

Education (Queensland College of Teachers) Bill 2005

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Education (Queensland College of Teachers) Bill 2005.

Policy Objectives of the Legislation

The policy objectives of the Bill are to:

- Uphold the standards of the teaching profession; and
- To maintain public confidence in the teaching profession; and
- To protect the public by ensuring education in schools is provided in a professional and competent way by approved teachers.

Reasons for the Bill

In March 2004, the Queensland Government commissioned a review of teacher registration requirements under the *Education (Teacher Registration) Act 1988*, to ensure Queensland remains progressive in the development and maintenance of high professional standards in the teaching workforce.

The Education (Queensland College of Teachers) Bill 2005, which will replace the *Education (Teacher Registration) Act 1988*, has been drafted with the objective of strengthening teaching standards in Queensland by incorporating all of the relevant 84 recommendations made in the 2004 Report, *Review of the Powers and Functions of the Board of Teacher Registration*.

Achieving the Objectives

The policy objectives of the Bill will primarily be achieved by:

- Establishing the Queensland College of Teachers;
- Conferring on the College functions and powers about:
 - Granting registration or permission to teach to persons;
 - Taking disciplinary action against approved teachers;
 - Monitoring compliance with and enforcing the Bill; and
- Establishing the Office of the Queensland College of Teachers to help the College in the performance of its functions.

Administrative costs

The College, as the Board of Teacher Registration's successor, will continue to be funded through the teachers' registration fee regime, with the fees set at levels that will sustain the operations of the regulatory authority over the longer term.

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

The current power to obtain criminal history reports, police investigative information and other information has been maintained. A power modelled on that contained in the *Commission for Children and Young People and Child Guardian Act 2000* has also been included to allow the police to check new police information against the names of those registered or holding 'Permission to Teach'. These provisions may be seen as measures restricting an individual's right to privacy. However they are considered justified, as it is necessary to ensure initial and continuing suitability in a profession that has a close, ongoing association with children. While mandatory notification obligations will assist the College to keep abreast of possible disciplinary conduct, it is heavily reliant on self-disclosure. Accordingly, it is considered appropriate that new and existing teachers undergo periodic criminal history and police information checks.

It is proposed to maintain the ability to override the application of the *Criminal Law (Rehabilitation of Offenders) Act 1986* to enable the College to access and consider a person's full criminal history i.e. all convictions and charges (which may not have resulted in a conviction) regardless of when they may have occurred. Given the on-going community interest in issues of child protection, it is considered appropriate to ensure the full criminal history (including information about 'spent' convictions and charges) is available to the College to ensure that all potential and existing teachers are, and remain, suitable to be registered or to hold 'Permission to Teach'.

The Bill will contain provisions to safeguard the interests of affected individuals - for example, where an applicant can satisfy the College that the conviction is an exceptional case in which it would not harm the best interests of children to allow them to work in a child-related field, the applicant may be granted registration or 'Permission to Teach'. The Bill requires the College to keep guidelines regarding its use of information under the Bill and make the guidelines available, upon request, to applicants, existing registrants and holders of 'Permission to Teach'. There is also an opportunity to seek an internal review of the decisions taken by the College and there is a subsequent avenue of appeal to the District Court.

Professional Standards

Allowing the College to refer to Professional Standards when assessing registration applications raises the question whether the Bill will sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly, as it is not proposed that the Standards be subordinate legislation. The minimum pre-service requirements are to remain prescribed by the supporting regulation and are to be carried over from the current *Education (Teacher Registration) By-law 1999*. However, in many cases, applicants for registration have obtained non-standard qualifications, for example from overseas, making it difficult to comply with prescribed "clock and calendar" qualifications. It is acknowledged that a teacher has a combination of knowledge, skills and experience and therefore the prescription of standard qualifications is only really sufficient for those who undertake an Australian undergraduate or postgraduate teaching degree. The Standards provide the ability to outline the comprehensive combination of knowledge, skills and experience that may be deemed sufficient to gain registration if an individual has not undertaken the prescribed qualifications.

The Standards are expected to require detailed documentation that would not lend itself to being included in legislation. They will detail the abilities, experiences, knowledge or skills expected of teachers, and present a range of possibilities for applicants to achieve compliance. The College will be required to make assessments in each case based on the evidence available in the particular circumstances. This presents some difficulty in terms of incorporating the Standards in a regulation.

Five other States or Territories have Professional Standards to which their equivalent teacher registration body may refer when considering a teacher's knowledge, skills and experience. A *National Framework for Professional Standards for Teaching* has also been developed to aim for national consistency and a common approach to recognising quality, as well as to facilitate a national co-operative approach in supporting teacher quality and mutual recognition. The Ministerial Council for Education, Employment, Training and Youth Affairs has endorsed the framework, with the expectation that all State and Territory authorities align their Professional Standards with the National Framework by the end of 2006, facilitating the mobility of teachers under Mutual Recognition legislation. Consequently, the Bill has been framed to enable the College to develop Standards that articulate closely to the national framework.

It is proposed that the College, in establishing its Standards, will be required to consult with the entities considered by the College as having appropriate knowledge and experience in the teaching profession. This ensures that there is a level of scrutiny of the Standards before they are adopted.

Immediate cancellation and suspension power

The current power to immediately suspend a teacher if the BTR reasonably believes they pose an imminent risk of harm to children has been maintained in the Bill. A teacher is suspended while the independent Teachers Disciplinary Committee conducts a hearing into the matter to determine whether a disciplinary sanction is required.

An immediate, non-discretionary suspension and cancellation power has also been included, which may be seen to infringe upon an individual's rights and liberties. It is acknowledged that the suspension of a person's registration could have an impact on a person's livelihood, given that they are not permitted to teach while their registration is suspended. However, because of a teacher's close role with children, it is considered that some offences ("excluding offences" as defined in the *Commission for Children and Young People and Child Guardian Act 2000*) are serious enough to

warrant non-discretionary suspension upon a charge, or cancellation upon a conviction, of registration or 'Permission to Teach' - for example, when a teacher is convicted of a serious sexual offence involving a child and a custodial sentence, or disqualification order is received. In this case, it is not considered necessary to have the disciplinary committee conduct a hearing into the matter, as a court has already determined that the circumstances of the offence warranted the person being sentenced to a period of imprisonment, or the imposition of a lifetime ban from being a teacher at a school. If a person successfully appeals the decision of the sentencing court, the person will have the ability to re-apply for registration or 'Permission to Teach'.

Legislation in Victoria, Western Australian and the Northern Territory provides for automatic cancellation of registration for serious sexual offences. A similar process to the one proposed for the College has also recently been included in the *Commission for Children and Young People and Child Guardian Act 2000*.

Where a teacher's registration or 'Permission to Teach' is suspended if he or she is charged with an excluding offence, the teacher will be provided with the opportunity to show cause to the Teachers Disciplinary Committee why the matter is an exceptional case in which the best interests of children would not be harmed if the suspension were ended. Provisions have been included to require the College to give notice of the suspension to the Teachers Disciplinary Committee at the same time as it provides notice to the teacher, the Committee to give notice inviting submissions from the teacher as soon as it is notified of the suspension, and the Committee to decide on the teacher's submission within 14 days of receiving it.

This suspension power is similar to the provision in the *Commission for Children and Young People and Child Guardian Act 2000*. However, under the *Commission for Children and Young People and Child Guardian Act 2000* there is no opportunity provided for the affected person to provide input into the process, while the provisions in this Bill allow the affected teacher to put a case to the Teachers Disciplinary Committee. In addition the provision of powers for the Teachers Disciplinary Committee to make interim orders enables the Committee to end a suspension in the event the 'trigger' for the suspension falls away (for example the charge is withdrawn).

Information Sharing

The College may enter into an information sharing arrangement with a relevant agency for the purposes of sharing or exchanging any information

held. A relevant agency includes a department, the Crime and Misconduct Commission, or an interstate regulatory authority. These agreements may be considered to be a restriction to a person's liberties as the agreement may affect a person's right to privacy. However, the information that may be shared is limited to information that helps the college or relevant agency in the exercise of its functions. Criminal history information is not to be shared. The purpose of the provision is to enable the relevant agencies to operate efficiently in relation to matters such as investigations. If an investigation has already been undertaken by an agency in relation to a matter, it is in the individual teacher's interests that duplication of an investigation into the same matter by another relevant agency is minimised. Provisions for other information sharing between the College and government agencies such as the Commission for Children and Young People and Child Guardian and the Queensland Police Service have been retained from the current Act.

The Register of Teachers may also be considered to be a restriction to a person's liberties as it affects a person's right to privacy. However, the Register is an important tool for the College to meet the objectives of the Bill. The register is an effective way of recording a person's details relevant to their practice in the profession. These details include not only basic information about the teacher but also information pertaining to any conditions placed on their registration or 'Permission to Teach', and disciplinary action. Registers with similar details are common to most professions in Queensland. Sufficient regard has been had to an individual's privacy as access to any individually identifying information, as opposed to systemic information, is restricted from the public. Only employers may apply to the College for authorisation to receive more detailed information relevant to the teacher's registration or 'Permission to Teach' status.

Immunity from liability

The Minister, Commissioner of Police, Board of the College or a committee of the Board, a disciplinary committee or member, and an investigator or person acting under the direction of an investigator will not be held civilly liable for an act or omission, made honestly and without negligence. This intention is carried over from the current Act and is considered necessary to provide protection for decisions made when carrying out responsibilities under the legislation in good faith. Instead of attaching to the individual, civil liability attaches to the State. The proposed immunity does not extend to an official who has been negligent, even though the official may have acted in good faith. A person who is

asked by the Teachers Disciplinary Committee to conduct a health assessment under clause 136 is also afforded protection from civil liability. However any liability will attach to the College.

Clause 81 of the Bill provides protection from liability for an employing authority for a school that reports to the College under the relevant clauses. The protection from liability is carried over from the current Act and is considered necessary on the basis that if an employer could be sued for defamation or breach of confidence it is unlikely that matters would be reported to the College. Consequently, the child protection objectives of the Bill would be frustrated. Given the serious nature and consequences of the conduct to be reported, it is essential to remove any significant deterrents to the making of reports about this conduct to the College.

Administrative decisions

The fundamental legislative principle regarding an individual's rights and liberties being dependent on administrative power is raised, but not contravened, as proposed administrative decisions relating to refusal of registration, placing conditions upon full registration or applying low-level sanctions, are sufficiently defined and are both internally reviewable and subsequently appealable to the District Court. Administrative decisions that are not appealable include the imposition of conditions upon provisional registration and those with 'Permission to Teach'. As individuals in these categories are not sufficiently qualified or experienced to be fully registered, it is considered necessary to set conditions to ensure they practice competently and safely.

Other administrative actions that are not provided with a formal review or appeal avenue include a request by the College to ask an applicant for further information or a document the College reasonably requires to decide the application (clause 17); and the decision by the College to cancel registration or 'Permission to Teach' where a teacher is given a notice under clause 66(4) that the payment of their annual fee is late and the teacher continues to fail to pay the annual fee by the due day. Despite the lack of any formal appeal avenue, administrative decisions are reviewable under the *Judicial Review Act 1991*.

Consultation

Community

An extensive consultation process has been conducted during the Review of the Functions and Powers of the Board of Teacher Registration and throughout the preparation of the new Bill.

In relation to the Review, the External Reviewer, with the support of a reference group comprising all major stakeholders, developed a 50 page Discussion Paper canvassing the range of issues relevant to the regulation of the teaching profession. The Discussion Paper was released for a 7-week consultation period in June 2004. During the consultation period, forums were held throughout Queensland with teachers, peak stakeholder bodies and the general public. The Board of Teacher Registration provided notification of the forums to all registered teachers and principals of each school in Queensland. A total of 441 submissions were received in response to the issues raised in the Discussion Paper, 75 per cent of these coming from classroom teachers.

The External Reviewer, on the basis of the consultation undertaken, prepared a Report of the Review to the Minister making recommendations for reform. After the Report of the Review was made publicly available in November 2004, further feedback on the implementation of the proposed reforms was subsequently requested from stakeholders until February 2005.

In relation to the Bill, a media statement was made to the public on 20 May 2005 notifying the availability of the Consultation Draft of the Bill and Explanatory Paper for public consultation from 23 May 2005 for 7 weeks. A copy of the Draft Bill, together with an Explanatory Paper, was sent to all significant stakeholders including the State, Catholic and Independent sectors, teachers unions, parent associations and teacher pre-service providers. An advertisement notifying the availability of the Draft Bill and Explanatory Paper was placed in the Courier-Mail newspaper on 21 May 2005 and also in the Board of Teacher Registration's 'Professional Exchange' newsletter, which was sent to every registered teacher in Queensland.

The Department of Education web site and the College's interim website contained links to the consultation documents. The ConsultQld site within the Queensland Government website also notified the availability of the documents.

Government

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

- Department of the Premier and Cabinet
- Queensland Treasury
- Commission for Children and Young People and the Child Guardian
- Department of Child Safety
- Department of Communities
- Department of Employment and Training
- Department of Justice and Attorney-General
- Queensland Police Service
- Office of the Public Service, Merit and Equity
- Department of Industrial Relations
- Department of State Development and Innovation

Notes on Provisions

Chapter 1 Preliminary

Clause 1 Short Title

Clause 1 sets out the short title of the Bill as the *Education (Queensland College of Teachers) Act 2005*.

Clause 2 Commencement

Clause 2 provides that clauses 6, 299,304 and Schedule 3, which relate to the Dictionary, definitions for chapter 12 and the conduct of elections for the new board before commencement, commence on assent. The remaining provisions of the Bill commence on 1 January 2006.

Clause 3 Main objects of Act

Clause 3 outlines that the main objects of the Bill are to uphold the standards of the teaching profession, maintain public confidence in the teaching profession and protect the public by ensuring education in schools is provided in a professional and competent way by approved teachers.

Clause 3 also states that the objects are to be achieved mainly by establishing the Queensland College of Teachers, conferring on the College functions and powers about granting registration or permission to teach to persons and taking disciplinary action against approved teachers, and monitoring compliance with and enforcing the Bill. An Office of the Queensland College of Teachers will also be established to help the College in the performance of its functions.

Clause 4 Act binds all persons

Clause 4 specifies that the Bill binds all persons, including the State. However, the State cannot be prosecuted for an offence against this Bill.

Clause 5 Mutual recognition legislation not affected

Clause 5 specifies that this Bill does not affect the operation of the *Mutual Recognition (Queensland) Act 1992* or the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*, which facilitate the registration in Queensland of teachers registered in other Australian jurisdictions and New Zealand.

Clause 6 Dictionary

Clause 6 notifies that the Dictionary in Schedule 3 of the Bill defines particular words used in this Bill.

