

EDUCATION (QUEENSLAND STUDIES AUTHORITY) BILL 2001

EXPLANATORY NOTES

Short Title of the Bill

The short title of the Bill is the *Education (Queensland Studies Authority) Bill 2001*.

Policy Objectives of the Bill

The primary policy objective of the Bill is to create a new legislative regime:

- To contribute to high levels of completion of year 12 or its equivalent to improve the social cohesion and the social and human capital of Queensland;
- To deal with syllabus development, assessment, certification and tertiary entrance procedures and articulation to post school options across diverse preschool to year 12 education settings and contexts;
- To support the development of a coherent set of principles which inform the conditions of learning across the span of schooling and build the foundations for life long learning;
- To provide statutory arrangements that will operate to enable schooling sectors and individual schools to achieve their common and specific objectives to meet the needs of their clients; and
- To support effective transitions between stages of schooling, formal and informal learning environments, and to post school destinations and active citizenship.

In addition the Bill contains amendments to the *Education (General Provisions) Act 1989*. These amendments make provision for the Director-General of Education to direct the level of implementation in State schools

of syllabuses, guidelines and tests that have been approved or accredited by the statutory body.

Consequential amendments are also being made to the *Public Service Act 1996* so as to deem the Office of the Queensland Studies Authority a public service office.

Reason that the proposed legislation is necessary

Previous arrangements in Queensland

Previous to this Act, the legislative arrangements in place for curriculum development, certification, assessment, testing and tertiary entrance were contained in the *Education (School Curriculum P-10) Act 1996*, *Education (Senior Secondary School Studies) Act 1988*, *Education (Tertiary Entrance Procedures Authority) Act 1990* and certain sections of the *Education (General Provisions) Act 1989*. Under this legislative scheme, three separate statutory bodies, the Queensland School Curriculum Council, the Board of Senior Secondary Schools Studies and the Tertiary Entrance Procedures Authority, and the Department of Education carry out functions relating to development of curriculum, testing and examinations, junior and senior certification, tertiary entrance statements and tertiary entrance procedures.

Under the regime, the Queensland School Curriculum Council and the Board of Senior Secondary School studies must develop a syllabus development strategic plan for the Minister's approval. Syllabuses developed pursuant to that plan become "approved syllabuses" that must be implemented by the chief executive officer in State schools. As such, syllabuses developed by the Council for years 1 to 10 are to be implemented in State schools through this implementation plan.

The Board of Senior Secondary School Studies also develops syllabuses for years 11 and 12, though no similar mandation occurs in State schools. Rather, the Board's syllabuses must be used to develop work programs, which are to be approved, if the student is to have his or her results recorded on the senior certificate, and taken into account for the Tertiary Entrance Statement. Other results can be recorded on the senior certificate, such as results in Board Registered Subjects and Recorded Subjects, but these will not count for the purpose of the Tertiary Entrance Statement.

The Tertiary Entrance Statement is issued by the Tertiary Entrance Procedures Authority and includes the student's statewide rank order (otherwise known as the overall position or OP).

In addition to the work of the statutory bodies, the department issues a junior certificate, and also plays a role in curriculum development.

Effect of these processes

The combined effect of this legislative regime determines the conditions for learning in Queensland schools. Extensive review and analysis of the future of education, in response to changing educational demands within the context of a rapidly changing global world, has highlighted the anomalies in the current legislative regime.

The current system for curriculum development, assessment, certification and tertiary entrance is complex, with the three authorities operating independently rather than collaboratively. There are overlapping roles and functions and divergent reporting and accountability responsibilities between the existing three statutory bodies.

The separation of the responsibility for syllabus and assessment in the compulsory years of schooling (years 1 to 10) from the non-compulsory years of schooling (years 11 and 12) does not support consistent approaches to learning and assessment across the years of schooling with articulation to further education, training and employment. The disconnection creates difficulties for students as they progress, particularly those at risk of not completing year 12.

The current legislative regime tends to favour those students seeking to enter university or other tertiary institutions on completion of year 12. This is currently only about 35% of the age cohort. Operating separately, the legislative functions of the Board of Senior Secondary School Studies and the Tertiary Entrance Procedures Authority have little scope for ensuring clarity of definition, or effective articulation and coordination, of the learning pathways and qualifications framework for the wide variety of post school education, training and employment destinations of the majority of year 12 school leavers.

A community consultation process, based on the Green Paper *Student Achievement in Queensland*, was undertaken in order to address these issues. The establishment of a single statutory authority to subsume the functions of the Queensland School Curriculum Council, the Board of Senior Secondary School Studies and the Tertiary Entrance Procedures Authority emerged as an option for resolution of the issues.

On reviewing the issues, the Minister made the decision that a single statutory authority was the most appropriate solution to meet the future needs of the state.

How the Policy Objectives will be achieved

The objects of the legislation are primarily achieved in the following ways:

- A single statutory body, the Queensland Studies Authority, is established to develop syllabuses for implementation in schools, to accredit syllabuses developed elsewhere, to develop tests, to issue certificates and tertiary entrance statements, and to ensure collaboration and cooperation between the State and non-State schooling sectors, and between primary, secondary and tertiary education.
- The membership of that authority will achieve a balance between expertise and representation. This is important to promote collaboration and cooperation across the State and non-State schooling sectors, across the preschool to year 12 span of schooling and the transitions to further study and employment.

Alternative method of achieving the Policy Objectives

The Bill will carry on a legislative scheme that consists of three separate Acts and three separate statutory bodies, and amalgamates those legislative functions into one single Act and one single statutory body. The new legislative scheme enhances those functions in various ways, and it is appropriate that the policy objectives are achieved by legislative means.

Estimated cost for Government implementation

While initially the amalgamation of the three statutory bodies and their offices would involve some additional costs, it is anticipated that the streamlining of processes within one statutory body and an associated office will reduce the cost to government in the longer term.

Consistency with Fundamental Legislative Principles

Comment on consistency with fundamental legislative principles of the *Legislative Standards Act 1992* is required in relation to the following provisions:

Under its functions, the authority will make a range of decisions that may affect the rights of, or place obligations on students, school sectors and private developers of syllabuses. It is intended that the processes, criteria,

fees and appeal structures around this range of decisions will be dealt with under Regulation. Clause 79 of the Bill sets out an extensive regulation making power for this purpose.

Clause 54 of the Bill also recognises the importance of the current senior certification process for students in terms of their future opportunities to access employment, training and tertiary education by ensuring that students who are subject to the requirements under any particular current regime are not disadvantaged by changes to those requirements.

The Bill further ensures that students under the current regime will not be disadvantaged by the creation of the new legislation, by continuing under Regulation, existing arrangements that are currently set out in the by laws and rules of the Board of Senior Secondary School Studies. This will require certain transitional arrangements to be expressed during the drafting of the new Regulation.

While the Bill may be criticised for not providing for procedures and review rights on the face of the Bill, it is considered desirable that such procedures and review rights, because of the level of detail necessary, are enshrined in Regulations, rather than the Act, which will ensure flexibility in the face of rapidly changing demands on the way in which the authority carries out its functions.

Consultation

Community

The Bill is based on the results of extensive community consultation that was held from December 2000 to April 2001, based around *Student Achievement in Queensland* – a Green Paper for consultation on reform of statutory arrangements for syllabus development, assessment, and certification. Both the State and non-State schooling sectors held meetings throughout Queensland. The community was invited to provide written submissions and these were received from employing authorities, unions, universities, professional associations and the existing statutory bodies.

Three working groups, representative of the State, Catholic and Independent schooling sectors were established to resolve policy issues, inform the drafting of the Bill and deal with transitional arrangements. These groups met regularly over a ten-week period. A stakeholder reference group, chaired by the Parliamentary Secretary, was also established and met throughout the process of preparing the Bill.

A focused consultation process was undertaken over two week period with stakeholder groups on the Exposure Draft of the Bill. Feedback was incorporated into the final Bill.

Government

The following Government departments and agencies were consulted in relation to the Bill:

- Department of Premier and Cabinet
- Commission for Children and Young People
- Department of Employment and Training
- Department of State Development
- Treasury Department
- Department of Aboriginal and Torres Strait Islander Policy
- Department of Industrial Relations
- Department of Innovation and Information Economy

NOTES ON PROVISIONS

PART 1—PRELIMINARY

DIVISION 1 —INTRODUCTION

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

Clause 2 provides the Act is to commence on a day to be fixed by proclamation.

DIVISION 2 —OBJECTS

Clause 3 sets out the objects of the Act. The primary focus of the Act is as detailed in the Policy Objectives of the Bill, contained in these

Explanatory Notes. The objects set out in subclause 3(1) are important for guiding the administration of the legislation. These objects are:

- To help schools to achieve quality learning outcomes of their students. The object is primarily to be achieved through the availability of quality assured syllabuses and preschool guidelines for implementation in schools.
- To facilitate the transition of students through the sectors of education. “Students” is defined by the Dictionary (located at the end of the Bill) as persons studying areas of learning within the sectors of education. “Sectors of education” are defined as preschool education, primary education, secondary education, special education and tertiary education. This object aims to support effective transitions between stages of schooling, formal and informal learning environments, and to post school destinations and active citizenship. While the target-group for the functions of the authority is wider than students in this sense, the focus of the legislation and hence the authority is on students. Other persons, who are not students, may be affected by the functions of the authority, for example, by nominating to sit senior external exams.
- To maintain public confidence in certificates of achievement issuable under this Act. This object is aimed at ensuring that, for example, the integrity of the senior certificate is maintained as a valuable and recognisable piece of evidence of student achievement.

