

Queensland



**EDUCATION AND OTHER
LEGISLATION
AMENDMENT ACT 1999**

Act No. 81 of 1999

Queensland



**EDUCATION AND OTHER
LEGISLATION AMENDMENT ACT 1999**

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Queensland



Education and Other Legislation Amendment Act 1999

Act No. 81 of 1999

An Act to amend legislation about education, and for another purpose

[Assented to 14 December 1999]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Education and Other Legislation Amendment Act 1999*.

Commencement

2. This Act commences on 1 January 2000.

PART 2—AMENDMENT OF EDUCATION (CAPITAL ASSISTANCE) ACT 1993

Act amended in pt 2

3. This part amends the *Education (Capital Assistance) Act 1993*.

Amendment of s 3 (Definitions)

4. Section 3, definition “eligible non-State school”, paragraph (b), ‘affiliated’—

omit, insert—

‘listed’.

Amendment of s 9 (Functions)

5. Section 9, ‘affiliated’—

omit, insert—

‘listed’.

Amendment of s 10 (Affiliation with CAA)

6.(1) Section 10, heading, ‘Affiliation’—

omit, insert—

‘Listing’.

(2) Section 10, ‘affiliated’—

omit, insert—

‘listed’.

(3) Section 10(3), ‘affiliation’—

omit, insert—

‘listing’.

Amendment of s 11 (Change of affiliation)

7.(1) Section 11, ‘affiliation’—

omit, insert—

‘listing’.

(2) Section 11(3), ‘affiliated’—

omit, insert—

‘listed’.

Amendment of s 15 (Application)

8. Section 15(2), ‘affiliated’—

omit, insert—

‘listed’.

Amendment of s 18 (Making of application)

9. Section 18(2), ‘affiliated’—

omit, insert—

‘listed’.

Amendment of s 21 (CAA to have regard to available funds)

10. Section 21(1), ‘affiliated’—

omit, insert—

‘listed’.

Amendment of s 22 (CAA may provide capital assistance)

11. Section 22(1), ‘affiliated’—

omit, insert—

‘listed’.

Amendment of s 23 (Return by eligible non-State schools)

12. Section 23(2), ‘affiliated’—

omit, insert—

‘listed’.

Replacement of pt 7 hdg

13. Part 7, heading—

omit, insert—

**‘PART 7—VALIDATION OF CERTAIN PAYMENTS
AND TRANSITIONAL PROVISIONS**

‘Division 1—Validation of certain payments for Act No. 37 of 1993’.

Insertion of new pt 7, div 2

14. After section 27—

insert—

‘Division 2—Transitional provisions for Education and Other Legislation Amendment Act 1999

‘References to affiliation with a CAA

‘28.(1) A non-State school affiliated with a CAA immediately before the commencement of this section is taken to be listed with the CAA.

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

PART 3—AMENDMENT OF EDUCATION (GENERAL PROVISIONS) ACT 1989**Act amended in pt 3**

15. This part amends the *Education (General Provisions) Act 1989*.

Amendment of s 2 (Interpretation)

16.(1) Section 2(1), definition “continuing student”—

omit.

(1A) Section 2(1)—

insert—

‘**“planning approval”** see section 134B(1).

“planning guidelines” see section 134A(1).

“proponent” see section 134A(1).

“significantly modifying”, a non-State school, means the following—

- (a) if it is a non-State school only for primary education—changing from providing facilities for, and instruction in, primary education to providing facilities for, and instruction in, primary and secondary education;
- (b) if it is a non-State school only for secondary education—changing from providing facilities for, and instruction in, secondary education to providing facilities for, and instruction in, primary and secondary education;
- (c) changing the school’s location;
- (d) adding a school campus more than 5 km from the existing school campus;
- (e) changing from providing facilities and instruction at the school for students of 1 sex to providing facilities and instruction at the school for students of both sexes, other than by amalgamating with another school;
- (f) changing from providing facilities and instruction at the school for students of both sexes to providing facilities and instruction at the school for students of 1 sex;
- (g) changing the school’s facilities to provide facilities for boarding students.’.

