



Queensland

Education Legislation Amendment Act 2004

Act No. 44 of 2004



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Education Legislation Amendment Act 2004

Act No. 44 of 2004

**An Act to amend Acts administered by the Minister for
Education and the Arts**

[Assented to 18 November 2004]

Part 1 Preliminary

1 Short title

This Act may be cited as the *Education Legislation Amendment Act 2004*.

2 Commencement

- (1) The following provisions commence on 1 January 2005—
 - section 21 (other than to the extent it inserts the definitions *financial data* and *non-State school in receipt of subsidy*)
 - sections 22 to 24 and 41.
- (2) Part 2 commences on a day to be fixed by proclamation.

Part 2 Amendment of Education (Capital Assistance) Act 1993

3 Act amended in pt 2

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

4 Amendment of s 3 (Definitions)

- (1) Section 3—

insert—

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

initial application, for part 5, see section 21A.’.
- (2) Section 3, definition *eligible non-State school*, paragraph (a)—

omit, insert—

‘(a) a school, the governing body of which is eligible for Government funding under the *Education (Accreditation of Non-State Schools) Act 2001*; and’.

5 Amendment of s 4 (Meaning of *capital project*)

(1) Section 4(3)(a), example—

omit, insert—

‘Example—

work for the installation of information or communication technology equipment, or air-conditioning’.

(2) Section 4(3)(b), ‘local authority’—

omit, insert—

‘local government’.

(3) Section 4(3)(b), ‘local authority’s’—

omit, insert—

‘local government’s’.

(4) Section 4(3)—

insert—

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

Example—

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

6 Amendment of s 10 (Listing with CAA)

Section 10(1), from ‘in receipt of’—

omit, insert—

‘, the governing body of which is eligible for Government funding under the *Education (Accreditation of Non-State Schools) Act 2001*, to become listed with a CAA.’.

7 Amendment of s 11 (Change of listing)

(1) Section 11(2)—

omit, insert—

‘(2) An eligible non-State school may apply to the Minister for an approval under subsection (1) only if—

(a) the application is made not less than 12 months before 1 January of the year for which the school is seeking the change of listing to be effective; and

(b) all amounts granted to the approved authority of the school for capital assistance for a proposed capital project at the school have been paid to the school; and

(c) before making its application, the school gives written notice of its intention to apply for approval to change its listing, including the reasons for the proposed change, to each CAA.

‘(2A) The application must be in writing.’.

(2) Section 11(3), from ‘the CAA’—

omit, insert—

‘each CAA about the application.’.

(3) Section 11(4), from ‘the CAA’—

omit, insert—

‘the CAAs.’.

(4) Section 11(2A) to (8)—

renumber as section 11(3) to (9).

8 Insertion of new s 12A

Part 2, after section 12—

insert—

‘12A CAAs to notify schools of relevant dates

‘(1) Each CAA must give written notice to the approved authority of each of the eligible non-State schools listed with the CAA of the day (the *relevant day*) before which applications for capital assistance for a year may be made under section 15.

- ‘(2) The written notice—
- (a) must be given to each approved authority before the day prescribed under a regulation; and
 - (b) may provide for different relevant days for capital assistance for different types of capital projects.
- ‘(3) Each CAA must have at least 1 relevant day in each year for each type of capital project.’.

9 Amendment of s 14 (Certain projects must not be funded)

Section 14(1)(b)(ii) and (3), ‘usually’—
omit.

10 Amendment of s 15 (Application)

- (1) Section 15(1), ‘the day prescribed by regulation for the relevant year’—
omit, insert—
‘the relevant day for a year’.
- (2) Section 15—
insert—
- ‘(1A) Despite subsection (1), an application for capital assistance may be made by the approved authority of an eligible non-State school after the relevant day for the year if the CAA with which the school is listed considers that there are exceptional circumstances.’.
- (3) Section 15—
insert—
- ‘(5) In this section—
relevant day, for a year, means—
- (a) the day notified, under section 12A, to the approved authority of an eligible non-State school by the CAA with which the school is listed for the making of applications for capital assistance of the type concerned for the year; or

- (b) if the CAA fails to notify the approved authority of an eligible non-State school listed with it of the day under section 12A, the day prescribed under a regulation as the day for the making of applications for capital assistance of the type concerned for the year.’.
- (4) Section 15(1A) to (5)—
renumber as section 15(2) to (6).