This clause also sets out the ways in which the objects of the Act are to be achieved through the legislation. The matters listed in subclause 3(2) are the principal mechanisms that enable the objects of the Act to be met, namely:

- Establishing the Queensland Studies Authority.
- Conferring on the authority, functions about the development, approval and accreditation of syllabuses and preschool guidelines, testing and assessment of persons, including students, moderation, issuing of certificates of achievement to eligible persons, vocational education and training and tertiary entrance procedures.
- Establishing the Office of the Queensland Studies Authority to assist the Authority in the performance of its functions.

DIVISION 3 —GUIDING PRINCIPLES FOR ACHIEVING THE ACT'S OBJECTS

Clause 4 provides for the guiding principles for achievement of the Act's objects. It is a principle that collaboration and consultation should be promoted across sectors of education as well as across State and non-State schools. "Sectors of education" are defined by the Dictionary as preschool education, primary education, secondary education, special education and tertiary education.

It is further a principle that students should be encouraged to gain a certificate of achievement on completion of secondary education or an equivalent qualification issued in accordance with the Australian Qualifications Framework. The principle recognises that there are flexible learning pathways, which may lead to such certification or qualification, and that studying Board Subjects is not the only way to gain valuable qualifications in senior secondary schooling. The Dictionary defines the Australian Qualifications Framework as the national framework of educational qualifications approved by the Ministerial Council for Education, Employment, Training and Youth Affairs, and stated in the implementation handbook for the framework, as in force from time to time. The implementation handbook is published by the Australian Qualifications Framework Advisory Board established by the Ministerial Council for Education, Employment, Training and Youth Affairs.

It is also a principle that the professional role of teachers in schools is to be recognised. The Queensland model of school based assessment is strongly based on an acknowledgement of the professionalism of teachers, and this principle aims to ensure that the authority has regard to, and takes into account, this role when developing syllabuses, and determining procedures of assessment and moderation.

It is a principle also that the diverse educational needs of students should be catered for. It is recognised that one syllabus does not necessarily fit the needs of all students, and it is anticipated that the authority will develop syllabuses and preschool guidelines to meet the needs of students with special needs, such as students with disabilities and students of non-English speaking backgrounds.

It is further a principle that students should be helped to achieve their educational career goals. This is done, among other things, by making available information to assist students chose the pathway to suit their needs. The guiding principles thus focus on students. The dictionary

defines “Students” as persons studying areas of learning within the sectors of education. Hence the focus of the authority should be on those students in formal settings, from the preschool to tertiary education setting.

DIVISION 4 — INTERPRETATION

Clause 5 provides that particular words used in the Act are defined in the Dictionary at the end of the Bill.

PART 2—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE QUEENSLAND STUDIES AUTHORITY

DIVISION 1—ESTABLISHMENT

Clause 6 establishes the Queensland Studies Authority. The authority is established as a body corporate with a common seal that may sue and be sued in its corporate name.

DIVISION 2—FUNCTIONS

Clause 7 explains that Division 2 states the functions of the authority

Clause 8 provides that the authority has a syllabus and preschool guideline development function. “Syllabus” is defined by the Dictionary as including standards of learning and standards of assessment for an area of learning. “1-12 syllabus” is defined as syllabuses for an area of learning in one or more of the years 1 to 12 years of schooling. As such the words “syllabus” and “1-12 syllabus” refer to a document that, as a minimum, sets out standards of learning and standards of assessment for an area of learning. “Area of learning” is defined as including a subject and a vocational education program. “Preschool guidelines” are defined as meaning guidelines for the preschool year of schooling. “School” is defined as an educational institution established under the Education

(General Provisions) Act 1989, or a non-State school provisionally accredited or accredited under the *Education (Accreditation of Non-State Schools) Act 2001*.

The development functions include the following:

- developing and revising 1-12 syllabuses and preschool guidelines;
- approving 1-12 syllabuses and preschool guidelines developed or revised by the authority for implementation in schools;
- developing and revising documents to support the implementation of approved syllabuses and approved preschool guidelines in schools; and
- developing resources and services for the professional development of teachers to support the implementation of approved preschool guidelines or approved syllabuses in schools.

The development function enables the authority to create comprehensive materials to support the implementation of the authority's developed and approved syllabuses in schools, including source books, guidelines for assessment and teacher professional development. The material created can be paper based or electronic. Teacher professional development is not defined, but is understood in the teaching workforce as development through engaging teachers in professional dialogue to develop teachers' understanding of the content of the syllabuses, teaching and assessment techniques and practices.

Under the transitional provision in clause 87 all syllabuses and preschool guidelines currently approved by the Queensland School Curriculum Council and syllabuses and study area specifications currently approved by the Board of Senior Secondary School Studies are taken to be approved syllabuses or approved preschool guidelines under this Act. This will enable all current syllabuses, preschool guidelines and study area specifications to continue to be in force, when the new regime commences, without the additional requirement of approval by the new authority.

Clause 9 provides for an accreditation function, enabling the authority to guarantee the quality of 1-12 syllabuses and preschool guidelines developed by entities other than the authority. The term "Syllabus" is defined by the Dictionary as including standards of learning and standards of assessment for an area of learning. The words "syllabus" and "1-12 syllabus" refer to a document that, as a minimum, sets out standards of learning and standards of assessment for an area of learning. "Area of

learning” is defined as including a subject and a vocational education program. “Preschool guidelines” are defined as meaning guidelines for the preschool year of schooling.

Utilising the accreditation function, the Minister, through the Department of Education may develop a syllabus and apply to the authority to have the syllabus accredited so as to enable State schools to implement it. Similarly, a private company that has developed a syllabus may apply for the syllabus to be accredited by the authority. Such accreditation may become an important marketing tool in the private sector and may also become significant for non-State schools to be able to say that they offer educational programs based on syllabuses accredited by the authority.

The processes for accreditation will be prescribed by Regulation (refer clause 79(2)(a)), and it is anticipated that application fees may be prescribed by Regulation (refer clause 79(2)(1)).

Clause 10 provides for a testing function. A test may be prescribed under Regulation, and for such prescribed tests, the authority is responsible for developing the test. The authority is also responsible for developing procedures for the administration of the test, whether it be by schools or the authority. Further, the authority has the function of providing principals and students information about student performance in the tests. Clause 19 provides for the head of power to prescribe, in Regulation, tests for the assessment of particular skills and knowledge of persons, including students. The year 5 test of literacy skills is one example of such a test. Also, subclause 79(2)(e) provides for the regulation making power in respect of the testing of persons, including students.

The authority further has the function of analysing systemic information about the performance of students in the test, and reporting such analysis to the Minister, the chief executive. The Association of Independent Schools of Queensland Inc and Queensland Catholic Education Commission.

Clause 11 provides that the authority has assessment and moderation functions. Under subclause 11(1), the authority has the function of deciding on procedures and carrying out arrangements for assessment of persons, including students, in an area of learning, where the results may be recorded on a certificate of achievement to be issued under the Act. “Area of learning” is defined as including a subject and a vocational education program. Subclause 79(2)(g) provides for the making of Regulations with respect of assessment of persons, including students. It is anticipated that senior external examinations, as currently made available and administered by the Board of Senior Secondary School Studies under the *Education*

(*Senior Secondary School Studies*) By-law 1999, will be continued under Regulations.

Subclause 11(2) provides for functions, in relation to assessment prescribed by Regulation, to develop and revise documents for the assessment, and to develop procedures for the administration of the assessment. Subclause 79(2)(g) provides for the making of Regulations with respect of assessment of students. An example of assessment to be prescribed by Regulation is the Year 2 Diagnostic Net.

Under subclause 11(3) the functions extend to the collection of assessment data, analysis of such assessment data and reporting the results of the analysis to the Minister for Education, the chief executive of the Department of Education. The Association of Independent Schools Queensland Inc and Queensland Catholic Education Commission. "Assessment data" is defined by the Dictionary as the results of school-based assessment of students' achievement in areas of learning.

Clause 12 gives the authority the function of deciding on procedures, and making arrangements, for moderation. "Moderation" is defined by the Dictionary as the process under which the results of school-based assessment of students' achievement in areas of learning are moderated to ensure comparability, across the State, of assessing teachers' judgements in deciding the results. Currently, moderation is an important part of the issuing of senior certificates in relation to Board Subjects and this function will enable the existing processes to continue.

Clause 13 provides that the authority has a certification function. Subclause 79(2)(d) provides for a regulation-making power with respect to the issuing of certificates of achievement. Currently, the Board of Senior Secondary School Studies issues senior certificates. It is anticipated that the Regulation will make provisions for these certificates to continue to be issued, but that other certificates in the future may be prescribed by Regulation. Furthermore, Regulations may be made under this subclause as to eligibility requirements for certificates.

Subclause 13(1) provides the authority with a function to issue certificates of achievement as required by Regulation to persons entitled to the certificates. Subclause 79(2)(k) provides for Regulations to be made with respect to the verification of information contained in such a certificate. This will enable a person who has received a certificate of achievement to seek a review to verify the accuracy of the information on the certificate. Under subclause 13(1) the authority also has the function to review and make recommendations to the Minister about the requirements for issuing certificates of achievement. Further, the authority has the

function of informing the public about each type of certificate that may be issued under the Act and the requirements for issuing such certification.

