

# Education Legislation Amendment Bill 2004

## Explanatory Notes

### General Outline

#### Short Title

The short title of the Bill is the *Education Legislation Amendment Bill 2004*.

#### Policy Objectives of the Legislation

The primary policy objectives of the Bill are to:

- bring the legislative framework governing the provision of capital assistance to non-State schools up to date;
- ensure, through the undertaking of criminal history checks, that only persons whose enrolment as mature age students would not harm the best interests of children, are able to be enrolled in certain State educational institutions where they will be learning alongside children;
- introduce a legislative requirement for non-State schools to provide certain financial data to the Minister, to be used in relation to the payment of allowances to the schools;
- amend the *Education (Teacher Registration) Act 1988* to enable the Minister for Education to extend the term of the members of the Board of Teacher Registration for a period of up to 2 years;
- make minor technical amendments to the *Grammar Schools Act 1975* to clarify the Government's policy position that a by-law or regulation may prescribe an electoral eligibility amount for all elections or a specified election of a board of trustees for a grammar school; and
- insert a transitional provision into the *University of Queensland Act 1998* to extend the term of office of the current senate of the University of Queensland for a further 12 months to offset the costs

involved in reconstituting this governing body two times within the space of 12 months, that is, at the end of 2004 and again in 2005.

## **Reasons for the Bill**

### Amendments to the *Education (Capital Assistance) Act 1993*

The *Education (Capital Assistance) Act 1993* establishes a legislative framework for the provision of capital assistance to non-State schools. The capital assistance scheme was instigated by the State Government as a systematic method of providing non-State schools with funding assistance for capital projects. Two capital assistance authorities (CAAs), the Queensland Catholic Capital Assistance Authority and the Independent Schools of Queensland Block Grant Authority, have been established under the legislation to administer the scheme.

Guidelines have been developed over time to address operational matters in relation to the provision of assistance under the *Education (Capital Assistance) Act 1993*. Given that the guidelines have been in place for more than five years, it was considered appropriate to review them to ensure the continued efficiency of the scheme. A review was undertaken under the auspices of the Non-State Schools Authorities Council (NSSAC). The NSSAC is a Ministerial Advisory Committee established in 1999 by the then Minister for Education to advise the Minister in respect of policy to be adopted by the State Government that will affect the non-State schooling sector.

To review the guidelines, the NSSAC established a working party consisting of representatives from the two CAAs and the Department of Education and the Arts. The Assistant Director of the Queensland Catholic Education Commission chaired the working party. The working party's review of the guidelines has resulted in recommendations to amend certain aspects of the policy underpinning the capital assistance scheme and to improve the efficiency of its administration.

The Bill amends the *Education (Capital Assistance) Act 1993* to address these policy recommendations, and to refine the Act so as to address minor inconsistencies in the legislation. The amendments will ensure that the legislative framework for delivering capital assistance funding to non-State schools is sound and adequately reflects existing and emerging policies in this area.

### Amendments to the *Education (General Provisions) Act 1989*

- *Criminal history checking of mature age students*

The *Education (General Provisions) Act 1989* provides an entitlement to an allocation of State education. There are no legislative limits placed on the ages at which people may take up this allocation. Consequently, persons over the age of 18 may seek to take up any remaining entitlement by enrolling in a State educational institution.

In a recent incident a mature age student of a State high school was charged with attempted murder following a serious assault. The 21 year-old student had a criminal history that included armed robbery, stealing, assault and fraud. The school was unaware of this person's criminal history until after the most recent charges had been brought against him.

Whilst this incident was unusual, it brought into question the policies and procedures relating to the attendance of mature age students in State educational institutions and what steps the Department takes to satisfy itself that adult students are not a risk to the safety and welfare of children also attending those schools.

The Bill seeks to ensure, as far as possible, that children attending State educational institutions are protected from associating with mature age students who may harm their best interests. The Bill also seeks to balance the rights of mature age students by providing those mature age students considered unsuitable to attend in school settings alongside children with the option of accessing their entitlement to State education through State Schools of Distance Education.

- *Recurrent funding for non-State schools*

The State provides funds to non-State schools based on an administrative disbursement model that determines how much money each non-State school will receive in the form of annual allowances (or grants), out of the total pool of recurrent funds for non-State schools approved through the State budget process. A recent review of this system has recommended changes to the current arrangements, including the development of a new disbursement model.

The development of the new disbursement model will also involve the creation of a new School Resource Index, which cannot be undertaken without obtaining certain financial data from the non-State schools. In addition, to enable the operation of the new disbursement model, it will be necessary to obtain financial data on a yearly basis from each operating non-State school that is eligible for Government funding.

Government allowances for non-State schools are paid in accordance with the provisions of the *Education (General Provisions) Act 1989*. Therefore, the Bill amends this Act to introduce a legislative requirement for non-

State schools to provide the Minister with the relevant financial data, and to refine the existing legislation applying to payment of allowances to non-State schools.

#### Amendments to the *Education (Teacher Registration) Act 1988*

The *Education (Teacher Registration) Act 1988* establishes the Board of Teacher Registration (the Board) and provides for the registration of teachers. In March 2004, the Minister announced a review of the functions and powers of the Board. At that time it was anticipated that the review would be completed within 1 year. Accordingly, new election and nomination processes were undertaken to appoint Board members for 1 year.

As the time frames for the review and implementation of any subsequent reforms have been extended, it is necessary to extend the appointment of those Board members. This is a time-consuming and costly process to undertake, given that the members only need to be appointed for a relatively short time frame until the reforms of the review are implemented.

To address this situation, the Bill inserts a provision into the Act to allow the Minister to extend the terms of office of the members of the Board for up to two years. This will provide flexibility in situations where, due to some event or occurrence, the appointment term runs short of the amount of time the Minister requires the Board to be appointed.

#### Amendments to the *Grammar Schools Act 1975*

The *Grammar Schools Act 1975* specifies that the membership of the board of trustees for a grammar school consists of elected members and members nominated by the Minister.

The *Grammar Schools Act 1975* was amended in 2003 to implement recommendations arising from a review of the Act. One recommendation was that in order to be eligible to vote in or participate in the elections for the board of trustees, donors or subscribers must demonstrate an ongoing commitment to the grammar school via donations. The Government's policy intent is that this commitment is to be demonstrated through payment of an amount, namely the electoral eligibility amount. It was intended that payment of the electoral eligibility amount could occur approximately at four yearly intervals, which would entitle the donor or subscriber to vote in or participate in the next board election. Alternatively, if permitted by a by-law made by the board of trustees for a grammar school, payment of the electoral eligibility amount could occur as a one-off lump sum donation, which would entitle the donor or subscriber to vote or participate in all future board elections.

The Office of the Queensland Parliamentary Counsel has advised that the amendments made in 2003 have not adequately reflected the Government's policy intention around electoral eligibility amounts. Therefore, the Bill makes a minor amendment to the *Grammar Schools Act 1975* to make it clear that a by-law or regulation may prescribe the electoral eligibility amount for all elections or a specified election.

#### Amendments to the *University of Queensland Act 1998*

To be eligible for additional funding from the Commonwealth, legislative amendments are required to the authorising legislation of Queensland universities to achieve consistency with the National Governance Protocols for Higher Education Providers ('the National Governance Protocols'). Implementation of the requirements of the National Governance Protocols requires legislative amendments to be made to the *University of Queensland Act 1998* which affect the size and composition of the governing body. Subject to Parliament, it is anticipated that these amendments will be enacted during 2005 in a separate Bill, and that the senate of the University of Queensland will then be reconstituted under the new arrangements.

The term of office for the existing senate is due to expire in December 2004. The legislative amendments implementing the requirements of the National Governance Protocols will not be in place before this time. This means that the senate would therefore have to be reconstituted under the existing arrangements and in approximately twelve months' time, reconstituted under the new arrangements. To avoid this circumstance, the university has requested that the term of office for the existing senate be extended until the anticipated enactment of necessary legislative amendments implementing the requirements of the National Governance Protocols in 2005.

As an interim measure, the Bill inserts a transitional provision into the *University of Queensland Act 1998* to extend the term of members of the existing senate for a period of twelve months.