Clause 7 Meaning of *harm*

Clause 7 defines ‘harm’ to mean any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing. It is immaterial how the harm is caused. Harm can be caused by physical, psychological or emotional abuse or neglect. Harm can also be caused by sexual abuse or exploitation. This meaning has been taken from the definition of ‘harm’ under the *Child Protection Act 1999*.

Chapter 2 Registration and permission to teach

Part 1 Eligibility requirements

Clause 8 Eligibility for full registration

Clause 8 sets out the criteria that the College must consider when determining whether a person is eligible for full registration. Clause 8(1)(a) provides two alternative avenues. The first relates to qualifications and experience, while the second considers the person's education, abilities, experience and contribution to education and whether they meet the professional standards for full registration. An example is provided for guidance.

Clause 8 also sets out the criteria that the person must be suitable to teach. Elements to be considered to determine suitability are set out in clauses 11 and 12. Clause 8 also states that the person must meet any other requirements for professional practice for full registration prescribed under a regulation. Clauses 8(2) and (3) clarify which criteria are professional practice requirements and which are the eligibility requirements, as these terms are used elsewhere in the legislation. Clause 8(4) clarifies that the College may address concerns about a person's eligibility for full registration by imposing conditions on the registration under clause 20.

Clause 9 Eligibility for provisional registration

Clause 9 sets out the criteria that the College must consider when determining whether a person is eligible for provisional registration. The criteria are the same as for full registration in clause 8. However, to gain provisional registration, a person does not need to demonstrate that they have had the required level of experience if they are trying to satisfy the College under clause 9(1)(a)(i), or if they are utilising clause 9(1)(a)(ii), they only need to establish that they meet the requirements in the professional standards for provisional registration. As with clause 8, clause 9 sets out which requirements are professional practice requirements and which are eligibility requirements. The clause also clarifies that the College may address concerns about a person's eligibility for provisional registration by imposing conditions on the registration under clause 20.

Clause 10 Eligibility for permission to teach

Clause 10 sets out the criteria that the College must consider when determining whether a person is eligible for permission to teach. Permission to teach replaces the current process of ‘authorising’ an employing authority to employ an unregistered teacher for a teaching position. Permission to teach now attaches to the individual person and not the employing authority and will still only be granted in circumstances where an appropriate registered teacher is unavailable for the teaching position. Accordingly, a person must satisfy the College that they have been offered a teaching position in a school and that the employing authority for, or principal of the school has been unable to find an appropriate registered teacher to fill the position. The person must also show that they have relevant necessary knowledge, qualifications, skills or training, that they are suitable to teach and they meet any other prescribed requirements.

Clause 10(2) clarifies which criteria are the eligibility requirements as this term is used elsewhere in the legislation. Clause 10(3) clarifies that the College may address concerns about a person’s eligibility for permission to teach by imposing conditions on the permission under clause 20.

Clause 11 Suitability to teach – criminal history information

Clause 11 outlines criminal history information criteria, which the College must consider when determining whether a person is suitable to teach for the purposes of clauses 8, 9 and 10. The criminal history and other information that may be considered, is obtained under clauses 14 and 15. Importantly, if the College is aware that the person’s criminal history includes a conviction for a serious offence the College must decide the person is not suitable to teach unless the College is satisfied it is an exceptional case in which it would not harm the best interests of children for the person to teach. As outlined in the Dictionary in Schedule 3, the meaning of ‘serious offence’ is contained in 99C of the *Commission for Children and Young People and Child Guardian Act 2000*. The list of the offences is contained in Schedule 2 and 2A of that Act. The definition is cross-referenced to ensure consistency between teaching and non-teaching staff in schools.

The criteria contained in clauses 11 and 12 continue the objectives of the *Education (Teacher Registration) Act 1988* which requires teachers to be of ‘good character’ and suitable to work in a child-related field.

Clause 12 – Suitability to teach – other considerations

Clause 12 outlines other considerations the College is to consider in determining whether a person is suitable to teach. This clause focuses more on circumstances of the person's teacher registration and employment other than in Queensland and reflects the requirement that the person needs to be of an appropriate character to be a teacher in relation to their behaviour and integrity.

Part 2 Making and deciding applications for registration or permission to teach**Division 1 Applications other than by holders of provisional registration****Clause 13 Application of div 1**

Clause 13 clarifies that this division does not apply to a holder of provisional registration who applies for full registration. Division 2 is the relevant division for applications for full registration by a holder of provisional registration.

Clause 14 Application for registration or permission to teach

Clause 14 states that a person, other than an excluded person, may apply for full registration, provisional registration, or permission to teach. Clause 14 also outlines procedural application requirements. An 'excluded person' is defined in the Dictionary in Schedule 3.

Clause 15 Criminal history check etc.

Clause 15 requires the College to ask the Commissioner of Police for a written criminal history of an applicant and outlines the information that is sought. This information includes circumstances of a conviction or charge for an offence and information about any investigation relating to the possible commission of a serious offence by the applicant. Clause 15 outlines that the College's request may include personal information about the applicant, such as their name, gender and date and place of birth. The Commissioner of Police only has to comply with the request if the

Commissioner has the information and must only give information about an investigation if the Commissioner is satisfied that it wouldn't have a detrimental effect, such as prejudicing an investigation, identifying an informant or affecting the safety of a person. Clause 15(7) clarifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the information concerned in clause 15.

Clause 16 Requirement to advise applicant of criminal history information received

Clause 16 requires the College to disclose any information received from the Commissioner of Police and allow the applicant a reasonable opportunity to make representations to the College about the information.

Clause 17 College's power to obtain further information etc. from applicant

Clause 17 allows the College to request further information or a document from the applicant in order to assist the College in deciding the application. Clause 17 outlines what notice may be given, what the notice must state and timeframes.

Clause 18 Effect of failure by applicant to comply with a request for further information etc.

Clause 18 states that the applicant is taken to have withdrawn the application if the applicant does not comply with the College's request under clause 17, or the applicant does not verify by statutory declaration any information required under the notice to be verified by statutory declaration.

Clause 19 College may use documents or information to verify application

Clause 19 states that the College may use any documents or information held or obtained by the College to verify information in or accompanying an application, or obtained under clause 17.

Clause 20 How College may decide application

Clause 20 requires the College to consider an application and to grant full or provisional registration with or without conditions, grant permission to teach with or without conditions, or refuse to grant registration or

permission to teach. The College may only place a condition on the registration or permission to teach if it is necessary to ensure the applicant meets the eligibility requirements. Examples of conditions the College might impose are also given.

Clause 21 Steps to be taken after College decides application

Clause 21 sets out what action must be taken after a decision is made under clause 20. If an applicant is granted registration or permission to teach, the College must give an approval notice, issue a certificate and if registration is granted, issue a registration card. However, if provisional registration is granted instead of full registration, the College must give the applicant an information notice about the decision and issue a certificate and registration card. If an applicant is refused registration or permission to teach, the College must provide the applicant an information notice about the decision and refund the registration or permission to teach fee paid by the applicant. The contents of an approval notice are specified and 'relevant year' is defined for the purpose of the clause. The contents of an information notice are specified in the Dictionary in Schedule 3.

Division 2 Application for full registration by holder of provisional registration

Clause 22 Application by holder of provisional registration

Clause 22 states that a holder of provisional registration may apply for full registration under this division. They do not make an application under Division 1.

Clause 23 Requirements for application

Clause 23 outlines the requirements for an application for full registration by a holder of provisional registration.

Clause 24 How College may decide application

Clause 24 sets out what action must be taken after an application is made under clause 23. The College must either grant full registration with or without conditions, or refuse to grant full registration. The College may grant the application only if it is reasonably satisfied that, where applicable, the applicant has fulfilled all of the conditions on their provisional

registration and they meet the professional practice requirements for full registration. This process is to ensure efficient transition from provisional to full registration where a person can fulfil any additional requirements needed to obtain full registration. The applicant will not need to meet suitability requirements again and there is no fee associated with the application.

Clause 25 Steps to be taken after College decides application

Clause 25 states that if an applicant is granted full registration, the College must give an approval notice and issue an amended certificate and registration card for the rest of the relevant year. However, if an applicant is refused full registration, the College must provide the applicant an information notice about the decision. The contents of an approval notice are specified and 'relevant year' is defined for the purpose of the clause. The contents of an information notice are specified in the Dictionary in Schedule 3.

Part 3 Period, and renewal or extension, of registration or permission to teach

Division 1 Period and renewal of full registration and permission to teach

Clause 26 Period and renewal of full registration

Clause 26 states that the period of full registration is 5 years. However, if the person previously held provisional registration, the period of full registration is reduced by the period of provisional registration. For example, if a person held provisional registration for 1 year, renewal of registration would be required after the person has held full registration for 4 years. At the end of the 5-year period of registration, the registration expires. However, if an application for renewal is made before the registration expires the registration is taken to continue until the application is decided. Full registration may be renewed for a further period of 5 years.

Clause 27 Period and renewal of permission to teach

Clause 27 states that the period of permission to teach is that stated on the certificate issued. However, the period must not be longer than 2 years. If a permission to teach has been issued for 2 years, the holder may apply for renewal of that permission for a further period up to 2 years. It is intended that a permission to teach will generally be for the length of the specific teaching contract which the permission to teach was sought for, as it is desirable for the employing authority to again try to appoint an appropriate registered teacher to fill the teaching position. If an application for renewal of permission to teach is made before the period of the permission to teach ends, the permission to teach is taken to continue until the application is decided.

Clause 28 Application for renewal of full registration or permission to teach

Clause 28 outlines that a person, other than an excluded person, may apply for renewal of either full registration or permission to teach. An application for renewal of full registration must not be made earlier than 6 months before the registration ends, whereas an application for renewal of permission to teach must not be made earlier than 3 months before the permission to teach ends. An 'excluded person' is defined in the Dictionary in Schedule 3. Clause 28 also outlines procedural application requirements.

Clause 29 Requirements for renewal – full registration

Clause 29 applies to a person who makes an application to renew their full registration under clause 28. The College may renew the registration if it is reasonably satisfied that the applicant is suitable to teach and that any conditions have, or are being complied with. To determine whether the applicant is suitable to teach, clauses 15 to 19 apply as if it were an application for the grant of initial registration.

To gain renewal, the applicant must also satisfy the College that he or she has practised as a teacher, whether or not on a full-time basis, for a period that is at least 1 year in the last 5 years (recency of practice). This time period will be prescribed in the regulation. If the applicant has practised 1 year in the last 5 years, they must also state whether they have undertaken, in the last 5 years, continuing professional learning (CPL), as required under the CPL framework. If the applicant has not fulfilled the recency of practice requirement in clause 29(2)(c), the applicant does not need to

show that he or she has undertaken CPL. The CPL framework is outlined in clause 30.

If the College is satisfied that the applicant is suitable and is complying with conditions of registration, but has not fulfilled the recency of practice requirement in clause 29(2)(c), the College must still renew the applicant's registration. However, the registration will be subject to a returning to teaching condition. The Dictionary in Schedule 3 defines a 'returning to teaching condition'. It means a condition requiring the holder of full registration to undertake prior to, or within the first 12 months of returning to a teaching position in a school, a professional learning program for returning to teaching. The time period and the elements of the professional learning program will be prescribed by the regulation.

Clause 30 Development or recognition of CPL framework by College

Clause 30 provides that the College must develop or recognise a framework for the CPL of registered teachers, while having regard to the Professional Standards. The framework may state, for the purpose of renewal of registration, the type of CPL required and the minimum amount of CPL a teacher must undertake. In developing the framework, the College must at least consult the chief executive and the representative entities. 'Representative entities' is defined in the Dictionary in Schedule 3. The College must give notice to all registered teachers of the matters contained in the framework and must make the framework available for inspection on its Internet site and office.

Clause 31 Requirements for renewal – permission to teach

Clause 31 outlines that the College may renew an application for permission to teach under clause 28 if it is satisfied that the person is suitable to teach and any conditions have, or are being complied with. To determine whether the applicant is suitable to teach, clauses 15 to 19 apply as if it were an application for the grant of initial registration.

Clause 32 How College may decide application for renewal

Clause 32 stipulates that the College must either renew the applicant's registration or permission to teach, with or without conditions, or refuse to renew the application. The renewed registration or permission to teach remains subject to any conditions imposed prior to renewal, other than a condition that has already been fulfilled.

Clause 33 Steps to be taken after College decides application

Clause 33 states that if the College decides to grant renewal, the College must give the applicant written notice (approval notice) of the renewal, issue a certificate and if full registration is renewed, issue a registration card. However, if the College refuses to renew, it must give the applicant an information notice about the decision. The contents of an information notice are specified in the Dictionary in Schedule 3.

Division 2 Period and extension of provisional registration**Clause 34 Period of provisional registration**

Clause 34 outlines that provisional registration is for a period of 2 years but may be extended for a further period of 2 years under clause 35. At the end of the registration period, the registration expires.

Clause 35 Option to extend provisional registration

Clause 35 allows a person who holds provisional registration to extend the provisional registration for a further period of 2 years by giving the College notice that he or she wishes to exercise the option and by paying the annual fee. After the option is exercised properly, the College must extend the registration for a further 2 years and issue a new certificate of registration and registration card. Provisional registration may be extended only once, as 4 years should be sufficient time to fulfill any further requirements in order to become eligible for full registration.

Part 4 Restoration of full registration**Clause 36 When application for restoration of full registration may be made**

Clause 36 provides that a person, other than an excluded person, whose full registration has expired, may apply to the College for restoration of the registration. The application must be made within 2 months of expiry of the registration. However, the College may accept a later application if it is satisfied it would be reasonable in all the circumstances to accept it.

Clause 37 Requirements for application for restoration

Clause 37 outlines the procedural requirements for a restoration application.

Clause 38 Application of Pt 3, Div 1 for restoring full registration.

An applicant and a registrant's application for restoration shall be treated in the same way as if the application by the registrant were an application for renewal, with the exception that the application is not being lodged within the normal renewal period.

Part 5 Conditions**Division 1 Review, amendment and removal of conditions****Clause 39 Application for review of conditions**

Clause 39 allows an approved teacher to make a written application requesting the College review a condition on their registration or permission to teach and amend or cancel it. This does not apply to a condition imposed by a disciplinary committee.

Clause 40 Review of conditions

After reviewing the condition, the College may amend the condition under clause 41 or 42, cancel the condition under clause 43, impose a new condition under clause 41, or refuse to amend or cancel the condition under clause 41 or 43.