Subclause 13(2) provides the function of approving work programs for areas of learning that may lead to certification. This function is particular to the current senior certificate. Teachers are required to develop a work program that is submitted to Board for approval, before the students' results in the subject are recorded on the certificate. This function will enable the new authority to continue this requirement, as prescribed by Regulation. Subclause 79(2)(b) provides for regulation-making power for the approval by the authority of work programs for an area of learning, for which the results may be recorded on a certificate of achievement. If in future, a different certificate is prescribed, the authority will similarly be able to approve work programs for the purpose of certification, if the Regulation prescribed that it was a requirement for certification that work programs be approved.

Subclause 13(3) provides the further function of recognising student results in "non-authority areas of learning" that may be recorded on a certificate. Subclause 79(2)(c) provides for a regulation-making power with respect to the recognition of student results, for a non-authority area of learning, that may be recorded on a certificate of achievement issuable under the Act. "Non-authority area of learning" is defined by the Dictionary as areas of learning in which a student's results are not subject to the authority's procedures for moderation and for which the authority does not approve work programs. The definition is seeking to capture what is now known as Recorded Subjects. The function is particular to the current senior certificate. Currently, for Recorded Subjects to be approved, a process under the *Education (Senior Secondary School Studies) By-law 1999* is followed. Once approved, student achievements in those Recorded Subjects can be recorded on the senior certificate. The Bill anticipates this process to continue under the provisions for non-authority areas of learning. An example of a non-authority area of learning is the Australian Music Examination Board (AMEB) subjects. A student's result, assessed by the AMEB, will be able to continue be recorded on the senior certificate under the new regime.

Clause 14 provides the authority with the function of exercising any relevant powers delegated to it by the Training Recognition Council, under the *Training and Employment Act 2000*. Under this delegation the authority will be responsible for accrediting vocational education and training courses and for registering training organisations. Furthermore, the authority has the function of informing the public about these courses and organisations, as well as advising the Minister responsible for the

administration of the *Training and Employment Act 2000* (presently, the Minister for Employment, Training and Youth) about vocational education and training matters relevant to the functions.

Clause 15 provides the authority with a tertiary entrance function. “Tertiary entrance” is defined by the Dictionary as the entrance by persons to tertiary education in Queensland. The meaning of tertiary education is not defined, but is intended to cover all forms of formal education beyond secondary education, including universities and TAFE institutes. Subclause 15(a) provides that after consulting with the Minister, the authority has the function to decide the authority’s tertiary entrance procedures and requirements. Subclause 15(b) provides the authority with the function of ranking persons, including students, as a basis for tertiary entrance in accordance with the authority’s tertiary entrance procedures and requirements. This statewide ranking is currently known as the Overall Position score and field positions. Under subclause 15(c) the authority then has the function of issuing tertiary entrance statements to persons entitled to the statements. Subclause 79(2)(h) enables Regulations to be made about tertiary entrance procedures and requirements and the issue of tertiary entrance statements to persons entitled to the statements. Regulations for the review of information contained in a tertiary entrance statement issued may be made under subclause 79(2)(j).

Subclause 15(d) provides the authority with the function of monitoring, reviewing and recommending to the Minister changes to tertiary entrance requirements of tertiary institutions established in the State. Under subclause 15(e) the authority also has the function of informing the public about tertiary entrance procedures and requirements. Further, under subclause 15(f) the authority has the function of conferring and collaborating with entities who have an interest in tertiary education. This function includes a non-exclusive list of who might have an interest in tertiary education, including the universities, TAFE colleges and various government departments. Finally, the authority has the function of reviewing and making recommendations to the Minister about tertiary entrance under subclause 15(g).

Clause 16 provides the authority with a research function. This function allows the authority to conduct research into any aspect of the performance of its various other functions. It is anticipated that the authority may conduct a wide range of research into matters relevant to its functions under this function.

Clause 17 provides the authority with other functions. Under subclause 17(a) the authority has the function to decide the equivalence of a level of

school education or school qualification obtained by a person at an educational institution outside Queensland. This function will enable the authority to decide what level of educational achievement compared with Queensland standards an interstate or overseas person has achieved. Regulations about this process may be made under subclause 79(2)(f).

Under subclause 17(b) the authority has the function of issuing copies of certificates of achievements issued to students under this Act and previous Acts. Old certificates are currently held by the Board of Senior Secondary School Studies and individuals may request certified copies of their own certificates for whatever purpose. This subclause enables the authority to continue to issue copies of old certificates.

Under subclause 17(c) the authority has the function of advising the Minister and informing the public about matters relevant to the performance of the authority's functions. This function is extended by subclause 17(d) under which the authority can give information obtained by it in the performance of its functions, to the Commonwealth, a State or an entity of the Commonwealth or a State. Under subclause 17(d) the authority will be able to continue to provide the Commonwealth Department of Education, Training and Youth Affairs, with data about Queensland students. However, it will also be possible to continue to provide information in response to ad hoc requests. For example, currently the Board of Senior Secondary School Studies may be requested by third parties to provide statistics about the demographic details of students studying maths in year 11. As a result of its certification function, the Board has a wide range of data about students, which it then interrogates to provide such statistics to, for example, a university or other research body. It is anticipated that the authority will be able to continue to collate and provide such information under a combination of subclauses 15(f)(i), 16, 17(c), and 17(d).

Finally, subclause 17(e) provides the authority with the function of performing other functions given to the authority under this or other Acts.

DIVISION 3—AUTHORITY'S POWERS

Clause 18 sets out the powers of the authority. Under subclause 18(1) the authority has all the powers of an individual. Examples provided are that the authority may enter into contracts, acquire, hold, dispose of, and deal with, property, appoint agents and attorneys, engage consultants, produce documents in performing its functions, charge for advertising in the

documents, fix terms for services and other facilities, and do anything else necessary or convenient to be done in performing its functions.

Subclause 18(2) limits the authority's powers with respect to entering into agreements about real property. The authority must first obtain the Minister's approval before entering into such agreements. For example, the authority cannot lease premises without the Minister's approval.

Subclause 18(3) further provides that the authority has the powers given to it under this or another Act, without limiting the powers under subclause 18(1).

Subclauses 18(4) and (5) make clear that the authority may exercise its powers inside or outside Queensland and outside Australia.

With these powers, the authority should be able to commercially exploit its materials and services both within Queensland, interstate and overseas.

DIVISION 4 — TESTS AND NOTIFICATIONS OF SYLLABUSES AND PRESCHOOL GUIDELINES

Clause 19 provides that a Regulation may require the authority to develop tests for the assessment of particular skills or knowledge of persons, including students. Subclause 19(2)(e) also provides for the regulation-making power about the testing of persons. These tests are for example the year 5 test of literacy or the Core Skills Test. Subclause 19(2) provides that once the authority has developed or revised a test prescribed by Regulation, the authority must notify the Minister and the governing bodies of all non-State schools. Clause 21 provides that the authority must comply with a request from a governing body of a non-State school that such notices be forwarded to a nominated body.

Subclause 19(3) provides that if a school administers a test developed under this section, the principal must give the authority the test script of each student enrolled at the school who undertook the test. This will enable the authority to mark and quality assure the marking of tests.

Clause 20 provides that after approving a 1-12 syllabus or preschool guideline the authority must give notice about the accredited syllabus or accredited preschool guideline to the Minister and the governing bodies of non-State schools.

Clause 21 provides that the authority must comply with a request from a governing body of a non-State school that such notices be forwarded to a

nominated body. The Dictionary provides that “1-12 syllabuses” means the syllabuses for an area of learning in or more of the years 1 to 12 years of schooling. Examples of 1-12 syllabuses are the “Physical Education Senior Syllabus”, which is a syllabus for years 11 and 12, “A short course in the Australian Constitution” which is a semester syllabus for years 11 and 12 students, and “Health and Physical Education Years 1 to 10 Syllabus” which, as its name indicates, is a syllabus for years 1 to 10. “Accredited 1-12 syllabus” is defined as meaning a 1-12 syllabus accredited by the authority under the Act. “Preschool guidelines” is defined as meaning guidelines for the preschool year of schooling. “Accredited preschool guideline” is defined as a preschool guideline accredited by the authority under the Act.

Clause 21 provides that the governing body of a non-State school may nominate another body to receive notices under this division. This is to enable the principal or headmaster of a non-State school to receive timely notice about the test, where the governing body may not meet frequently.

PART 3—MINISTER’S POWERS IN RELATION TO AUTHORITY

Historically, the role of the Minister for Education with respect of syllabus content has not been precisely defined in Queensland. In recent years, it has been practice that the Minister retains strategic oversight of syllabus development only, but has had no role in directing syllabus content. The provisions in this division clearly spell out the role of the Minister in this context.

Clause 22 provides the Minister with power to refer a matter to the authority, if the matter is relevant to the authority’s performance of its functions, and the Minister considers the authority should investigate the matter. The matter must be referred to the authority by notice. The Dictionary provides that “notice” means written notice.

Subclause 22(2) provides that once the investigation into the matter has been completed by the authority, the authority must give the Minister a written report about the matter.

Clause 23 provides the Minister with power to give directions to the authority in the public interest about a matter relevant to the performance of the authority’s functions. If the Minister is satisfied that it is necessary to give the direction in the public interest, the Minister may give the authority a written direction. The authority must comply with a direction.