### **Achieving the Objectives**

The policy objectives of the Bill will primarily be achieved as follows.

#### Amendments to the *Education (Capital Assistance) Act 1993*

The amendments to the *Education (Capital Assistance) Act 1993* will –

- clarify the meaning of the term "capital project" to ensure that it covers all types of capital assistance available to non-State schools;

- enable CAAs to determine the due day by which approved authorities must submit their applications for capital assistance;
- permit CAAs to accept applications for assistance after the due day in exceptional circumstances;
- clarify that in assessing applications for assistance, a CAA must have regard to other applications for the same type of capital assistance received by the CAA in relation to the same relevant day;
- provide that when making a recommendation to the Minister about an application for capital assistance, if the Minister has advised a CAA that different amounts are available for different types of capital assistance, then the CAA must have regard to the amount that is available to provide capital assistance for projects of that type;
- require approved authorities that have been granted capital assistance for a proposed capital project to make an initial application for payment before the due day, which will be either 2 years after the day the Minister granted the application for assistance, or a later day decided by the Minister;
- provide that the grant of an application for capital assistance will be revoked if the approved authority has not made an initial application for payment or sought an extension of time in which to do so, or if an extension of time has been refused;
- enable a CAA to provide additional capital assistance of up to 10% of the amount granted by the Minister for a capital project, if there has been a variation in the cost of the proposed project that was not reasonably foreseeable at the time when the approved authority made application for capital assistance for the project;
- remove the requirement for approved authorities to give the CAAs a return about the capital assistance that was provided in the previous year;
- provide a power of entry for a person nominated by the Minister to enter a school for the purpose of inspecting a capital project for which an application for capital assistance was granted; and
- provide the Minister with a head of power to issue guidelines about the various types of capital assistance that can be provided to non-State schools.

Amendments to the *Education (General Provisions) Act 1989*

In relation to the criminal history checking of mature age students, the amendments to the *Education (General Provisions) Act 1989* will –

- provide a regime to screen persons, based on their criminal history, who are seeking to enrol as mature age students in State educational institutions, except State Schools of Distance Education and Special Schools; and
- require those mature age students who obtain enrolment in such schools to report any changes relating to their criminal history.

The criminal history checking and disclosure regime will apply to any person who seeks to be an adult enrolled at a mature age State educational institution or who is an adult enrolled at a mature age State educational institution and who was 18 or more at the time of their enrolment. Persons who are in Australia on some form of visa will have undergone character checks by the Department of Immigration and Multicultural and Indigenous Affairs prior to their being issued with a visa and will not be subject to an initial criminal history check on their application for enrolment in a school. However, visa holders will be subject to the disclosure regime. The Chief Executive has the ability to undertake subsequent criminal history checks on a person who is subject to the initial criminal history check or the disclosure regime. The Chief Executive also has the ability to receive information from the Commissioner of the Police Service about changes to such a person's criminal history.

Students who simply turn 18 during their enrolment or who, having turned 18, return to school after a period of absence of less than 12 months are not captured by the initial criminal history checking. This cohort is also not subject to the disclosure regime.

In relation to the provision of recurrent funding to non-State schools, the amendments to part 8A of the *Education (General Provisions) Act 1989* will –

- require the governing bodies of operating non-State schools, who are eligible for Government funding for the schools under the *Education (Accreditation of Non-State Schools) Act 2001*, to provide the Minister with financial data on a yearly basis;
- require those governing bodies of schools that were operating either for all of the 2002 and 2003 school years, or all of the 2003 school year, to provide the Minister with the financial data relating to those years by 14 February 2005;

- define the term “financial data” to clarify the type of data that each governing body is required to provide to the Minister;
- provide a head of power for the Minister to request the provision of documents, records or information from a school’s governing body, in connection with financial data provided by the governing body;
- introduce an offence provision for giving false or misleading information under part 8A of the Act; and
- provide that the financial data provided to the Minister is confidential, and that use or disclosure of the information, other than in accordance with part 8A of the Act, is an offence.

#### Amendments to the *Education (Teacher Registration) Act 1988*

The amendments to the *Education (Teacher Registration) Act 1988* will enable the Minister to extend the terms of office of members of the Board of Teacher Registration for not more than 2 years. To extend the terms of office of these members, the Minister must be satisfied the extension is necessary for the Board to perform its functions and exercise its powers appropriately, effectively and efficiently.

#### Amendments to the *Grammar Schools Act 1975*

The amendments to the *Grammar Schools Act 1975* will clarify that a by-law or regulation may prescribe an electoral eligibility amount for all elections or a specified election. This reflects the intent of the Government’s policy for the amendments made to the *Grammar Schools Act 1975* in 2003.

#### Amendments to the *University of Queensland Act 1998*

The amendments to the *University of Queensland Act 1998* will extend the term of office for members of the existing senate of the university for twelve months until the legislative amendments which implement the requirements of the National Governance Protocols, are enacted. Subject to Parliament, it is anticipated that those legislative amendments will be enacted in 2005.

### **Administrative costs**

The proposed amendments to the *Education (General Provisions) Act 1989* concerning the criminal history checking of mature age students will result in future applicants for enrolment as mature age students being required to meet the cost of a criminal history check (\$21.00). The Bill amends the *Education (General Provisions) Regulation 2000* to set out this charge.



The Department will be required to meet the costs of any criminal history checks it may require once a person is enrolled as a mature age student. The Department will also meet the cost of checking of any lists the Chief Executive may provide to the Queensland Police Service (QPS) for the purposes of updating criminal histories and any proactive searches the QPS may perform. These costs will be met within budget allocations.

There are significant financial and logistical expenses associated with the reconstitution of the senate of the University of Queensland. Extending the term of office for the existing senate means the senate will not need to be reconstituted at the end of 2004 and again in 2005. The senate will only need to be reconstituted in 2005. This will minimize the expense incurred by the university.

### **Fundamental Legislative Principles**

Aspects of the Bill that raise fundamental legislative principles issues are outlined below:

#### **Power to obtain criminal history reports and police investigative information under the *Education (General Provisions) Act 1989***

The proposed amendments raise Fundamental Legislative Principle issues. Under s.4(2)(a) of the *Legislative Standards Act 1992*, legislation must have sufficient regard to the rights and liberties of individuals. There are two issues for consideration: the erosion of the policy under the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and the use of that criminal history information to refuse enrolment or to suspend or exclude a mature age student from a State school setting.

The amendments erode the policy under the *Criminal Law (Rehabilitation of Offenders) Act 1986* about a person's right not to disclose, or have disclosed, particular convictions or charges recorded against the person. Under the amendments the Department may obtain from the Commissioner of the Police Service the criminal history of a person who applies for enrolment as a mature age student at a State educational institution, other than a Special School or State School of Distance Education. The criminal history that the Commissioner is required to release includes all convictions and charges recorded against the person. Also, a person who is enrolled as a mature age student in a State educational institution, other than those mentioned above, has an ongoing obligation to report changes in the person's criminal history record. In cases where charges are taken into account, it may be suggested that the provision of an extensive criminal history will impact on the rights and liberties of an individual, as the

history may include information that has not been tested by a Court and may not be true.

A primary aspect of the amendments is the ability of the Chief Executive to either not allow an applicant to enrol in certain State educational institution settings, or to suspend and possibly exclude a mature age student from that setting. Depending on the circumstances, these actions will be based on the consideration of the relevant criminal history of the person.

The Department considers that erosion of the policy under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, and potentially refusing enrolment to or excluding a mature age student in this way, is necessary to protect the best interests of children, and strikes an appropriate balance between the mature age student's rights and the Department's obligation to protect children enrolled at State educational institutions.

It is submitted that the ongoing obligation to report changes in the person's criminal history record is justifiable in that mature age students, who want to retain their enrolment in a school setting, should be required to disclose any changes in their criminal history to ensure that, as far as possible, only suitable adults are allowed to learn alongside children in a school environment. If mature age students were not obliged to disclose changes in criminal history records, the policy intent could not be met. Mature age students will not have their entitlement to State education effected as they may access their entitlement through State schools of distance education.

