

EDUCATION AND OTHER LEGISLATION AMENDMENT BILL 1999

EXPLANATORY NOTE

SHORT TITLE OF THE BILL

The short title of the Bill is the *Education and Other Legislation Amendment Bill 1999*.

POLICY OBJECTIVES OF THE BILL AND REASONS FOR THOSE OBJECTIVES

There are several primary policy objectives of the Bill.

The first primary policy objective of the Bill is to remedy several practical difficulties in the election of staff members and, in certain circumstances, the election of parent members to school councils under the *Education (General Provisions) Act 1989*.

The second primary policy objective of the Bill is to clarify and put beyond doubt several statutory arrangements dealing with the allocation of semesters of State education provided for in the *Education (General Provisions) Act 1989*.

The next primary policy objective of the Bill is to confine the obligation under the *Education (General Provisions) Act 1989* to give notices about students' remaining allocation of State education to only those students who are enrolled in semester 2 in a calendar year in a State educational institution, and, who by the end of the calendar year will have a remaining allocation of 4 or less semesters.

The final primary policy objective of the Bill is to clarify the day upon which decisions of student suspension, exclusion and cancellation take effect under the *Education (General Provisions) Act 1989*.

The Government considers that these four primary policy initiatives will facilitate, amongst other things:

- (a) enhancements in the operation of school councils, in particular the election of members to school councils; and
- (b) more socially just treatment of all students, both those with a disability and those without a disability, in their access to State education;
- (c) streamlining administrative processes associated with notifying students of their remaining allocation; and
- (d) greater clarity in relation to the implementation of behaviour management plans for schools.

In addition, the Bill makes concise, minor and non-controversial miscellaneous amendments to other legislation in the education portfolio and to the Public Sector Ethics Act 1994.

**THE WAY THESE POLICY OBJECTIVES WILL BE ACHIEVED
AND WHY THIS WAY OF ACHIEVING THE OBJECTIVES IS
REASONABLE AND APPROPRIATE**

The primary policy objective of the Bill is to be achieved mainly by:

- (a) changing the provisions of school council constitutions governing the election of elected staff members and elected parent members to school councils ; and
- (b) ensuring that allocations of State education are fair and equitable for all students, disabled and non-disabled; and
- (c) reducing the number of notices of remaining allocation required to be sent to students; and
- (d) creating greater certainty for students and principals about when decisions regarding student discipline take effect.

The Government believes that this way of achieving the policy objectives is reasonable and appropriate as implementation of the Bill, when passed, will:

- (a) assist significantly in improving the management of school councils;
- (b) improve social justice for all students in their access to State education;

- (c) improve the process of notification of the remaining allocation of state education by streamlining the administrative burden associated with notifying students about their remaining allocation of State education; and
- (d) improve the good order and management of State educational institutions.

ALTERNATIVE WAY OF ACHIEVING THE POLICY OBJECTIVES

There are no appropriate or reasonable alternative ways of achieving the policy objectives. Further, each of the policy objectives dealt with in the Bill is required to be effected by legislation.

ADMINISTRATIVE COSTS FOR GOVERNMENT IMPLEMENTATION OF THE BILL

While there will be on-going savings in administrative costs to Government in the implementation of particular initiatives provided for in the Bill, there will be some administrative costs associated with effecting several of the proposals.

By way of illustration, it is expected that savings will accrue to Government in relation to the implementation of the proposal to confine the giving of annual notices about remaining allocation of semesters to a limited number of students rather than all students and in relation to the repeal of the *Education (Tertiary Entrance Procedures Authority) Regulation 1991*. There will also be savings following implementation of the proposal that will no longer require elections in situations where there are no more persons nominated as candidates than are required to be elected. In relation to the remedy of certain practical difficulties in school council elections it is estimated that if there are any overall additional costs to the Department of Education, they will be insignificant and able to be met by existing budget allocations.

On balance, it is estimated that there will be no additional costs to the Department of Education that cannot be met from within the existing budget.

It is estimated at this time that there will be no additional costs to Government.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

Care has been taken in the drafting of the Bill to ensure that no aspects of the Bill infringe upon fundamental legislative principles.

CONSULTATION

Extensive consultation has taken place with key stakeholders including employee organisations in the preparation of the Bill.

PURPOSE AND INTENDED OPERATION OF EACH CLAUSE OF THE BILL

PART 1—PRELIMINARY

Clause 1 sets out the short title of the proposed Act.

Clause 2 provides for the commencement of the Act.

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

Clause 3 specifies that this part of the Bill is to amend the *Education (Capital Assistance) Act 1993*.