Without limiting the directions that may be issued under this clause, subclause 23(2) provides that the direction may require the authority to comply with a policy, standard or other instrument applying to a public sector unit or another document, such as another policy, standard or instrument. However, subclause 23(4) provides that the direction cannot be about:

- (a) the content of a 1-12 syllabus or pre-school guideline;
- (b) the approval of 1-12 syllabuses or preschool guidelines developed or revised by the authority;
- (c) the accreditation of 1-12 syllabuses or preschool guidelines;
- (d) the approval of work programs for areas of learning;
- (e) the recording of results of a particular person, in an area of learning, on a certificate of achievement issued to the person.

Subclause 23(5) provides that copies of all directions issued by the Minister under clause 23 must be included in the authority's annual report for a financial year prepared under the *Financial Administration and Audit Act 1977*.

Subclause 23(6) provides that clause 23 is subject to clause 76(3). This provision ensures that where a direction is to be made under clause 23 about the authority's functions under clause 14 (Vocational education and training functions), the direction must be made jointly by the Minister responsible for the education department and the Minister administering the vocational education and training department. It also ensures that prior to any direction being given about the authority's functions under clause 14, the Ministers are jointly satisfied that the direction is in the public interest.

Clause 24 provides the Minister with power to require the production of documents by the authority. Documents that the Minister may require are documents relevant to the authority's performance of its functions under the Act. Under this clause the Minister may give notice to the authority requiring the authority to make available for inspection by the Minister, or to provide to the Minister for inspection, at a reasonable time and place nominated by the Minister, a document relevant to the authority's performance of its functions which is in the possession or control of the authority. "Notice" is defined as written notice by the Dictionary. The Minister may keep the document to copy it, but must return it to the authority as soon as possible.

Subclause 24(4) provides that copies of all notices issued by the Minister under clause 24 must be included in the authority's annual report for a financial year prepared under the *Financial Administration and Audit Act 1977*.

PART 4—MATTERS CONCERNING AUTHORITY

DIVISION 1—MEMBERSHIP

Clause 25 provides for the membership of the authority. The authority consists of the chief executive of the Department of Education, the chief executive of the vocational education and training department, and up to 18 members set out in subclause 25(2) to be appointed by the Governor in Council. In accordance with the definition in the Dictionary, “official members” are the chief executives of both departments. “Vocational education and training department” is defined by the Dictionary as the department within which the *Training and Employment Act 2000* is administered. The philosophy behind the membership is to ensure that the authority has a balance of representation between the State and non-State sectors. The appointed members are:

- (a) 1 person nominated by the Minister. Under clause 28 this nominee is to be the authority's chairperson.
- (b) 1 nominee of The Association of Independent Schools Queensland Inc (AISQ).
- (c) 1 nominee of the Queensland Catholic Education Commission (QCEC).
- (d) 2 nominees of the Higher Education Forum, at least 1 of who must have expertise tertiary entrance. In the Dictionary, “Higher Education Forum” is defined as the entity by that name constituted by the vice-chancellors of universities in the State.
- (e) 1 nominee of the Queensland Council of Parents' and Citizens' Association Incorporated who at the time of appointment is a parent or guardian of a student currently enrolled at a school. “Guardian” is defined by the dictionary as a person who is recognised in law as having all the duties, powers,

responsibilities and authority that, by law, parents have in relation to their children.

- (f) 1 person nominated jointly by the Federation of Parents and Friends Associations of Catholic Schools, Queensland and the Independent Parents and Friends Council of Queensland who at the time of appointment is a parent or guardian of a student currently enrolled at a school. The Dictionary defines the term “parent” as including persons who are regarded as a parent under Aboriginal tradition or Torres Strait Island custom. “Guardian” is defined by the dictionary as a person who is recognised in law as having all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.
- (g) 2 principals, consisting of 1 primary school principal and 1 secondary school principal of whom 1 is to be nominated by the chief executive and 1 is to be nominated jointly by AISQ and QCEC.
- (h) 2 teachers, consisting 1 teacher of primary education and 1 teacher of secondary education, neither of whom is a school principal, of whom 1 is to be nominated by the chief executive and 1 is to be nominated jointly by AISQ and QCEC.
- (i) 1 nominee of the Queensland Teachers’ Union.
- (j) 1 nominee of the Queensland Independent Education Union of Employees.
- (k) 1 nominee of the Minister of the vocational education and training department. “Vocational education and training department” is defined by the Dictionary as the department within which the *Training and Employment Act 2000* is administered.
- (l) 1 nominee of the Minister who has expertise in the provision of special education.
- (m) 1 nominee of the Minister who has expertise in the education of Aborigines or Torres Strait Islanders.
- (n) 1 nominee of the Minister who is representative of industry.
- (o) 1 other nominee of the Minister. This member may be nominated by the Minister, should the need arise. The clause enables the Minister to include additional representation in response to the priorities at the time. For example, the Minister may decide to

nominate an early childhood education expert if enhancement of the early years of schooling were a priority for the authority.

Subclause 25(3) provides that the Minister's nominees must have the qualifications, experience or standing the Minister considers appropriate for membership of the authority.

Subclause 25(4) precludes the director of the Office of the Queensland Studies Authority to be appointed as a member. However, under clause 41 the director may participate in authority meetings, though the director does not have any voting rights at those meetings. Also, under clause 46 the director is also entitled to participate in the executive committee's deliberations, but again cannot vote. Therefore, while the director cannot become a member of the authority, these sections permit the director to participate in authority business.

Clause 26 applies to members nominated by an entity under subclause 25(2)(b) to (j). The Minister must give the entity notice stating a reasonable time within which the entity may nominate a person for membership. The Dictionary provides that "notice" means written notice. If a nomination from that entity has not been received within the time stated in the notice, the Minister may nominate a person for membership and the nomination is taken to have been made by the entity. If the Minister nominates a person under this clause, the nominee must be a person who meets the requirements for nomination under subclause 25(2). For example, if one of the parent organisations fails to nominate a person for membership under subclause 25(2)(e), the Minister may nominate a person who at the time of appointment is a parent or guardian of a student currently enrolled at a school; in this case, the Minister would only be able to nominate a person who is a parent or guardian, whose child is currently enrolled at a school.

Clause 27 provides that the term of appointment for an appointed member is for not more than four years. It is anticipated that the membership terms will vary so as to avoid all members' terms expiring at the same time. For example, initially half of the authority may be appointed for three years, and the other half may be appointed for 4 years. In this way, the situation could be avoided where there is a complete change of membership at the same time.

Clause 28 provides that the Governor-in-Council is to appoint the Minister's nominee mentioned in subclause 25(2)(a) as the chairperson of the authority. This appointment as chairperson may take place at the same time as the person is appointed as a member, and the chairperson will hold office for as long as he or she is a member under subclause 25(2)(a).

Clause 29 provides that the authority must appoint a member as a deputy chairperson of the authority. The term of that appointment is to be decided by the authority. The office of deputy chairperson also becomes vacant if the deputy chairperson resigns from the office by signed notice of resignation given to the Minister, or ceases to be a member. If the deputy chairperson resigns from the office, he or she may continue to be a member. The role of the deputy chairperson is to act as chairperson during a vacancy in the office of chairperson, and during all periods when the chairperson is absent from duty or for another reason cannot perform the functions of the office. Subclause 29(5) makes it clear that if a person is acting as deputy chairperson because of an acting appointment under subclause 33(7), the acting deputy chairperson is to act as chairperson during a vacancy in the office of the chairperson.

Clause 30 provides for circumstances when a person cannot become or continue to be an appointed member of the authority. A person will be disqualified from membership if the person is affected by bankruptcy action, or is or has been convicted of an indictable offence. The Dictionary defines “affected by bankruptcy action”, in relation to a person, as meaning that the person is bankrupt, has compounded with creditor, or, as a debtor, has taken advantage of any law about bankruptcy.

Subclause 30(2) provides that the Minister has discretion to disregard the fact that a person had been convicted of an indictable offence, or is affected by bankruptcy action. If the person was an appointed member when convicted or affected by bankruptcy action, the Minister may have regard to the circumstances of the offence or bankruptcy action, and if the Minister considers it reasonable, the Minister may give notice to the chairperson and the person that the person is to be restored as an appointed member, and may later be reappointed. The Dictionary provides that “notice” means written notice. If the person is not an appointed member at the time of the conviction or being affected by bankruptcy action, the Minister may have regard to the circumstances, and, if the Minister considers it reasonable, the Minister may give written approval for the person to become an appointed member despite the conviction or being affected by bankruptcy action.

Subclause 30(3) provides that a person who is to be restored as an appointed member by Ministerial discretion, is restored on the day when the chairperson receives a notice of the Minister’s decision, and if another person has been appointed to fill the vacancy, the other person’s appointment ends on that day. The Dictionary provides that “notice” means written notice.

Subclause 30(3) makes clear that if a person is restored as an appointed member, the person's term of office ends when it would have ended, had the person not been convicted of the offence and disqualified as a result.

Clause 31 provides for circumstances when an appointed member is taken to have vacated office. A member has vacated office if the member resigns by signed notice of resignation given to the Minister, cannot continue as a member under clause 30; or is absent, without the authority's permission, from 3 consecutive authority meetings of which proper notice has been given. Subclause 31(3) has the effect that a member is absent from a meeting only if there is a quorum present, and that a member is attending a meeting whether or not there is a quorum present.