Given the maintained community interest in issues of protection of children, it is considered appropriate to ensure this criminal history information is available to the Department when educating adult students in the same setting as children. The amendments contain provisions to safeguard the interests of affected individuals. For example, the provisions make available the opportunity to make submissions (both oral and written) against actions proposed by the Department. There is also an opportunity to seek an internal review of the decisions taken by the Department. In addition any decision made under these provisions will be subject to judicial review.

## **Consultation**

### **Community**

#### Amendments to the *Education (Capital Assistance) Act 1993*

In relation to the proposed amendments to the *Education (Capital Assistance) Act 1993*, a review was undertaken which examined all aspects

of the proposed amendments to the guidelines, including proposals to amend the Act. The following key stakeholders were consulted about, and involved in, the review of the capital assistance guidelines over a two and a half year period:

- The Queensland Catholic Education Commission (QCEC) – representing Catholic diocesan and order-owned schools;
- The Association of Independent Schools of Queensland (AISQ) – representing independent schools;
- The Queensland Catholic Capital Assistance Authority – which administers the capital assistance schemes on behalf of the State Government in respect of Catholic schools;
- The Independent Schools of Queensland Block Grant Authority – which administers the capital assistance schemes on behalf of the State Government in respect of independent schools; and
- The Non-State Schools Authorities Council – a Ministerial advisory committee made up of non-State schooling sector representatives.

The working party that reviewed the guidelines for capital assistance for non-State schools developed a report, which has informed the proposed amendments to the *Education (Capital Assistance) Act 1993*. The report was endorsed by the QCEC, the AISQ, the Queensland Catholic Capital Assistance Authority and the Independent Schools of Queensland Block Grant Authority.

The QCEC and the AISQ were also consulted on an exposure draft of that portion of the Bill containing the proposed amendments to the *Education (Capital Assistance) Act 1993*. The QCEC and the AISQ support the proposed amendments.

#### Amendments to the *Education (General Provisions) Act 1989*

- *Criminal history checking of mature age students*

Consultation on the legislative proposals regarding mature age students has been undertaken with the Queensland Secondary Principals' Association and the Queensland State P-10/12 School Administrators' Association.

The Queensland Secondary Principal's Association and the Queensland State P-10/12 School Administrators' Association support the proposed amendments.

- *Recurrent funding for non-State schools*

The Executive Directors of the QCEC and the AISQ were consulted about the Government's proposed adoption of a disbursement model that includes a new School Resource Index, and the introduction of a process to collect school financial data from which to derive this index.

The QCEC supports the use of a School Resource Index as part of the new model for disbursement of Government funds to non-State schools, and consequently the proposal to collect and use financial data for this purpose. The AISQ does not support the use of a School Resource Index in the disbursement model, based on its view that any such resource indices are either invalid or inappropriate measures for use in allocating funds to non-State schools. Consequently, the AISQ does not support the proposal to collect and use financial data for this purpose. However, provision of the financial information is not considered to be an onerous requirement, given that it will be the same as the information already provided by the non-State schools to the Commonwealth Government in accordance with the Commonwealth's funding agreements with them.

In particular, the AISQ has concerns about perceived anomalies from the past use of resource indices. These concerns will be taken into account as part of the development of the School Resource Index, which will be undertaken by an independent expert.

The AISQ is also concerned that financial data supplied by non-State schools may be used inappropriately for purposes other than calculation of funding. To address this concern, the Bill provides that the financial data provided to the Minister is confidential, and that use or disclosure of the information, other than in accordance with part 8A of the Act, is an offence.

Finally, the AISQ raised concerns about the proposal to retrospectively collect financial data relating to 2002 and 2003, given that the data was not prepared for the purpose of allocating funds to non-State schools. However, this data will be used together with the financial data from 2004 to create a 3-year rolling average for the School Resource Index. The collection of this historical data will not impact on the allowances allocated to the non-State schools in 2005, as the new disbursement model will only apply from 2006. In each subsequent year, the rolling average will be updated so that it disregards the first year and includes the most recent year.

#### Amendments to the *Education (Teacher Registration) Act 1988*

Consultation has been undertaken with the Board of Teacher Registration regarding the amendments to the *Education (Teacher Registration) Act 1988*. The Board supports the amendments to this Act.

Amendments to the *Grammar Schools Act 1975*

Given that the amendments to the *Grammar Schools Act 1975* simply confirm the Government's policy position, which was agreed to with the grammar schools during the development of amendments to the Act in 2003, further consultation was unnecessary.

Amendments to the *University of Queensland Act 1998*

In relation to the proposed amendment to the *University of Queensland Act 1998*, the university requested this amendment and therefore supports it.

**Government**

The following Government departments and agencies were consulted during the preparation of the Bill:

- Department of the Premier and Cabinet
- Queensland Treasury
- Commission for Children and Young People
- Department of Aboriginal and Torres Strait Islander Policy
- Department of Child Safety
- Department of Communities
- Department of Corrections
- Department of Employment and Training
- Department of Justice and Attorney-General
- Department of Local Government, Planning, Sport and Recreation
- Department of Police
- Department of Public Works
- Department of State Development and Innovation
- Disability Services Queensland

## Notes on Provisions

### Part 1 Preliminary

#### Short title

Clause 1 sets out the short title of the Act as the *Education Legislation Amendment Act 2004*.

#### Commencement

Clause 2 provides that Part 2 of the Act will commence on a day to be fixed by proclamation.

### Part 2 Amendment of Education (Capital Assistance) Act 1993

Clause 3 provides that this part amends the *Education (Capital Assistance) Act 1993*.

Clause 4 amends section 3 to insert definitions for two new terms that are used in the Act, namely '*due day*' and '*initial application*'. These terms are further defined in new section 21A.

Clause 4 also updates paragraph (a) of the definition of '*eligible non-State school*' by cross-referencing it directly to the *Education (Accreditation of Non-State Schools) Act 2001*. It is defined to mean a school, the governing body of which is eligible for Government funding under the *Education (Accreditation of Non-State Schools) Act 2001*. The previous paragraph (a) used the term 'school in receipt of a subsidy' and cross-referenced that to the *Education (General Provisions) Act 1989*, section 134A(1)(b), which then further cross-referenced the definition to the *Education (Accreditation of Non-State Schools) Act 2001*. The amendment to paragraph (a) of the definition eliminates an unnecessary cross-reference and improves readability of the definition.

Clause 5 broadens the example under subsection 4(3)(a) to illustrate that work relating to equipment or furniture can also include work for the

installation of information or communication technology equipment, or air-conditioning.

Clause 5 also makes technical amendments to section 4 to replace references to the term 'local authority' with the preferred legislative term 'local government'.

Clause 5 also amends section 4 by inserting a new subsection 4(3)(c) to clarify that the meaning of 'capital project' also includes payment of an amount to a local government as part of that local government's approval relating to a capital project. For instance, a local government may require payment of a levy for the provision of water supply or sewerage services, or for environmental protection.

Clause 6 amends section 10(1) in a manner similar to the clause 4 amendment to paragraph (a) of the definition of '**eligible non-State school**'. That is, by referring to a school, the governing body of which is eligible for Government funding under the *Education (Accreditation of Non-State Schools) Act 2001*. The previous section 10(1) referred to 'a school in receipt of a subsidy', which was cross-referenced to the *Education (General Provisions) Act 1989*, and which then further cross-referenced that term to the *Education (Accreditation of Non-State Schools) Act 2001*. The amendment to section 10(1) eliminates an unnecessary cross-reference and improves readability of the section.

Clause 7 replaces section 11(2) with new sections 11(2) and (2A) to provide that if an eligible non-State school wishes to change its listing from one CAA to another, it must apply in writing and may only apply to the Minister for approval to change its listing if –

- (a) The school makes the application not less than 12 months before 1 January of the year for which the school wishes the change of listing to be effective; and
- (b) There are no outstanding amounts of capital assistance to be paid to the school's approved authority in relation to the grant of capital assistance for proposed capital projects at the school; and
- (c) Before making the application, the school gave written notice of its intention to do so, including the reasons for the proposed change of listing, to each CAA.