Clause 41 Amendment or imposition of conditions following a review

Clause 41 allows the College, subsequent to reviewing a condition under clause 40, to impose a new condition, amend the condition reviewed, or refuse to amend the reviewed condition as requested by the holder. The College must give the person an information notice about this action unless the amended condition is the one requested by the holder. If the amended

condition is the same as the teacher requested, it is considered to be a non-contentious amendment and would fall under clause 42.

Clause 42 Non-contentious amendment of conditions

Clause 42 allows the College, at any time, to amend a condition on a person's registration or permission to teach if the amendment omits the conditions (non-adversely), for a formal or clerical reason, in another way that is not adverse to the holder's interests, or at the holder's request. The College may make an amendment by giving written notice to the holder.

Clause 43 Cancellation of conditions

Clause 43 stipulates that the College may cancel a condition imposed on a person's registration or permission to teach if the College is satisfied the condition has been fulfilled or is no longer necessary for the person to meet the eligibility requirements. However, a returning to teaching condition may only be cancelled if the College receives evidence, of a type prescribed under a regulation, of satisfactory completion of the required professional learning program. If the College refuses to cancel a condition at the request of a registrant, it must provide the person an information notice about the decision.

Clause 44 Amending or replacing certificate of registration or certificate of permission to teach

Clause 44 states that an approved teacher must, unless the teacher has a reasonable excuse, return their certificate within 21 days, if they receive a notice from the College requesting the return. A penalty of 10 units (\$750) attaches to this clause. On receiving the certificate, the College must send to the teacher an amended or replacement certificate.

Division 2 Suspension or cancellation of registration or permission to teach for failing to comply with condition

Clause 45 Application of div 2

Clause 45 outlines that the division applies in relation to a person who holds provisional registration or permission to teach that is subject to a

condition. The division also applies to a person who holds full registration that is subject to a returning to teaching condition.

Clause 46 College to give show cause notice for failing to comply with condition

Clause 46 requires the College to give notice to a person who the College believes is not complying, or has failed to comply, with a relevant condition. The notice is to state that the College may order cancellation or suspension of the person's registration or permission to teach, the grounds for the proposed order, and if suspension is proposed, the relevant suspension period. The notice must also invite the person to show why the proposed order should not be made.

Clause 47 College's power to suspend or cancel registration or permission to teach

Clause 47 states that if the College, after considering submissions made by the relevant teacher, is still satisfied that grounds exist to proceed with the proposed order, the College may suspend or cancel the registration or permission to teach. The College must within 7 days of the College's decision, inform the teacher of the decision taken and if cancellation or suspension is proceeded with, provide the person with an information notice.

Part 6 Immediate suspension and cancellation of registration or permission to teach by College

Division 1 Suspension

Clause 48 Effect of charge for excluding offence pending charge being dealt with

Clause 48 stipulates that if, after commencement, an approved teacher is charged with an excluding offence, the College must immediately suspend the teacher's registration or permission to teach. An 'excluding offence' is defined in the Dictionary in Schedule 3 and refers to the list of serious

child-related sexual offences in Schedule 2B and 2C and the offences relating to classifications legislation contained in Schedule 2 of the *Commission for Children and Young People and Child Guardian Act 2000*. The definition is cross-referenced to ensure consistency of treatment of teaching and non-teaching staff in schools.

Clause 49 College's power to suspend if approved teacher poses imminent risk of harm to children

Clause 49 allows the College to suspend an approved teacher's registration or permission to teach at any time, if it reasonably believes the teacher poses an imminent risk of harm to children and it is necessary to immediately suspend the teacher to protect children. 'Harm' is defined in clause 7 of the Bill.

Clause 50 Requirement to give notice of suspension

Clause 50 states that if the College suspends an approved teacher's registration or permission to teach under this division, the College must immediately give notice to the teacher. For a suspension under clause 48, the notice must state that suspension has been imposed, the reasons for the suspension and that the Teachers Disciplinary Committee will review the continuation of the suspension to decide whether it is an exceptional case in which the best interests of children would not be harmed if the suspension were ended. For a suspension under clause 49, the notice must state that suspension has been imposed, the reasons for the suspension and that the Teachers Disciplinary Committee will hear the matter to determine whether a ground for disciplinary action against the teacher is established.

A copy of the notice must also be given to the employing authority for and the principal of each school at which the teacher is employed and the Teachers Disciplinary Committee. This notice must be given at the same time that notice of the suspension is given to the teacher to enable the Teachers Disciplinary Committee to commence its review or hearing as soon as possible after suspension is imposed.

Clause 51 When suspension takes effect

Clause 51 provides that suspension takes effect on the day notice of the suspension is given to the teacher under clause 50.

Clause 52 When suspension ends

Clause 52 stipulates that suspension ends when the earlier of the following occurs: the Teachers Disciplinary Committee decides under clause 55, 102, 152, 159 or 160 to end the suspension; or the teacher's registration or permission to teach is cancelled under division 3 or clause 160.

Division 2 Review of continuation of suspension**Clause 53 Requirement to review continuation of suspension under s 48**

Clause 53 requires the Teachers Disciplinary Committee to review the continuation of the suspension of an approved teacher under clause 48 (Effect of charge for excluding offence pending charge being dealt with). The purpose of the review is for the Committee to decide whether it is an exceptional case in which the best interests of children would not be harmed if the suspension were ended.

Clause 54 Committee to give notice inviting submissions to approved teacher

Clause 54 provides that the Teachers Disciplinary Committee must give the approved teacher a notice inviting them to show why the matter is an exceptional case in which the best interests of children would not be harmed if the suspension of the teacher's registration or permission to teach were ended. The notice must be given to the teacher immediately after the Committee has been advised of the suspension.

Clause 55 Committee's decision about continuation of suspension

Clause 55 requires the Teachers Disciplinary Committee to decide whether it is an exceptional case in which the best interests of children would not be harmed if the suspension of the teacher's registration or permission to teach were ended. The suspension must be ended if the Committee is satisfied it is an exceptional case. The Committee's decision must be made not later than 14 days after the earlier of the following to happen— the committee receives the approved teacher's submission, or the stated time under clause 54 ends. If the Committee does not make a decision within the 14-day period under clause 55 (3), the Committee is taken to have made an order ending the suspension. Notice of the decision must be provided to the

approved teacher. The notice must outline the decision, reasons and that the teacher may appeal to the District Court if the Committee decided it is not an exceptional case.

Division 3 Cancellation

Clause 56 Cancellation if conviction for excluding offence and imprisonment or disqualification order imposed

Clause 56 applies, if after its commencement, an approved teacher is convicted of an excluding offence and the court imposes an imprisonment or disqualification order. An 'excluding offence' is defined in the Dictionary in Schedule 3 and refers to the list of offences in Schedule 2B and 2C and the offences relating to classifications legislation contained in Schedule 2 of the *Commission for Children and Young People and Child Guardian Act 2000*. The term 'imprisonment order' is defined in the Dictionary and 'disqualification order' is defined in clause 58(2). The College must, as soon as it becomes aware of the conviction, cancel the teacher's registration or permission to teach and give notice stating that there is no appeal in relation to the decision to cancel. The notice must also outline that the teacher can never again be granted registration or permission to teach unless the conviction of the excluding offence or the imprisonment/disqualification order on which the decision to cancel was based, is not upheld on appeal. A copy of the notice must also be given to the employing authority and the principal of each school at which the teacher is employed.

Clause 57 Effect of appeal on cancellation

Clause 57 states that where the registration or permission to teach of an approved teacher is cancelled by the College under clause 56 and the teacher appeals the conviction of an excluding offence or imposition of an imprisonment/disqualification order, the cancellation remains in effect during the appeal. If the conviction or order is overturned on appeal, the person is no longer an excluded person for the Bill and may again apply for registration or permission to teach.

Division 4 Disqualification order

Clause 58 Disqualification order

Clause 58 applies if an approved teacher is convicted of an excluding offence and the court that convicts the teacher does not impose an imprisonment order for the offence. The court may, on application by the prosecutor or on its own initiative, make a disqualification order in relation to the teacher stating that the teacher may never be an approved teacher.

Part 7 Surrender of registration or permission to teach

Clause 59 Surrender of registration or permission to teach

Clause 59 allows an approved teacher to surrender his or her registration or permission to teach by giving notice to the College, accompanied by the certificate and if applicable, the registration card.

Part 8 Documents evidencing registration or permission to teach

Clause 60 Form of certificate of registration

Clause 60 specifies that a certificate of registration must be in the approved form providing for inclusion of the registered teacher's name, type of registration, identification number, period of registration, relevant qualifications held by the teacher and any conditions of the registration.

Clause 61 Form of certificate of permission to teach

Clause 61 specifies that a certificate of permission to teach must be in the approved form providing for inclusion of the approved teacher's name, period of the permission to teach, identification number and any conditions of the permission to teach.

Clause 62 Replacing certificates of registration or permission to teach

Clause 62 allows an approved teacher to apply, in the approved form, for a replacement of his or her certificate if it has been lost, stolen, destroyed or damaged. The application is to be accompanied by the prescribed fee.

Clause 63 Requirements for registration card

Clause 63 outlines that a registration card must be issued for 1 year and in the approved form. Issuing of a registration card is subject to receipt of payment of the annual fee provided for in clause 66. The registration card must include the teacher's name, identification number, the type of registration and the period for which the card is issued.

Clause 64 Requirement to return certificate of registration or permission to teach etc. on suspension or cancellation.

Clause 64 states that if an approved teacher's registration or permission to teach is suspended or cancelled by the College or the Teachers Disciplinary Committee, the teacher must return both the certificate and if applicable, the registration card within 14 days, unless they have a reasonable excuse. A penalty of 20 units (\$1,500) attaches to this clause. This assists to prevent a person from falsely representing that they have valid registration or permission to teach, where the person's registration or permission to teach is, in fact, suspended or cancelled.

Part 9 Miscellaneous provisions**Clause 65 College's power to obtain criminal history etc. in relation to an approved teacher**

Clause 65 allows the College to obtain a written criminal history report or other criminal history information mentioned in clause 15 (2) for the purpose of deciding whether an approved teacher is, or continues to be, suitable to teach. Therefore clauses 15(3) to (7) apply for the request as if it were made under that clause. For clause 15(3), the College's request may also include a number or date relevant to the teacher's registration or permission to teach. Clauses 11 and 12, which relate to suitability to teach, apply for the College's decision about whether the teacher is, or continues to be, suitable to teach.

Clause 66 Payment of annual fee by approved teacher and issue of registration card to registered teacher

Clause 66 requires an approved teacher to pay the annual fee prescribed under a regulation for keeping the teacher's registration or permission to teach current for the next year. If a registered teacher makes payment, the College must issue a registration card for the next year. If payment is made by the holder of a permission to teach, the College must give the teacher a notice stating that their name has been retained in the Register. Where the annual fee is not paid, the College must provide the teacher with notice stating that their registration or permission to teach will be cancelled unless the fee, plus any late fee is paid by the due date, which must not be less than 14 days after the notice is given. If payment is still not completed by the due date, the College must cancel the teacher's registration or permission to teach and give the teacher notice of the cancellation.

Clause 67 Effect of suspension on registration or permission to teach

Clause 67 states that while a person's registration or permission to teach is suspended, the person must not start or continue to teach in a school. The person is to hold the same registration, or permission to teach, on the same conditions at the end of the suspension, subject to any order to the contrary made by the disciplinary committee, payment of the annual fee, and renewal if the registration or permission to teach expires. A maximum penalty of 100 units (7,500) attaches to this clause.

Chapter 3 Requirements for approved teachers and other persons

Part 1 Giving information to the College

Division 1 Approved teachers

Clause 68 Changes in criminal history

Clause 68 requires an approved teacher to immediately disclose any change, including details, in their criminal history. Where a teacher does not currently have a criminal history, there is taken to be a change in their criminal history if they acquire one.

Clause 69 Requirements for disclosure of changes in criminal history

Clause 69 states that disclosure by the approved teacher is to be in the approved form and must include information about the existence of the conviction or charge and various details about the conviction or charge.

Clause 70 Failure to disclose changes in criminal history

Clause 70 states that an approved teacher must not fail to disclose any change in their criminal history, unless they have a reasonable excuse. A maximum penalty of 100 (\$7,500) units attaches to the clause.

Clause 71 Disclosure of other change in circumstances

Clause 71 requires an approved teacher, within 20 business days, to give notice to the College about a change in circumstances prescribed under a regulation, other than a change in criminal history. A maximum penalty of 10 units (\$750) attaches to this clause.

Division 2 Registered teachers

Clause 72 Disclosure about particular changes in teaching status in another State

Clause 72 requires a registered teacher to give detailed notice to the College within 7 days if the person is registered as a teacher interstate and their registration is cancelled or suspended, or if their employment as a teacher interstate is terminated because the person's employer was satisfied the person was not competent or suitable to be employed as a teacher. A maximum penalty of 40 units (\$3,000) attaches to this clause.

Division 3 Other persons

Clause 73 Definitions for Div 3

Clause 73 defines the term 'relevant teacher' for the purpose of Division 3.

Clause 74 Meaning of *prescribed school*

Clause 74 defines a *prescribed school* as:

- A State or non-State school;
- A kindergarten or preschool centre that purports to offer an education program for children in the year prior to enrolment in year 1;
- Another institution or place, or part of an institution or place, at which an educational program based on a syllabus approved or accredited by the Queensland Studies Authority under the *Education (Queensland Studies Authority) Act 2002* is offered.

An example of point 3 is Senior Colleges in TAFE's and Youth Detention Centres.

Clause 75 Commissioner of Police may notify changes in criminal history

Clause 75 states that the Commissioner of Police may notify the College about a change in criminal history where they suspect that a person who is charged with an offence is either currently an approved teacher, or was an approved teacher when the offence is alleged to have been committed. The

clause outlines what must be contained in the Commissioner's notification and allows the College to confirm the suspicions of the Commissioner. On receiving notice, the College may write to the subject person to inform them of their obligation under clause 68(1) which relates to an approved teachers obligation to notify the College when there is a change in their criminal history. The clause clarifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the giving of notification by the Commissioner.

Clause 76 Requirement for employing authority to notify College about particular investigations

Clause 76 obliges an employing authority for a school, if it investigates an allegation of 'harm' to a child because of the conduct of a teacher, to give notice to the College of the investigation as soon as practicable after the investigation starts. 'Harm' is defined in clause 7 of this Bill and refers to any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. A maximum penalty of 40 units (\$3,000) attaches to this obligation. The clause also outlines the kind of details the notice must contain.