Clause 4 amends section 3 (Definitions) of the Act. The clause omits ‘affiliated’ from the definition of eligible non-State school and inserts ‘listed’.

Clause 5 amends section 9 (Functions) of the Act. The clause omits all references in the section to ‘affiliated’ and inserts ‘listed’.

Clause 6 amends section 10 (Affiliation with CAA) of the Act. The clause omits the references in the section heading and the section to ‘affiliation’ and inserts ‘listing’. The clause omits references in the section to ‘affiliated’ and inserts ‘listed’.

Clause 7 amends section 11 (Change of affiliation) of the Act. The clause omits the references in the section to ‘affiliation’ and inserts ‘listing’. The clause omits the reference in the section to ‘affiliated’ and inserts ‘listed’.

Clause 8 amends section 15 (Application) of the Act. The clause omits the reference in the section to ‘affiliated’ and inserts ‘listed’.

Clause 9 amends section 18 (Making of application) of the Act. The clause omits the reference in the section to ‘affiliated’ and inserts ‘listed’.

Clause 10 amends section 21 (CAA to have regard to available funds) of the Act. The clause omits the reference in the section to ‘affiliated’ and inserts ‘listed’.

Clause 11 amends section 22 (CAA may provide capital assistance) of the Act. The clause omits the reference in the section to ‘affiliated’ and inserts ‘listed’.

Clause 12 amends section 23 (Return by eligible non-State schools) of the Act. The clause omits the reference in the section to ‘affiliated’ and inserts ‘listed’.

Clause 13 replaces part 7 heading with a new heading, “Part 7 – Validation of certain payments and transitional provisions. The clause inserts a new division 1, “Division 1 – Validation of certain payments for the *Education (Capital Assistance) Act 1993*”.

Clause 14 inserts a new division 2 into Part 7 of the Act, “*Division 2 – Transitional provisions for the Education and Other Legislation Amendment Act 1999*”. The clause inserts a new section 28 (References to affiliation with a CAA) which provides a non-State school affiliated with a CAA immediately before the commencement of this clause is taken to be listed with the CAA. The clause provides that if a non-State school applied to the Minister to change its affiliation from one CAA to another and the Minister had not decided the application before the commencement of this clause, 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*

Clause 15 specifies that this part of the Bill is to amend the *Education (General Provisions) Act 1989*.

Clause 16 omits the definition of “continuing student” from section 2(1) of the Act as it is potentially ambiguous and is no longer referred to in the main body of the Act.

The clause replaces references to ‘section 54(11)’ in section 2(1) definitions of “appointed member”, “coopted student member”, “elected parent member”, “elected staff member” and “elected student member” and inserts ‘section 54(13)’.

Clause 17 amends the heading of section 18 (Establishment of school support centres, student hostels and residential colleges and other State educational institutions) of the Act. The clause omits the references to ‘school support centres, student hostels and residential colleges’ to reflect the current wording of the section thus rectifying an oversight in earlier amendments to the Act.

Clause 18 amends section 26 (Religious Instruction in school hours) of the Act. The clause omits the words ‘of religion or accredited representative of a religious denomination’ and inserts ‘of a religious denomination or society, or an accredited representative of a religious denomination or society’ to rectify an anomaly in the section.

The clause omits ‘religious society or denomination’ from section 26(1) and inserts ‘denomination or society’.

Clause 19 amends section 32 (Dealing with submissions against suspension). The clause omits paragraph (a) of subsection (2) and inserts a new paragraph (a).

Current paragraph (a) of subsection (2) provides that after the principal’s supervisor has decided to affirm, vary or set aside the principal’s decision to suspend a student, the supervisor must promptly tell the student and the principal about the decision.

New paragraph (a) of subsection 32(2) provides that after the principal’s supervisor has decided to affirm, vary or set aside the principal’s decision to suspend a student, the supervisor must, as soon as possible, tell the student

and the principal about the supervisor's decision. Further, if the supervisor's decision allows the student to return to school earlier than if the principal's decision had been affirmed, the supervisor must, as soon as possible, tell the student and the principal about when the student may return to school.

Clause 20 amends section 36 (Exclusion of student). The clause omits paragraph (a) of subsection (5) and inserts a new paragraph (a).

Current paragraph (a) of subsection (5) provides that if the principal's supervisor decides not to exclude the student, the supervisor must promptly tell the student about the decision, and that the suspension has ended.

New paragraph (a) of subsection 36(5) provides that if the principal's supervisor decides not to exclude the student, the supervisor must, as soon as possible, tell the student and the principal about the decision, and that the suspension has ended.