There are a number of aspects of the capital assistance scheme that operate on a yearly cycle, for example the allocation of funding and the approval of projects. Therefore, any short-term shifting of listing from one CAA to another is not desirable. Requiring a school to provide at least 12 months

advance notice of its intention to change its listing to the other CAA is considered an appropriate period to prevent short-term changes. This period also aligns well with the yearly operational cycle of the capital assistance scheme.

If a school wishes to change its listing, then for accurate accounting purposes there must be no outstanding commitment to pay monies to the school under an existing application for assistance. Also, each CAA should be advised of the school's intention to change listing before it makes its application. This is to provide the CAAs with an opportunity to form their views regarding the school's proposal to change its listing, and to check whether there are any outstanding amounts owing to the school.

Clause 7 also amends section 11(3) to provide that the Minister must seek the views of each CAA about a school's application to change its listing. The Minister was previously required to seek the views only of the CAA with which the school wished to become listed. The change is necessary so that the CAA with which the school is currently listed can advise the Minister about whether there are any outstanding commitments to provide the school with assistance. As explained above, these commitments must be finalised before a school applies to change its listing to another CAA.

Clause 7 amends section 11(4) to provide that the Minister may grant or refuse a school's application to change its listing from one CAA to the other, after considering any views of each of the CAAs about the application.

Clause 7 then renumbers section 11(2A) to (8) as section 11(3) to (9).

Clause 8 inserts a new section 12A, which provides that the CAAs must give written notice to the approved authorities of the day before which applications for capital assistance for a year may be made (the *relevant day*). The CAAs must give the written notice to the approved authorities before a day prescribed under a regulation. The CAAs may provide for different relevant days for different types of capital projects, however they must have at least 1 relevant day in a year for each type of capital project (whether the same or a different day for each capital project).

Clause 9 amends section 14(1)(b)(ii) and (3) to remove the word 'usually'. The policy in relation to the provision of capital assistance, where similar facilities may have been provided for State schools, has now altered. Assistance may be provided for a facility for an eligible non-State school, if a similar facility has been provided in at least one State school. That is, it is no longer necessary to determine whether it is 'usual' to provide a relevant type of facility in a State school.



Clause 10 amends section 15 as a consequence of the insertion of new section 12A, which provides that the CAAs must set the day by which applications for assistance for a year may be made under section 15. Section 15(1) is amended to provide that the approved authorities are required to apply to the Minister for capital assistance by ‘the relevant day for a year’. A new subsection (1A) is inserted to enable applications to be made after the relevant day if the CAA with which the school is listed considers that there are exceptional circumstances.

Clause 10 also inserts a new subsection 15(5) to define the term ‘*relevant day*’, for a year, for section 15. The term means either –

- (a) the day notified by the CAA under section 12A, in relation to applications for capital assistance of the type concerned for the year; or
- (b) if the CAA has failed to notify the approved authority of the day, then the day prescribed under a regulation as the day for making applications for capital assistance of the type concerned for the year.

Clause 10 then renumbers section 15(1A) to (5) as section 15(2) to (6).

Clause 11 amends section 16(1)(a) to provide that on receipt of an application under section 15, the CAA must assess it having regard to –

- (i) the criteria prescribed under a regulation; and
- (ii) other applications for the same type of capital assistance received by the CAA in relation to the same relevant day.

The amendment clarifies that CAAs must assess applications not only with regard to criteria prescribed in a regulation, but also with regard to other applications that they have received for the same type of capital assistance in relation to the same relevant day. Assessing applications in this way already occurs in practice, but the amendment will specify this and provide clarity in the legislation.

Clause 12 replaces section 21 to clarify that in making a recommendation about an application for capital assistance, a CAA must have regard either to –

- (a) the amount that the Minister has advised the CAA is available to provide capital assistance; or
- (b) if the Minister has advised the CAA that there are different amounts available for different types of capital projects, then the

amount that is available to provide capital assistance for projects of that type.

However, section 21 also provides that the CAA does not have to have regard to an available amount when making a recommendation about an application for capital assistance that includes work or a payment mentioned in section 4(3)(b) or (c). These works or payments are funded under the external infrastructure scheme (one of the different types of capital assistance schemes), which provides assistance on a subsidy basis. That is, the provision of this type of assistance is not restricted by a requirement to draw the funds from a predetermined total amount set aside for this purpose. The level of subsidy to be provided under the external infrastructure scheme is a matter of Government policy.

Clause 13 amends part 5 by inserting division headings to create new divisions 1 and 2 for this part.

Clause 13 also inserts a new section 21A to define the terms '*due day*' and '*initial application*' for part 5.

The term '*due day*' is used in relation to an initial application for payment of the amount, or part of the amount, granted for a capital project. It means—

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

The term '*initial application*' is further defined in section 22A(a).

Clause 14 amends section 22(2) to extend the conditions under which a CAA can provide an approved authority with the amount of assistance granted for a capital project. Previously, a CAA could not provide the amount until —

- (a) the CAA and the approved authority had entered into a written agreement for the project; and
- (b) at least 25% of the value of the works relating to the project had been completed.

The amendment to section 22(2) requires that, in addition to these two conditions, a CAA can not provide the amount until the approved authority has applied for payment of the amount or part of the amount, as required by new section 22A.

Clause 15 inserts new sections 22A to 22F. Notes on these sections are as follows —

- Section 22A requires that an approved authority must initially apply to its CAA for payment of the amount, or part of the amount, granted for a capital project before the due day (see section 21A for the definition of '*due day*'). If the approved authority is unable to make an initial application for payment before the due day, then it must apply for an extension of time under section 22B.

The inclusion of a legislative requirement to make an initial application for payment by a due day formalises the process that occurs at an operational level. It is necessary for initial applications for payment to be made within a reasonable period of time, in order to avoid potential budgetary problems for a CAA. If an approved authority was to significantly delay seeking payment of the assistance granted to it, then this could potentially negatively impact on the CAA's budgetary position, because the CAA would be less able to forecast the amounts of assistance it expects to pay in any particular period. Therefore, the inclusion of sections 22A to 22E will provide the CAAs with greater certainty in managing their finances. These sections set out the process for making an initial application for payment, or seeking an extension of time in which to do so, as well as specifying under what circumstances the grant of an application for capital assistance is revoked.

- Section 22B sets out the process by which an approved authority may apply to the Minister for an extension of time in which to make an initial application for payment. The approved authority's application must –
  - (a) be made in writing through the CAA with which the school is listed; and
  - (b) give reasons for the proposed extension of time; and
  - (c) be given to the CAA before the due day.

Section 22B also provides that an approved authority may make more than 1 application for an extension of time about the same capital project.

- Section 22C specifies the action that must be taken by a CAA when it receives an application for an extension of time made under section 22B. The CAA is required to assess the application and recommend to the Minister whether it should be granted or refused. The CAA must give its written recommendation to the Minister, together with its reasons for the recommendation and the approved authority's application, within 28 days after receipt of the application by the CAA.

- Section 22D provides that the Minister must make a decision whether to grant or refuse the approved authority's application for an extension of time. The Minister may have regard solely or principally to the recommendation provided by the CAA about the application.

When the Minister has made a decision about the application, the Minister must give written notice of the decision to both the approved authority and the CAA. If the Minister grants the application, then the Minister must also advise the CAA and the approved authority about the new due day by which the approved authority must make an initial application for payment. If the Minister refuses the application, then the Minister must give reasons for the refusal.

- Section 22E sets out the circumstances under which the original grant of an application for capital assistance is revoked. The revocation occurs if –
  - (a) neither an initial application for payment has been made before the due day (as defined in section 21A), nor an application for an extension of time has been received by the approved authority's CAA before the due day; or
  - (b) an application for an extension of time has been received by the CAA before the due day, but has been refused by the Minister under section 22D.

Section 22E(2) provides that if any of these circumstances occurs, then the original grant is automatically revoked. If the capital assistance is still required by the school, then its approved authority must make a fresh application under section 15.