Clause 77 Requirement for employing authority to notify College about particular terminations of employment

Clause 77 obliges an employing authority for a school, if it investigates an allegation of 'harm' to a child because of the conduct of a teacher and subsequently dismisses the teacher, or the teacher resigns during or after the investigation, to give notice to the College of the dismissal or resignation within 14 days. 'Harm' is defined in clause 7 of this Bill. A maximum penalty of 40 units (\$3,000) attaches to this obligation. The clause also outlines the kind of details the notice must contain. 'Termination day' means the day on which the employing authority gave notice of the dismissal to the relevant teacher, or received oral or written notice from the relevant teacher of the teacher's resignation.

Clause 78 Requirement for employing authority to notify College about certain other dismissals

Clause 78 obliges an employing authority for a school, if it dismisses a teacher in circumstances that call into question the teacher's competency to be employed as a teacher and is not required to give notice about the dismissal under clause 76, to give notice of the dismissal to the College within 14 days. A maximum penalty of 40 units (\$3,000) attaches to this

obligation. The clause also outlines the kind of details the notice must contain.

Clause 79 College may request information from Principal

Clause 79 states that the College may, by notice, require the Principal of a school to give the College reports and returns, in the approved form, about approved teachers teaching at the school. The Principal must comply. A maximum penalty of 20 units (\$1,500) attaches to this obligation. This reporting often takes the form of an annual census of teachers.

Clause 80 Requirement for prosecuting authority to notify College about committal, conviction etc.

Clause 80 requires the Commissioner of Police or the Director of Public Prosecutions to give notice to the College if they believe that a person charged with an indictable offence is an approved teacher or was, at the time the offence is alleged to have been committed, an approved teacher. If the person is committed for trial for an indictable offence, the prosecuting authority must, within 7 days after the committal, give notice to the College containing the particulars outlined in clause 80(2). If the person is convicted of the indictable offence, the prosecuting authority must, within 7 days after the conviction, give notice to the College of the particulars outlined in clause 80(3). If there is an acquittal, mistrial or the prosecuting authority decides not to continue the prosecution, the prosecuting authority must, within 7 days after the event happens, give notice to the College of the particulars outlined in clause 80(4). The following events are examples of instances where the prosecuting authority decides not to continue the prosecution:

- The police offer no evidence;
- The prosecuting authority presents a no true bill; and
- The prosecuting authority presents a nolle prosequi.

Even if notice is given under clause (2), notice is still to be given under clause (3) or (4).

Clause 81 Protection from liability for employing authorities giving required notices

Clause 81 applies if an employing authority for a school gives a notice as required under the division. The employing authority is not liable, civilly, criminally or under an administrative process for disclosing information

contained in the notice. Without limiting this protection, the employing authority also has a defence of absolute privilege for publishing the disclosed information, should there be a proceeding for defamation. Also, if the employing authority would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice, the employing authority does not contravene the requirement by disclosing the information.

Part 2 General offences

Clause 82 Only approved teachers may be employed as teachers

Clause 82 states that the employing authority for a prescribed school must not employ a person as a teacher in the school unless the person is an approved teacher. The employing authority for a prescribed school must not allow an approved teacher to teach in the school if the person's registration or permission to teach is suspended by the College or the Teachers Disciplinary Committee. A maximum penalty of 200 units (\$15,000) attaches to each of these limbs.

Clause 83 Requirement to hold registration or permission to teach to teach in schools

Clause 83 states that a person who is not an approved teacher must not teach in a prescribed school. The clause also states that a person who is not a registered teacher must not supervise, or assess the work of, a teacher or student teacher. A maximum penalty of 100 units (\$7,500) attaches to each of these limbs.

Clause 84 Offence to misrepresent nature of registration or permission to teach

Clause 84 states that a person who holds provisional registration must not claim, or hold out to have, full registration. A person who holds permission to teach must not claim, or hold out to have, registration. An approved teacher whose registration or permission to teach is subject to a condition must not claim, or hold out to have, registration or permission to teach that is not subject to conditions. A maximum penalty of 100 units (\$7,500) attaches to each of these offence provisions.

Clause 85 False or misleading information

Clause 85 states that a person must not give relevant information to the College that the person knows is false or misleading in a material particular. Relevant information means information a person is required or permitted under this Bill to give the College. An example is information in an application or information disclosed to the College under Part 1. A maximum penalty of 50 units (\$3,750) attaches to this clause.

Clause 86 False, incomplete or misleading documents

Clause 86 stipulates that a person must not give the College a document containing false, incomplete or misleading information in a material particular. This does not apply to a person who, when giving the document informs the College of the extent to which the document is false, incomplete or misleading and gives the correct information to the College if he or she is able to do so. A maximum penalty of 50 units (\$3,750) attaches to this clause.

Chapter 4 Complaints about teachers

Clause 87 Making a complaint

Clause 87 allows a person to make a complaint to the College alleging that a ground for disciplinary action exists against a person who is an approved teacher, or was an approved teacher when the conduct giving rise to the complaint happened. Grounds for disciplinary action are outlined in clause 92. The complaint must be in writing and contain particulars of the allegation.

Clause 88 College may require further information or statutory declaration

Clause 88 allows the College, by notice, to ask the complainant to give the College further information about the complaint within a reasonable time, which is stated in the notice. The College may also require the complainant to verify the complaint or further information by statutory declaration.

Clause 89 Refusal to deal with complaint

Clause 89 states that the College may refuse to deal with a complaint if it reasonably believes:

- The complaint, if proved, would not establish a ground for disciplinary action against the person who is the subject of the complaint. Grounds for disciplinary action are outlined in clause 92; or
- The complaint is trivial, unreasonable or without substance; or
- The complaint concerns frivolous matter or was made vexatiously; or
- The complaint is based on an allegation that could more appropriately be dealt with by another entity; or
- The complaint is based on an allegation that has already been adequately dealt with by the College or another entity; or
- Having regard to the length of time that has elapsed since the matter complained of happened, it is not practicable for the College to deal with the complaint. However, the College may not refuse to deal with a complaint under this limb if the person who is the subject of the complaint is an approved teacher and the College reasonably believes the complaint is based on an allegation that, if proved, would establish a ground for suspending or canceling the person's registration or permission to teach under Chapter 2, Part 6.

The College may also refuse to deal with the complaint if the complainant refuses, without a reasonable excuse, to provide further information required by the College to decide whether to deal with the complaint, or comply with a requirement of the College under clause 88(2), which requires further information to be verified by statutory declaration.

If the College refuses to deal with a complaint, the College must give notice to the complainant as soon as practicable and keep a record about the complaint and the College's refusal to deal with it. A disciplinary committee, for the purpose of taking disciplinary action, may have regard to the making of a complaint about a person even if the College refused to deal with the complaint. This allows the disciplinary committee to have regard to a series of complaints, for example, as showing a pattern of behaviour.

Clause 90 How a complaint must be dealt with

Clause 90 states that if the College does not refuse to deal with a complaint under clause 89, it must start disciplinary proceedings in relation to the complaint under clause 97, or authorise an investigation of the complaint under clause 98.

Chapter 5 Disciplinary action against teachers**Part 1 Preliminary****Division 1 Definitions****Clause 91 Definition for Ch 5**

Clause 91 outlines that for Chapter 5, the term ‘disciplinary information’ means any of the following:

- A complaint, other than a complaint the College refuses to deal with under clause 89;
- Information in or accompanying an application made by a person under Chapter 2;
- Information disclosed to the College as required under Chapter 3, Part 1;
- Any other information or document required or permitted to be given to the College under this Bill.

Clause 92 Grounds for disciplinary action

Clause 92 outlines the following as a ground for disciplinary action against a relevant teacher:

- The relevant teacher has been convicted of a serious offence, except if the offence is an excluding offence; and the court that

convicts the teacher imposes an imprisonment order or makes a disqualification order. This type of offence is specifically dealt with in clause 56;

- The teacher has been convicted of an indictable offence (other than a serious offence), or an offence against the Bill;
- If the teacher is the holder of full registration – the teacher fails to comply with a condition of the registration, other than a returning to teaching condition;
- If the teacher is incompetent in performing the work of a teacher and the teacher is dismissed, or resigns from employment in Queensland as a teacher in circumstances that call into question the teacher’s competency in performing the work of a teacher;
- If the teacher was registered as a teacher in another State – the teacher’s registration in the State was cancelled or suspended;
- If the teacher was employed as a teacher in another State that does not register teachers – the teacher’s employment as a teacher in the State was terminated because the teacher’s employer was reasonably satisfied the teacher was not competent or suitable to be employed as a teacher;
- The teacher did not possess or no longer possesses the qualifications and experience relied on by the teacher to obtain registration or permission to teach;
- The teacher is not suitable to teach. This ground is taken to apply to each of the following situations:
 - A relevant teacher who is suspended under clause 48 (effect of charge for an excluding offence pending the charge being dealt with) and the charge of the excluding offence is dealt with. ‘Dealt with’, in relation to the charge means the teacher was acquitted, the charge was withdrawn or dismissed, or a nolle prosequi or no true bill is presented;
 - A relevant teacher who is suspended under clause 48 and is convicted of an offence other than an indictable offence;
 - A relevant teacher who is suspended under clause 49 (College’s power to suspend if approved teacher poses imminent risk of harm to children).

- The teacher fails to comply with a lawful demand made under this Bill by the College, an investigator or a disciplinary committee;
- The teacher contravenes an order made under this Bill by the College or a disciplinary committee.

Clause 93 Disciplinary matters

Clause 93 states that a ‘show cause’ matter, a Professional Practice & Conduct (PP&C) matter and a general matter are ‘disciplinary matters’.

Clause 94 Show cause matters

Clause 94 states that a matter involving the ground for disciplinary action in 92(1)(a) is a show cause matter. This relates to the situation where a relevant teacher has been convicted of a serious offence, except if the offence is an excluding offence and the court that convicts the teacher imposes an imprisonment order or makes a disqualification order.

Clause 95 PP&C matters

Clause 95 states that a matter involving the grounds for disciplinary action in 92(1)(b) to (j) is a PP&C matter if the College reasonably believes that minor disciplinary action is likely to be appropriate and the teacher is not a relevant teacher mentioned in clause 92(2)(a), (b), or (c), or the College authorises an investigation of the matter under clause 98. The term ‘minor disciplinary action’ means issuing a warning or reprimand, or accepting an undertaking from a relevant teacher.

Clause 96 General matters

Clause 96 states that a matter is a general matter if it involves a ground for disciplinary action mentioned in 92(1)(b) to (j) and is not a PP&C matter.

Division 2 Starting disciplinary proceedings

Clause 97 Requirement for College to start disciplinary proceedings

Clause 97 states that if the College reasonably believes on the basis of disciplinary information received, that 1 or more grounds for disciplinary

action exist against a teacher, the College must refer the matter to the appropriate disciplinary committee. The clause then outlines what the appropriate disciplinary committee is. For a show cause matter or a general matter, it is the Teachers Disciplinary Committee. For a PP&C matter, it is the PP&C Committee. If the teacher has been suspended under clause 49, the College must refer the disciplinary matter to the Teachers Disciplinary Committee immediately after the teacher is suspended. Clause 133(4)(a) requires the Teachers Disciplinary Committee to commence a hearing no later than 14 days after the suspension has been imposed.

Clause 98 College may authorise investigation

Clause 98 empowers the College to authorise an investigation if it reasonably believes on the basis of disciplinary information that a ground for disciplinary action against a relevant teacher may exist. However, the College may only authorise an investigation in relation to a former approved teacher if it is satisfied it is in the public interest for the investigation to be conducted and the ground arose while the person was an approved teacher.

If the College authorises an investigation and appoints an investigator, it must as soon as practicable after appointing an investigator give the teacher notice. The notice must state the nature of the complaint or the grounds forming the basis of the investigation, that the teacher may make a submission to the investigator and how the submission may be made. If the submission is to be made orally, the notice should outline a time and place, not less than 14 days after the notice is given, for the teacher to attend before the investigator. If the submission is to be made in writing, the notice should outline a day, not less than 14 days after the notice is given, for the teacher to give the investigator their submission. However, the College does not need to give notice of the investigation if it reasonably believes that doing so may seriously prejudice the investigation, place at risk the wellbeing of vulnerable persons, or place the complainant or another person at risk of harassment or intimidation.

Clause 99 Proceedings for an offence not prevented by disciplinary proceedings

Clause 99 states that if a ground for disciplinary action against a teacher involves the commission of an offence against the Bill, starting disciplinary proceedings against the teacher does not prevent a proceeding being taken or continued for the offence.

Part 2 Show cause matters dealt with by Teachers Disciplinary Committee

Clause 100 Application of Pt 2

Clause 100 states that Part 2 applies to a show cause matter referred to the Teachers Disciplinary Committee by either the College or the PP&C Committee under Part 4.

Clause 101 Teachers Disciplinary Committee to give show cause notice

Clause 101 requires the Teachers Disciplinary Committee to give the relevant teacher a notice stating if the teacher is an approved teacher, the Committee may order the cancellation of their registration or permission to teach and prohibit the teacher from re-applying for a stated period that is not more than 5 years. If the teacher is a former approved teacher, the Committee may order that the teacher be prohibited from reapplying for registration or permission to teach for a stated period that is not more than 5 years. This is called the specified order. The notice must also state the grounds for the specified order, outline the facts and circumstances forming the basis for the grounds and invite the person to show in writing why the matter is an exceptional case in which the best interests of children would not be harmed if the proposed order were not made. The time period given under this latter limb must not be less than 28 days.

Clause 102 Disciplinary action by Teachers Disciplinary Committee – approved teachers

Clause 102 states that if the relevant teacher is an approved teacher, the Teachers Disciplinary Committee, after considering any written submissions made by the teacher under clause 101, must decide whether to cancel the teacher's registration or permission to teach and if it decides not to, what disciplinary action to take. The relevant disciplinary action is contained in clause 102(5). The Committee must decide to cancel the registration or permission to teach unless the Committee is satisfied it is an exceptional case in which it would not harm the best interests of children for the teacher's registration or permission to teach not to be cancelled. If the Committee decides to cancel the registration or permission to teach, it may also make an order prohibiting the teacher from reapplying again up to 5 years from the date the order is made.

If the Committee decides not to order cancellation, it may do any of the following:

- Take no further action in relation to the matter;
- If the teacher is suspended under clause 48 (effect of charge for excluding offence pending charge being dealt with) – end the suspension;
- Issue a warning or reprimand to the teacher;
- Suspend the teacher’s registration or permission to teach for a stated time;
- Make an order requiring the teacher to pay to the College by way of costs, an amount the Committee considers appropriate. Regard must be had to any expenses incurred by the College in undertaking an investigation of the matter and the expenses the Committee has incurred in considering and deciding the matter;
- Make an order requiring the teacher to pay to the College, by way of a penalty, an amount fixed by the Committee but not more than the equivalent of 20 penalty units (\$1,500);
- Impose conditions on, or amend or remove conditions on, the teacher’s registration or permission to teach;
- Make an order that a particular notation or endorsement about the teacher be entered in the Register;
- Make another order the Committee considers appropriate;
- Accept an undertaking from the teacher.

