserts new sections 349A and 349B.

New section 349A enables the non-state school's governing body, or its nominee, to exercise the power to give a written direction in section 349 if the principal or non-state school's governing body reasonably believes it would be appropriate to do so. An example is provided in the section, i.e. in circumstances where the principal was prevented from doing so because of bias.

New section 349B provides for the review of written directions issued under sections 349 or 349A by the school's review body. Further review to QCAT is available under chapter 15, part 3 of the EGPA.

Clause 118 replaces existing section 350. New section 350 enables a non-state school's governing body, or its nominee, to give a person a written direction not to enter the premises of a non-state school for more than 60 days up to 1 year if reasonably satisfied that unless the direction is given the person is likely to do certain things. It is an offence to fail to comply with the written direction. A maximum penalty of 40 penalty units applies. A person who is given a written direction under new section 350 may apply to QCAT for a review of the direction under chapter 15, part 3 of the EGPA.

Clause 119 makes consequential amendments to section 356 of the EGPA.

Clause 120 makes consequential amendments to section 357 of the EGPA.

Clause 121 makes consequential amendments to section 358 of the EGPA.

Clause 122 makes consequential amendments to section 359 of the EGPA.

Clause 123 makes a consequential amendment to the heading for chapter 15, part 3 to state 'external review of particular directions and decision'.

Clause 124 replaces section 397 to provide who may apply to QCAT for an external review of particular directions, or decisions, mentioned in the section.

Clause 125 amends section 407 consequential to amendments that provide the principal of a non-state school with the power to grant exemptions and replaces the word 'issue' with 'grant' to ensure consistent terminology is used in relation to the exemption provisions.

Clause 126 inserts new section 429B, which provides that the *Anti-Discrimination Act 1991* does not apply in relation to an act that is necessary to comply with, or is specifically authorised by, a mature age student provision. A mature age student provision is defined in this new section.

Clause 127 inserts new chapter 20, part 8, divisions 4, 5 and 6, which provide transitional provisions for the *Education and Other Legislation Amendment Act 2014*.

New division 4 sets out transitional arrangements for mature age student notices. New section 530 provides that if an application for a mature age student notice was made and not decided before commencement, the application is to be decided in accordance with the provisions in the EGPA as if the EGPA had not been amended (the pre-amended EGPA).

New section 531 provides that if the chief executive has issued a positive notice in relation to a mature age state school under the pre-amended EGPA and the notice is in force immediately before the commencement, the provisions in chapter 2, part 5 of the pre-amended EGPA continue to apply as if the EGPA had not been amended. This applies whether or not the mature age state school mentioned in the notice is a mature age state school under the amended Act.

New section 532 provides that if the chief executive issued a negative notice to a person under the pre-amended EGPA and the notice is in force immediately before commencement, the provisions in the pre-amended EGPA continue to apply to the negative notice.

New section 533 provides that if an application for enrolment was made under the pre-amended EGPA and the application had not been decided before commencement, the pre-amended EGPA continues to apply in relation to the application.

New section 534 provides that if a person has been issued a negative notice under the pre-amended EGPA and the period of one year after the person was notified about the decision to issue a negative notice has not ended, the person is not eligible to apply for enrolment as a mature age student until the one year period has ended.

New section 535 provides that if a person is a mature age student of a mature age school immediately before commencement, the provisions about criminal history contained in chapter 2, part 5 of the pre-amended EGPA apply to the person.

New division 5 sets out transitional arrangements as a consequence of the amendments made to directions and prohibitions orders in chapter 12, parts 5, 6 and 7 in the Bill.

New section 536 provides that the pre-amended EGPA continues to apply to a person given a direction under sections 337, 340 or 349 in certain circumstances outlined in section 536(1)(b).

New section 537 provides that the pre-amended EGPA continues to apply to applications made to QCAT under sections 341(1) or 350(1) of the pre-amended EGPA not decided before commencement.

New section 538 makes it clear that, despite consequential amendments to section 358, the chief executive must still report on the number of orders made under section 341 in the 2014-2015 annual report.