Subclause 31(2) further provides that an appointed member who was nominated for membership of the authority under subclauses 25(2)(e) to (g), but who stops being qualified to be nominated as a member under those subclauses, the appointed member is taken to have vacated office. For example, if a person nominated by the chief executive as a primary principal has retired as a principal that person is taken to have vacated the office.

Clause 32 provides that a notice of resignation takes effect when the notice is given to the Minister, or at a later time as stated in the notice. A notice of resignation may be given under subclause 29(3) or 31(1)(a). The Dictionary provides that "notice" means written notice.

Clause 33 provides for leave of absence for appointed members. The Minister has the power to approve leave of absence for an appointed member, and the Minister may appoint someone else to act for the absent member during the approved absence. If the absent member is a person nominated by an entity under subclause 25(2)(b) to (j), before appointing an acting member, the Minister must give the entity a notice stating a reasonable time within which it may nominate someone else to act in the office of the absent member. The Dictionary provides that "notice" means written notice. If the entity does not make the nomination within the time stated in the notice, the Minister may then appoint a person who would have been a valid nominee for the entity under subclause 25(2). A person appointed as an acting member is taken to be an appointed member during the term of the acting appointment. Subclause 33(6) clarifies that the Minister's powers under this clause does not affect the Governor in Council's powers stated in the *Acts Interpretation Act 1954*, section 25(1)(b)(v).

Subclause 33(7) provides that if the absent member is the deputy chairperson, the authority may appoint another person to act in the office of deputy chairperson during the approved absence.

Clause 34 provides that an appointed member is entitled to be paid the fees and allowances as determined by the Governor in Council.

DIVISION 2 —AUTHORITY BUSINESS

Clause 35 provides that the authority must conduct its business, including its meetings, in the way it considers appropriate, subject to this division.

Clause 36 makes provisions about the time and place of authority meetings. Authority meetings must be held at the times and places the executive committee decides. The executive committee is established by clause 45. The executive committee must call a meeting if asked, in writing, to do so by either the Minister or at least the number of members required to form a quorum for the authority. Clause 37 provides that the quorum is half of the members, rounded up to the next higher number. The authority must meet as often as necessary to perform its functions, and must meet at least six times a year.

Clause 37 provides that the quorum for the authority is the number equal to one-half of the number of its members, or if one-half is not a whole number, the next highest whole number. Therefore, if the authority consists of all 20 members set out in clause 25, the quorum will be 10. If it consists only of 17 members, for whatever reason, the quorum will be 9.

Clause 38 provides that the chairperson must preside at all authority meetings at which he or she is present. In cases where the chairperson is absent from the meeting, and the deputy chairperson is present, the deputy chairperson must preside. Subclause 38(4) makes it clear that if a person is acting as deputy chairperson because of an acting appointment under subclause 33(7), the acting deputy chairperson is to act as chairperson during a vacancy in the office of the chairperson. In cases where both the chairperson and the deputy chairperson are absent, or the offices are vacant, the members present at the meeting must choose a member to preside.

Clause 39 provides flexibility for an official member to appoint another person (the official member's nominee) to attend the authority and executive committee meetings on his or her behalf. "Official member" is defined by the Dictionary as the chief executive of the departments as

mentioned in clause 25(1). The official member must, if practicable, appoint a person who has previously attended the meetings as the official member's nominee. The appointed person must be an appropriately qualified public service officer and "appropriately qualified" is defined by the Dictionary as having the qualifications, experience or standing appropriate to attend the meetings. If a person has been appointed under this section, the chief executive must give the chairperson notice of the appointment of that person. Also, if the instrument of appointment of the person is amended or revoked, the chief executive must give the chairperson notice of that amendment or revocation. The Dictionary provides that "notice" means written notice.

Clause 40 provides for appointed members to attend meetings by proxy. However, an appointed member is not entitled to attend by proxy more than twice in a year. This continues the proxy provisions relevant to appointed members of the Queensland School Curriculum Council, the Board of Senior Secondary School Studies and the Tertiary Entrance Procedures Authority. A proxy is not entitled to preside at an authority meeting, merely because the member is the proxyholder for a member who would have been entitled to preside if present.

Clause 41 provides for participation in authority meetings of the director of the office of the authority. The director may participate in any of the authority's deliberations, but has no voting rights. The chairperson must give the director timely notice of authority meetings to enable the director to participate. The Dictionary provides that "notice" means written notice. Subclause 41(3) makes it clear that the meeting of the authority is not invalid merely because the chairperson failed to give the director timely notice.

Clause 42 provides for the conduct of meetings. A question is decided by a majority of the votes of members present. Each member present has one vote on each question to be decided. If votes are equal, the presiding member also has a casting vote. A member, who is present and abstains from voting, is taken to have voted in the negative. Meetings may be held, or members may be able to participate, by using any technology allowing reasonably contemporaneous and continuous communication between the members at the meeting. This could be by teleconferencing. If a member takes part in a meeting by such technology, the member is taken to be present at the meeting.

Subclause 42(6) further provides that a resolution will be validly made, even if not passed at a meeting, if it is given under procedures approved by the authority, and a majority of the members gives written agreement to the

resolution. Under this subclause it will be possible for the authority to make decisions without having to meet, for example in circumstances where time is of the essence.

Clause 43 mandates that the authority must keep minutes of its meetings.

Clause 44 provides that an interested member must not be present when the authority considers the issue, or take part in a decision about the issue, unless the authority otherwise directs. Under this clause an “interested member” is a member that has a direct or indirect interest in an issue being considered, or about to be considered, by the authority, and the interest could conflict with the proper performance of the interested member’s duty for considering the issue. Under subclause 44(2), the interested member must, as soon as practicable after the relevant facts come to the interested member’s knowledge, disclose the nature of the interest. For example, a member who is nominated by an entity who has submitted a syllabus for accreditation, and the authority is about to consider the accreditation of that syllabus must disclose the interest, and unless the authority otherwise directs, must not be present when the authority considers that accreditation or be part of the decision-making process involving the accreditation. Subclause 44(7) provides that such a disclosure must be recorded in the authority’s minutes.

The authority has discretion to direct that the interested member may be present at the time when the matter is considered or may be part of the decision-making about the issue. However, under subclause 44(4) the interested member must not be present when the authority is considering whether to give such a direction. Also, if there is another member who is also obliged to disclose an interest under subclause 44(2), that other member must not be present while the authority is considering whether to give a direction that the first member can be present or be part of the decision-making process. Nor may that other member be part of the decision-making process as to whether to give the direction. Therefore, if there is another member who has a financial interest in the syllabus submitted for accreditation in the above example, that other member must not be present when a decision is made about the nominated members presence when the accreditation is being considered or decided. Nor can the first member be present when the decision about the other member’s presence is being considered or decided.

Subclause 44(6) makes provision about quorum in relation to an issue to be considered or decided where an interested member is not present, or a decision to direct that an interested member may be present or take part in decision-making. If there would have been a quorum had the interested

member been present, the remaining members present are a quorum. So, if ordinarily quorum is ten members, and an interested member is absent because of this section, quorum for deciding the issue or exercising the discretion to direct that the interested member may be present is nine.

DIVISION 3—AUTHORITY COMMITTEES

Clause 45 establishes an executive committee of the authority. The executive committee is to consist of 5 members, namely the chairperson, the official members (i.e. the chief executive officers of the department and the vocational education and training department – refer to the definition in the Dictionary and clause 25(1)) and the appointed members nominated by AISQ and the QCEC. Clause 39 provides that the official members may appoint a nominee to attend authority meeting and executive committee meetings on their behalf.

The function of the executive committee is to set the agenda for each authority meeting called under subclause 36(1), to perform functions referred to the committee by the authority, and to report to the authority as it requires.

Clause 46 provides that the director of the Office of the Queensland Studies Authority may participate in deliberations of the executive committee, but has no voting rights at a meeting of the executive committee. To enable the director to participate in the deliberation, the chairperson must give the director timely notice of a meeting of the executive committee. The Dictionary provides that “notice” means written notice.

Clause 47 makes provision for establishment of other committees of the authority. Under this clause, the authority may establish committees for effectively and efficiently performing its functions. Committees may include persons who are not members of the authority. The authority must decide the terms of reference of a committee established under this clause, and under subclause 47(6) the authority is empowered to decide matters about a committee not provided for in the Act, such as the committee’s conduct of business. A committee must advise and make recommendations to the authority about matters referred by the authority to the committee. Such a matter must be within the scope of the authority’s functions. A committee may also exercise powers delegated to it by the authority, and if exercising delegated powers, the committee must keep records of decisions made in that capacity.

It is under this clause that the authority will be able to continue to work through committee and forum structures currently used by the Queensland School Curriculum Council, the Board of Senior Secondary School Studies and the Tertiary Entrance Procedures Authority. However, rather than prescribing forums in the legislation, the authority will have power to establish committees to suit its needs, rather than as a result of legislative compliance.

Clause 48 provides that authority committee members are entitled to be paid fees and allowances as decided by the Governor in Council. “Authority committee” is defined by the Dictionary as the executive committee established by clause 45, or a committee established under clause 47(1).

DIVISION 4—FINANCIAL PROVISIONS

Clause 49 provides that the authority is a statutory body under the *Financial Administration and Audit Act 1977*. This means that the provisions within that Act relating to statutory bodies will apply to the authority.