11 Amendment of s 16 (Action by CAA)

Section 16(1)(a)—

omit, insert—

- ‘(a) assess it, having regard to—
- (i) the criteria prescribed under a regulation; and
 - (ii) other applications for the same type of capital assistance received by the CAA in relation to the same relevant day; and’.

12 Replacement of s 21 (CAA to have regard to available funds)

Section 21—

omit, insert—

‘21 CAA to have regard to available funds

- ‘(1) In making a recommendation to the Minister about an application under section 15 or 18 for capital assistance for a proposed capital project, a CAA must have regard to—
- (a) the amount the Minister has advised the CAA is available to provide capital assistance to eligible non-State schools listed with the CAA; or
 - (b) if the Minister has advised the CAA that different amounts are available for different types of capital projects—the amount that is available to provide capital assistance to eligible non-State schools listed with the CAA for capital projects of that type.

- ‘(2) Subsection (1) does not apply to making a recommendation about an application for capital assistance for a capital project to the extent it includes work or a payment mentioned in section 4(3)(b) or (c).’.

13 Insertion of new pt 5, div 1 hdg and div 2 hdg

Part 5, before section 22—

insert—

‘Division 1 Definitions

‘21A Definitions for pt 5

‘In this part—

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

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

initial application see section 22A(a).

‘Division 2 Provision of capital assistance’.

14 Amendment of s 22 (CAA may provide capital assistance)

Section 22(2)—

insert—

- ‘(c) the approved authority has applied, under section 22A, for payment of the amount, or part of the amount.’.

15 Insertion of new ss 22A–22F

Part 5, after section 22—

insert—

‘22A Application for payment of amount granted for project

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

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

‘22B Extension of time for making initial application for payment

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

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

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

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

‘22C Action by CAA

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

‘22D Minister to decide application

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

‘22E Revocation of grant of application

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

application has been received before the due day by the CAA through which it must be made; or

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

‘22F CAA may provide additional capital assistance

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

(ii) an amount remaining in the fund because of a revocation under section 22E.

‘(6) If a CAA provides additional capital assistance to an approved authority it must give the Minister a written notice about the provision of the additional capital assistance, including the amount of the additional capital assistance provided.’.

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

Section 23—

omit, insert—

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

‘(1) A CAA must permit an approved person—

- (a) to inspect, without fee, a record kept by the CAA for an approved application for capital assistance; and
- (b) to take a copy of, or extract from, the record without fee.

‘(2) Before inspecting a record kept by the CAA, the approved person must produce a copy of the approved person’s approval to the person in charge of the CAA for that person’s inspection.

‘(3) The approved person must, as soon as practicable after inspecting the record, give a report to the Minister about the record’s contents.

‘(4) In this section—

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

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

17 Amendment of s 24 (Return by CAA)

Section 24(1)(c)—

omit, insert—

- ‘(c) giving the following details for each capital project for which the approved authority of an eligible non-State school listed with the CAA received or retained capital assistance in the previous year—
- (i) a description of the project;
 - (ii) whether or not the project was completed in the previous year;
 - (iii) the amount spent on the project as at the end of the previous year;
 - (iv) the amount, if any, held on account of the project at the end of the previous year;
 - (v) the amounts, and sources of the amounts, used to fund the project; and’.

18 Insertion of new ss 24A and 24B

After section 24—

insert—

‘24A Power of entry

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

‘24B Guidelines

- ‘(1) The Minister may issue guidelines for this Act.

- ‘(2) Without limiting subsection (1), a guideline may give guidance about—
- (a) administrative matters relevant to applications under this Act; or
 - (b) how an applicant should deal with issues involved in the proper formulation of the application; or
 - (c) how funds will be allocated and paid to a CAA, and how a CAA may use the funds; or
 - (d) the information to be kept by a CAA about capital projects for which applications for assistance have been granted.
- ‘(3) A guideline may be replaced or varied by a later guideline issued under this section.
- ‘(4) The chief executive must keep a copy of a guideline, issued under this section, available for inspection and permit a person—
- (a) to inspect the guideline without fee; and
 - (b) to take extracts from the guideline without fee.
- ‘(5) For subsection (4)—
- (a) a copy of the guideline—
 - (i) must be kept at the head office of the department; and
 - (ii) may be kept at any other place the chief executive considers appropriate; and
 - (b) the copy kept under paragraph (a) must be available for inspection during office hours on business days for the office or place.
- ‘(6) Also, the chief executive must keep a copy of a guideline, issued under this section, available for supply to a person and permit a person to obtain a copy of the guideline, or a part of the guideline, without fee.