(2) Section 2(1), definitions “appointed member”, “coopted student member”, “elected parent member”, “elected staff member” and “elected student member”, ‘section 54(11)’—

omit, insert—

‘section 54(13)’.

(3) Section 2(2), after ‘non-State school’—

insert—

‘, for that type of education,’.

Insertion of new s 2A

16A. After section 2—

insert—

‘Decision about non-State school

‘2A.(1) This section applies if the Minister is to make a decision under section 2(2) for a school.

‘(2) Before the Minister may make the decision, the Minister must be satisfied the school has been granted, and complied with, a planning approval under the planning guidelines for the type of education to be provided by the school.

‘(3) However, subsection (2) does not apply if—

- (a) the school is a non-State school for primary education and the Minister is to make a decision about whether the school provides facilities for, and instruction in, preschool education; or
- (b) the Minister is to make a decision about whether the school provides facilities for, and instruction in, special education.

‘(4) A decision by the Minister under section 2(2) that results in a school being a non-State school for a type of education is subject to any continuing conditions about facilities or instruction imposed, under the planning guidelines, on the planning approval granted in relation to the school for the type of education.’.

Amendment of s 18 (Establishment of school support centres, student hostels and residential colleges and other State educational institutions)

17. Section 18, heading, from ‘school support’ to ‘colleges’—

omit, insert—

‘certain centres, student hostels, student residential colleges’.

Amendment of s 26 (Religious instruction in school hours)

18.(1) Section 26(1), from ‘of religion’ to ‘religious denomination’—
omit, insert—

‘of a religious denomination or society, or an accredited representative of a religious denomination or society’.

(2) Section 26(1), ‘religious society or denomination’—
omit, insert—

‘denomination or society’.

Amendment of s 32 (Dealing with submissions against suspensions)

19. Section 32(2)(a)—
omit, insert

‘(a) as soon as possible tell the student and the principal—

- (i) about the supervisor’s decision; and
- (ii) if the supervisor’s decision allows the student to return to school earlier than if the principal’s decision had been affirmed—about when the student may return to school; and’.

Amendment of s 36 (Exclusion of student)

20. Section 36(5)(a), ‘promptly tell the student’—
omit, insert—

‘as soon as possible tell the student and the principal’.

Amendment of s 38 (Dealing with submissions against exclusions)

21. Section 38(2)(a)—
omit, insert—

- ‘(a) as soon as possible tell the excluded person and the principal—
- (i) about the chief executive’s decision; and

- (ii) if the chief executive's decision allows the excluded person to return to school earlier than if the supervisor's decision had been affirmed—about when the excluded person may return to school; and'.

Amendment of s 42 (Dealing with submissions against cancellations of enrolment)

22. Section 42(2)(a)—

omit, insert—

- '(a) as soon as possible tell the person under the cancellation and the principal—
 - (i) about the supervisor's decision; and
 - (ii) if the supervisor's decision allows the person under the cancellation to return to school earlier than if the principal's decision had been affirmed—about when the person under the cancellation may return to school; and'.

Replacement of s 46 (Time notices take effect)

23. Section 46—

omit, insert—

'When decisions take effect

'**46.(1)** Notice of a decision under this part about a student must be given to the student under the section under which the decision is made.

'(2) A decision takes effect—

- (a) if the student must be told about the decision and, under the decision, the student may return to school earlier than if the decision was to affirm another decision—on the day the student is told about the decision; or
- (b) otherwise—on the day the student is given written notice of the decision or a later day stated in the notice.'

Amendment of s 54 (Membership of school councils)

24.(1) Section 54(6)(b) and (c)—

omit, insert—

‘(b) otherwise—by a secret ballot under the council’s constitution.’.