- Applications for capital assistance are granted for specific monetary amounts. However, as the application is usually based on estimates, actual costs sometimes vary and so alter the final price tag for undertaking the works or providing the facilities for which assistance was granted. It may sometimes be possible for a CAA to provide extra assistance towards such increased project costs.

Section 22F provides power for a CAA to give an approved authority this additional capital assistance for a proposed capital project if there has been a variation in the cost of the proposed project that was not reasonably foreseeable at the time the application for capital assistance was made by the approved authority. CAAs may provide this additional assistance from interest earned, amounts returned (for instance if another project is completed below the original estimated cost), or from amounts remaining in the CAA's Capital Assistance Fund. The total amount of

additional capital assistance that may be provided by a CAA in relation to any one capital project must not be more than 10% of the amount granted by the Minister for the project. If a CAA provides additional assistance under section 22F, then subsection (6) provides that the CAA must give the Minister written notice about this, including the amount of the additional capital assistance provided.

Clause 16 replaces section 23 to remove the previous requirement for approved authorities that have received or retained capital assistance in a year to give their CAA a written return containing details about the project and its funding. Approved authorities do not need to provide the CAAs with this information, because the CAAs already hold sufficient information and records about granted applications for capital assistance.

Clause 16 also clarifies the requirement in the previous section 23 for a person approved by the Minister to be able to inspect and take copies of the records kept by a CAA about an approved application for capital assistance. The new section 23 provides that an approved person may inspect a record kept by a CAA for an approved application for capital assistance, and may also take a copy of, or extract from, that record, without fee. However, the approved person cannot inspect the CAA's records until the person has produced a copy of their approval for inspection by the person in charge of the CAA. After inspecting the CAA's record, the approved person must give a report to the Minister about the record's contents.

Clause 16 defines the terms '*approved person*' and '*record*' for section 23. An '*approved person*' means a person approved by the Minister, in writing, for the section. A '*record*', for an approved application for capital assistance, means any document kept by the CAA about the capital project for which the application for capital assistance was granted.

Clause 17 replaces section 24(1)(c) as a consequence of the removal of the requirement in the previous section 23 for approved authorities to give their CAA a written return about capital projects for which capital assistance has been received or retained in a year. The CAAs previously provided the Minister with the details from these written returns. Although it is no longer necessary for the approved authorities to provide the CAAs with these returns, the same information must still be provided to the Minister by the CAAs. Therefore, section 24(1)(c) has been replaced to ensure that the section clearly specifies the details that the CAA must give to the Minister.

Clause 18 inserts new sections 24A and 24B. Notes on these sections are as follows –

- Section 24A provides that a person nominated in writing by the Minister has power to enter a school at any reasonable time to inspect the capital project for which capital assistance was granted. However, before inspecting the capital project, the person must give the school's principal reasonable notice of their intention to enter the school, and they must also produce a copy of their nomination for inspection by the school's principal.
- Section 24B provides that the Minister may issue guidelines for the Act. The administration of the system for providing capital assistance to non-State schools has become more complex since the commencement of the Act. Guidelines have been developed to assist the CAAs and to address operational matters in relation to the administration of the capital assistance scheme. Section 24B formalises this process by providing the Minister with a clear power to issue the guidelines. Without limiting the Minister's power to issue guidelines for the Act, a guideline may give guidance about –
  - (a) administrative matters relevant to applications under the Act;
  - (b) how an applicant should deal with issues involved in the proper formulation of the application;
  - (c) how funds will be allocated and paid to a CAA, and how a CAA may use the funds;
  - (d) the information to be kept by a CAA about capital projects for which applications for assistance have been granted.

A guideline may be replaced or varied by a later guideline issued by the Minister under this section.

The Chief Executive must keep a copy of any guideline issued by the Minister for the Act, and must make it available for inspection, including allowing a person to take extracts from, or copies of, the guideline, without fee. The Chief Executive must also make the guideline available for supply to any person without fee, and must keep a copy of the guideline posted on the Department's web site on the Internet.

Clause 19 amends part 7 by inserting a new division 3, which contains a transitional provision for this Bill.

The transitional provision is new section 29, which applies only to applications for capital assistance that the Minister has granted prior to the commencement of section 29, but for which the CAA has not yet provided the approved authority with the amount granted for the project.

Section 29 provides that section 22 continues to apply to these applications as if section 22(2)(c) has not commenced and sections 22A to 22E do not apply to the payment of amounts granted for these applications. Given that these legislative requirements did not exist at the time the relevant applications were granted, it was not considered appropriate to impose the requirements on them retrospectively.

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

Clause 20 provides that this part amends the *Education (General Provisions) Act 1989*.

Clause 21 amends section 2(1) of the Act to insert definitions of new terms that are used in the Act. They are summarised as follows.

The term ‘*charge*’ is referenced to new section 26AA, and is defined for the division so as to include within the accepted meaning of the word in Queensland allegations of offences made outside Queensland in a way the same as, or substantially the same as, a charge under the law of Queensland. The definition is designed to capture all Queensland offences and charges in other jurisdictions, however named, that are substantially the same matters as Queensland charges.

The term ‘*conviction*’ is referenced to section 26AA, and is defined to mean a finding of guilt by a court, or the acceptance of a plea of guilty by a court, regardless of whether or not a conviction is recorded. The definition is deliberately designed to capture all convictions regardless of whether or not a conviction was recorded.

The term ‘*criminal history*’ is referenced to section 26AA, and is defined to include both convictions and charges for an offence, regardless of whether the conviction or charge occurred in Queensland or in another jurisdiction, and regardless of whether the conviction or charge occurred before or after this division commenced.

The term ‘*financial data*’, for a non-State school in receipt of subsidy, means –

- (a) details of the school’s recurrent income;
- (b) details of the school’s capital income;

- (c) details of the schools recurrent expenses;
- (d) details of the school's capital expenses;
- (e) details of the school's profit or loss from incidental business activities;
- (f) details of the school's loans;
- (g) other financial details, for the school, prescribed under a regulation.

The phrase 'incidental business activities' in paragraph (e) includes any activity that is separate from the main activity of a school, namely to provide education to the students. An incidental business activity of a school can be either major or minor in size, scope and significance.

The term '*mature age State educational institution*' is referenced to section 26AA and is defined to mean a limited category of State educational institutions that does not include a school of distance education or a special school.

The term '*mature age student*' is referenced to section 26AA and is defined to mean an adult enrolled with a mature age State educational institution. Adults enrolled at other State educational institutions are not intended to be captured by the definition.

The term '*mature age student notice*' is referenced to section 26AA and is defined to mean a mature age student notice issued under section 26AE.

The term '*negative notice*' is referenced to section 26AA and is defined in section 26AE(1)(b).

The term '*non-State school in receipt of subsidy*' is cross-referenced to paragraph (b) of the definition of *school in receipt of subsidy* in section 134A(1) of the Act.

The term '*notice*' is referenced to section 26AA and is defined to mean a written notice.

The term '*original decision*' is referenced to section 26AO and is defined in section 26AP.

The term '*positive notice*' is referenced to section 26AA and is defined in section 26AE(1)(a).

The term '*serious offence*' is cross-referenced to the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.



Clause 22 inserts a new part 3, division 4 (Provisions relating to mature age students) into the Act. This clause also inserts new provisions 26AA to 26AT. Notes on these provisions are as follows –

### **Subdivision 1 Preliminary**

- The new section 26AA defines terms for division 4.
- The new section 26AB provides that division 4 applies to persons despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*. Removing the application of this Act from the consideration of criminal histories under the division means that expired convictions and charges against a person may be provided to the Chief Executive and taken into account when making a decision about whether or not it would harm the best interests of children to allow a person to be enrolled as a mature age student in certain State educational institutions.

### **Subdivision 2 Obligation relating to mature age student notices**

- The new section 26AC(1) prevents a principal of a mature age State educational institution from enrolling a person as a mature age student with the institution unless the person has a current positive notice for that institution.