Clause 103 Disciplinary action by Teachers Disciplinary Committee – former approved teachers

Clause 103 applies if the relevant teacher is a former approved teacher i.e. the teacher has previously held registration or permission to teach. After considering any written submissions made by the relevant teacher within the stated time under clause 101, the Teachers Disciplinary Committee must decide whether to prohibit the teacher from reapplying for a period not longer than that stated in the notice given to the teacher under clause 101.

Clause 104 Notice and effect of Committee's decision

Clause 104 requires the Committee to give notice of the decision to the relevant teacher and to the College. This must happen as soon as practicable after making its decision under clause 102 or 103. The notice must state the decision and reasons, if the Committee decides to cancel the registration or permission to teach - the date of cancellation, or if the Committee prohibits reapplication - the period for which the order applies. The notice must also state that the teacher may, within 28 days after the notice is given, appeal against the decision to the District Court and how to appeal. If the disciplinary action originated from a complaint, the Committee must also give notice of its decision and the reasons for it to the complainant. If the Committee decides to cancel or suspend the teacher's registration it must also advise the teacher's principal and employing authority. The Committee's decision is binding on the College and the relevant teacher and the College must give effect to, or secure compliance with the decision.

Part 3 General matters and PP&C matters dealt with by Teachers Disciplinary Committee**Clause 105 Application of Pt 3**

Clause 105 states that Part 3 applies in relation to a general matter referred to the Teachers Disciplinary Committee by the College under clause 97, or a PP&C matter referred to the Teachers Disciplinary Committee by the PP&C Committee under Part 4.

Clause 106 Teachers Disciplinary Committee may authorise investigation

Clause 106 enables the Teachers Disciplinary Committee to authorise an investigation before considering the matter, if it reasonably believes further information is required to decide the matter. The Committee must provide the College with notice about the authorisation and the College must arrange for the matter to be investigated.

Clause 107 Application of Ch6, Pt 2, Div 2

Clause 107 states that Chapter 6 (disciplinary committees), Part 2 (Teachers Disciplinary Committee), Division 2 (disciplinary proceedings conducted by Teachers Disciplinary Committee) applies to the hearing and making of decisions about a matter before the Teachers Disciplinary Committee.

Part 4 PP&C matters dealt with by PP&C Committee**Clause 108 Application of Pt 4**

Clause 108 states that Part 4 applies if the College refers a PP&C matter to the PP&C Committee under clause 97, or the College authorises an investigation of a disciplinary matter under clause 98 and the PP&C Committee receives the investigators report about the matter.

Clause 109 PP&C Committee may authorise investigation

Clause 109 enables the PP&C Committee to authorise an investigation before considering the matter if it reasonably believes further information is required to decide the matter.

Clause 110 Notice to be given to college if PP&C Committee authorise investigation

Clause 110 states that the PP&C Committee must provide the College with notice about the authorisation of the investigation and the College must arrange for the matter to be investigated.

Clause 111 Application of Ch 6, Pt 1, Div 2

Clause 111 states that the PP&C Committee must deal with the matter under Chapter 6 (disciplinary committees), Part 1 (PP&C Committee), Division 2 (disciplinary proceedings of PP&C Committee).

Part 5 Other provisions

Clause 112 Reporting of offences

Clause 112 states that if the College or Teachers Disciplinary Committee becomes aware, or reasonably suspects, that disciplinary information or other information before it discloses an offence, the chairperson of the Board or Committee may report the offence to 1 or more of the Commissioner of Police, Crime and Misconduct Commission, or chief executive. The chairperson must also make available all relevant information held by the College or Committee.

Chapter 6 Disciplinary Committees

Part 1 PP&C committee

Division 1 Establishment, membership and functions

Clause 113 Establishment

Clause 113 states that the College must establish a Committee called the 'Professional Practice and Conduct Committee'.

Clause 114 Membership

Clause 114 states that the PP&C Committee must consist of 3 members of the Board. Two of the Committee members must be registered teachers and one must not be a registered teacher. The College must appoint 1 of the Committee members to be the Committee's chairperson.

Clause 115 Functions of PP&C Committee

Clause 115 outlines the functions of the PP&C Committee in relation to a relevant disciplinary matter. The functions include the authorisation of an investigation into a matter before hearing and deciding it, referring a matter

to the Teachers Disciplinary Committee for hearing, or hearing and deciding a matter itself. The clause outlines what is considered to be a relevant disciplinary matter.

Division 2 Disciplinary proceedings of PP&C Committee

Clause 116 PP&C Committee may conduct disciplinary proceedings by hearing or on correspondence

Clause 116 allows the PP&C Committee to conduct disciplinary proceedings by hearing or on correspondence. However, the proceedings may not be conducted on correspondence if the relevant teacher requires the proceedings be conducted by hearing by giving the Committee a notice mentioned in clause 118(2)(c)(i).

Clause 117 Procedure for hearing by PP&C Committee

Clause 117 states that any hearing conducted by the PP&C Committee is to be closed to the public. The Committee must decide the matter in the way it considers appropriate but must observe natural justice and act as quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues. The Committee is not bound by the rules of evidence, may inform itself in the way and to the extent the Committee considers appropriate, may decide the procedures to be followed for the proceedings and may receive evidence on oath or by statutory declaration. The chairperson of the Committee, or a member of the Committee permitted by the chairperson, may administer an oath to a person appearing before the Committee.

Clause 118 Notice of intention to conduct disciplinary proceedings by correspondence

Clause 117 states that the PP&C Committee must give notice of its intention to conduct the proceedings by correspondence to the relevant teacher and if the disciplinary proceedings originated from a complaint, the complainant. The notice must state the ground for the disciplinary action, the facts and circumstances forming the basis for the ground, that the relevant teacher may give the Committee a notice requiring that the proceedings be conducted by hearing, or give the Committee a written submission about the ground. The notice must also state that even if the

teacher fails to give a notice or make a submission, the Committee may continue the disciplinary proceedings and make a decision about whether the ground for disciplinary action is established. The period for giving a notice or making a submission stated in the notice must be at least 14 days after the teacher is given the notice.

Clause 119 Substituted service on relevant teacher or complainant

Clause 119 allows the PP&C Committee to order substituted service under clause 118, if the notice cannot be served personally on the relevant teacher. Instead the notice can be served in a way ordered, for example by way of facsimile or telephone.

Clause 120 PP&C Committee may require other information

Clause 120 states that the PP&C Committee may in proceedings by correspondence, by giving notice, require the relevant teacher or other person to give information, including a document, relevant to the disciplinary proceedings. The Committee may make a copy or take an extract from a document received.

Clause 121 Power of PP&C Committee to continue disciplinary proceedings without receiving relevant teacher's submission

Clause 121 states that if a teacher does not make a written submission about the ground for disciplinary action (as required by clause 118), or give information as required under clause 120, the Committee may still continue the proceedings and make a decision about whether the ground for disciplinary action is established.

Clause 122 Offence for failing to give information and protection against self-incrimination

Clause 122 states that a person given a notice under clause 120 must not fail, without a reasonable excuse, to give the PP&C Committee the information the person is required to give by the notice. A maximum penalty of 60 units (\$4,500) attaches to this clause. However, it is a reasonable excuse for an individual to fail to give information, if giving the information might tend to incriminate the individual.

Clause 122 also provides that an individual is not required to produce to the PP&C Committee anything, or answer a question, if producing it or answering the question might tend to incriminate the individual.

Clause 123 Disciplinary action by PP&C Committee

Clause 123 states that if the Committee reasonably believes a ground for disciplinary action against the relevant teacher exists it may decide to do 1 or more of the following:

- Not take any further action;
- Refer the matter to the Teachers Disciplinary Committee, if it believes that disciplinary action mentioned in clause 160(2)(d) to (h) or (j) should be taken against the teacher;
- Issue a warning or reprimand to the teacher;
- Make an order that a particular notation or endorsement about the teacher be entered in the Register;
- Accept an undertaking from the teacher.

In making its decision, the Committee must have regard primarily to the welfare and best interests of children and also the objects of the Bill, circumstances of the case and the seriousness of the matter. As soon as practicable after making its decision, the Committee must, if it decides to issue a warning or reprimand, order a notation or endorsement be entered in the Register, or accept an undertaking from the teacher, give the teacher an information notice about the decision, and otherwise give the teacher notice of the decision and the reason for it. If the matter originated from a complaint, the Committee must, as soon as practicable after making its decision, give notice of the decision and the reasons for it to the complainant. The PP&C Committee's decision is binding on the College and the relevant teacher and the College must give effect to, or secure compliance with the decision.

Part 2 Teachers Disciplinary Committee

Division 1 Establishment, membership and functions

Clause 124 Establishment of Teachers Disciplinary Committee

Clause 124 establishes the Teachers Disciplinary Committee.

Clause 125 Members of the Teachers Disciplinary Committee

Clause 125 provides that the Teachers Disciplinary Committee consists of the following persons nominated by the Minister:

- 1 lawyer of at least 5 years standing who is familiar with school environments;
- 2 registered teachers;
- 2 persons who are not registered teachers.

The 2 registrants and 2 non-registrants must be nominated from a list of persons submitted to the Minister by the chairperson of the Board. A person cannot become, or continue as, a member of the Committee if the person is or becomes a member of the Board. The members of the Committee are to be appointed by the Governor in Council for a term of not more than 4 years. A person ceases to be a member of the Committee if they resign, change the registration status on which they were appointed, or are removed by the Governor in Council. A member may be removed by the Governor in Council if the Governor in Council reasonably believes they are incapable of properly discharging their duties, or are performing their duties carelessly, incompetently or inefficiently.

Clause 126 Chairperson of Teachers Disciplinary Committee

Clause 126 states that the chairperson of the Teachers Disciplinary Committee is the lawyer of at least 5 years standing who is familiar with school environments.

Clause 127 Constitution of Teachers Disciplinary Committee for disciplinary proceedings

Clause 127 requires the Teachers Disciplinary Committee to be constituted under the chairperson's direction as soon as practicable after a disciplinary

matter is referred by the College or the PP&C Committee. The Committee must be constituted by the chairperson and 2 other members of whom 1 must be a registered teacher and 1 must be a person who is not a registered teacher. The chairperson must have a reasonable belief that neither of these members is an *interested member*. An *interested member* is defined as a member of the Committee who has a personal or professional connection with the relevant teacher that may prejudice the way the member performs their functions as a member of the Committee. The chairperson may, before a disciplinary proceeding starts, appoint another committee member to act as the chairperson if the chairperson believes he or she will be unable to take part in the proceeding, or is an interested member for that proceeding.

Clause 128 Payment of members

Clause 128 entitles a member of the Teachers Disciplinary Committee to be paid the remuneration and allowances decided by the Governor in Council.

Clause 129 Functions of Teachers Disciplinary Committee

Clause 129 states that the functions of the Teachers Disciplinary Committee are to conduct a hearing and make decisions about disciplinary matters referred to the Committee by the College or the PP&C Committee.

Division 2 Disciplinary proceedings conducted by Teachers Disciplinary Committee

Subdivision 1 Preliminary

Clause 130 Application of Div 2

Clause 130 states that this division applies to disciplinary proceedings before the Teachers Disciplinary Committee relating to a general matter, or a PP&C matter referred to the Committee by the PP&C Committee under clause 110(2)(b).

Clause 131 Parties to disciplinary proceedings

Clause 131 states that the parties to disciplinary proceedings before the Teachers Disciplinary Committee are the relevant teacher to whom the proceedings relate and the College.

Subdivision 2 Proceedings of Teachers Disciplinary Committee

Clause 132 Time and place of hearing

Clause 132 stipulates that the hearing before the Committee must be conducted at the time and place decided by the chairperson of the Committee.

Clause 133 Notice of intention to conduct hearing

Clause 133 requires the College to give notice about the Committee's intention to conduct a hearing. The notice must be given to the relevant teacher and complainant (if any). The notice must state the ground for disciplinary action, the facts and circumstances forming the basis of the ground; the time and place of the hearing, the names of the Committee members constituting the Committee for the hearing, if relevant that the complainant may attend the hearing, and that the teacher may be accompanied by a lawyer or other person. The time for the hearing must not be more than 14 days after the teacher was suspended under clause 49, otherwise the hearing must not be less than 14 days after the teacher is given the notice.

Clause 134 Substituted service on relevant teacher and complainant

Clause 134 allows the Committee to order substituted service of a notice under clause 133 on the relevant teacher or complainant (if any), if the Committee is satisfied service cannot be effected on the person. Substituted service may be effected in any way ordered. A notice served by way of substituted service ordered by the Committee, is taken to be a notice given to the person under clause 133.

Clause 135 Pre-hearing conference

Clause 135 allows the Committee, before the hearing starts, to hold a conference for considering or giving directions about any matter within its jurisdiction, including, for example, the exchange of documents by the parties before the hearing. The Committee may give the directions at or after the conference. A conference may be held and directions given on the application of a party or on the Committee's own initiative. The conference may be held and directions given by any form of

contemporaneous communication. The Committee may delegate the power to hold the conference to a committee member.

Clause 136 Committee may require health assessment

Clause 136 states that if, before or during the hearing, the Committee reasonably believes it is necessary for the relevant teacher to undergo a health assessment to enable the Committee to decide whether a ground for disciplinary action against the teacher is established, it may give notice requiring the health assessment be undertaken at a reasonable time and place. The Committee must be reasonably satisfied the person appointed to conduct the assessment has the necessary qualifications, expertise or experience. The notice must state the reasons for the health assessment, the name and qualifications of the person appointed by the Committee to conduct the assessment and the place, day and time for the assessment. The teacher must not fail, without reasonable excuse to attend and cooperate with the person conducting the assessment. A maximum penalty of 50 units (\$3,750) attaches to this clause. The College must meet the cost of the assessment.

Clause 137 Hearing open to the public

Clause 137 requires a hearing to be open to the public unless the Committee decides all or part should be closed, or the relevant teacher asks for all or part of the hearing to be closed. However, even if the teacher requests it be closed, the Committee may still decide to keep all or part of the hearing open to the public if it considers it would be in the public interest to do so.

Clause 138 Attendance and appearance at hearing

Clause 138 allows the relevant teacher to be accompanied by a lawyer or another person and is entitled to be represented. A lawyer, member of the Board, or a member of the Office of the College's staff may appear at the hearing to present evidence to, or help the Committee. Even if all or part of the hearing is closed to the public, the complainant may also attend the hearing, although this is subject to clause 139.