(2) Section 54(7)—

omit, insert—

‘(7) The elected staff members of a school’s council must be elected by a secret ballot, held under the council’s constitution, of all the persons who are—

(a) employed by a department and assigned to the school; or

(b) otherwise employed full-time or part-time at the school.’.

(3) Section 54(11)—

renumber as section 54(13).

(4) Section 54, after subsection (10)—

insert—

‘**(11)** Subsection (12) applies if, at the time of closure of nominations for an elected member under the constitution of the relevant association or council, the number of nominations for elected members is not more than the number required to be elected.

‘**(12)** The person who, under the relevant constitution is responsible for conducting the election for the elected members, must declare the person or persons who are properly nominated under the constitution to have been elected.’.

Amendment of s 122 (Calculation of allocation where student begins schooling at State educational institution)

25. Section 122(2)(d)—

omit, insert—

‘(d) a person who, at any time before the end of semester 2 in 1997, was enrolled in a State educational institution, other than a student mentioned in paragraph (e);

- (e) a student enrolled in a year level mentioned in column 1 of section 123(3) at the end of semester 2 in 1997.’.

Amendment of s 123 (Calculation of allocation if s 122(1) does not apply)

26.(1) Section 123(2), ‘or (c)’—

omit, insert—

‘, (c) or (d)’.

(2) Section 123(4)—

omit, insert—

‘**(4)** However, if the principal of a State educational institution decides that the application of subsection (3) to a student mentioned in section 122(2)(e) is inappropriate, the principal must decide the student’s remaining allocation.

‘**(4A)** The principal’s decision that it is inappropriate for subsection (3) to apply to the student is, for section 124(2), a decision about the student’s remaining allocation.’.

Amendment of s 125 (Annual notice about remaining allocation)

27.(1) Section 125, heading—

omit, insert—

‘**Notice to certain students about remaining allocation**’.

(2) Section 125(1)—

omit, insert—

‘**125.(1)** This section applies to students—

- (a) who are enrolled in semester 2 in a calendar year in a State educational institution; and
- (b) whose remaining allocation will be 4, or less than 4, semesters at the end of the calendar year.’.

Insertion of new ss 125A and 125B

28. Part 8, division 2, after section 125—

insert—

‘Other notices about allocation

‘125A.(1) This section applies to a student who—

- (a) is enrolled in a State educational institution for the first time; or
- (b) is repeating, in a State educational institution, a year for which the student has already been enrolled in a State educational institution.

‘(2) The principal must give the student written information about the allocation of State education under this part.

‘(3) If the student to whom written notice must be given is under 18 years, the written information must be given also to—

- (a) if a parent has care and control of the student—the parent; or
- (b) if another adult has care and control of the student—the adult.

‘(4) For a person mentioned in subsection (1)(b), the notice must be given before the student begins to repeat the year.

‘Copy of notices under this part to be given to parent etc.

‘125B.(1) If a person is required, under this part, to give a notice to a student and the student is under 18 years, the person must, as soon as possible, give a copy of the notice to—

- (a) if a parent has care and control of the student—the parent; or
- (b) if another adult has care and control of the student—the adult.

‘(2) In deciding to whom a notice must be given under subsection (1), the person required to give the notice may rely on the relevant State educational institution’s records about—

- (a) if a parent, or another adult, has care and control of the student; and
- (b) the current residential address of the parent or adult.’.

Insertion of new pt 8A

28A. After section 134—

insert—

‘PART 8A—PLANNING GUIDELINES FOR NON-STATE SCHOOLS**‘Minister may issue planning guidelines**

‘134A.(1) The Minister may issue guidelines (the “**planning guidelines**”) about the following—

- (a) the process to be followed by a person (the “**proponent**”) proposing to establish a non-State school to obtain a planning approval from the Minister for the school;
- (b) the process to be followed by a person (also the “**proponent**”) proposing to significantly modify a non-State school to obtain a planning approval from the Minister for the modification;
- (c) the facilities for and instruction in preschool, primary, secondary or special education to be provided by a proposed, or significantly modified, non-State school.