Subsection (2) provides that subsection (1) does not apply if the person has previously been enrolled with a non-State school or State educational institution and the person's last day of attendance at that school is not more than 12 months prior to the proposed first day of attendance at the mature age State educational institution. A person may decide to leave a school (a non-State school or State educational institution) for a period of not more than 12 months (perhaps to explore other education, training or work options); the person turns 18 during the period of absence and subsequently decides to return to attend a mature age state educational institution. In this case the person will not be required to obtain a mature age student notice if the period between their last day of attendance at the previous school, and their first day of attendance at the mature age State educational institution is not more than 12 months. Usually the first day of attendance will be the first day of the school year, but may vary depending on the student's individual circumstances. It is possible under this provision that the previous State education institution and the mature age State educational institution, at which the person proposes to attend, may be the same institution.

**Subdivision 3 Issue of mature age student notices**

- The new section 26AD establishes the application process that certain persons must undertake prior to being considered for enrolment at certain State educational institutions.

Subsection (1) provides that the section applies to persons, other than visa holders, who wish to be a mature age student of a particular mature age State educational institution. '*Visa holder*' is defined for the section under subsection (8).

Subsection (2) sets out the way in which the application must be made, that is in the approved form, signed by the person and accompanied by the fee prescribed by regulation.

Subsection (3) provides that the form must contain provision for identifying information about the person.

Subsection (4) enables the person to withdraw their application at any time before it is decided.

Subsection (5) enables the Chief Executive to ask the person for additional information reasonably needed to establish the person's identity. This request may be made either orally or in writing.

Subsection (6) establishes the grounds on which the person is taken to have withdrawn their application. These grounds are that after giving the person a notice containing specified information, including a stated time and a warning:

- the person does not comply with the request within the time stated in the notice; and
- the Chief Executive is unable to establish with certainty the person's identity.

The application is taken to be withdrawn once the Chief Executive gives the person a notice stating that the application has been taken to be withdrawn.

Subsection (7) defines the term '*visa holder*' for the section. '*Visa holder*' is defined to mean a person who holds a visa issued under the *Migration Act 1958* (Commonwealth).

- The new section 26AE establishes the basis on which the Chief Executive is to decide applications for mature age student notices and the process for notifying persons of those decisions.

Subsection (1) provides the Chief Executive with two options in relation to deciding applications for mature age student notices: to issue a positive notice to a person who is suitable to be a mature age student at the particular institution; or a negative notice to a person who is unsuitable for that purpose. The Chief Executive is required to make these decisions as soon as practicable after the application is received.

Subsection (2) requires the Chief Executive to issue a positive notice if the Chief Executive is unaware of any convictions or charges against the person.

Subsection (3) provides that subsection (4) applies if the Chief Executive is aware of a conviction for the person, other than for a serious offence, or a charge of the person for an offence.

Subsection (4) requires the Chief Executive to issue a positive notice on the circumstances set out in subsection (3), unless the Chief Executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the positive notice to be issued.

Subsection (5) requires that if the Chief Executive is aware that the person has a conviction for a serious offence, the Chief Executive must issue a negative notice to the person, unless the Chief Executive is satisfied it is an exceptional case in which it would not harm the best interests of children for a positive notice to be issued.

Subsection (6) sets out the matters to which the Chief Executive must have regard in deciding the application for a mature age student notice in a case where the Chief Executive is aware that the person applying for the mature age student notice has a conviction or a charge for an offence. In respect of the commission or alleged commission of the offence the Chief Executive must have regard to:

- (a) whether it is a conviction or a charge;
- (b) whether the offence is a serious offence;
- (c) when the offence was committed or is alleged to have been committed;
- (d) the nature of the offence and its relevance to the person being a mature age student of the institution;
- (e) anything else the Chief Executive reasonably considers to be relevant to the assessment of the person.

Subsection (7) requires that on deciding the application the Chief Executive must issue a mature age student notice to the person and provide

a copy of that notice to the relevant institution's principal. The principal is provided a copy of the notice so that if the person seeks enrolment at the institution the principal is aware of the person's suitability.

Subsection (8) requires a negative notice to the person to be accompanied by a notice stating the reasons for the decision, notifying the person of their right to seek a review of the decision within 40 days of receiving the notice, and details of how they may apply for the review.

- The new section 26AF sets out the process by which the Chief Executive must invite a person, to whom it is intended to issue a negative notice, to make submissions about the person's criminal history.

Subsection (1) sets out what the Chief Executive must do if it is proposed to issue a negative notice to a person. The Chief Executive must give the person a notice advising the person about the person's criminal history of which the Chief Executive is aware and invite the person to make a submission about that information, or about whether their attendance at the school at which they have sought to be enrolled as a mature age student, would be likely to harm the best interests of children. The notice must state a time within which the submission must be made. Submissions may be made orally or in writing.

Subsection (2) requires the time stated for the making of a submission to be reasonable and at least 7 days after the Chief Executive gives the notice to the person.

Subsection (3) requires the Chief Executive to consider any submissions received from the person within the stated time prior to deciding the application.

- The new section 26AG limits the period in which a positive notice remains current to six (6) months after it is issued. Six months is chosen to enable a prospective mature age student to receive the mature age student notice in sufficient time to seek enrolment at the institution for which the notice has been issued. The period will also provide the principal of that institution with sufficient time to make their enrolment decisions prior to the expiry of the positive notice and the commencement of the school year or semester etc. The period also minimises the risk of the person to whom the notice has been issued of having a changed criminal history prior to their seeking enrolment at the institution. If the enrolment does not take place during the 6 month period, the positive notice will lapse and the person will be required to apply for a new mature age student notice

should they wish to enrol as a mature age student with that institution or any other mature age State educational institution.

#### **Subdivision 4 Provisions about criminal history**

- The new section 26AH enables the Chief Executive to request from the Commissioner of the Police Service criminal history information on certain persons, and sets out the duties of the Commissioner in respect of those requests.

Subsection (1) sets out the three categories of person to whom the section applies:

- (a) Persons from whom the Chief Executive has received an application for a mature age student notice and the application remains on foot;
- (b) Persons who have already been issued with a positive notice but who are not yet enrolled in the particular mature age State educational institution for which the notice has been issued. This category is included because the positive notice remains current for six (6) months and it may be some months between the issuing of the notice and the person being enrolled at the relevant institution. The ability to seek criminal history information on these persons during that intervening period will limit the potential for a person with a positive notice whose criminal history has subsequently changed to be enrolled without an assessment being made of this change;
- (c) Persons who are mature age students of a mature age State educational institution and who were adults on the day of their enrolment with the institution.

Subsection (2) enables the Chief Executive to request from the Commissioner of the Police Service a written report about the criminal history of those persons.

Subsection (3) also enables the Chief Executive to request from the Commissioner of the Police Service a brief description of the circumstances of a conviction or charge for an offence that is mentioned in the person's criminal history.

Subsection (4) requires the Commissioner of the Police Service to comply with requests under subsections (2) and (3), subject to subsection (5).

Subsection (5) limits the duty imposed on the Commissioner of the Police Service to comply with a request for information to only that information

in the possession of the Commissioner or to which the Commissioner has access.

- The new section 26AI enables the Commissioner of the Police Service to notify the Chief Executive about changes to a person's criminal history where that person is a person under section 26AH(1)(a) to (c) and that person has been charged with an offence.

Subsection (1) enables the Commissioner of the Police Service to notify the Chief Executive about changes to a person's criminal history. The Commissioner must reasonably suspect that a person who is charged with an offence and about whom the notification is to be made is a person under section 26AH(1)(a) to (c). These will be persons who have a current application for a mature age student notice, persons with a current positive notice, or persons who are mature age students.

Subsection (2) sets out the information that must be contained in the Commissioner's notice to the Chief Executive. The information appropriately identifies the person through provision of the person's name, address and date of birth, and provides the offence for which the person is charged, particulars of the offence and the date of the charge.

Subsection (3) permits the Chief Executive to confirm the Commissioner's suspicions under subsection (1) that the person is a person under section 26AH(1)(a) to (c).

Subsection (4) applies in cases where the person is a person who is required to disclose a change in their criminal history under 26AJ(2). In such a case, if the Chief Executive has received a notice from the Commissioner for the Police Service under subsection (1) that relates to a person with a duty to disclose, the Chief Executive may write to the person informing the person of their obligation to disclose the change in their criminal history.