Clause 139 Committee may exclude complainant or witness from hearing

Clause 139 allows the Committee to direct that the complainant or a witness be excluded from part or all of the hearing until the person gives

evidence if the Committee believes their attendance would seriously prejudice the fairness of the hearing.

Clause 140 Committee may exclude disruptive person from hearing

Clause 140 allows the Committee to direct a person attending the hearing, other than the relevant teacher, to leave if the person is disrupting the hearing.

Clause 141 Procedure for hearing by Committee

Clause 141 states that when conducting a hearing, the Committee must comply with natural justice and act as quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues. The Committee is not bound by the rules of evidence and may inform itself in the way and to the extent the Committee considers appropriate. The chairperson of the Committee may decide the procedures to be followed for the hearing. The Committee must tell the relevant teacher the facts and circumstances of the proceedings and the possible disciplinary action the Committee may take under clause 160 or 161. If asked by the relevant teacher, the Committee must explain any aspect of the procedures or any decisions or rulings relating to the hearing and ensure the relevant teacher has the fullest opportunity practicable to be heard.

Clause 142 Committee may require evidence on oath or by statutory declaration

Clause 142 allows the Committee to require evidence on oath or by statutory declaration.

Clause 143 Evidence by telephone, video link or another form of communication

Clause 143 provides the Committee with flexibility in the ways it can receive evidence, provided that the method used allows for a reasonable level of simultaneous communication between the participants. The manner in which such a method is used is at the discretion of the Committee.

Clause 144 Witnesses

Clause 144 states that the Committee may, by giving an attendance notice to a person, require the person to attend the hearing at a stated reasonable time and place to give evidence or answer questions, or produce a stated thing. The chairperson of the Committee, or a member of the Committee permitted by the chairperson, may administer an oath to a person appearing as a witness before the Committee. The relevant teacher or the College may ask for an attendance notice to be given to a person. The Committee must give the attendance notice to the person unless the Committee reasonably believes it is unnecessary or inappropriate to do so.

Clause 145 Allowance to witnesses

Clause 145 entitles a witness to be paid an allowance for attendance at the hearing. The amount is either prescribed under regulation, or an amount considered reasonable by the chairperson of the Committee. The allowance must be paid by the College.

Clause 146 Provision for witnesses who are children

Clause 146 applies to child witnesses who appear before the Committee. The Committee may, on its own initiative, or on application of a party to the proceedings:

- exclude the relevant teacher from the room in which the hearing is being held while the witness is giving evidence;
- obscure the relevant teacher from the view of the witness while the witness is giving evidence or is required to appear before the committee for any other purpose;
- while the witness is giving evidence, exclude particular persons from the room in which the hearing is being held;
- have the witness give evidence in a room other than the room in which the hearing is being held and from which particular persons are excluded;
- have a person approved by the Committee be present while the witness is giving evidence or is required to appear before the Committee for any other purpose, to provide emotional support to the witness;

- allow a videotape of the evidence of the witness or any portion of it to be made under stated conditions and the videotaped evidence to be viewed and heard in the proceedings instead of the direct testimony of the witness.

An order must not be made if it appears to the Committee that the making of the order would unfairly prejudice a party to the proceedings. If the witness gives evidence in a place where the teacher is not present, provision must be made for the relevant teacher to see and hear the witness while the witness is giving evidence. This could be by means of an electronic device. Also, if the Committee allows a videotape of the evidence of the witness instead of direct testimony, a person entitled in the proceedings to examine or cross-examine the witness must be given a reasonable opportunity to view any relevant portion of the videotape.

Clause 147 Receiving or adopting findings etc. in other proceedings

Clause 147 states that during the hearing the Committee may receive into evidence a transcript, or part of a transcript, of evidence taken in a proceeding before a disciplinary body or a court, tribunal or other entity considered under the law of the State, the Commonwealth, another State or a foreign country. The Committee may also draw conclusions of fact from the evidence. The Committee may adopt, as it considers appropriate, decisions, findings, judgments, or reasons for judgment, of a disciplinary body, court, tribunal or other entity that may be relevant to the hearing.

Clause 148 Committee may proceed in absence of relevant teacher or may adjourn hearing

Clause 148 allows the Committee to proceed in the absence of the relevant teacher if it reasonably believes the teacher has been given notice of the hearing. The Committee also has the ability to adjourn the hearing from time to time.

Clause 149 Questions to be decided by majority of Committee members

Clause 149 states that a question before the Committee must be decided by a majority vote of the Committee members and if the votes are equal, the chairperson of the Committee has a casting vote. However, the chairperson's decision on a question of law is taken to be the Committee's decision on the questions.

Clause 150 Procedure if Committee member unable to participate further in the disciplinary proceedings

Clause 150 deals with those situations where a committee member is unable to continue on the Committee after the hearing has commenced but before the Committee has made its decision. If the committee member who cannot continue was, or is, the chairperson, a new Committee must be established. In other cases, the hearing may continue with the remaining committee members, if the registrant consents, otherwise a new committee must be established. The new Committee may contain persons from the previous Committee. The new Committee must continue and finish the disciplinary proceedings and, for that purpose, may have regard to any record relating to the proceedings made by the Committee as previously constituted.

Clause 151 Inspection of things

Clause 151 allows the Committee to inspect anything produced to it at the hearing. If it considers the thing may be relevant to the hearing, the Committee may photograph it, make a copy of or take an extract from it, or keep the thing while it is necessary for the hearing. If the Committee keeps the thing, it must allow a person otherwise entitled to possession of the thing to inspect, copy or take an extract from it, or photograph the thing at a reasonable place and time.

Clause 152 Interim orders

Clause 152 allows the Committee to make an interim order if it reasonably believes it is necessary, pending its final decision. For example, the Committee may make the interim order of ending a teacher's suspension. The clause states that the order must be least onerous and sets out when the order is to end. The College must give effect to an interim order made by the Committee.

Clause 153 Committee to make record of proceedings

Clause 153 requires the Committee to make a record of evidence given to it for the disciplinary proceedings. However, the Committee is not required to make a transcript of the proceedings.

Subdivision 3 Offences about disciplinary proceedings dealt with by Teachers Disciplinary Committee

Clause 154 Offences about attending hearing, answering questions and related matters

Clause 154 sets out a number of offences in relation to the conduct of teachers and witnesses at a proceeding of the committee, including when a teacher or person is required to attend but fails to attend or fails to continue to attend, or fails to take an oath. It is also an offence for a witness to fail without a reasonable excuse to answer a question or produce a thing. A maximum penalty of 60 units (\$4,500) attaches to this. It is a reasonable excuse if the required action might tend to incriminate the witness.

Clause 155 False or misleading information

Clause 155 stipulates that a person must not state anything to the Committee that the person knows is false or misleading in a material particular. A maximum penalty of 50 units (\$3,750) attaches to this.

Clause 156 False or misleading documents

Clause 156 provides a penalty of up to 50 penalty units (\$3,750) for persons who knowingly provide a document containing false information to the Committee, unless the person informs the Committee how the information is incorrect and if possible, provides the correct information.

Clause 157 Contempt of Committee

Clause 157 provides a penalty of up to 50 penalty units (\$3,750) for persons acting in contempt of the Committee, as described in the clause.

Subdivision 4 Decision on completion of disciplinary proceedings

Clause 158 Decision about whether ground for disciplinary action is established

Clause 158 states that as soon as practicable after completing the hearing, the Committee must decide whether a ground for disciplinary action has been established. In making the decision, the Committee must have regard to any relevant previous decision by a disciplinary committee of which the Committee is aware. This does not limit the matters the Committee may consider in making its decision.

Clause 159 Ending of suspension if ground for disciplinary action not established

Clause 159 applies if the Committee decides no ground for disciplinary action against the relevant teacher has been established and the relevant teacher is suspended under clause 48 or 49. The Committee must end the suspension.

Clause 160 Decision about disciplinary action against approved teacher

Clause 160 applies to an approved teacher. If the Committee decides a ground for disciplinary action has been established, the Committee may do 1 or more of the following:

- Decide to take no further action;
- If the teacher is suspended under clause 48 or 49 – end the suspension;
- Issue a warning or reprimand to the teacher;
- Cancel the teacher's registration or permission to teach;
- Suspend the teacher's registration or permission to teach for a stated time;
- Make an order requiring the teacher to pay to the College, by way of costs, an amount the Committee considers appropriate having regard to any expenses incurred by the College in undertaking an investigation and the expenses the Committee has incurred in conducting the hearing;

- Make an order requiring the teacher to pay to the College, by way of penalty, an amount fixed by the Committee but not more than the equivalent of 20 penalty units (\$1,500);
- Impose conditions on, or amend or remove conditions on the registration or permission to teach;
- Make an order that a particular notation or endorsement about the teacher be entered in the register;
- If the Committee cancels the registration or permission to teach – make an order prohibiting the teacher from reapplying for registration or permission to teach for not more than 5 years from the day the order is made;
- Make another order the Committee considers appropriate;
- Accept an undertaking from the teacher.

Clause 161 Decision about disciplinary action against former teacher

Clause 161 applies to a former teacher. If the Committee decides a ground for disciplinary action has been established, the Committee may do 1 or more of the following:

- Decide to take no further action;
- Make an order requiring the teacher to pay to the College, by way of costs, an amount the Committee considers appropriate having regard to any expenses incurred by the College in undertaking an investigation and the expenses the Committee has incurred in conducting the hearing;
- If the Committee would have made an order cancelling the teacher's registration or permission to teach if the teacher had been an approved teacher, make an order prohibiting the teacher from reapplying for registration or permission to teach for up to 5 years;
- Make an order that a particular notation or endorsement about the teacher be entered in the register.

Clause 162 Committee may make an order prohibiting publication of particular information

Clause 162 allows the Committee to order that the name of the teacher, complainant or witness, evidence presented and the contents of any document produced, must not be published.

Subdivision 5 Action after decision about disciplinary action**Clause 163 Notification of Committee's decision**

Clause 163 states that the Committee must, as soon as practicable after making a decision under Subdivision 4, give notice about the decision to the parties. The notice must state the Committee's decision about whether a ground for disciplinary action is established, the disciplinary action (if any), reasons for the decision, that the teacher and College may appeal to the District Court within 28 days and how to appeal. The decision takes effect on the day the notice is given to the teacher, or the day of effect stated in the notice, whichever is the later.

Clause 164 College may notify other persons

Clause 164 states that after the Committee makes a decision about a disciplinary proceeding, the College may by notice, advise the complainant about the Committee's decision (if relevant), or advise any of the following persons:

- The chief executive;
- Interstate or overseas regulatory authorities;
- The employing authority for a school;
- The Minister;
- Any other entity relevant to the teacher's practice of the teaching profession.

Subject to clause 165, the College must not give a notice about the decision to the persons listed above unless the College reasonably believes the entity needs to know about the decision. However, this provision does not limit the College's power to record in the Register any notation or endorsement under an order made by the Committee, or any condition imposed on the teacher's registration or permission to teach by the Committee.

Clause 165 Requirement to notify particular interstate regulatory authorities about decisions

Clause 165 requires the College, as soon as practicable after the Committee makes a decision about disciplinary proceedings against a relevant teacher, to give notice of the decision to interstate regulatory authorities with which the College is aware the teacher is registered.

Clause 166 Publication of information about disciplinary proceedings by College

Clause 166 states that after the Committee makes a decision about disciplinary proceedings against a relevant teacher, the College may publish the teacher's identity and the nature and outcome of the proceedings, including for example, on the College's Internet site or in the College's annual report or a newsletter. This is subject to an order by the Teachers Disciplinary Committee under clause 162 prohibiting publication. The College must not publish any other information about the disciplinary proceedings, including, for example, information that identifies a witness or complainant. However, this does not affect the College's power to record in the Register details of any disciplinary order.

Subdivision 6 Effect of decision**Clause 167 Effect of Committee's decision**

Clause 167 states that the Committee's decision is binding on the College and the relevant teacher.

Clause 168 Implementation of decision

Clause 168 states that the College must give effect to, or secure compliance with, the Committee's decision.

Subdivision 7 Immunities

Clause 169 Protection of Committee members and other persons

Clause 169 provides that members of the Committee have the same protection and immunity as a Supreme Court judge performing the functions of a judge when performing their duties for disciplinary proceedings. A lawyer or other person appearing before the Committee for someone else has the same protection and immunity as a barrister appearing for a party in the Supreme Court. A person required to attend a hearing for disciplinary proceedings, or appearing before the Committee as a witness, has the same protection the person would have if the proceeding were being heard before the Supreme Court.

Part 3 Miscellaneous provision for disciplinary proceedings

Clause 170 Office to keep record of disciplinary proceedings

Clause 170 states that the office must keep a record of all disciplinary proceedings. The record must include details of the decisions made by the Committee in relation to the proceedings and the reasons for the decisions.

Clause 171 Payment of costs or penalty

Clause 171 applies if the Teachers Disciplinary Committee orders, under clauses 102(5)(e) or (f), 160(2)(f) or (g), or 161(2)(b), the relevant teacher to pay an amount as costs or a penalty. The amount is payable immediately, or at the end of the time allowed by the Committee. The College may enforce the order by filing a copy of the order made by the Committee, certified by the chairperson of the Board and an affidavit of the chairperson of the Board, in the appropriate Court's registry nearest the place where the teacher lives. The College must serve a copy of the documents on the teacher and the Registrar must register the order in the Court. The order may be enforced as if it were a properly entered judgment of the Court.

Chapter 7 Investigations

Part 1 Investigations by employing authorities

Clause 172 Particular investigation may be carried out on College's behalf by an employing authority

Clause 172 provides that the College may enter into an agreement with an employing authority for a school, under which the employing authority may undertake an investigation into a disciplinary matter. However, the employing authority is not an investigator for this Bill. Clause 172(2) provides that such an agreement may only be entered into if:

- (a) the teacher about whom the disciplinary matter relates consents to the employing authority undertaking the investigation; and
- (b) the conditions on which the investigation may be carried out require that the College's stated requirements regarding the investigation process are complied with and that the report is to be provided to the College within a stated period.

Part 2 Investigators' functions and powers generally

Clause 173 Functions of investigator

Clause 173 provides that investigators have the function of carrying out and reporting on the investigation for which the investigator was appointed. Investigations may relate to either a disciplinary matter or monitoring and enforcing compliance with the Bill, or generally in relation to a matter.

Clause 174 Powers of investigator

Clause 174 provides that investigators have the powers given to them under this Bill. Chapter 7, Part 4 outlines investigator's powers.

