



Queensland

# **Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005**

**Act No. 29 of 2005**





Queensland

# Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005

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Queensland

# **Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005**

## **Act No. 29 of 2005**

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

**[Assented to 31 May 2005]**

**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005*.

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

### **2 Act amended in pt 2**

This part amends the *Education (Accreditation of Non-State Schools) Act 2001*.

### **3 Amendment of s 3 (Objects of Act)**

- (1) Section 3(1)(d)—  
*omit.*
- (2) Section 3(1)(e)—  
*renumber* as section 3(1)(d).

### **4 Insertion of new s 7A**

After section 7—  
*insert—*



**‘7A Meaning of *prohibited arrangement***

‘A *prohibited arrangement* is a contract or arrangement entered into by a school’s governing body or proposed governing body and a for-profit entity not dealing with each other at arm’s length.’.

**5 Amendment of s 17 (If applicant seeks government funding for the school)**

Section 17(1)(b)—

*omit, insert—*

‘(b) the board is satisfied—

- (i) the school will not on its establishment be operated for profit; and
- (ii) the applicant is not a party to, and does not intend to enter into, a prohibited arrangement in relation to the operation of the school; and
- (iii) there is no direct or indirect connection between the applicant and a for-profit entity, and there will not on the school’s establishment be a direct or indirect connection between the applicant and a for-profit entity, that could reasonably be expected to compromise the independence of the applicant when making financial decisions.’.

**6 Insertion of new ss 17A and 17B**

Chapter 2, part 2, division 2, subdivision 1, after section 17—

*insert—*

**‘17A Further information or documents**

- ‘(1) Before deciding whether it is satisfied about a matter mentioned in section 17(1)(b), the board may by notice given to the applicant require the applicant to give the board, within a reasonable time of at least 30 days stated in the notice, further information or a document the board reasonably requires for it to make the decision.

- ‘(2) The notice may state that the information or document must be verified by a statutory declaration.
- ‘(3) The applicant is taken to no longer be seeking Government funding for the school if, within the stated time, the applicant does not comply with the requirement.

**‘17B Board not satisfied about particular matter**

‘If the board decides it is not satisfied about a matter mentioned in section 17(1)(b), it must as soon as practicable give the applicant an information notice about the decision.’.

**7 Amendment of s 39 (Suitability of governing body)**

- (1) Section 39(2) to (4)—  
*renumber* as section 39(3) to (5).
- (2) Section 39—  
*insert*—
- ‘(2) The board may have regard to the following—
  - (a) the governing body’s relationship with other entities;
  - (b) whether the governing body has appropriate guiding principles and procedures for identifying, declaring and dealing with any conflict of interest a director of the governing body may have relating to an aspect of the operation of the school;
  - (c) the conduct of the governing body, or its directors, relevant to the operation of the school.’.
- (3) Section 39(5), as renumbered, from ‘and (3)’—  
*omit, insert*—  
‘to (4) do not limit the matters to which the board may have regard in making a decision mentioned in subsection (1).’.
- (4) Section 39—  
*insert*—

- ‘(6) In this section—  
*conflict of interest* includes a potential conflict of interest.’.

## **8 Amendment of s 41 (Criminal history reports for investigation)**

Section 41(1), ‘section 39’—  
*omit, insert*—  
‘section 40’.

## **9 Insertion of new s 41A**

Chapter 2, part 2, division 4, after section 41—  
*insert*—

### **‘41A Report by assessor**

- ‘(1) Before making a decision mentioned in section 39(1)(b), the board may obtain a written report from an assessor about the matter.
- ‘(2) To prepare the report, the assessor may exercise the assessor’s powers under chapter 5, part 3.<sup>1</sup>’.