Clause 50 provides that the authority is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*. Part 2B of that Act sets out the way in which the authority’s powers under this Act will be affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 51 makes provisions about the authority’s budget process. For each financial year, the authority must develop, adopt and give the Minister a budget by the day the Minister directs. A budget has no effect until approved by the Minister. The authority may develop, adopt and give to the Minister amendments to its approved budget for the financial year. Such amendments have no effect until approved by the Minister.

Clause 52 provides that the authority must comply with the budget for a financial year that has been approved by the Minister. Subclause 52(2) provides that if the authority makes a disbursement that is not provided for in its approved budget, the members who knowingly agreed to the disbursement are jointly and severally liable to repay the amount of the disbursement to the authority. Subclause 52(3) provides that the Minister may appoint a person in writing to recover the amount from the relevant members as a debt.

DIVISION 5 — OTHER PROVISIONS ABOUT THE AUTHORITY

Clause 53 provides for the Minister's responsibility in respect of the authority's operations. Subclause 53(1) provides that the Minister has responsibility to ensure that the authority operates to best practice standards. To assist the Minister discharging this responsibility, subclause 53(2) provides that the authority must report to the Minister on the efficiency, effectiveness, economy and timeliness of the authority and its systems and processes, including operational processes. Such reports are to be at a time and in a way determined by the Minister. This subclause will enable the Minister to request that the authority reports to the Minister on matters relating to the operations of the authority, and under subclause 53(3) the authority must comply with such a request. Subclause 53(4) provides that the authority must include copies of all Ministerial requests under this section in its annual report published under the *Financial Administration and Audit Act 1977*.

Clause 54 makes provision to ensure that persons studying to receive a certificate are not disadvantaged by changes to the requirements for certificates. This is an important provision to ensure that students currently in the process of achieving that certificate will not be disadvantaged by the change should requirements for eligibility change for a particular certificate. So, for example, a student may be studying for a senior certificate in year 11, and at that time a change in the requirements for issue of senior certificates is to be effected, the authority must ensure that the year 11 student can continue to the course of study towards the senior certificate, as planned, without being affected by the change.

Clause 55 provides the authority with power to delegate its powers under the Act. The authority may delegate its powers to a member, an authority committee, the director or an appropriately qualified member of the staff of the office of the authority. The Dictionary defines "appropriately qualified" so as to ensure the delegated person has the qualifications, experience or standing appropriate to the exercise of the delegated power. Subclause 55(2) limits this delegation power by prohibiting the delegation of the power to approve 1-12 syllabuses or preschool guidelines developed or revised by the authority, and to accredit 1-12 syllabuses or preschool guidelines developed by entities other than the authority. As such decisions to approve or accredit syllabuses and preschool guidelines can only be made by the authority itself.

Clause 56 provides for the time within which the authority must do something under the Act. If the authority is to do something under the Act

after the happening of an event, and the Act does not state the time within which the authority must do the thing, the authority must do the thing as soon as practicable after the event happens. For example, under clause 19(2) the authority must give notice to the Minister and governing bodies of non-State schools about a developed test. The effect of clause 56 is that this notice must be given as soon as practicable after the test has been developed.

PART 5—OFFICE OF THE QUEENSLAND STUDIES AUTHORITY

DIVISION 1—ESTABLISHMENT

Clause 57 provides for the establishment of the Office of the Queensland Studies Authority, consisting of the director and the staff of the office. The office will be a public service office for the purpose of the *Public Service Act 1996*. Schedule 1 of the Bill will amend the *Public Service Act 1996* to prescribe the office to be a public service office under sections 17 and 18 of the *Public Service Act 1996*. The effect of this is that the *Public Service Act 1996* and other acts apply to the office and its employees as if it were a department and the head of the office were the chief executive of the department.

DIVISION 2—OFFICE'S FUNCTION AND POWERS

Clause 58 provides that the office's function is to help the authority in performance of the authority's functions, and that it has powers to do anything necessary and convenient to be done in performing this function.

DIVISION 3—THE DIRECTOR

Clause 59 makes provisions relating to the appointment of the director of the office. The director is to be appointed by the Governor in Council, for a term stated in the instrument of appointment. The director is eligible for

reappointment. The stated term must be no longer than 5 years. Subclause 59(5) provides that the *Public Service Act 1996* does not apply to the appointment of the director. This ensures that, in relation to the performance of the functions of the office, the line of accountability for the director is to the authority through its Chair, and not to the Director-General of Education.

Clause 60 provides for the terms of appointment of the director. The director is to be paid the remuneration and allowances decided by the Governor in Council. The Governor in Council may decide the terms of the director's appointment, except for those terms provided for in the Act.

Clause 61 provides for the function of the director. The director has the function of controlling the office, and is responsible for its efficient and effective administration and operation. In performing this function, the director is subject to the direction of the authority. Subclause 61(2) clarifies that the office may be attached to the department so as to ensure that the office has the administrative support services it requires to carry out its functions effectively and efficiently. This will enable the office to be attached to the department if this is necessary or convenient for, for example, the purpose of information technology support.

Clause 62 provides that the director must act independently, impartially, fairly and in the public interest when performing the functions and exercising the powers of the director. Also, in doing so the director is not under the control or direction of the Minister. This clause ensures the independence of the director, and also sets standards for the conduct of the director.

Clause 63 enables the director to delegate his or her powers under the Act to an appropriately qualified member of the office's staff. "Appropriately qualified" is defined by the Dictionary so as to ensure that the delegated staff member has the qualifications, experience or standing appropriate to exercise the delegated power.

Clause 64 provides that the director may resign from the position by giving signed notice to the Minister. The Dictionary provides that "notice" means written notice.

Clause 65 provides that the Governor in Council may end the appointment in certain circumstances. If the director is convicted of an indictable offence the Governor in Council may terminate the appointment. "Convicted" means found guilty or having a plea of guilty accepted by a court, whether or not a conviction is recorded. If the director is guilty of misconduct that could have warranted dismissal from the public service,

had the director been a public service officer, this is a ground for the Governor in Council to dismiss the director. The Governor in Council may also terminate the director's appointment if the director is guilty of neglect of duty or incompetence, or if the director becomes incapable of satisfactorily performing the functions of the director.

Clause 66 preserves the rights of a public service officer appointed to the position of director. Subclause 66(2) provides that if a public service officer is appointed as director, the officer retains and is entitled to retain all rights that have accrued to him or her because of employment as a public service officer, or that could accrue in the future because of that employment. The appointment and service as a director is to be treated as if it were a continuation of service as a public service officer. For example, the director will retain accrued leave entitlements, such as long service leave and recreation leave.

When the director's appointment ends, subclause 66(3) provides that a person who was a public service officer before becoming a director would be entitled to be employed again as a public service officer at the classification level at which the person would have been employed, had the person continued as a public service officer, and on the remuneration to which the person would have been entitled if the person had continued in employment as a public service officer. Furthermore, the person's service as a director is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer. This provision ensures that a public service officer is in no way disadvantaged by taking up appointment as the director. It will also assist in ensuring that public service officers are not discouraged to apply, by not disadvantaging their position, should they become successful in winning the contract, which by virtue of clause 59 is for up to 5 years only.

Clause 67 makes provision to ensure that a public service officer who is appointed as director continues to be eligible to be a member of the State Public Sector Superannuation Scheme. If a public service officer is appointed as the director, and immediately before the appointment, the officer was a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*, he or she continues to be eligible to be, and to be, a member of the scheme. This clause supplements clause 66 by protecting the rights of public service officers in relation to their superannuation scheme and hence ensures that considerations about superannuation will not narrow the field of applicants for the position of director.

Clause 68 provides that the Minister may appoint an acting director in certain circumstances. If the office of the director is vacant, or if the director is absent from duty or cannot, for another reason, perform the functions of the office, the Minister may appoint a person to act as director.

DIVISION 4—STAFF OF THE OFFICE

Clause 69 provides that the staff of the office are to be public service officers employed under the *Public Service Act 1996*. The effect of this clause, combined with the amendment to Schedule 1 in the *Public Service Act 1996* is that that Act will apply to the employees of the office. For example, appointments to positions within the office are to be on merit, and staff of the office are subject to disciplinary action under that Act.

PART 6—MISCELLANEOUS

Clause 70 provides for the protection of persons from civil liability for acts done or omissions made honestly and without negligence under the Act. Persons so protected are the Minister, a member of the authority or a member of an authority committee established under clause 47, who is not an authority member. If this clause prevents civil liability attaching to the official, the liability attaches instead to the State. This clause offers protections to persons performing duties under the Act, but will not protect a person from criminal responsibility or civil liability arising from negligent actions.

Clause 71 provides that the authority may approve forms for use under this Act. It is anticipated that forms will be prescribed by Regulations in relation to many of the authority's functions, and this clause will enable the authority to approve such forms.

Clause 72 provides that the Minister may delegate the Minister's powers under the Act to an appropriately qualified person. "Appropriately qualified" is defined by the Dictionary so as to ensure the delegated person has the qualifications, experience or standing appropriate to exercise the power. However, the Minister cannot delegate the Minister's powers under clauses 22(1) (power to refer matters to the authority), 23(1) (power to give directions in the public interest), 24 (power to require production of

documents) or 53 (power to request reports on performance of the authority). These powers are considered to be critical to the Minister's strategic responsibility for ensuring that the authority operates to best practice standards under clause 53(1), and for that reason should be retained by the Minister at all times.