Clause 21 amends section 38 (Dealing with submissions against exclusions). The clause omits paragraph (a) of subsection (2) and inserts a new paragraph (a).

Current paragraph (a) of subsection (2) provides that after the chief executive has decided to affirm, vary or set aside the supervisor's decision to exclude a student, the chief executive must promptly tell the excluded person about the decision.

New paragraph (a) of subsection 38(2) provides that after the chief executive has decided to affirm, vary or set aside the supervisor's decision, the chief executive must, as soon as possible, tell the excluded person and the principal about the chief executive's decision. Further, if the chief executive's decision allows the student to return to school earlier than if the supervisor's decision had been affirmed, the chief executive must, as soon as possible, tell the excluded person and the principal about when the excluded person may return to school.

Clause 22 amends section 42 (Dealing with submissions against cancellations of enrolment). The clause omits paragraph (a) of subsection (2) and inserts a new paragraph (a).

Current paragraph (a) of subsection (2) provides that after the principal's supervisor has decided to affirm, vary or set aside the principal's decision, the supervisor must promptly tell the person under the cancellation about the decision.

New paragraph (a) of subsection 42(2) provides that after the principal's supervisor has decided to affirm, vary or set aside the principal's decision, the supervisor must, as soon as possible, tell the person under the cancellation and the principal about the supervisor's decision. Further, if the supervisor's decision allows the student to return to school earlier than if the principal's decision had been affirmed, the supervisor must, as soon as possible, tell the person under the cancellation and the principal about when the student may return to school.

Clause 23 amends section 46 (Time notices take effect) of the Act. The clause replaces section 46 and inserts new subsections 46(1) and (2).

Current section 46 provides that a notice given to a student under this part takes effect on the day the notice is given to the student or a later day stated in the notice.

New subsection (1) of section 46 provides that notice of a decision under Part 4 of the Act must be given to a student in accordance with the section under which the decision is made.

New subsection (2) of section 46 provides that if a student must be told about the decision, and the decision allows the student to return to school earlier than if the decision was to affirm another decision, the decision takes effect when the student is told about the decision. Otherwise, a decision takes effect on the day the student is given written notice of the decision or a later day stated in the notice.

Clause 24 amends section 54 (Membership of school councils) of the Act. The clause omits paragraphs (b) and (c) of subsection (6) and inserts a new paragraph (b). Currently, paragraph (a) of subsection (6) provides that where the constitution of the school's parents and citizens association provides for the election of elected parent members a school council, the elected parent members of a school council are to be elected under the association's constitution. Current paragraph (b) provides that where the association's constitution does not provide for the election of parent members to the school's council then the parent members of the school council are to be elected by a secret ballot of the association's members attending a meeting called by the association's president. Paragraph (c) currently provides that if there is no association formed for the school the elected parent members of a school's council are to be elected under the council's constitution.

New paragraph (b) of subsection 54(6) provides that in circumstances other than those described in paragraph (a) the elected parent members of a school's council must be elected as specified in the council's constitution.

The clause omits subsection (7) of section 54 and inserts a new subsection (7). Current subsection (7) provides that the elected staff members of a school's council must be elected by a secret ballot of all persons who are employed by the department and assigned to the school, and attend a meeting called, under the council's constitution, for electing the staff members.

New subsection (7) provides that the elected staff members of a school's council are to be elected as specified in the school council's constitution by persons employed by a department and assigned to the school, and other persons employed at the school.

The clause renumbers section 54(11) as section 54(13).

The clause inserts a new subsection (11) of section 54 which provides that subsection (12) applies if, at the time of closure of nominations for an elected member under the parents and citizens association constitution or the school council constitution, the number of nominations for elected members is not more than the number required to be elected.

The clause inserts a new subsection (12) of section 54 which provides that the person who, under the parents and citizens association constitution or the school council 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.

Clause 25 amends s122 (Calculation of allocation where student begins schooling at State educational institution). The clause replaces paragraph (d) of subsection (2) and inserts a new paragraph (e). Current paragraph (d) of subsection (2) refers to a continuing student which is potentially ambiguous.

New paragraph (d) of subsection (2) provides that 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 in paragraph (e), does not have the basic allocation.

New paragraph (e) provides that a student enrolled in a year level mentioned in column 1 of section 123(3) at the end of semester 2 in 1997 does not have the basic allocation.

Clause 26 amends section 123 (Calculation of allocation if s122(1) does not apply). The clause replaces the reference to ‘or (c)’ in subsection (2) and inserts ‘(c) or (d)’.