## **10 Amendment of s 52 (Decision of board)**

Section 52(2)—  
*omit, insert*—

- ‘(2) If the application is about a change in the school’s governing body, the board may decide to grant the application only if the board is satisfied—
- (a) the proposed governing body would be suitable to be the school’s governing body;<sup>2</sup> and
- (b) if the school’s governing body is eligible for Government funding for the school and the intention is

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1 Chapter 5 (Administration), part 3 (Authorised persons)

2 See section 39 (Suitability of governing body).

for the proposed governing body to also be eligible for Government funding for the school—

- (i) once the change is effected, the school will continue to be a school not operated for profit; and
- (ii) the proposed governing body is not a party to, and does not intend to enter into, a prohibited arrangement in relation to the operation of the school; and
- (iii) there is no direct or indirect connection between the proposed governing body and a for-profit entity that could reasonably be expected to compromise the independence of the proposed governing body when making financial decisions.’.

## **11 Insertion of new s 52A**

After section 52—

*insert—*

### **‘52A Deemed eligibility for Government funding**

- ‘(1) This section applies if—
  - (a) the school’s governing body is eligible for Government funding for the school; and
  - (b) the application is about a change in the school’s governing body; and
  - (c) the intention is for the proposed governing body to also be eligible for Government funding for the school; and
  - (d) the board decides to grant the application.
- ‘(2) Once the change is effected, the new governing body of the school is taken to be eligible for Government funding for the school.’.

## **12 Amendment of s 72 (Restrictions on application for Government funding for school)**

Section 72—

*insert—*

- ‘(3) Also, a school’s governing body may not apply for Government funding for the school if the governing body is an ineligible company.’.

**13 Replacement of s 73 (Application for Government funding for accredited school)**

Section 73—

*omit, insert—*

**‘Division 1 Application for accredited school**

**‘73 Application for Government funding for accredited school**

- ‘(1) The governing body of an accredited school may apply for Government funding for the school.
- ‘(2) The application must—
- (a) be in the approved form; and
  - (b) be made to the board; and
  - (c) be accompanied by the fee, if any, prescribed under a regulation.
- ‘(3) Subsection (4) applies if the board is satisfied—
- (a) the school is not being operated for profit; and
  - (b) the applicant is not a party to, and does not intend to enter into, a prohibited arrangement in relation to the operation of the school; and
  - (c) there is no direct or indirect connection between the applicant and a for-profit entity that could reasonably be expected to compromise the independence of the applicant when making financial decisions.
- ‘(4) The board must as soon as practicable—
- (a) give the committee—
    - (i) a copy of the application; and

- (ii) copies of the documents that accompanied the application; and
- (b) give the Minister a notice stating—
  - (i) that the board has received the application; and
  - (ii) the day the application was received.

### **‘73A Further information or documents**

- ‘(1) Before deciding whether it is satisfied about a matter mentioned in section 73(3), the board may by notice given to the applicant require the applicant to give the board, within a reasonable time of at least 30 days stated in the notice, further information or a document the board reasonably requires for it to make the decision.
- ‘(2) The notice may state that the information or document must be verified by a statutory declaration.
- ‘(3) The applicant is taken to have withdrawn the application if, within the stated time, the applicant does not comply with the requirement.

### **‘73B Report by assessor**

- ‘(1) Before deciding whether it is satisfied about a matter mentioned in section 73(3), the board may obtain a written report from an assessor about the matter.
- ‘(2) To prepare the report, the assessor may exercise the assessor’s powers under chapter 5, part 3.<sup>3</sup>

### **‘73C Board not satisfied about particular matter**

- ‘(1) If the board decides it is not satisfied about a matter mentioned in section 73(3), it must as soon as practicable give the applicant an information notice about the decision.
- ‘(2) The application lapses if—

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3 Chapter 5 (Administration), part 3 (Authorised persons)

- (a) the applicant does not apply for a review of the decision under chapter 4; or
- (b) the applicant applies for a review of the decision under chapter 4 and the Minister makes a further decision mentioned in section 103(6)(b).

## **‘Division 2                    Application for school not yet in operation’.**

### **14            Insertion of new ch 3, pt 5A**

Before chapter 3, part 6—

*insert—*

## **‘Part 5A                        Restriction on type of corporation**

### **‘91A    Restriction on type of corporation that may be eligible for Government funding for a school**

‘The governing body of a Government-funded school must not be an ineligible company.’.