- ‘(7) In addition, the chief executive must keep a copy of a guideline, issued under this section, posted on the department’s web site on the internet.¹’.

19 Insertion of new pt 7, div 3

After section 28—

insert—

‘Division 3 Transitional provision for Education Legislation Amendment Act 2004

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

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

1 The department’s web site address on the internet is <www.education.qld.gov.au>.

Part 3 **Amendment of Education (General Provisions) Act 1989**

20 **Act amended in pt 3**

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

21 **Amendment of s 2 (Interpretation)**

Section 2(1)—

insert—

‘charge, for part 3, division 4, see section 26AA.

conviction, for part 3, division 4, see section 26AA.

criminal history, for part 3, division 4, see section 26AA.

financial data, for a non-State school in receipt of subsidy, means the following—

- (a) details of the school’s recurrent income;
- (b) details of the school’s capital income;
- (c) details of the school’s recurrent expenses;
- (d) details of the school’s capital expenses;
- (e) details of the school’s profit or loss in carrying out each of its incidental business activities;
- (f) details of the school’s loans;
- (g) other financial details, for the school, prescribed under a regulation.

mature age State educational institution, for part 3, division 4, see section 26AA.

mature age student, for part 3, division 4, see section 26AA.

mature age student notice, for part 3, division 4, see section 26AA.

negative notice, for part 3, division 4, see section 26AA.

non-State school in receipt of subsidy means a school mentioned in paragraph (b) of the definition *school in receipt of subsidy* in section 134A(1).

notice, for part 3, division 4, see section 26AA.

original decision, for part 3, division 4, subdivision 6, see section 26AO.

positive notice, for part 3, division 4, see section 26AA.

serious offence, for part 3, division 4, see section 26AA.’.

22 Insertion of new pt 3, div 4

Before part 4—

insert—

‘Division 4 Provisions relating to mature age students

‘Subdivision 1 Preliminary

‘26AA Definitions for div 4

‘In this division—

charge, for an offence, in relation to a charge made outside Queensland, means any allegation of an offence made in a way that is the same as, or substantially the same as, a charge under the law of the State.

conviction means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

criminal history, of a person, means—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, at any time and whether before or after the commencement of this division; and
- (b) every charge made against the person for an offence, in Queensland or elsewhere, at any time and whether

before or after the commencement of this division and whatever the outcome of the charge.

mature age State educational institution means a State educational institution other than—

- (a) a school of distance education; or
- (b) a special school.

mature age student, in relation to a mature age State educational institution, means an adult enrolled with the institution.

mature age student notice means a mature age student notice issued under section 26AE.

negative notice see section 26AE(1)(b).

notice means written notice.

positive notice see section 26AE(1)(a).

serious offence see the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

‘26AB This division applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

‘This division applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

‘Subdivision 2 Obligation relating to mature age student notices

‘26AC Obligation of mature age State educational institution’s principal

- ‘(1) A mature age State educational institution’s principal must not enrol a person as a mature age student with the institution unless the person has a current positive notice for the enrolment.
- ‘(2) Subsection (1) does not apply if—

- (a) the person has previously been enrolled with a non-State school or State educational institution (the *previous school or institution*); and
- (b) the period commencing on the last day of attendance of the person at the previous school or institution and ending on the day before the proposed first day of attendance of the person at the mature age State educational institution is not more than 12 months.