Subsection (5) sets out the information that the Chief Executive may provide to the Commissioner of the Police Service under subsection 3. The information that may be provided is:

- (a) information as to whether the person is a person mentioned in section 26AH(1)(a) to (c); and
- (b) if the person is a person under 26AH(1)(a) to (c), identifying information about the person including the name, date of birth, place of birth and any alias.

Subsection (6) prevents the Commissioner of the Police Service from using information given to the Commissioner under subsection (5) for any purpose other than the purpose within this division.

- The new section 26AJ requires mature age students to disclose changes in their criminal history.

Subsection (1) provides that subsection (2) applies to a person who was 18 years or older on the day of their enrolment with a mature age State educational institution.

Subsection (2) requires the person to immediately disclose to the Chief Executive the details of their changed criminal history. Failure to do so is an offence with a maximum penalty of 20 penalty units.

Subsection (3) clarifies that for a person who does not have a criminal history there is taken to be a change to their criminal history if the person acquires a criminal history. The definition for the division of '*criminal history*' generally means convictions and charges for offences in Queensland or elsewhere.

- The new section 26AK sets out the way in which a person must disclose a change in their criminal history.

Subsection (1) requires that disclosures under section 26AJ(2) must be in the approved form.

Subsection (2) requires that the information about a person's conviction or charge for an offence to be contained in a disclosure must include:

- (a) the existence of the conviction or charge;
- (b) when the offence was committed or alleged to have been committed;
- (c) sufficient details to identify the offence or alleged offence; and
- (d) for a conviction, whether or not a conviction was recorded and the sentence imposed on the person.

The information will be used by the Chief Executive in consideration of a person's suitability to be issued with a positive notice, to retain their positive notice, or to continue as a mature age student at a particular institution.

- The new section 26AL prevents the Chief Executive from using information obtained under this division about a person's criminal history other than for the purposes under this division or part 4,

division 3A (Footnote 2 - exclusion of students by the Chief Executive).

- The new section 26AM provides for the confidentiality of criminal history information obtained under this division.

Subsection (1) sets out that the section applies to a person who was or is an officer of the Department and who acquired information, or gained access to a document, under this division about someone else's criminal history.

Subsection (2) prevents the person from disclosing that information or giving access to the document to anyone else. Breach of this confidentiality requirement is an offence with a maximum penalty of 20 penalty units.

Subsection (3) sets out three grounds on which certain disclosure of information and giving of access to a document does not constitute an offence under subsection (2):

- (a) provision to the Chief Executive for the purpose of the Chief Executive deciding whether to:
  - (i) issue a mature age student notice to the person;
  - (ii) cancel a positive notice issued to the person; or
  - (iii) exclude the person from a mature age State educational institution; or
- (b) with the person's consent; or
- (c) if the disclosure or giving of access is otherwise required under an Act or other law.

### **Subdivision 5 Cancellation and replacement of positive notices**

- The new section 26AN provides the circumstances, grounds and process on which the Chief Executive may cancel a positive notice and substitute a negative notice.

Subsection (1) provides that the section applies to a person issued with a positive notice but who is yet to become a mature age student of the institution. The person becomes a mature age student of the institution on enrolment at the institution.

Subsection (2) permits the Chief Executive to cancel a positive notice and substitute a negative notice if the Chief Executive is satisfied:

- (a) the decision to issue the positive notice was based on wrong or incomplete information; and



- (b) based on the correct or complete information the Chief Executive should issue the new notice (a negative notice).

Subsection (3) establishes another ground for cancellation of a positive notice and substitution of a negative notice. This ground relies on criminal history information provided by the Commissioner of the Police Service under section 26AI(1).

Subsection (4) requires the Chief Executive to comply with the requirements of section 26AF before substituting a negative notice for a positive notice. The application of section 26AF is applied as though:

- (a) a reference in section 26AF(1) is taken to be a reference to the substituting of a negative notice for a positive notice; and
- (b) the reference in section 26AF(3) is taken to be a reference to the substituting of a negative notice for a positive notice.

Subsection (5) requires the Chief Executive to issue a new notice to the person and to provide a copy of that new notice to the institution's principal.

Subsection (6) requires the new notice to be accompanied by a notice:

- (a) stating the reasons for the Chief Executive to issue the new notice;
- (b) stating that the person may within 40 days after receiving the notices, apply to the Chief Executive for a review of the decision; and
- (c) setting out how the person may apply for the review.

### **Subdivision 6 Review of decisions**

- The new section 26AO provides the definition of '*original decision*' for the purpose of subdivision 6 and refers to section 26AP.
- The new section 26AP provides that a person may apply to the Chief Executive for a review of the decision (the *original decision*) to issue the person with a negative notice for a mature age State educational institution.
- The new section 26AQ provides how a person may apply for a review.

Subsection (1) provides that the person must apply within 40 days after the person is given the original decision.

Subsection (2) provides that the Chief Executive may at any time extend the time for applying for a review.

Subsection (3) provides that the application for a review must be in writing and state fully the grounds of the application.

- The new section 26AR provides for the conduct of the review.

Subsection (1) provides that the Chief Executive must conduct the review on the material that led to the original decision, the reasons for the original decision and any other relevant material the Chief Executive allows (the *allowed material*).

Subsection (2) provides that the Chief Executive must give the applicant a reasonable opportunity to make written representations to the Chief Executive.

Subsection (3) provides that, without limiting subsection (2), if the allowed material affects the Chief Executive's decision, the Chief Executive must give the applicant a reasonable opportunity to make written representations to the Chief Executive.

Subsection (4) provides that the Chief Executive must after reviewing the original decision, make a further decision (a *review decision*) that either confirms the original decision, or cancels the negative notice and substitutes a positive notice.

Subsection (5) provides that as soon as practicable, the Chief Executive must give the applicant notice of the review decision. This notice is called a review notice.

Subsection (6) provides that if the review decision confirms the original decision, the review notice must also state the reasons for the review decision.

Subsection (7) provides that if the review decision is to cancel the negative notice and to substitute a positive notice, the Chief Executive must issue the positive notice to the person and give a copy of the positive notice to the institution's principal.

### **Subdivision 7 General provisions**

- The new section 26AS places an onus on persons not to provide false or misleading information to the Chief Executive and sets out penalties for breaches of that requirement.

Subsection (1) provides that a person must not give information to the Chief Executive under this division that the person knows is false or

misleading in a material particular. Breach of this requirement is an offence with a maximum penalty of 20 penalty units.

Subsection (2) provides that a person must not give to the Chief Executive under this division a document containing information that the person knows is false or misleading in a material particular. Breach of this requirement is an offence with a maximum penalty of 20 penalty units.

Subsection (3) limits the application of subsection (2). Subsection (2) does not apply to the person if, when the person gives the document to the Chief Executive, the person tells the Chief Executive how it is false or misleading. The person must provide this information to the best of their ability. The subsection also does not apply in the circumstances where the person has, or can reasonably obtain, the correct information and gives the correct information to the Chief Executive.

- The new section 26AT establishes a period within which a person issued a negative notice for a particular mature age State educational institution may not make another application for a mature age student notice for that institution.

Subsection (1) provides that the section applies if:

- (a) a person makes an application for a mature age student notice for a particular mature age State educational institution; and
- (b) the Chief Executive decides the application by issuing a negative notice.

Subsection (2) prohibits the person from making another application for a mature age student notice in relation to that mature age State educational institution within 1 year after the person is notified of the decision after the first application.

Clause 23 inserts a new section 36BA after section 36B to provide the grounds on which the Chief Executive may exclude a mature age student who was 18 years or more at the time of their enrolment from the institution at which they are enrolled. The section applies despite section 33 (which sets out certain grounds for exclusion by a principal's supervisor) and without limiting section 36B(a) (which sets out certain grounds for exclusion by the Chief Executive). The grounds for excluding a mature age student under this division are:

- (a) the student has been convicted of a serious offence. '*Serious offence*' is defined for the division in section 26AA;

- (b) the student has been convicted of an offence, other than a serious offence and the Chief Executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the student to continue to be enrolled at the relevant institution;
- (c) if the student has been charged with an offence and the Chief Executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the student to continue to be enrolled at the relevant institution.