‘(2) The planning guidelines may provide for the Minister to impose on a planning approval for a proposed non-State school, or to significantly modify a non-State school, conditions about the facilities for, or instruction in, preschool, primary, secondary or special education to be provided at the school.

‘(3) The planning guidelines must provide for a right of review for a proponent in the following circumstances—

- (a) if the Minister refuses an application for a planning approval;
- (b) if the Minister imposes conditions on a planning approval.

‘Planning approval for proposed school

‘134B.(1) A proponent may apply to the Minister for approval (a “**planning approval**”)—

- (a) for a non-State school the proponent proposes to establish; or
- (b) to significantly modify a non-State school.

‘(2) The application, and the Minister’s decision about the application, must be made under the planning guidelines.’.

Insertion of new div 1 hdg

29. Before section 153—

insert—

‘Division 1—Transitional provisions before Education and Other Legislation Amendment Act 1999’.

Replacement of s 158 (Application of part to continuing students)

30. Section 158—

omit, insert—

‘Division 2—Transitional and validation provisions for Education and Other Legislation Amendment Act 1999’

‘Transitional provision about existing elected members of school councils

‘**158.(1)** Subject to sections 56, 57 and 58,¹ an existing elected member continues to be a member until the end of the term for which the member was elected.

‘(2) In this section—

“existing elected member” means a person who, immediately before the commencement of this section, was an elected parent member or an elected staff member.

¹ Sections 56 (Terms of office for elected and appointed members), 57 (Ineligibility on conviction of indictable offence) and 58 (Appointment not affected by other laws restricting employment)

‘Transitional provision about guidelines

‘159.(1) The 1997 guidelines are taken to be guidelines issued by the Minister under section 134A(1).

‘(2) To remove any doubt, it is declared that nothing in this section limits the power of the Minister to issue guidelines under section 134A(1).

‘(3) In this section—

“1997 guidelines” means the document called ‘Queensland Non–State Schools Planning Assessment of Individuals Applications’ approved by the Minister on 26 September 1997 and amendments to the document approved by the Minister before the commencement of this section.²

‘Validation of certain decisions made by Minister

‘160.(1) This section applies if, before the commencement of this section—

- (a) a person proposing to establish, or significantly modify, a non-State school applied to the Minister for an approval to establish, or significantly modify, the school; and
- (b) the application would have been an application for a planning approval for the school if the application had been made after the commencement; and
- (c) the Minister decided to—
 - (i) refuse the application; or
 - (ii) grant the application, with or without conditions relating to the facilities for, or instruction in, preschool, primary, secondary or special education at the school.

‘(2) The Minister’s decision is taken to be, and always to have been, validly made to the extent it would be validly made under section 134B after the commencement of this section.

² A copy of the document is available from the department’s central office at 30 Mary Street, Brisbane and its district offices.

‘Validation of conditions imposed on non-State school

‘161.(1) This section applies if, before the commencement of this section, the Minister—

- (a) made a decision (a **“section 160 decision”**) mentioned in section 160(1)(c)(ii) for a school, subject to conditions relating to the facilities for, or instruction in, preschool, primary, secondary or special education at the school; and
- (b) subsequently made a decision (a **“section 2(2) decision”**) for section 2(2) that results in the school being a non-State school for a type of education.

‘(2) The section 2(2) decision is subject to any continuing conditions about facilities or instruction imposed on the section 160 decision as if the decision had been made after the commencement of section 2A(4).’.