‘Subdivision 3 Issue of mature age student notices

‘26AD Application for mature age student notice

- ‘(1) A person, other than a visa holder, who wishes to be a mature age student of a particular mature age State educational institution may apply to the chief executive for a mature age student notice stating whether the person is a suitable person to be a mature age student of the institution.
- ‘(2) The application must be—
 - (a) in the approved form; and
 - (b) signed by the person; and
 - (c) accompanied by the fee prescribed under a regulation.
- ‘(3) The approved form must include provision for identifying information about the person.
- ‘(4) The person may withdraw the application at any time before it is decided.
- ‘(5) On receiving the application, the chief executive may ask the person, orally or in writing, for further information that the chief executive reasonably needs to establish the person’s identity.
- ‘(6) The person is taken to have withdrawn the application if—
 - (a) the chief executive gives the person a notice—
 - (i) asking the person to provide, within a reasonable stated time, stated information that the chief executive reasonably needs to establish the person’s identity; and

- (ii) warning the person that, if the person does not comply with the request, the person's application will be taken to have been withdrawn; and
 - (b) the person does not comply with the request within the stated time; and
 - (c) the chief executive can not establish with certainty the person's identity; and
 - (d) the chief executive gives the person a notice stating that the person is taken to have withdrawn the application.
- '(7) In this section—
- visa holder* means a person who holds a visa issued under the *Migration Act 1958* (Cwlth).

'26AE Decision on application

- '(1) The chief executive must decide the application, as soon as practicable after receiving it, by issuing—
- (a) a mature age student notice declaring the person to be a suitable person to be a mature age student of the institution (a *positive notice*); or
 - (b) a mature age student notice declaring the person to be an unsuitable person to be a mature age student of the institution (a *negative notice*).
- '(2) If the chief executive is not aware of any convictions or charges of the person for any offence, the chief executive must issue a positive notice.
- '(3) Subsection (4) applies if the chief executive is aware of—
- (a) a conviction of the person for an offence, other than a serious offence; or
 - (b) a charge of the person for an offence.
- '(4) The chief executive must issue a positive notice unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the chief executive to issue a positive notice.
- '(5) If the chief executive is aware of a conviction of the person for a serious offence, the chief executive must issue a negative

notice unless the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of children for the chief executive to issue a positive notice.

- ‘(6) If the chief executive is aware of a conviction or charge of the person for an offence, the chief executive must decide the application having regard to the following matters relating to the commission, or alleged commission, of the offence by the person—
- (a) whether it is a conviction or a charge;
 - (b) whether the offence is a serious offence;
 - (c) when the offence was committed or is alleged to have been committed;
 - (d) the nature of the offence and its relevance to the person being a mature age student of the institution;
 - (e) anything else the chief executive reasonably considers to be relevant to the assessment of the person.
- ‘(7) On deciding the application, the chief executive must—
- (a) issue the mature age student notice to the person; and
 - (b) give a copy of the notice to the institution’s principal.
- ‘(8) A negative notice issued to the person must be accompanied by a notice stating—
- (a) the reasons for the chief executive’s decision on the application; and
 - (b) that, within 40 days after receiving the notices, the person may apply to the chief executive to have the decision reviewed; and
 - (c) how the person may apply for the review.

‘26AF Chief executive to invite submissions from person about criminal history

- ‘(1) If the chief executive proposes to decide the application by issuing a negative notice, the chief executive must give the person a notice—

- (a) stating information about the person's criminal history of which the chief executive is aware; and
 - (b) inviting the person to give the chief executive, within a stated time, a submission (oral or written) about the information or about the person's suitability to be a mature age student of the institution.
- '(2) The stated time must be reasonable and, in any case, at least 7 days after the chief executive gives the notice to the person.
- '(3) Before deciding the application, the chief executive must consider any submission received from the person within the stated time.

'26AG Currency of positive notice

'A positive notice remains current for a period of 6 months after it is issued.

'Subdivision 4 Provisions about criminal history

'26AH Criminal history check etc.

- '(1) This section applies to a person if—
- (a) the chief executive has received an application for a mature age student notice about the person and the application has not been withdrawn; or
 - (b) the person has been issued with a positive notice for a particular mature age State educational institution, but has not become a mature age student of the institution; or
 - (c) the person—
 - (i) is a mature age student of a mature age State educational institution; and
 - (ii) was 18 years or more on the day of enrolment with the institution.

- ‘(2) The chief executive may ask the commissioner of the police service to give the chief executive a written report about the criminal history of the person.
- ‘(3) Also, the chief executive may ask the commissioner of the police service to give the chief executive a brief description of the circumstances of a conviction or charge, for an offence, mentioned in the person’s criminal history.
- ‘(4) Subject to subsection (5), the commissioner of the police service must comply with a request under subsection (2) or (3).
- ‘(5) The duty imposed on the commissioner of the police service to comply with the request applies only to information in the possession of the commissioner or to which the commissioner has access.