Part 3 Appointment of investigators

Clause 175 Appointment

Clause 175 provides that the College may appoint a member of the staff of the Office of the College, or a member of the Board as an investigator. The College may only appoint a person as an investigator if it is satisfied that the person is qualified for appointment because the person has the necessary expertise or experience. More than one investigator may be appointed for an investigation.

Clause 176 Appointment conditions and limit on powers

Clause 176 provides that an investigator holds office on the conditions of appointment stated in the instrument of appointment or a signed notice given to the investigator. The instrument of appointment or signed notice may limit the investigator's powers under the Bill. 'Signed notice' is defined to mean a notice signed by the chairperson of the Board.

Clause 177 Issue of identity card

Clause 177 requires the College to issue an identity card to an investigator containing a recent photograph and a copy of the investigator's signature and identifying the person as an investigator.

Clause 178 Production or display of identity card

Clause 178 provides that when exercising a power in relation to a person, an investigator must produce their identity card for the person's inspection before exercising their powers and have the card on display so it is clearly visible. However, if it is not practicable to comply with these requirements, the inspector must produce the card for inspection at the first reasonable opportunity. An investigator does not exercise their powers in relation to a person only because the investigator has entered into a place mentioned in clause 184(1)(b) or (2).

Clause 179 Resignation

Clause 179 provides that an investigator may resign by a signed notice given to the College. Within 21 days of resigning, the inspector must give the College a written report about the investigation the investigator carried out.

Clause 180 Return of identity card

Clause 180 requires a person, who ceases to be an investigator, to return their identity card to the College within 15 business days of ceasing to be an investigator, unless they have a reasonable excuse. A maximum penalty of 10 penalty units (\$750) may be imposed for failing to comply with this provision.

Part 4 Powers of investigators**Division 1 Power to obtain information****Clause 181 Power to require information or attendance**

Clause 181 enables an investigator to issue a notice requiring a person to provide stated information within a stated reasonable time and in a stated reasonable way, or to attend before the investigator to answer questions or produce a stated thing.

Clause 182 Offences

Clause 182 establishes offences in relation to investigations. Clause 182(1) provides that a person required to give information to an inspector under clause 181, must give the information as required unless the person has a reasonable excuse. A maximum penalty of 50 penalty units (\$3,750) attaches to this clause.

Clause 182(2) provides that a person given a notice to attend before an investigator must, unless the person has a reasonable excuse, attend before the investigator as required by the notice and continue to attend before the investigator until excused, answer questions asked by the investigator and produce things required by the notice. A maximum penalty of 50 penalty units (\$3,750) attaches to this clause.

Clause 182(3) provides that it is a reasonable excuse for an individual not to answer a question, or produce a stated thing if doing so might incriminate the individual.

Clause 183 Inspection of produced things

Clause 183 gives an investigator the power to inspect things produced to the investigator. If the investigator reasonably believes the thing to be relevant to the investigation, the inspector may photograph the thing, copy or take an extract of the thing if it is a document or keep the thing during the investigation. However, if the investigator keeps the thing, the owner must be allowed reasonable access to it, in the manner specified in the clause.

Division 2 Entry of places**Clause 184 Power to enter places**

Clause 184 provides that an investigator may enter a place if either an occupier of the place consents, or the place is a public place and entry is made when the place is open to the public, or when the entry is authorised by a warrant. To obtain an occupier's consent, the investigator may enter the land around the premises to the extent that is reasonable to contact the occupier and to enter part of the premises the investigator reasonably considers members of the public are ordinarily allowed to enter when they wish to contact the occupier.

Division 3 Procedure for entry**Clause 185 Entry with consent**

Clause 185 prescribes the procedure for an investigator to seek an occupier's consent for the investigator, or another investigator, to enter the premises under clause 184(1)(a). Under this clause:

- before asking for consent, the investigator must tell the occupier the purpose of the entry and that the occupier is not required to consent;
- if consent is given, the investigator must ask the occupier to sign an acknowledgement of consent containing information prescribed under this clause;
- a copy of the signed acknowledgment must be immediately given to the occupier;

- if an issue arises in a court proceeding about the provision of an occupier's consent, and an acknowledgement is not obtained, the onus is on the person relying on the lawfulness of the entry to prove the occupier consented.

Clause 186 Application for warrant

Clause 186 enables an investigator to apply to a magistrate for a warrant. The warrant must be sworn and contain the grounds on which the warrant is sought. A magistrate may refuse the application until the investigator provides all the information the magistrate requires about the application, in a way the magistrate requires, for example by statutory declaration.

Clause 187 Issue of warrant

Clause 187 provides that a magistrate may only issue a warrant if there are reasonable grounds for suspecting the particular thing or activity may provide evidence about a matter being investigated and that the evidence is or may be at the place within the next seven days. The clause also prescribes the content required in a warrant.

Clause 188 Warrants – procedure before entry

Clause 188 prescribes the procedure to be followed by an investigator entering a place under a warrant issued under this division. Before entering a place, the investigator must do or make a reasonable attempt to do the following:

- (a) identify themselves to the occupier, producing their identity card or another document evidencing their appointment;
- (b) give the person a copy of the warrant;
- (c) tell the person the investigator is permitted by the warrant to enter the place; and
- (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.

These requirements need not be followed if the investigator believes on reasonable grounds that immediate entry is required to ensure that execution of the warrant is not frustrated.

Division 4 Powers after entry

Clause 189 General powers after entering places

Clause 189 sets out the powers that an investigator has after entering a place with the occupier's consent or under some other authority, for example with a warrant. The clause specifies a number of things that the investigator can do for the purpose of finding and collecting evidence. The investigator may require the occupier or person at the place to assist the investigator to exercise the investigator's powers, or to provide information to the investigator. In doing so, the investigator must warn the occupier or person at the place that it is an offence to not assist unless there is a reasonable excuse.

Clause 190 Failure to help investigator

Clause 190 provides it is an offence to fail to give an investigator the reasonable help requested under clause 189(3)(e), unless the person has a reasonable excuse. A maximum penalty of 50 penalty units (\$3,750) attaches to this clause. If the request relates to the provision of information or a document, it is a reasonable excuse to refuse to comply with the requirement if complying with the request might incriminate the person.

Clause 191 Failure to give information

Clause 191 provides it is an offence to fail to comply with a requirement under clause 189(3)(f), unless the person has a reasonable excuse. A maximum penalty of 50 penalty units (\$3,750) attaches to this clause. It is a reasonable excuse to refuse to comply with the requirement if complying with the requirement might incriminate the person.

Division 5 Power to seize evidence

Clause 192 Seizing evidence at public place if entry made when place open

Clause 192 provides that an investigator who enters a public place when the place is open to the public may seize a thing at the place if the investigator reasonably believes the thing is evidence that is relevant to the investigation being carried out.

Clause 193 Seizing evidence at a place that may only be entered with consent or warrant

Clause 193 provides for the seizure of evidence by an investigator that has entered a place with the consent of an occupier or under a warrant. If the investigator enters a place with the consent of the occupier, the investigator may seize a thing at the place if the investigator reasonably believes it is evidence that is relevant to the investigation and its seizure is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

If the investigator enters the place with a warrant, the investigator may seize the evidence for which the warrant was issued. The investigator may seize anything else at the place if the investigator reasonably believes the thing is evidence that is relevant to the investigation and the seizure is necessary to prevent the thing being hidden, lost or destroyed.

Clause 194 Securing seized things

Clause 194 provides that once a thing is seized, the investigator may move it, or leave it where it was seized but take reasonable action to restrict access to it.

Clause 195 Tampering with seized things

Clause 195 states that if an investigator restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without the investigator's approval.

Clause 196 Receipt for seized things

Clause 196 requires that after seizing a thing, the investigator must give a receipt to the person from whom it is seized. If it is not practical to comply with this requirement, the investigator must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way. The receipt must generally describe each thing seized and its condition. This clause does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

Clause 197 Forfeiture of seized things

Clause 197 provides that things that have been seized by an investigator may be forfeited if the owner cannot be found after making reasonable

enquires, or the thing cannot be returned to its owner after making reasonable efforts to return it. The investigator must have regard to the nature, condition and value of the seized thing when considering the effort required to find the owner or return the thing.

Clause 198 Dealing with forfeited things

Clause 198 provides that on the forfeiture of a thing to the College, the thing becomes the College's property and may be dealt with by the College as it considers appropriate, including destroying or otherwise disposing of the thing.

Clause 199 Return of seized things

Clause 199 provides if a thing is not forfeited, the investigator must return it to the owner at the end of six months, or if proceedings are commenced within the six months, at the end of any proceedings or appeal from proceedings. The clause also provides that unless a thing that has been seized as evidence is forfeited, the investigator must immediately return it to its owner if the investigator stops being satisfied its continued retention as evidence is necessary.

Clause 200 Access to seized things

Clause 200 provides that until a seized thing is forfeited or returned, an investigator must allow its owner to inspect it and, if it is a document, to copy it, unless it is impracticable or would be unreasonable to allow the inspection or copying.

Part 5 General investigation matters

Clause 201 Investigator's report

Clause 201 provides that as soon as practicable after completing an investigation involving a disciplinary matter, the investigator must give a written report about the investigation to the PP&C Committee, in relation to an investigation authorised by the College, or otherwise to the Teachers Disciplinary Committee.

Clause 202 Investigator's obligation not to cause unnecessary damage

Clause 202 provides that an investigator must take all reasonable steps to ensure they do not cause any unnecessary damage to property in exercising a power under Part 4.

Clause 203 Notice of damage

Clause 203 provides that if an investigator or a person (the *other person*) acting under the direction of an investigator damages property, an investigator must immediately give notice of particulars of the damage to a person who appears to be an owner of the property. If the investigator believes the damage was caused by a latent defect in the property or circumstances beyond the investigator's or other person's control, the investigator may state the belief in the notice. If, for any reason, it is impracticable to comply with these requirements the investigator must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened. Clause 203 does not apply to damage the investigator reasonably believes is trivial. For clause 203, the *owner*, of property, includes a person in possession or control of it.

Clause 204 Compensation

Clause 204 provides that a person may claim compensation from the College if the person incurs loss or expense because of the exercise or purported exercise of a power under Part 4, Division 2, 4 or 5 and for a loss or expense incurred in complying with a requirement made of the person under the division. The clause also provides that compensation may be claimed and ordered to be paid in a proceeding brought in a court provided it is satisfied it is fair to make the order in the circumstances of the particular case.

Clause 205 False or misleading information given to investigator

Clause 205 provides that a person must not state anything to an investigator the person knows is false or misleading in a material particular. A maximum penalty of 50 penalty units (\$3,750) attaches to this clause.

Clause 206 False or misleading documents given to investigator

Clause 206 makes it an offence, with a penalty of up to 50 penalty units (\$3,750), for a person to provide a document to an investigator knowing that the document contains false or misleading information, unless the person informs the investigator how the information in the document is false or misleading and provides to the investigator the correct information if it is reasonably available to the person.

Clause 207 Obstruction of investigator

Clause 207 provides that a person must not obstruct an investigator in the exercise of a power, unless the person has a reasonable excuse. A maximum penalty of 50 penalty units (\$3,750) attaches to this clause. If a person has obstructed an investigator and the investigator decides to proceed with the exercise of the power, the investigator must warn the person that it is an offence to obstruct the investigator, unless the person has a reasonable excuse; and that the investigator considers the person's conduct is an obstruction. For this clause 'obstruct' includes hinder and attempt to obstruct or hinder.

Clause 208 Impersonation of investigator

Clause 208 provides that a person must not pretend to be an investigator. A maximum penalty of 50 penalty units (\$3,750) attaches to this clause.

Chapter 8 Reviews and appeals**Part 1 Reviews****Clause 209 Appeal process for particular decisions starts with internal review**

Clause 209 provides that a person or entity who is given, or is entitled to be given, an information notice for a decision (an *original decision*) and who is dissatisfied with the decision may appeal against the decision under this

part. The decisions for which an information notice must be given under this Bill are specified in schedule 1. In the first instance appeals must be by an internal review application under clause 210.

Clause 210 Applying for review

Clause 210 provides that the internal review application must be made within 28 days after the day the person or entity is given the information notice, or the day the person or entity otherwise becomes aware of the decision. The College may, at any time, extend the time for applying for the review. The application must be in the approved form and state fully the grounds of the application.

Clause 211 Review Committee

Clause 211 provides that the internal review application must initially be dealt with by the Review Committee, established by the College to conduct the review. The Review Committee may include any person, whether or not the person is a member of the board. However, if practicable, the Review Committee must not include a person who was involved in the making of the original decision the application relates to.

The Review Committee must conduct the review on the material before the College or PP&C Committee that led to the original decision, the reasons for the original decision and any other relevant material the Review Committee allows. The Review Committee must give the applicant a reasonable opportunity to make oral or written submissions to the Committee.

After reviewing the original decision, the Review Committee must make a recommendation to the College about whether it should confirm or amend the original decision, or to substitute another decision for the original decision. The College is not required to follow the Review Committee's recommendation.

Clause 212 College's decision

Clause 212 provides that after considering the Review Committee's recommendation, the College must make a further decision (a *review decision*) to either confirm or amend the original decision or substitute another decision for the original decision. The confirmed, amended or substituted decision is taken to be the review decision.

Clause 213 Notice of review decision

Clause 213 requires the College to, as soon as practicable, give the applicant a review notice of the review decision. If the review decision is not the decision sought by the applicant, the review notice must also state the reasons for the decision, that the applicant may, within 28 days after the review notice is given, appeal against the decision to the District Court and how to appeal. If the College does not give the review notice within 45 days after the application is made, the College is taken to have made a review decision confirming the original decision.

Part 2 Appeals**Clause 214 Definitions for pt 2**

Clause 214 provides for definitions of the terms *appealable decision* and *relevant disciplinary committee decision* for the purpose of this part.

Clause 215 Who may appeal

Clause 215 provides that for a review decision, a person who has applied for the review of the original decision under Part 1 and is dissatisfied with the review decision may appeal to the District Court. The clause also provides that for a relevant disciplinary committee decision, the relevant teacher to whom the decision relates, or the College, may appeal to the District Court against the decision.

Clause 216 Starting appeal

Clause 216 provides that an appeal is started by filing a notice of appeal with the Registrar of the District Court at the place where the person resides or carries on business or at Brisbane and by complying with the rules of court applicable to the appeal. However, this does not limit a provision of another law about where a proceeding may be started in the District Court. The notice of appeal must be filed within 28 days after:

- (a) for an appeal against a review decision, if the person is given a review notice for the decision—the day the person is given the review notice;
or

- (b) for an appeal against a relevant disciplinary committee decision, if the person is given notice of the decision—the day the person is given the notice; or
- (c) if paragraphs (a) and (b) do not apply—the day the person otherwise becomes aware of the appealable decision.