PART 4—AMENDMENT OF EDUCATION (OVERSEAS STUDENTS) ACT 1996

Act amended in pt 4

31. This part amends the *Education (Overseas Students) Act 1996*.

Replacement of s 33 (Delegation)

32. Section 33—

omit, insert—

‘Delegation

‘33.(1) The chief executive may delegate the chief executive’s powers under this Act to—

- (a) an appropriately qualified person; or

- (b) a body whose members are appropriately qualified, including a committee established by the chief executive under part 4, division 5.³

‘(2) In this section—

“appropriately qualified” means having qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

A person’s classification level in the public service.’.

Renumbering of pt 4, div 5

33. Part 4, division 5—

renumber as part 4, division 6.

Insertion of new div 5

34. After section 33—

insert—

‘Division 5—Committees

‘Chief executive may establish committees

‘**33A.(1)** As the chief executive considers appropriate, the chief executive may establish committees to advise the chief executive or for another purpose.

‘(2) For each committee, the chief executive must state its functions and terms of reference.

‘(3) A committee must report to the chief executive as the chief executive requires.

³ Part 4 (Miscellaneous), division 5 (Committees)

‘Committee members

‘**33B.(1)** The chief executive may appoint persons to be members of each committee as the chief executive considers appropriate.

‘(2) However, the chief executive must appoint appropriately qualified persons to be the members of a committee.

‘(3) In this section—

“**appropriately qualified**” includes having the qualifications or experience appropriate to the functions and terms of reference of the committee.

‘Committee chairperson

‘**33C.** The chief executive must appoint a member of a committee to be the chairperson of the committee.

‘Disclosure of interest

‘**33D.(1)** This section applies to a member of a committee (the “**interested member**”) if—

- (a) the interested member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the committee; and
- (b) the interest could conflict with the proper performance of the person’s duties about the consideration of the issue.

‘(2) As soon as practicable after the relevant facts come to the interested member’s knowledge, the member must disclose the nature of the interest to a meeting of the committee.

‘(3) Unless the committee otherwise directs, the interested member must not—

- (a) be present when the committee considers the issue; or
- (b) take part in a decision of the committee about the issue.

‘(4) The interested member must not be present when the committee is considering whether to give a direction under subsection (3).

‘(5) If there is another member who must, under subsection (2), also disclose an interest in the issue, the other person must not—

- (a) be present when the committee is considering whether to give a direction under subsection (3); or
- (b) take part in making the decision about giving the direction.

‘(6) Despite section 33I, the members present at a committee meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3), are a quorum of the committee for considering or deciding the issue or giving the direction if—

- (a) an interested member or interested members are not present because of this section; and
- (b) there would be a quorum if the interested member or members were present.

‘(7) A disclosure under subsection (2) must be recorded in the committee’s minutes.

‘Fees and expenses

‘33E.(1) A member of a committee, including the committee’s chairperson, is not entitled to receive a fee or allowance for attending committee meetings or for conducting business for the committee.

‘(2) However, the chief executive may approve payment for reasonable expenses incurred in attending a committee meeting.

‘(3) An approval under subsection (2) may apply generally or for a particular case.

‘Conduct of business

‘33F. Subject to this division, a committee may conduct its business in the way it considers appropriate.

‘Times and places of meetings

‘33G.(1) A committee may meet at the times and places the committee decides.

‘(2) Without limiting subsection (1), a committee may hold a meeting, or allow a member to take part in a meeting, by telephone, video link or other form of communication allowing reasonably contemporaneous and continuous communication between the members taking part in the meeting.

‘(3) A member who takes part in a meeting by use of communication mentioned in subsection (2) is taken to be present at the meeting.

‘Presiding at meetings

‘**33H.(1)** The chairperson of a committee must preside at all meetings of the committee if the chairperson is present.

‘(2) If the chairperson is not present at a meeting, a committee member chosen by the members present at the meeting must preside.

‘Quorum

‘**33I.** A quorum for a committee is the number equal to two-thirds of the number of its members or, if two-thirds is not a whole number, the next highest whole number.