‘26AI Notice of change in criminal history

- ‘(1) If the commissioner of the police service reasonably suspects that a person who is charged with an offence is a person mentioned in section 26AH(1)(a) to (c), the commissioner may notify the chief executive about the change in the person’s criminal history.
- ‘(2) The notice must state the following—
 - (a) the person’s name and address;
 - (b) the person’s date of birth;
 - (c) the offence the person was charged with;
 - (d) particulars of the offence;
 - (e) the date of the charge.
- ‘(3) The chief executive may confirm the suspicions of the commissioner of the police service under subsection (1).
- ‘(4) If the person is a person to whom section 26AJ(2) applies, the chief executive, on receiving notice under subsection (1), may write to the person to inform the person of the person’s obligations under section 26AJ(2).
- ‘(5) For this section, the chief executive may give the commissioner of the police service—

- (a) information as to whether the person is a person mentioned in section 26AH(1)(a) to (c); and
 - (b) if the person is a person mentioned in section 26AH(1)(a) to (c), the name of the person and other identifying information about the person, including the person's date and place of birth and any alias.
- ‘(6) Information given to the commissioner of the police service under subsection (5) must be used only for this division.

‘26AJ Disclosure of change in criminal history

- ‘(1) Subsection (2) applies to a person who—
- (a) is a mature age student of a mature age State educational institution; and
 - (b) was 18 years or more on the day of enrolment with the institution.
- ‘(2) If there is a change in the person's criminal history, the person must immediately disclose to the chief executive the details of the change.
- Maximum penalty—20 penalty units.
- ‘(3) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

‘26AK Requirements for disclosure

- ‘(1) To comply with section 26AJ(2), a person must give the chief executive a disclosure in the approved form.
- ‘(2) The information disclosed by a person about a conviction or charge for an offence in the person's criminal history must include—
- (a) the existence of the conviction or charge; and
 - (b) when the offence was committed or alleged to have been committed; and
 - (c) enough details to identify the offence or alleged offence; and

- (d) for a conviction, whether or not a conviction was recorded and the sentence imposed on the person.

‘26AL Use of criminal history information

‘The chief executive must not use information obtained under this division about a person’s criminal history other than for this division or part 4, division 3A.²

‘26AM Confidentiality of information about criminal history

- ‘(1) This section applies to a person who—
- (a) is, or has been, an officer of the department; and
 - (b) in that capacity acquired information, or gained access to a document, under this division about someone else’s criminal history.
- ‘(2) The person must not disclose the information, or give access to the document, to anyone else.
- Maximum penalty—20 penalty units.
- ‘(3) Subsection (2) does not apply to the disclosure of information, or giving of access to a document, about a person—
- (a) to the chief executive for the purpose of the chief executive deciding whether to—
 - (i) issue a mature age student notice to the person; or
 - (ii) cancel a positive notice issued to the person; or
 - (iii) exclude the person from a State educational institution under part 4, division 3A; or
 - (b) with the person’s consent; or
 - (c) if the disclosure or giving of access is permitted or required under an Act or other law.

² Part 4 (Good order and management of State educational institutions), division 3A (Exclusion of students by chief executive)

‘Subdivision 5 Cancellation and replacement of positive notices

‘26AN Wrong, incomplete or new information

- ‘(1) This section applies to a person who has been issued with a positive notice for a mature age State educational institution, but has not become a mature age student of the institution.
- ‘(2) The chief executive may cancel the positive notice (the *first notice*) and substitute a negative notice (the *new notice*) if the chief executive is satisfied—
 - (a) the decision on the application for the first notice was based on wrong or incomplete information; and
 - (b) based on the correct or complete information, the chief executive should issue the new notice.
- ‘(3) Also, the chief executive may cancel a positive notice about the person and substitute a negative notice (also the *new notice*), having regard to information about the person received by the chief executive under section 26AI(1).³
- ‘(4) However, if the chief executive proposes to substitute a negative notice, the chief executive must first comply with section 26AF,⁴ as if—
 - (a) the reference in section 26AF(1) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and
 - (b) the reference in section 26AF(3) to deciding the application were a reference to substituting a negative notice for a positive notice.
- ‘(5) The chief executive must—
 - (a) issue the new notice to the person; and