Clause 73 provides for the administrative support for the authority and the office. Under this clause the authority may make arrangements for the administrative support services for the authority and the office. For example, the authority may make arrangements with the Department of Education for the provision of services. If so, subclause 73(2) provides that the authority must pay the department a reasonable amount for the service, as would be expected if the authority instead entered into a contract for services with a commercial entity.

Clause 74 provides for the publication of details of powers delegated to the authority under section 186 of the *Training and Employment Act 2000* in the authority's annual report. The powers currently delegated by the Training Recognition Council are the powers to accredit courses, register schools as registered training organisations and to recognise vocational placement schemes. The annual report is to be published under the *Financial Administration and Audit Act 1977*.

Clause 75 protects the information privacy of individuals. If the authority is giving information to an entity under one of its information functions, it must be satisfied that arrangements are in place sufficient to ensure the privacy of individuals is protected. For example, if the authority is providing information to a university about the level of achievement of individual students, the authority must first be satisfied that the university has in place mechanisms to protect the privacy of that individual. Further, the authority should, under its own privacy plan, ensure that the student consents to their private information being provided to a third party, or that the student is aware when the information was collected that the information would be so provided.

Clause 76 confers the powers of the Minister for Education under clause 22 (Minister may refer matter to the authority), clause 23 (Minister's power to give directions in the public interest) and clause 24 (Power to require production of document) on the Minister administering the vocational education and training department (presently the Minister for Employment, Training and Youth), in relation to the Authority's functions under section 14 (Vocational education and training functions).

Subclause 76(2) provides that for the purpose of this provision, clauses 22 and 24 apply as if reference to "the Minister" was a reference to the

Minister administering the vocational education and training department and the reference to “the authority’s functions” was a reference to the functions under clause 14. This provision limits the power of the Minister for Employment, Training and Youth to refer matters to the authority and to require the authority to produce documents to those matters relevant to the authority’s functions under clause 14.

Subclause 76(3) provides that any directions under clause 23, made to the authority about matters relevant to its functions under clause 14, must be made jointly by the Minister for Education and the Minister administering the vocational education and training department. Further, prior to the giving a direction, the Minister for Education and the Minister administering the vocational education and training department and must be jointly satisfied that the direction is in the public interest.

Clause 77 provides for a three-year review of the Act. Under this clause the Minister must start a review of the Act to ensure that it is adequately meeting community expectations and its provisions remain appropriate. This review must be started before the third anniversary of the date of assent of the Act. Upon finishing the review, the Minister must, as soon as practicable, cause a report of the outcome of the review to be laid before the Legislative Assembly. This is an important accountability mechanism for the authority, whose operations necessarily will need to be assessed for the purpose of the review.

Clause 78 provides the authority with a power to make guidelines under a Regulation. It is anticipated that the power will be utilised for procedural matters subject to frequent change, such as for example administrative processes for the lodgement of applications for review, but also for more substantive procedures difficult to capture in legislative terms, such as the calculation of students’ overall position score for the purpose of ranking students for the tertiary entrance statement. However, if a guideline is inconsistent with the Act or the Regulation, under subclause 79(2), the guideline is invalid to the extent of the inconsistency. The guidelines will be statutory instruments for the purpose of the *Statutory Instruments Act 1992*.

Clause 79 provides that the Governor in Council may make Regulations under the Act. The clause lists 12 matters about which a Regulation may be made.

Subclause 79(2)(a) provides that Regulations may be made about the accreditation by the authority of 1-12 syllabuses or preschool guidelines. It is anticipated that syllabuses and preschool guidelines may be developed by entities other than the authority, such as school authorities or

commercial providers, who in turn submit the syllabuses and guidelines to the authority for accreditation. The Regulations will make provision for procedures for submitting a syllabus or preschool guideline for accreditation, and the criteria for accreditation.

Subclauses 79(2)(b), (c) and (d) relates to the issuing of certificates of achievement. Regulations may be made about the issuing of certificates of achievement to persons entitled to the certificates. As part of that process, Regulations may be made to approve work programs for areas of learning for which results may be recorded on a certificate, and the recognition of student results for a non-authority area of learning that may be recorded on a certificate of achievement. “Non-authority area of learning” is defined by the Dictionary as areas of learning in which a student’s results are not subject to the authority’s procedures for moderation and for which the authority does not approve work programs. Regulations made under these subclauses will specify how the authority will carry out the certification functions set out in clause 13. For example, the requirements for the senior certificate could be provided for in the Regulation, including provisions relating to current Board Subjects, Board Registered Subjects, Recorded Subjects and moderation procedures relevant to the recording of results on the certificate.

Subclause 79(2)(e) provides regulation-making power in relation to the testing of persons, including students. Pursuant to this power, tests will be prescribed to be developed by the authority and the Regulations may also prescribe whether or not the tests are to be administered by the authority or by schools. Such Regulations will complement the testing function of the authority in clause 10.

Subclause 79(2)(f) will enable Regulations to be made about processes for deciding the equivalence of level of education, or school qualification, obtained outside the State. These procedures will enable migrants to have their level of education obtained overseas compared with Queensland levels for the purpose of further studies within Queensland or employment purposes. Such Regulations tie in with the function set out in clause 17(a).

Subclause 79(2)(g) provides for regulation making power relevant to the assessment function in clause 11. The Regulation may prescribe an assessment, such as the Year 2 Diagnostic Net, to be developed by the authority, together with procedures for the assessment’s administration.

Subclause 79(2)(h) provides regulation-making powers in relation to tertiary entrance procedures and requirements, and the issue of tertiary entrance statements to persons entitled to those statements. Such Regulations will set out substantively how the authority will conduct some

functions relating to tertiary entrance set out in clause 15. For example the requirements to be met for a person to be entitled to a tertiary entrance statement will be provided for in Regulation, as will the content of that statement.

Subclause 79(2)(i) provides for the making of Regulations relating to review of decisions by the authority or one of its committees. In performing its functions, the authority will be making decisions that will affect the rights of individual citizens, and the regulation-making power enables procedures to be in place for the proper review of those decisions, without the need to rely on the onerous and limited judicial review provisions of the *Judicial Review Act 1991*, although the rights to judicial review under that Act are of course retained at all times. For example, if the authority decides not to accredit a syllabus developed and submitted to the authority by an entity other than the authority – this could be a commercial provider of syllabus, with a financial stake in the accreditation of the syllabus – this decision will affect the rights of that commercial provider to market the syllabus as an accredited syllabus. The Regulations will set out review procedures for that decision, so as to ensure fairness and transparency in decision-making. The authority will also be making decisions as to, for example, student results and eligibility for certification. Such decisions will affect the student’s rights and future career options, and the regulation-making power will enable review processes to be put in place in a regulation.

Subclause 79(2)(j) provides regulation-making power in respect of the review of the contents of tertiary entrance statements issued pursuant to the function in subclauses 15(b) and 15(c) as well as the Regulations made under subclause 79(2)(h). The information contained in the tertiary entrance statements is critical to the student’s acceptance at a higher education institution, and as such, special provision will be made in Regulations for procedures for reviewing the content of the tertiary entrance statement. These review procedures are currently conducted by the Board of Senior Secondary School Studies under Part 7 of the *Education (Senior Secondary School Studies) By-law 1999*.

Subclause 79(2)(k) similarly provides regulation-making power in respect of the verification of information contained in a certificate of achievement issued to a person pursuant to the certification function in clause 13 and under Regulations made pursuant to subclause 79(2)(d). These verification procedures are currently conducted by the Board of Senior Secondary School Studies under Part 7 of the *Education (Senior Secondary School Studies) By-law 1999*.

Subclause 79(2)(1) provides regulation-making power in respect of fees. This power includes the refund of fees. For example, currently the Board of Senior Secondary School Studies charge fees for the sitting of senior external exams, for the inspection of test scripts, review and verification of results, and for the issue of senior certificates to overseas students. It is anticipated that fees may be charged for the submission of an application for accreditation of a syllabus or preschool guideline.

The previous legislative scheme utilised regulations, by-laws and rules as subordinate legislation. The Bill will simplify this structure by prescribing only regulations and guidelines.

PART 7—REPEAL AND TRANSITIONAL PROVISIONS

DIVISION 1—REPEAL OF CERTAIN ACTS

Clause 80 repeals three Acts, namely the *Education (School Curriculum P-10) Act 1996*, *Education (Senior Secondary School Studies) Act 1988* and *Education (Tertiary Entrance Procedures Authority) Act 1990*.

DIVISION 2—TRANSITIONAL PROVISIONS

Clause 81 provides for definitions for the division.

Clause 82 provides that the former bodies are dissolved, and their members go out of office. The former bodies are defined by clause 81 as the Queensland School Curriculum Council, the Board of Senior Secondary School Studies and the Tertiary Entrance Procedures Authority.

Clause 83 provides that references to the repealed Acts or the former bodies are to be taken, if the context permits, to be a reference to this Act or to the authority respectively. The repealed Acts are defined by clause 80 as the *Education (School Curriculum P-10) Act 1996*, *Education (Senior Secondary School Studies) Act 1988* and *Education (Tertiary Entrance Procedures Authority) Act 1990*.

Clause 84 provides that the authority is the legal successor in law of each of the former bodies. Subclause 84(2) provides that this provision is not limited by clauses 85 and 86.

Clause 85 provides that an agreement or arrangement in force immediately before commencement between a former body and another entity is to be taken to be an agreement or arrangements between the authority and the other entity. For example, the Council may have an agreement with another body for that other body to administer and analyse the results of a test. This agreement will continue under this clause as if it were an agreement between the authority and the other body.