### **15            Amendment of s 93 (Grounds for withdrawal)**

- (1) Section 93—

*insert—*

‘(d) the school’s governing body is a party to a prohibited arrangement in relation to the operation of the school;

(e) there is a direct or indirect connection between the school’s governing body and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions;

(f) the school’s governing body is an ineligible company.’.

- (2) Section 93—

*insert—*

- ‘(2) For subsection (1)(d) or (e), it is immaterial when the prohibited arrangement or connection came into existence.’.

## **16 Insertion of new s 98A**

Chapter 3, part 6, division 2, after section 98—

*insert—*

### **‘98A Report by assessor**

- ‘(1) Before issuing a show cause notice on a ground mentioned in section 93(a), (d) or (e),<sup>4</sup> the board may obtain a written report from an assessor about the matter.
- ‘(2) To prepare the report, the assessor may exercise the assessor’s powers under chapter 5, part 3.<sup>5</sup>’.

## **17 Amendment of s 106 (Functions of board)**

- (1) Section 106(e) and (f)—

*renumber* as section 106(i) and (j).

- (2) Section 106—

*insert—*

- ‘(e) to monitor whether the governing body of a provisionally accredited, or accredited, school is suitable to continue to be the school’s governing body;<sup>6</sup>
- (f) to monitor whether a Government-funded school is a school not being operated for profit;
- (g) to monitor whether the governing body of a Government-funded school is not a party to a prohibited arrangement in relation to the operation of the school;
- (h) to monitor whether there is no direct or indirect connection between the governing body of a

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4 Section 93 (Grounds for withdrawal)

5 Chapter 5 (Administration), part 3 (Authorised persons)

6 See section 39 (Suitability of governing body).



Government-funded school and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions;’.

## **18 Replacement of s 141 (Function of assessor)**

Section 141—

*omit, insert—*

### **‘141 Functions of assessor**

‘An assessor has the functions of finding out the following—

- (a) whether a provisionally accredited, or accredited, school is complying with the accreditation criteria;
- (b) whether a Government-funded school is not being operated for profit;
- (c) whether an accredited school, the governing body of which is applying for Government funding for the school, is not being operated for profit;
- (d) whether the governing body of a Government-funded school is a party to a prohibited arrangement in relation to the operation of the school;
- (e) whether there is a direct or indirect connection between the governing body of a Government-funded school and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions;
- (f) whether the governing body of an accredited school that is applying for Government funding for the school is a party to, or intends to enter into, a prohibited arrangement in relation to the operation of the school;
- (g) whether there is a direct or indirect connection between the governing body of an accredited school that is applying for Government funding for the school and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions;

- (h) whether the governing body of a provisionally accredited, or accredited, school is suitable to continue to be the school's governing body.<sup>7</sup>.

**19 Amendment of s 150 (Purpose of div 4)**

Section 150, '33, 38, 62 or 192'—

*omit, insert—*

'33, 38, 38C, 41A, 62, 73B, 98A or 192'.

**20 Replacement of ch 8, hdg (Transitional provisions for Education (Miscellaneous Amendments) Act 2002)**

Chapter 8, heading—

*omit, insert—*

**'Chapter 8 Other transitional provisions**

**'Part 1 Transitional provisions for Education (Miscellaneous Amendments) Act 2002'.**

**21 Amendment of s 218 (Definitions for ch 8)**

- (1) Section 218, heading, after '8'—

*insert—*

' , pt 1'.

- (2) Section 218, 'chapter'—

*omit, insert—*

'part'.

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<sup>7</sup> See section 39 (Suitability of governing body).

## **22 Insertion of new ch 8, pt 2**

After section 221—

*insert—*

## **‘Part 2 Transitional provisions for Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005**

### **‘222 Definition for ch 8, pt 2**

‘In this part—

*commencement* means commencement of this section.

### **‘223 Certain applications not to be dealt with under pre-amended Act**

‘(1) This section applies to—

- (a) an application for Government funding for a school made on or after 15 November 2004 and before the commencement; or
- (b) an application for the accreditation of a school made on or after 15 November 2004 and before the commencement; or
- (c) an application under section 49,<sup>8</sup> or section 49, as applied by section 59, about a change in a school’s governing body made on or after 15 November 2004 and before the commencement.