3 Section 26AI (Notice of change in criminal history)

4 Section 26AF (Chief executive to invite submissions from person about criminal history)

- (b) give a copy of the new notice to the institution's principal.
- ‘(6) A new notice issued to the person under subsection (5) must be accompanied by a notice stating—
- (a) the reasons for the chief executive's decision to issue the new notice; and
 - (b) that, within 40 days after receiving the notices, the person may apply to the chief executive to have the decision reviewed; and
 - (c) how the person may apply for the review.

‘Subdivision 6 Review of decisions

‘26AO Definition for sdiv 6

‘In this subdivision—

original decision see section 26AP.

‘26AP Who may apply for review

‘A person may apply to the chief executive for a review of a decision (the *original decision*) of the chief executive to issue the person with a negative notice for a mature age State educational institution.

‘26AQ Applying for review

- ‘(1) The application must be made within 40 days after the person is given notice of the original decision.
- ‘(2) The chief executive may, at any time, extend the time for applying for the review.
- ‘(3) The application for review must be in writing and state fully the grounds of the application.

‘26AR Review decision

- ‘(1) The chief executive must conduct the review on—

- (a) the material that led to the original decision; and
 - (b) the reasons for the original decision; and
 - (c) any other relevant material the chief executive allows (the *allowed material*).
- ‘(2) For the review, the chief executive must give the applicant a reasonable opportunity to make written representations to the chief executive.
- ‘(3) Without limiting subsection (2), if the allowed material affects the chief executive’s decision, the chief executive must give the applicant a reasonable opportunity to make written representations to the chief executive on the material.
- ‘(4) After reviewing the original decision, the chief executive must make a further decision (the *review decision*) to—
- (a) confirm the original decision; or
 - (b) cancel the negative notice and substitute a positive notice.
- ‘(5) The chief executive must, as soon as practicable, give the applicant notice (the *review notice*) of the review decision.
- ‘(6) If the review decision is to confirm the original decision, the review notice must also state the reasons for the review decision.
- ‘(7) If the review decision is to cancel the negative notice and substitute a positive notice, the chief executive must—
- (a) issue the positive notice to the person; and
 - (b) give a copy of the positive notice to the institution’s principal.

‘Subdivision 7 **General provisions**

‘26AS **False or misleading information or documents**

- ‘(1) A person must not under this division give information to the chief executive the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

- ‘(2) A person must not under this division give the chief executive a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

- ‘(3) Subsection (2) does not apply to a person if the person, when giving the document—
- (a) tells the chief executive, to the best of the person’s ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

‘26AT Time limit on new application for mature age student notice

- ‘(1) This section applies if—
- (a) a person makes an application for a mature age student notice (the *first application*) in relation to a particular mature age State educational institution; and
 - (b) the chief executive decides the application by issuing the person with a negative notice.
- ‘(2) The person may not make another application for a mature age student notice in relation to the institution within 1 year after the person is notified of the decision on the first application.’.

23 Insertion of new s 36BA

After section 36B—

insert—

‘36BA Grounds for exclusion of mature age student by chief executive

- ‘(1) This section applies to a person who—
- (a) is a mature age student of a mature age State educational institution; and
 - (b) was 18 years or more on the day of enrolment with the institution.

- ‘(2) Despite section 33 and without limiting section 36B(a), each of the following is a ground for excluding the student from the institution under this division—
- (a) the student has been convicted of a serious offence;
 - (b) the student has been convicted of an offence, other than a serious offence and the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the student to continue to be enrolled at the institution;
 - (c) the student has been charged with an offence and the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the student to continue to be enrolled at the institution.’.

24 Amendment of s 38A (Periodic review of decision to exclude under div 3A)

- (1) Section 38A heading, ‘**under div 3A**’—
omit, insert—
 ‘**on ground mentioned in s 36B**’.
- (2) Section 38A(1), ‘under division 3A’—
omit, insert—
 ‘on a ground mentioned in section 36B’.

25 Insertion of new pt 8A, div 1 hdg

Part 8A, before section 134A—

insert—

‘Division 1 Scholarships and allowances’.