‘Voting

‘**33J.(1)** A committee must perform its functions or, if powers are delegated to the committee, exercise the powers by a majority vote of the members present at a properly constituted meeting.

‘(2) The person presiding at a meeting has a deliberative vote and, if the votes on a question are equal, also has a casting vote.

‘(3) A member who abstains from voting is taken to have voted for the negative.

‘No attendance by proxy

‘**33K.** A member of a committee may not attend a committee meeting by proxy.’.

PART 5—AMENDMENT OF EDUCATION (SCHOOL CURRICULUM P-10) ACT 1996

Act amended in pt 5

35. This part amends the *Education (School Curriculum P-10) Act 1996*.

Amendment of s 27 (Attendance by appointed member's proxy or chief executive's nominee)

36.(1) Section 27, heading—

omit, insert—

'Attendance by proxy'.

(2) Section 27(4)—

omit.

(3) Section 27(3)—

renumber as section 27(4).

(4) Section 27—

insert—

'(3) Also, the chief executive's nominee may attend a council meeting by proxy.'

Insertion of new pt 2, div 6A

37. After section 32—

insert—

'Division 6A—Chief executive's nominee

'Chief executive may appoint nominee

'32A.(1) The chief executive may, in writing, appoint a person (the **"chief executive's nominee"**) to attend council meetings or executive committee meetings for the chief executive during any period, or during all

periods, when the chief executive can not attend for any reason.

‘(2) When appointing a person to attend council meetings or executive committee meetings, the chief executive must, if practicable, appoint a person who has previously attended the meetings as the chief executive’s nominee.

‘(3) The chief executive’s nominee must be an appropriately qualified public service officer employed in the department.

‘(4) The chief executive must give the chairperson of the council written notice of—

- (a) the appointment of a person under subsection (1); and
- (b) if the instrument of appointment of the person is amended or repealed—the amendment or repeal.

‘(5) In this section—

“appropriately qualified” means having qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

A person’s classification level in the public service.’.

Amendment of sch 3 (Dictionary)

38. Schedule 3—

insert—

‘ **“chief executive’s nominee”** see section 32A(1).’.

**PART 6—AMENDMENT OF EDUCATION
(TERTIARY ENTRANCE PROCEDURES
AUTHORITY) ACT 1990**

Act amended in pt 6

39. This part amends the *Education (Tertiary Entrance Procedures Authority) Act 1990*.

Amendment of s 19 (Quorum and business of the authority)

40. Section 19(1)—

omit, insert—

‘**19.(1)** A quorum for the authority is the number equal to one-half of the number of its members or, if one-half is not a whole number, the next highest whole number.’.

**PART 7—AMENDMENT OF JAMES COOK
UNIVERSITY ACT 1997**

Act amended in pt 7

41. This part amends the *James Cook University Act 1997*.

Amendment of s 5 (Functions of university)

42. Section 5—

insert—

‘(ea) to disseminate knowledge and promote scholarship; and

(eb) to provide facilities and resources for the wellbeing of the university’s staff, students and other persons undertaking courses at the university; and’.

Amendment of s 57 (Making of university statutes)

43.(1) Section 57(2)(a) and (b)—

omit, insert—

- ‘(a) the admission and enrolment of students;
- (aa) the entitlement to degrees and other awards;
- (b) the disciplining of students and other persons taking courses at the university;’.

(2) Section 57(3)(a), ‘discipline of students’—

omit, insert—

‘disciplining of persons mentioned in subsection (2)(b)’.

Amendment of sch 2 (Dictionary)

44. Schedule 2, definition “academic staff”, paragraph (a), ‘; or’—

omit, insert—

‘other than research assistants; and’.

**PART 8—AMENDMENT OF PUBLIC SECTOR
ETHICS ACT 1994**

Act amended in pt 8

45. This part amends the *Public Sector Ethics Act 1994*.

Amendment of s 2 (Definitions)

46. Section 2, definition “State educational institution”—
omit.