‘(2) The application must be dealt with under this Act and not under the pre-amended Act.

‘(3) Any right or expectation of a person to have an application considered or dealt with under the pre-amended Act is extinguished.

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8 Section 49 (Application to change attribute of provisional accreditation)

‘(4) In this section—

*pre-amended Act* means this Act as in force immediately before the commencement.

## ‘224 Ineligible company

‘(1) This section applies if—

- (a) a school’s governing body was, immediately before the commencement, eligible for Government funding for the school; and
- (b) the governing body was, immediately before the commencement, an ineligible company.

‘(2) While the governing body is the ineligible company and, except for section 91A,<sup>9</sup> it continues to be eligible for Government funding for the school, that section and section 93(f)<sup>10</sup> do not apply to the governing body in relation to the school.’.

## 23 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definition *commencement*—  
*omit.*

(2) Schedule 3—  
*insert—*

*‘commencement—*

- (a) for chapter 7—see section 178; or
- (b) for chapter 8, part 1—see section 218; or
- (c) for chapter 8, part 2—see section 222.

*company* see the Corporations Act, section 9.

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<sup>9</sup> Section 91A (Restriction on type of corporation that may be eligible for Government funding for a school)

<sup>10</sup> Section 93 (Grounds for withdrawal)

*company limited by guarantee* see the Corporations Act, section 9.

*for-profit entity* means an entity that is carried on for profit or gain to its individual members.

*ineligible company* means a company that is not a company limited by guarantee.

*post-amended Act*, for chapter 8, part 1, see section 218.

*pre-amended Act*, for chapter 8, part 1, see section 218.

*prohibited arrangement* see section 7A.’.

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

#### **24       Act amended in pt 3**

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

#### **25       Amendment of s 26AC (Obligation of mature age State educational institution’s principal)**

Section 26AC(2)(a), after ‘*institution*’—

*insert*—

‘and on the day of enrolment was a child’.

## **Part 4**                      **Amendment of Education (Queensland Studies Authority) Act 2002**

### **26**      **Act amended in pt 4**

This part amends the *Education (Queensland Studies Authority) Act 2002*.

### **27**      **Amendment of s 69 (Office staff)**

Section 69—

*insert—*

‘(2) This section applies subject to section 69A.’.

### **28**      **Insertion of new s 69A**

Before part 6—

*insert—*

#### **‘69A**      **Employment of casual staff to help authority to perform its functions under s 10, 11 or 12**

‘(1) The authority may employ staff on a casual basis, to help the authority to perform its functions under section 10, 11 or 12.<sup>11</sup>

‘(2) The staff are to be employed under this Act and not under the *Public Service Act 1996*.

‘(3) The staff are entitled to be paid the remuneration and allowances decided by the Governor in Council.

‘(4) The staff are not subject to any industrial instrument or any determination or rule of an industrial tribunal.

‘(5) The staff are subject to the direction and control of the director.

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11 Section 10 (Testing functions), 11 (Assessment functions) or 12 (Moderation function)

- ‘(6) To remove any doubt, it is declared that a person employed under this section may be simultaneously employed in another capacity under the *Public Service Act 1996*.
- ‘(7) In this section—  
*industrial instrument* see the *Industrial Relations Act 1999*, schedule 5.’.

**29 Amendment of pt 7, hdg (Repeal and transitional provisions)**

Part 7, heading, ‘Repeal and transitional’—  
*omit, insert—*  
‘Repeal, transitional and validating’.

**30 Insertion of new pt 7, div 3**

After section 89—  
*insert—*

**‘Division 3 Validation provision for Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005**

**‘90 Validation of employment of certain casual staff**

- ‘(1) This section applies if, before the commencement of this section, a person was employed by the authority on a casual basis, to help the authority to perform its functions under section 10, 11 or 12.<sup>12</sup>
- ‘(2) The employment is taken to be, and always to have been, valid and effective.’.

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12 Section 10 (Testing functions), 11 (Assessment functions) or 12 (Moderation function)