26 Amendment of s 134A (Provision of scholarships and allowances)

Section 134A(2), ‘, in accordance with regulations made in that behalf’—

omit.

27 Insertion of new pt 8A, div 2 and div 3 hdg

After section 134A—

insert—

‘Division 2 Financial data**‘134AB Requirement to give financial data**

- ‘(1) The purpose of this section is to enable the Minister to obtain information in relation to a non-State school in receipt of subsidy for deciding the amount of an allowance payable under section 134A(2)(b) for students attending the school.
- ‘(2) The governing body of a non-State school in receipt of subsidy must on or before the day prescribed under a regulation give the Minister financial data, for the school, relating to the previous year of operation of the school.
- ‘(3) The data must be provided in the approved form.
- ‘(4) The source of the data must be the audited financial statements for the school’s governing body for the relevant year.
- ‘(5) Subsection (1) does not limit the matters the Minister may have regard to in deciding the amount of an allowance payable under section 134A(2)(b).
- ‘(6) Subsection (2) does not apply if the school has been in operation for less than the whole of the relevant year.

‘134AC Further information or documents relating to financial data

- ‘(1) This section applies to the governing body of a school that has given financial data for the school to the Minister under section 134AB.
- ‘(2) The Minister may by written notice given to the governing body require it to give the Minister, within a reasonable time of at least 28 days stated in the notice, further information or a document the Minister reasonably requires about the data.
- ‘(3) The governing body must comply with the requirement within the stated time.

‘134AD False or misleading information or documents

- ‘(1) A school’s governing body must not under section 134AB or 134AC give information to the Minister the governing body knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

- ‘(2) A school’s governing body must not under section 134AB or 134AC give the Minister a document containing information the governing body knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

- ‘(3) Subsection (2) does not apply to a school’s governing body if the governing body, when giving the document—

- (a) tells the Minister, to the best of the governing body’s ability, how it is false or misleading; and
- (b) if the governing body has, or can reasonably obtain, the correct information—gives the correct information.

‘134AE Confidentiality of financial data

- ‘(1) This section applies to the following persons—

- (a) a person who is, or was, the Minister;
- (b) another person who is, or was, involved in the administration of this division, including, for example, as a public service employee.

- ‘(2) The person must not disclose protected information to anyone else.

Maximum penalty—50 penalty units.

- ‘(3) Subsection (2) does not apply if—

- (a) the information is disclosed—
 - (i) in the performance of functions under this division; or
 - (ii) with the written consent of the governing body of the school to which the information relates; or
- (b) the information is otherwise publicly available; or

(c) the disclosure of the information is permitted or required under an Act or other law.

‘(4) In this section—

information includes a document.

protected information means information disclosed to, or obtained by, a person to whom this section applies under section 134AB or 134AC.

‘Division 3 Giving of allowance acquittal details’.

28 Insertion of new s 150A

After section 150—

insert—

‘150A Allegation of false or misleading information or document

‘In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, ‘false or misleading’.’.

29 Insertion of new pt 11, div 5

Before part 12—

insert—

‘Division 5 Transitional provisions for Education Legislation Amendment Act 2004

‘166F Requirement to give financial data—2002 and 2003

‘(1) This section applies to a non-State school in receipt of subsidy that was in operation for the whole of 2003.

- ‘(2) For section 134AB(1), the governing body of the school must on or before 14 February 2005 give the Minister financial data, for the school, relating to 2003.
- ‘(3) Also, for section 134AB(1), if the school was in operation for the whole of 2002, the governing body of the school must on or before 14 February 2005 give the Minister financial data, for the school, relating to 2002.
- ‘(4) The data must be provided in the approved form.
- ‘(5) The source of the data must be the audited financial statements for the school’s governing body for the relevant year.

‘166G Further information or documents relating to financial data

‘For this division, section 134AC applies to the governing body of a school as if a reference in that section to section 134AB were a reference to section 166F.

‘166H False or misleading information or documents

‘For this division, section 134AD applies to the governing body of a school as if—

- (a) a reference in that section to section 134AB were a reference to section 166F; and
- (b) a reference in that section to section 134AC were a reference to section 134AC, as applied by 166G.