Subclause 85(2) provides that a proceeding that could have been started or continued by or against a former body before commencement may be started or continued by or against the authority. For example, a breach of contract suit against the board may be continued against the authority, or if not yet begun, and still within the relevant limitation period, may be brought against the authority.

Clause 86 provides that on commencement assets and liabilities of the former bodies become assets and liabilities of the authority.

Clause 87 provides transitional provisions about syllabuses and preschool guidelines. Subclause 86(1) provides that a preschool guideline that is an approved syllabus under the *Education (School Curriculum P-10) Act 1996* is taken to be an approved preschool guideline for the preschool year of schooling. These include syllabuses that were deemed to be approved syllabuses in the transitional provisions under the *Education (School Curriculum P-10) Act 1996*. “Approved preschool guideline” is defined by the Dictionary as a preschool guideline developed or revised, and approved by the authority under the Act. This subclause has the effect of deeming a preschool guideline approved by the Queensland School Curriculum Council under the former Act to be an approved preschool guideline for the purpose of the Act. The transitional provision will ensure that existing preschool guidelines continue to be in force.

Subclause 87(2) provides that an approved syllabus under the *Education (School Curriculum P-10) Act 1996* is taken to be an approved syllabus for the subject under this Act. These include syllabuses that were deemed to be approved syllabuses in the transitional provisions under the *Education (School Curriculum P-10) Act 1996*. “Approved syllabus” is defined by the Dictionary as a 1-12 syllabus developed or revised, and approved, by the authority under this Act for an area of learning. This subclause has the effect of deeming a syllabus approved by the Queensland School Curriculum Council under the former Act to be an approved syllabus for

the purpose of this Bill. These include syllabuses that were deemed to be approved syllabuses in the transitional provisions under the *Education (School Curriculum P-10) Act 1996*. Currently, a range of syllabuses are approved and implemented in State educational institutions under the implementation plan required by section 12 of the *Education (School Curriculum P-10) Act 1996*. The transitional provision will ensure that existing approved syllabuses continue to be in force. This is essential to ensure approved syllabuses are in place for the implementation in State educational institutions, which is prescribed by the amendments to the *Education (General Provisions) Act 1989*.

Subclause 87(3) provides that a current, approved syllabus for a subject under the *Education (Senior Secondary School Studies) Act 1988* is taken to be an approved syllabus for the subject under the Act. This subclause has the effect of deeming a syllabus approved by the Board of Senior Secondary School Studies under the former Act to be an approved syllabus for the purpose of the Act. The transitional provision will ensure that existing approved syllabuses continue to be in force.

Subclause 87(4) provides that a study area specification for a subject, approved under the *Education (Senior Secondary School Studies) Act 1988* is taken to be an approved syllabus for the subject under this Act. This subclause has the effect of deeming a study area specification approved by the Board of Senior Secondary School Studies under the former Act to be an approved syllabus for the purpose of the Act. Study area specifications are approved for the purpose of including Board Registered Subjects on the senior certificate. The transitional provision will ensure that existing approved study area specifications continue to be in force and will not need to be approved afresh as a syllabus by the new authority. The definition of “syllabus” is broad enough to capture study area specifications, so as to enable them to continue as approved syllabuses.

Subclause 87(5) provides that a syllabus developed by an entity other than the Board of Senior Secondary School Studies and approved under the *Education (Senior Secondary School Studies) Act 1988* is taken to be an accredited syllabus for the subject under this Act. “Accredited syllabus” is defined by the Dictionary as a 1-12 syllabus accredited by the authority under this Act as an area of learning. This subclause has the effect of deeming a syllabus “accredited” by the Board under the current provisions as an accredited syllabus for the purpose of the Act. The transitional provision will ensure that existing “accredited” syllabuses will continue to have this status.

Subclause 87(6) provides that a syllabus for a vocational education program for students in years 11 and 12 of schooling, developed and approved under the *Education (Senior Secondary School Studies) Act 1988* is taken to be an approved syllabus for the program under this Act. This subclause has the effect of deeming a syllabus for a vocational education program for students in years 11 and 12, approved by the Board of Senior Secondary School Studies under the former Act to be an approved syllabus for the purpose of the Act. The transitional provision will ensure that existing approved syllabuses for vocational education programs continue to be in force.

Clause 88 provides that a work program approved under the *Education (Senior Secondary School Studies) Act 1988* is taken to be an approved work program for the corresponding area of learning. Work programs are approved for the purposes of Board Subjects and Board Registered Subjects the results of which are to be recorded on the senior certificate. The effect of this clause is to ensure that current work programs approved will continue to be approved for the purpose of certification. “Approved work program” is defined as a work program approved by the authority under this Act for an area of learning.

Clause 89 provides transitional provisions for persons undertaking studies for the purpose of the issue of a certificate of achievement. Such students are not to be disadvantaged because of the transition from the current regime to the regime under the Act. In practice this clause will protect a year 11 student studying for a senior certificate so as to ensure that any legislative change in the requirements for a senior certificate will not affect that student’s ability to achieve the certification under the student’s current mode of study. This clause is supplementary to clause 54 which imposes a continuing obligation on the authority to ensure that students studying to receive a certificate are not disadvantaged by changes to requirements for certificates.

PART 8—AMENDMENTS OF ACTS

Clause 90 provides for consequential and other amendments of Acts. Schedule 1 sets out consequential amendments to the *Education (General Provisions) Act 1989*, as well as to the *Public Service Act 1996*.

SCHEDULE 1—CONSEQUENTIAL AND OTHER AMENDMENTS OF ACTS

EDUCATION (GENERAL PROVISIONS) ACT 1989

Section 19 currently provides the Minister with power to do all things considered necessary to develop, review, maintain and implement curricula taught in State educational institutions. For some time section 19 has been considered overtaken by the legislative scheme of the *Education (School Curriculum P-10) Act 1996* and the *Education (Senior Secondary School Studies) Act 1988*, in particular the provisions providing the Minister with power to approve a strategic plan for the development of syllabuses. The scheme is now to provide expressly for the Minister's powers in respect of strategic oversight (refer clause 53 of the Bill), and to expressly prohibit the Minister from directly influencing syllabus content and approval, accreditation and the work of the Authority in relation to the approval of work programs (refer clause 23(4)).

By removing the strategic plan provision from the new legislative scheme, the mandatory implementation of approved syllabuses in State schools for years 1-10 has also been taken out of the authority legislation and is now instead inserted in the *Education (General Provisions) Act 1989*.

Schedule 1 omits Section 19 and inserts instead a new section 19 to provide the Minister with power to decide a curriculum framework that is to apply to educational institutions established under section 16, 17 and 18(1)(c). These educational institutions are State schools, environmental education centres, outdoor education centres, centres for continuing secondary education and other State educational institutions, such as the schools of distance education. "State school" is defined by the Act as a school at which primary, secondary or special education is provided by the State. Centres for continuing secondary education include, for example, Hendra Secondary College and Bundaberg Centre for Continuing Secondary Education attached to Bundaberg State High School. The framework will establish the parameters under which principals of the schools may decide the range of learning experiences to be offered to students enrolled at the school.

Further, section 19A is inserted to make express provision to enable the Minister to develop pre-school guidelines and 1–12 syllabuses. It is also intended that these pre-school guidelines and 1-12 syllabuses will be

submitted to the Authority for accreditation. This will become necessary if the Minister wants syllabuses so developed to be implemented in schools, because section 19B is inserted to mandate the implementation of only approved or accredited syllabuses in areas of learning in relevant State educational institutions. These institutions are State schools, environmental education centres, outdoor education centres, centres for continuing secondary education and other State educational institutions. If a syllabus for an area of learning is not accredited or approved by the authority, it cannot be implemented by State schools.

However, it is recognised that schools undertake activities that are outside the more formal curriculum, captured by approved or accredited syllabuses. For example, they may implement leadership training or pastoral care programs, they may engage in inter-school sport, and may provide an opportunity for students to do a first aid course. These other curriculum offerings are not areas of learning for which the syllabus must be accredited or approved. It is expected that the curriculum framework would include advice to principals on those elements of the school curriculum which lie outside the requirements relating to approved or accredited syllabuses.

The new subsection 19B(2) will give the Minister power to direct principals to ensure that the school provides education in a particular area of learning. Under subsection 19B(3) the Minister can direct principals to implement a particular approved or accredited syllabuses for an area of learning, and under subsection 19B(4), principals can be directed that a particular approved or accredited preschool guideline be implemented in the school's preschool centre. Such direction will occur in the context of the curriculum framework developed under the new section 19. The curriculum framework document provides the structure around which principals of State educational institutions can determine the range of learning experiences to be offered to students.

Finally, a new section 19C is inserted to give the Minister power to direct principals to administer an approved test, i.e. a test developed or revised by the authority under the Bill. This provision replaces a provision in the *Education (School Curriculum P-10) Act 1996*, relating to the administration of prescribed tests in State educational institutions. Under the *Education (School Curriculum P-10) Act 1996*, the power to direct principals to administer and an approved test vests in the chief executive of the department.

PUBLIC SERVICE ACT 1996

The amendment to the *Public Service Act 1996* prescribes the office and the director in schedule 1 of the *Public Service Act 1996* as a public service office and head of a public service office respectively.

Schedule 2 provides for the meaning of terms within the body of the Bill.