The grounds for exclusion mirror the grounds used by the Chief Executive in making a decision on the granting of a mature age student notice for a person to be enrolled at a particular mature age State educational institution. Essentially, if a person has a criminal history, which would have led to them being issued a negative notice at the time of their initial application, they will also be excluded on the basis of that criminal history.

Clause 24 amends section 38A to ensure that the grounds for exclusion, inserted by the new section 38BA are not required to be periodically reviewed under section 38A. Prior to this amendment section 38A applied to exclusions of students under division 3A. As the new section 38BA is also included in division 3A, and there is no intention for these decisions to be periodically reviewed, the section title and the section itself had to be amended.

Subsection (1) amends the section heading so that it relates only to those grounds for exclusion under section 36B.

Subsection (2) makes the same amendment to section 38A(1).

Clause 25 inserts a divisional heading for division 1 of part 8A of the Act.

Clause 26 amends section 134A(2) to omit the phrase ‘, in accordance with regulations made in that behalf’. This amendment removes the requirement for the Minister to provide scholarships or pay allowances to schools in receipt of subsidy, in accordance with the requirements of a regulation. The requirement is unnecessary, given that the provision of scholarships or payment of allowances is subject to appropriation by Parliament. In relation to this amendment, see also the notes on clause 42, which amends the *Education (General Provisions) Regulation 2000*.

Clause 27 inserts divisional headings for divisions 2 and 3 of part 8A of the Act.

Clause 27 also inserts new sections 134AB to 134AE in division 2. Notes on these sections are as follows –

- Section 134AB – Subsection (1) states that the purpose of this section is to enable the Minister to obtain information in relation to a non-State school in receipt of subsidy, for deciding the amount of an allowance payable under section 134A(2)(b).

Subsection (2) requires the governing body of a non-State school in receipt of subsidy to give the Minister financial data for the school relating to its previous year of operation, by a day prescribed under a regulation. This requirement does not apply if a school has been in operation for less than the whole of the relevant year (see subsection (6)).

Subsection (3) requires the data to be provided in the approved form.

Subsection (4) requires the financial data to be sourced from the audited financial statements for the school's governing body.

Subsection (5) indicates that subsection (1) does not limit the matters the Minister may have regard to when making a decision about payment of allowances. The Minister may also take into account matters other than financial data when deciding the amount of an allowance.

- Section 134AC enables the Minister to make a written request for a governing body to provide further information or documents about the financial data that the governing body has provided under section 134AB. The governing body must comply with the request within the time stated in the written notice from the Minister.

For example, request for further information or documents may be necessary if the financial data previously provided by the governing body needs to be validated, or is found to be incomplete or unclear.

- Section 134AD creates an offence for a governing body to give the Minister information or a document that is false or misleading. However, the offence is not created if the governing body tells the Minister, to the best of its ability, how a document that it gives is false or misleading; and if the governing body can give the correct information.
- Section 134AE creates an offence for disclosing protected information, which is information that has been disclosed or obtained in accordance with section 134AB or 134AC. However, the offence is not created if –
  - (a) the information is disclosed –
    - (i) in the performance of functions under the division; or

- (ii) with the written consent of the governing body of the school to which the information relates; or
- (b) the information is otherwise publicly available; or
- (c) the disclosure of the information is permitted or required under an Act or other law.

Clause 28 inserts a new section 150A in the Act, as a consequence of the creation of an offence for giving false or misleading information or documents under section 134AD. Section 150A clarifies that it is not necessary for a charge for an offence involving false or misleading information, or a false or misleading document, to specify which information or document was ‘false or misleading’. It is enough for the charge to state that the information or document was ‘false or misleading’.

Clause 29 inserts a new division 5 in part 11 of the Act. This division contains transitional provisions relating to the amendments in part 8A of the Act. Notes on these transitional sections are as follows –

- Section 166F applies to non-State schools in receipt of subsidy that were in operation for the whole of 2002 and 2003, or the whole or 2003 only. The governing bodies of these schools must provide the Minister with financial data for the schools relating to 2002 and/or 2003, as applicable. This data must be provided by 14 February 2005.

The provision of financial data for the 2002 and 2003 years will enable work to commence on the development of the new School Resource Index.

- Section 166G provides that section 134AC applies to a governing body that provides financial data in accordance with section 166F. If requested by the Minister, the governing body must give the Minister further information or a document that the Minister reasonably requires about the financial data.
- Section 166H provides that section 134AD also applies to the governing body of a school that provides financial data in accordance with section 166F. That is, it is an offence for the governing body to give the Minister information or a document that is false or misleading.
- Section 166I provides that section 134AE also applies to information that has been disclosed or obtained in accordance with section 166F or 166G. That is, it is an offence to disclose the information other than in accordance with section 134AE.

- Section 166J clarifies that the Governor in Council's power to amend or repeal the Education (*General Provisions*) Regulation 2000 remains, despite the fact that this Bill amends the Regulation. See Part 7 of the Bill.

## **Part 4 Amendment of Education (Teacher Registration) Act 1988**

Clause 30 provides that this part amends the *Education (Teacher Registration) Act 1988*.

Clause 31 amends section 14(5) of the Act to provide that a person appointed to fill a casual vacancy is appointed for the balance of the term of office of the person's predecessor. This amendment merely clarifies the section to ensure that the casual vacancy period includes any extension of the original term of office.

Clause 32 inserts a new division 4 in part 2 of the Act. This new division includes new section 29A, which enables the Minister to, by written notice, extend the terms of office of members of the board for not more than 2 years. The Minister may only extend the terms of office if satisfied that it is necessary for the board to perform its functions and exercise its powers appropriately, effectively and efficiently.

The Minister's power to extend the terms of office must be exercised in relation to all board members, with an extension being for the same amount of time for every member. In addition, subsection (3)(a) provides that the Minister is not permitted to extend the terms of office of the members for more than 2 years in total by again acting under subsection (1). That is, the Minister may extend the terms of office more than once, however the accumulated period of extensions must not be more than 2 years for the same board members.

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

Clause 33 provides that this part amends the *Grammar Schools Act 1975*.

Clause 34 removes a redundant phrase from the section as the process for filling a casual vacancy is detailed within section 11 of the Act.

Clause 35 inserts a new provision into section 15A of the Act, which clarifies that in making a by-law about an electoral eligibility amount, the by-law may provide that the electoral eligibility amount is for all elections or for a specified election for a board of trustees of a grammar school.

Clause 36 inserts a new provision into section 51 of the Act which clarifies that a regulation made under subsection 3(a)(i) or 3(a)(ii) may provide that an electoral eligibility amount is for all elections or a specified election for a board of trustees of a grammar school.

## **Part 6 Amendment of University of Queensland Act 1998**

Clause 37 provides that this part amends the *University of Queensland Act 1998*.

Clause 38 inserts a new part 8 into the Act for transitional provisions. The new section 60 is a transitional provision that extends the terms of existing appointed, elected or additional members of the senate until 1 January 2006 unless the member vacates their office earlier.

## **Part 7 Amendment of Education (General Provisions) Regulation 2000**

Clause 39 provides that this part amends the *Education (General Provisions) Regulation 2000*.

Clause 40 replaces section 59 of the Regulation with a new section 59, which prescribes 30 June of each year as the date by which the governing body of a non-State school in receipt of subsidy must give the Minister financial data, for the school, relating to the previous year of operation of the school. See section 134AB(2) of the *Education (General Provisions) Act 1988*.



Clause 41 inserts a new section 76B into the Regulation, to prescribe the fee that must accompany an application for a mature age student notice. See section 26AD(2)(c) of the *Education (General Provisions) Act 1988*. The prescribed fee is \$21.00.

Clause 42 amends schedule 1 of the Regulation to omit the reference to section 59 and part 2 of the schedule, as a consequence of the amendment to section 134A(2) of the *Education (General Provisions) Act 1988*. See the notes on clause 26 above.