‘166I Confidentiality of financial data

‘For this division, section 134AE applies to a person as if—

- (a) a reference in that section to section 134AB were a reference to section 166F; and
- (b) a reference in that section to section 134AC were a reference to section 134AC, as applied by 166G.

‘166J Further amendment, or repeal, of Education (General Provisions) Regulation 2000

‘The amendment of the *Education (General Provisions) Regulation 2000* by the *Education Legislation Amendment Act 2004* does not affect the power of the Governor in Council to further amend that regulation or to repeal it.’.

Part 4 Amendment of Education (Teacher Registration) Act 1988

30 Act amended in pt 4

This part amends the *Education (Teacher Registration) Act 1988*.

31 Amendment of s 14 (Casual vacancies on the board)

Section 14(5), from ‘term’—

omit, insert—

‘term of office of the person’s predecessor.’.

32 Insertion of new pt 2, div 4

Part 2—

insert—

‘Division 4 Extending terms of office of board members

‘29A Minister may extend terms of office

‘(1) The Minister may, by written notice given to the board, extend the terms of office of members of the board for not more than 2 years if the Minister is satisfied the extension is necessary for the board to perform its functions and exercise its powers appropriately, effectively and efficiently.

- ‘(2) If the Minister acts under subsection (1), the Minister must extend, by the same amount, the terms of office of all the members.
- ‘(3) This section—
- (a) does not allow the Minister to extend the terms of office of the members for more than 2 years by again acting under subsection (1); and
 - (b) applies despite section 9.⁵.

Part 5 **Amendment of Grammar Schools Act 1975**

33 Act amended in pt 5

This part amends the *Grammar Schools Act 1975*.

34 Amendment of s 11 (Casual vacancies)

Section 11(1B), ‘as prescribed’—
omit.

35 Amendment of s 15A (By-law making power)

- (1) Section 15A—
insert—
- ‘(1A) A by-law made under subsection (1)(a) may provide for an amount that is an electoral eligibility amount in relation to all elections or a specified election.’
- (2) Section 15A(3), ‘subsection (2)’—
omit, insert—
‘subsection (3)’.

5 Section 9 (Members’ term of appointment)

- (3) Section 15A(1A) to (4)—
renumber as section 15A(2) to (5).

36 Amendment of s 51 (Regulation-making power)

Section 51—

insert—

- ‘(4) A regulation made under subsection (3)(a)(i) or (ii) may provide for an amount that is an electoral eligibility amount in relation to all elections or a specified election.’

Part 6 Amendment of University of Queensland Act 1998

37 Act amended in pt 6

This part amends the *University of Queensland Act 1998*.

38 Insertion of new pt 8

After section 59—

insert—

‘Part 8 Transitional provision for continuing in office particular members holding office in 2004

‘60 Continuation of particular members

- ‘(1) This section applies to a person who was an appointed, elected or additional member immediately before the commencement of the section.

- ‘(2) Despite sections 18, 19(1) and 20,⁶ the person continues as an appointed, elected or additional member until—
- (a) 1 January 2006; or
 - (b) the person’s office sooner becomes vacant.’.

Part 7

Amendment of Education (General Provisions) Regulation 2000

39 Regulation amended

This part amends the *Education (General Provisions) Regulation 2000*.

40 Replacement of s 59 (Allowances to non-State schools in receipt of subsidy)

Section 59—

omit, insert—

‘59 Financial data—Act, s 134AB(2)

‘For section 134AB(2)⁷ of the Act, the day is 30 June of each year.’.

41 Insertion of new s 76B

Part 9, after section 76A—

insert—

‘76B Fee—Act, s 26AD(2)(c)

‘(1) For section 26AD(2)(c)⁸ of the Act, the fee is \$21.00.

6 Sections 18 (Appointed member’s term of office), 19 (Elected member’s term of office) and 20 (Additional member’s term of office)

7 Section 134AB (Requirement to give financial data) of the Act

8 Section 26AD (Application for mature age student notice) of the Act

- ‘(2) However, the chief executive may waive, entirely or partly, payment of the fee if the chief executive is satisfied payment of the fee would cause financial hardship to the person liable to pay it.’.

42 Amendment of sch 1 (Allowances)

- (1) Schedule 1, ‘sections 57, 59’—
omit, insert—
‘sections 57’.
- (2) Schedule 1, part 2—
omit.