Current subsection (2) of section 123 provides that if a student is mentioned in paragraphs (b) or (c) of subsection 122(2) and the student applies to enrol in a State educational institution, the principal must decide the student’s remaining allocation.

The new subsection 123(2) provides that if a student is a student mentioned in paragraph (b), (c) or (d) of subsection 122(2) and the student applies to enrol in a State educational institution, the principal must decide the student’s remaining allocation.

The clause replaces subsection (4) of section 123. Current subsection (4) of section 123 provides that if the principal decides that a student’s remaining allocation is other than as set out in subsection (3), the principal must send the student written notice about the principal’s decision by the end of semester 1 in 1998.

New subsection (4) of section 123 provides that if the principal of a State educational institution decides that the application of subsection 123(3) to a student mentioned in paragraph (e) of subsection 122(2) is inappropriate, the principal must decide the student’s remaining allocation.

The clause inserts a new subsection (4A) which provides that the principal’s decision that it is inappropriate for subsection 123(3) to apply to the student is a decision about a student’s remaining allocation for section 124(2).

Clause 27 amends section 125 (Annual notice about remaining allocation). The clause replaces the section heading with ‘Notice to certain students about allocation’.

The clause provides that the section applies only to students who are enrolled in semester 2 in a calendar year in a State educational institution and whose remaining allocation, at the end of the calendar year, will be 4 or less than 4, semesters.

Clause 28 inserts a new section 125A (Other notices about allocation) and a new section 125B (Copy of notices under this part to be given to parent etc.).

The new section 125A provides that the section applies to a student who is enrolled in a State educational institution for the first time, or a student who is repeating, in a State educational institution, a year for which the student has already been enrolled in a State educational institution.

The clause provides that the principal must give written information about the allocation of State education under this part to a student, and if the student is under 18 years, to the student's parent, or to the adult who has care and control of the student.

The clause provides that for a student who is repeating, in a State educational institution, a year for which the student has already been enrolled in a State educational institution the notice must be given before the student begins to repeat the year.

New section 125B provides that if a person is required under Part 8 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 the parent, if the parent has care and control of the student, or if another adult has care and control of the student, the adult. The clause provides that 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 who has care and control of the student and the current residential address of the person who has care and control of the student.

Clause 29 inserts a new division heading into Part 11 of the Act, "*Division 1 – Transitional provisions before the Education and Other Legislation Amendment Act 1999*"

Clause 30 removes current section 158 (Application of part to continuing students) as it is now redundant. The clause inserts a new Division, "*Division 2—Transitional provision for Education and Other Legislation Amendment Act 1999*".

The clause replaces section 158 with a new section 158 (Transitional provision about existing elected members of school councils) which provides that subject to sections 56, 57 and 58, an existing elected member continues to be a member until the expiry of the term for which the elected member was elected.

The clause defines "existing elected member" as a person who, immediately before the commencement of this section, was an elected parent member or an elected staff member.

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

Clause 31 specifies that this part of the Bill is to amend the *Education (Overseas Students) Act 1996*.

Clause 32 replaces section 33 (Delegation) of the Act with a new section 33 which provides that the chief executive may delegate the chief executive's powers under this Act to an appropriately qualified person or a body whose members are appropriately qualified, including a committee established by the chief executive under part 4, division 5 of the Act. The clause provides that "appropriately qualified" means having qualifications, experience or standing appropriate to exercise the power.

Clause 33 renumbers part 4, division 5 of the Act as division 6.

Clause 34 inserts a new division in Part 4 of the Act "*Division 5 – Committees*".

The clause inserts a new section 33A (Chief executive may establish committees) which provides that the chief executive may establish an advisory or other committee and decide the functions and terms of reference of the committee. The clause provides that the committee must report to the chief executive as the chief executive requires.

The clause inserts a new section 33B (Committee members) which provides that the chief executive may appoint to a committee the members the chief executive considers appropriate. The clause provides that the chief executive must appoint appropriately qualified persons to be the members of a committee.

The clause inserts a new section 33C (Committee chairperson) which provides that the chief executive is to appoint a member of a committee to be the chairperson of the committee.