New section 539 makes it clear that that, despite amendments to section 359, governing bodies of non-state schools must still report to the Minister on the number of orders made under section 350, for the 2014-2015 financial year.

New division 6 sets out transitional arrangements for other matters.

New section 540 provides that while the fee for distance education charged under section 52 of the EGPA remains unpaid, the chief executive may cancel the enrolment of the person to whom the fee relates. The chief executive must, at least 14 days before the enrolment is cancelled, give the person a notice that the chief executive intends to cancel the person’s enrolment.

New section 541 provides transitional arrangements for interstate students affected by the change to the definition of 'nearest applicable school' in amendments to section 48 of the EGPA.

Clause 128 amends the schedule 4, dictionary.

Part 6 Amendment of Education (Queensland College of Teachers) Act 2005

Clause 129 provides that part 6 amends the QCT Act.

Clause 130 inserts new section 25D into the QCT Act, which defines 'previously-provided police information' for the purposes of chapter 2, part 3, division 1.

Clause 131 insert new section 29(5A), which provides that section 16 does not apply in relation to previously-provided police information for the person unless the QCT proposes to make a decision under section 32(1) to renew the person's registration with conditions, or to refuse to renew the person's registration; and the previously-provided police information is relevant to the decision.

Clause 132 inserts new section 31(4), which provides that section 16 does not apply in relation to previously-provided police information for the person unless the QCT proposes to make a decision under section 32(1) to renew the person's permission to teach with conditions, or to refuse to renew the person's permission to teach; and the previously-provided police information is relevant to the decision.

The amendments made by clauses 131 and 132 will apply to applications for restoration of teacher registration and permission to teach, due to the operation of section 38 of the QCT Act.

Clause 133 inserts a new note into section 32.

Clause 134 amends section 246 to insert a definition for the section for the terms 'convicted' and 'indictable offence'. By amending these definitions for the section, the disqualifying offences and criminal history screening for a member of the QCT Board will align with the disqualifying offences and criminal history screening provisions that apply to other statutory bodies across the DETE portfolio.

Clause 135 amends section 247 to insert a definition of 'indictable offence' for the section so that the meaning of indictable offence does not include an indictable offence dealt with summarily. This amendment reflects the effect of section 659 of the *Criminal Code* and is part of the amendments to align the criteria for criminal history screening and disqualification from membership of statutory bodies across the DETE portfolio.

Clause 136 amends section 249 to insert a definition of 'indictable offence' for the section. This will align the disclosure requirements with the criminal history screening provisions and is consistent with the disclosure criteria applicable to other statutory bodies across the DETE portfolio. As a result of the change, members will be required to disclose any changes in

criminal history where the member has been convicted of an indictable offence, apart from indictable offences dealt with summarily.

Clause 137 inserts a definition of 'previously-provided police information' in the schedule 3, dictionary.

Part 7 Amendment of Further Education and Training Act 2014

Clause 138 provides that part 7 amends the FET Act.

Clause 139 amends section 194 of the FET Act, which provides that a prescribed person is protected from civil liability, to remove the chief executive and a public service employee employed in the department from the definition of 'prescribed person'. The chief executive and other public service employees are State employees afforded protection under section 26C of the Public Service Act.

New subsection (3) provides that section 194 does not apply to a prescribed person who is a State employee within the meaning of section 26B(4) of the Public Service Act. The effect of this provision is to ensure prescribed persons who are State employees are afforded indemnity under the Public Service Act. Other prescribed persons will continue to be afforded protection under the FET Act. These amendments are consequential to the amendments to the Public Service Act which provide standardised protection from civil liability for State employees.

Part 8 Minor and consequential amendments

Clause 140 provides that schedule 1 amends the Acts it mentions.

Schedule 1 Minor and consequential amendments

Schedule 1 makes consequential amendments to various Acts to omit references to 'international educational institution' as a consequence of the Bill omitting chapter 18 of the EGPA.

Schedule 1 also makes a minor amendment to section 175 of the Accreditation Act to omit the definition of 'appropriately qualified' in subsection (2). 'Appropriately qualified' is defined in schedule 1 of the *Acts Interpretation Act 1954*.