The clause inserts a new section 33D (Disclosure of interest) which provides that the section applies to a member of a committee (the 'interested member') if the interested member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the committee and the interest could conflict with the proper performance of the person's duties about the consideration of the issue. The clause provides that 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. The clause provides that unless the committee otherwise directs, the interested member must not be present or take part in a decision of the committee about the issue. The clause provides that the interested member must not be present when the committee is considering whether to give a direction. The clause provides that if there is another member who must disclose an interest in the issue, the other person must not be present when the committee is considering whether to give a direction or take part in the decision about giving the direction. Where the member's absence affects the quorum, the provision states that the remaining members present are a quorum for considering or deciding the issue at the meeting. The clause also prescribes how such disclosures are to be recorded.

The clause inserts a new section 33E (Fees and expenses). The clause provides that a member of a committee is not entitled to receive a fee or allowance for attending a committee meeting or for conducting business for the committee, however, the chief executive may approve payment for reasonable expenses incurred in attending a meeting of the committee.

The clause inserts a new section 33F (Conduct of business) which provides that subject to this division, a committee may conduct its business in the way it considers appropriate.

The clause inserts a new section 33G (Times and place of meetings). The clause provides that a committee may meet at the times and places the committee decides and may hold a meeting, or allow a member to take part in a meeting, by telephone, video link or other form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting. The clause provides that a member who takes part in such a meeting is taken to be present at the meeting.

The clause inserts a new section 33H (Presiding at meetings) which provides that the chairperson of a committee must preside at all meetings of the committee, or if the chairperson is not present, a committee member chosen by the members present at the meeting must preside.

The clause inserts a new section 33I (Quorum). This clause provides that a quorum of a committee is constituted if the number of members at a meeting is two thirds of the members, or if two-thirds of the members is not a whole number, the next highest whole number.

The clause inserts a new section 33J (Voting). This clause provides that 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. The clause provides that a person presiding at the meeting has a deliberative vote, and, if the votes on a question are equal, also has a casting vote. The clause provides that a member who abstains from voting is taken to have voted for the negative.

The clause inserts a new section 33K (No attendance by proxy). The clause provides that a committee member may not attend a meeting by proxy.

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

Clause 35 specifies that this part of the Bill is to amend the *Education (School Curriculum P-10) Act 1996*.

Clause 36 amends section 27 (Attendance by appointed member's proxy or chief executive's nominee) of the Act. The clause replaces the section heading with 'Attendance by proxy'. The clause omits section 27(4) and renumbers current subsection (3) as subsection (4). The clause inserts a new subsection (3). New subsection (3) provides that the chief executive's nominee may attend a council meeting by proxy.

Clause 37 inserts a new division 6A to Part 2 of the Act, '*Division 6A – Chief executive's nominee*'.

The clause inserts a new section 32A (Chief executive may appoint nominee) which provides that the chief executive may appoint, in writing, a nominee to attend council meetings or executive committee meetings for the chief executive when the chief executive can not attend. The clause provides that the chief executive must, if practicable, appoint a person who has previously attended council meetings or executive committee meetings as the chief executive's nominee. The clause provides that the chief executive's nominee must be an appropriately qualified public service officer employed in the department. The clause provides that the chief executive must give the council's chairperson written notice of the appointment. The clause provides that if the instrument of appointment is amended or repealed, the chief executive must give the council's chairperson written notice of the amendment or repeal.

Clause 38 amends schedule 3 (Dictionary) of the Act by inserting the definition of “chief executive’s nominee”.

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

Clause 39 specifies that this part of the Bill is to amend the *Education (Tertiary Entrance Procedures Authority) Act 1990*.

Clause 40 amends section 19 (Quorum and business of the authority). The clause replaces subsection (1) of section 19 with a new subsection (1) which provides that a quorum of the authority is constituted if the number of members at a meeting is one-half of the members, or if one-half of the members is not a whole number, the next highest whole number.

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

Clause 41 specifies that this part of the Bill is to amend the *James Cook University Act 1997*.

Clause 42 amends section 5 (Functions of university) of the Act. The clause provides that the university is to have the following additional functions: to disseminate knowledge and promote scholarship; and to provide facilities and resources for the wellbeing of the university’s staff, students and other persons undertaking courses at the university.

Clause 43 amends section 57 (Making of university statutes) of the Act. The clause amends the section to provide that, as well as other matters, the council may make university statutes about the admission and enrolment of students; entitlement to degrees and other awards; and the disciplining of students and other persons taking courses at the university.

Clause 44 amends Schedule 2 (Dictionary), definition of “academic staff” of the university to mean the university’s teaching and research staff other than research assistants and staff of the university whose instrument of appointment by the council states they are members of the academic staff.

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

Clause 45 specifies that this part of the Bill is to amend the *Public Sector Ethics Act 1994*.

Clause 46 omits the definition of ‘State educational institution’ from section 2 of the Act.