The court may also extend the time for filing the notice of appeal.

Clause 217 Hearing procedures

Clause 217 provides that in deciding an appeal, the District Court has the same powers as the entity that made the appealable decision, is not bound by the rules of evidence and must comply with natural justice. An appeal is by way of rehearing, unaffected by the appealable decision, on the material before the entity that made the appealable decision and any further evidence allowed by the court.

Clause 218 Courts powers on appeal

Clause 218 provides that the court may confirm or amend the appealable decision or set it aside and substitute another decision. In amending the appealable decision or substituting another decision for it, the court has the same powers as the entity that made the appealable decision. If the court amends the appealable decision or substitutes another decision for it, the amended or substituted decision is, for this Bill (other than this part), taken to be the decision of the entity that made the appealable decision.

Clause 219 Court may prohibit publication of particular information

Clause 219 provides that the District Court may order that any of the following must not be published—

- (a) the name of the appellant or any person who appeared as a witness before the entity that made the appealable decision or the court;
- (b) evidence given before the entity that made the appealable decision or the court;
- (c) the contents of any document produced to the entity that made the appealable decision or the court.

Chapter 9 Legal proceedings

Part 1 Evidence

Clause 220 Application of pt 1

Clause 220 provides that this part applies to a proceeding under this Bill, including disciplinary proceedings.

Clause 221 Appointments and authority

Clause 221 stipulates that it is not necessary to prove the appointments of the persons or entities listed or to prove the authority of the listed entities to do anything under this Bill.

Clause 222 Signatures

Clause 220 stipulates that a signature that purports to be that of one the persons specified in the clause shall be taken to be the signature of that person.

Clause 223 Evidentiary matters

Clause 223 stipulates that a certificate purporting to be signed by the director or chairperson of the Board regarding one of the listed matters shall be taken to be evidence of the matter.

Part 2 Proceedings

Clause 224 Proceedings in the name of the College

Clause 224 provides that proceedings in a court may be taken and prosecuted in the name of the College by the chairperson of the Board or another person authorised for that purpose by the chairperson.

Clause 225 Summary proceedings for offences

Clause 225 provides that proceedings for an offence against this Bill are to be taken in a summary way under the *Justices Act 1886* and must be started within the later of the following periods to end:

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

Clause 226 Allegations of false or misleading information or documents

Clause 226 provides that in relation to a complaint for an offence against this Bill involving false or misleading information or a document, it is enough for the complaint to state that the statement made, or the document given, was 'false or misleading' to the person's knowledge, without specifying which.

Clause 227 Penalties to be paid to College

Clause 227 provides that all penalties recovered as a result of proceedings for offences against this Bill are payable to the College.

Clause 228 Executive officers must ensure corporation complies with Act

Clause 228 provides that the executive officers of a corporation must ensure the corporation complies with this Bill. If a corporation commits an offence under the Bill, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision. The maximum penalty attached to this clause is the penalty for the contravention of the provision by an individual.

Evidence that the corporation has been convicted of an offence against a stated provision of this Bill is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision. However, it is a defence for an executive officer to prove:

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the stated provision; or

- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Chapter 10 Queensland College of Teachers

Part 1 Establishment, functions and powers of College

Clause 229 Establishment of College

Clause 229 establishes the Queensland College of Teachers. The College is a body corporate, has a seal and may sue and be sued in its corporate name.

Clause 230 College's functions about registration and permission to teach

Clause 230 provides that the College has the following functions about registration of, and permission to teach for, teachers in Queensland:

- (a) to be responsible to the Minister for granting registration or permission to teach to persons under this Bill;
- (b) deciding how a person must satisfy initial and ongoing eligibility requirements for registration and permission to teach;
- (c) deciding applications for the grant or renewal of registration or permission to teach;
- (d) ensuring approved teachers continue to meet the eligibility requirements mentioned in paragraph (b), including, for example, monitoring the compliance of approved teachers with any conditions of registration or permission to teach;
- (e) arranging checks of the criminal history of approved teachers and applicants for registration or permission to teach;

- (f) reviewing registration of teachers, and the granting of permission to teach to teachers, and reporting, and making recommendations, to the Minister about these matters;
- (g) approving and monitoring pre-service teacher education programs for provisional registration;
- (h) developing and applying professional standards for entry to, and continuing membership of, the teaching profession; and
- (i) keeping a register of, and records relating to, approved teachers.

Clause 231 College's discipline and enforcement functions

Clause 231 provides that the College has the following functions about disciplining approved and former approved teachers and enforcing this Bill:

- (a) monitoring compliance with this Bill and prosecuting persons who fail to comply with it;
- (b) receiving and assessing complaints;
- (c) conducting investigations, in relation to a complaint or on the College's own initiative, about—
 - (i) the professional conduct or competence of an approved teacher or former approved teacher; or
 - (ii) a contravention of this Bill;
- (d) referring disciplinary matters to a disciplinary committee;
- (e) giving effect to and monitoring compliance with disciplinary orders; and
- (f) developing and applying codes of practice about the professional conduct or practice of registered teachers.

Clause 232 College's other functions

Clause 232 provides for the College's other functions, which include:

- (a) undertaking or supporting reviews and research relevant to the regulation of the teaching profession, including reviews and research commissioned and funded by the Minister;
- (b) collecting data about approved teachers, and providing the data to other persons, as required or permitted under this Bill;

- (c) promoting the teaching profession to the public;
- (d) advising relevant entities in Queensland and interstate regulatory authorities about the operation of this Bill, as required or permitted under this Bill;
- (e) informing approved teachers and the public about the operation of this Bill;
- (f) reviewing the operation of this Bill, and reporting to the Minister about its operation; and
- (g) performing other functions conferred on the College under this or another Act.

Clause 233 Primary considerations of College in performing its functions

Clause 233 provides that in performing its functions under this Bill, the welfare and best interests of children are to be the primary considerations of the College.

Clause 234 Powers of College

Clause 234 provides that the College has all the powers of an individual and may do any of the matters listed. The College is prohibited from entering into an agreement about real property, including, for example, leasing premises for its accommodation, unless the Minister has approved its entering into the agreement. Without limiting clause 234(1), the College has the powers given to it under this or another Act. The College has the ability to exercise its powers inside or outside Queensland and if necessary, the College may exercise its powers outside Australia.

Clause 235 Professional standards

Clause 235 requires the College to develop Professional Standards. The purpose of the Standards is to detail the abilities, experience, knowledge or skills expected of teachers to be the criteria for the College's decision about whether to approve a pre-service teacher education program and to help the College decide whether an applicant for the grant or renewal of registration meets the professional practice requirements. The standards may provide for the abilities, knowledge and skills required for provisional and full registration and for renewal of full registration. In developing or amending the professional standards, the College must consult with at least the chief

executive and the representative entities. ‘Representative entities’ is defined in the Dictionary in Schedule 3.

If the Professional Standards are inconsistent with a requirement under this Bill, the Standards are invalid to the extent of the inconsistency. To ensure access to the Standards, the College must make the professional standards available for inspection on its Internet site and ensure copies of the Standards, and any document applied, adopted or incorporated by the standards, are kept available for inspection, free of charge, at the office.

Clause 236 Approval of pre-service teacher education programs

Clause 236 allows a higher education entity to apply in writing to the College for the approval of a pre-service teacher education program. The College may only approve the program if:

- (a) it considers the qualification resulting from successful completion of the program is suitable to be prescribed as a qualification for provisional registration under clause 9(1)(a)(i);
- (b) the College is reasonably satisfied that a person who completes the program will attain the abilities, knowledge and skills required under the Professional Standards; and
- (c) the program is offered at a place in Queensland.

The College must give the applicant notice of the approval if it approves the program. However, the College must give the applicant an information notice about the decision if it decides not to approve the program. An approval of a program given by the College under this clause has effect only in relation to the professional practice requirements for provisional registration under this Bill.

Part 2 Board of the College

Clause 237 The Board

Clause 237 provides that the College has a Board.

Clause 238 Role of Board

Clause 238 provides that the Board is the governing body of the College, which decides the policies of the College, controls the affairs of the College, carries out the functions of the College and exercises the powers of the College. Anything done by the Board is taken to have been done by the College.

Clause 239 Membership of Board

Clause 239 provides that the Board consists of the following persons appointed by the Governor in Council—

- (a) 1 nominee of the Minister;
- (b) 1 nominee of the chief executive;
- (c) 1 nominee of the Queensland Catholic Education Commission;
- (d) 1 nominee of the Association of Independent Schools of Queensland Inc.;
- (e) 2 nominees who are practising teachers, of whom—
 - (i) 1 is to be nominated by the Queensland Teachers' Union;
 - (ii) 1 is to be nominated by the Queensland Independent Education Union of Employees; and
- (f) 1 nominee of the Queensland Public Sector Union and who is a registered teacher;
- (g) 1 nominee of the Higher Education Forum who is a practising teacher educator;
- (h) 2 persons who, at the time of appointment, are parents or guardians of students enrolled at a school, of whom:
 - (i) 1 is to be nominated by the Queensland Council of Parents and Citizens' Associations Incorporated; and
 - (ii) 1 is to be nominated jointly by the Federation of Parents and Friends Associations of Catholic Schools in Queensland and the Queensland Independent Schools Parents Council Inc.;
- (i) 3 nominees who are practising teachers, of whom:
 - (i) 2 are to represent State schools and are to be nominated by the chief executive; and

- (ii) 1 is to represent non-State schools and is to be nominated jointly by the Queensland Catholic Education Commission and the Association of Independent Schools Queensland;
- (j) 3 persons who are practising teachers, of whom:
 - (i) 2 are to be employed by the State and elected by registered teachers who identify themselves as affiliated with State schooling; and
 - (ii) 1 is to be employed by the employing authority for a non-State school and elected by registered teachers who identify themselves as affiliated with non-State schooling;
- (k) 1 other nominee of the Minister who:
 - (i) must represent the interests of the community generally in the conduct and practice of the teaching profession; and
 - (ii) is not a practising teacher.

The director may not be appointed as a member of the Board. Definitions of the terms *Higher Education Forum* and *practising teacher educator* are provided for the purpose of this clause.

Clause 240 Requirements for elections

Clause 240 provides for an election for clause 239(1)(j) and states that the election must be carried out as required under a regulation. A person may be a candidate in the election only if:

- (a) a written report about the person's criminal history has been obtained by the director; and
- (b) the director is reasonably satisfied the person has not been convicted of an indictable offence, other than:
 - (i) a conviction that is a spent conviction; or
 - (ii) a conviction for which the Minister has given the person a notice or written approval under clause 246(4), stating the conviction does not prevent the person being appointed or reappointed to the board.

For clause 240(3)(a), the director may act under clause 247(1) in place of the Minister and clause 247 applies as if a reference to the Minister were a reference to the director. If the election is carried out and insufficient persons are elected to comply with clause 239(1)(j):

- (a) the Minister may nominate the number of practicing teachers required to comply; and
- (b) a practising teacher nominated by the Minister under this subsection is taken to have been elected for the purpose of clause 239(1)(j).

Clause 241 Nomination by entities for membership of board

Clause 241 provides that this clause applies for the nomination of a person for membership of the Board by an entity or entities mentioned in any of paragraphs (c) to (h) or (i)(ii) of clause 239(1). The Minister is required to give the entity or entities a notice stating a reasonable time within which it or they may nominate a person for the membership. The Minister is able to nominate a person for the membership if the entities do not nominate a person within the time stated in the notice. The Minister's nomination is taken to have been made by the entity or entities. The person nominated under clause 241(3) must be a person whom the entity or entities may nominate for membership of the Board as stated in clause 239(1).

Clause 242 Term of appointment of members

Clause 242 provides that the member of the Board appointed as its chairperson may be appointed for a term of not more than 4 years. However, any other member may be appointed for a term of not more than 3 years. This clause is subject to clause 243.

Clause 243 Minister may extend a member's term of appointment

Clause 243 provides that the Minister may, by notice given to the Board, extend the term of appointment of members of the Board for not more than 1 year if the Minister is satisfied it is necessary for the Board to perform its functions and exercise its powers appropriately, effectively and efficiently. If the Minister acts under this clause, the terms of appointment of all the members must be extended by the same amount. The extension applies only to members holding office when the notice is given. This extension power may only be used once to extend the term of appointment of a set of members.

Clause 244 Chairperson of Board

Clause 244 provides that the Governor in Council must appoint the member mentioned in clause 239(1)(a) to be the chairperson of the Board.

A person may be appointed as the chairperson at the same time as the person is appointed as a member. The chairperson holds office at the same time as being a member.

Clause 245 Deputy chairperson of Board

Clause 245 provides that the Board must appoint a member, other than the chairperson, to be the deputy chairperson of the Board. The deputy chairperson holds office for the term decided by the Board. A vacancy occurs in the office of deputy chairperson if the person holding office resigns by giving notice of resignation to the Minister, or ceases to be a member of the Board. However, a person resigning the office of deputy chairperson may continue to be a member of the Board. 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.

Clause 246 Disqualification from membership

Clause 246 provides that a person cannot become, or continue as, a member of the Board if the person is, or has been, convicted of an indictable offence and the conviction is not a spent conviction, or if the person is an insolvent under administration within the meaning of section 9 of the Corporations Act. A person cannot become a member of the Board if the person refuses to consent to the Minister requesting a criminal history report under clause 247(1). The Minister may act under clause 246(4) if the Minister considers it would be reasonable to do so having regard to primarily, the welfare and best interests of children and the circumstances of the indictable offence of which a person has been convicted or the circumstances under which the person became an insolvent under administration.

The Minister may if the person was a member when convicted or becoming an insolvent under administration, give notice to the chairperson and the person that the person is restored as a member of the Board, and may be later reappointed, despite the conviction or being an insolvent under administration. Otherwise, the Minister may give written approval for the person to become a member of the board despite the conviction or being an insolvent under administration. On the day the chairperson receives a notice under clause 246(4)(a), the person is restored as a member and if another person has been appointed to fill the vacancy, the other person's appointment ends. If a person is restored as a member, the person's term of

appointment as a member ends when it would have ended if the person had not been convicted of the offence or an insolvent under administration.

Clause 247 Report about person's criminal history

Clause 247 states that to decide whether a person is disqualified from membership of the Board under clause 246(1)(a), the Minister may ask the Commissioner of Police for a written report about the person's criminal history and a brief description of the circumstances of a conviction mentioned in the criminal history. The Commissioner of Police must comply with the request.

The Minister may only make a request about a person who is not a member of the Board if that person has consented in writing to the request. The duty imposed on the Commissioner of Police to comply with a request for a criminal history report applies only to information in the Commissioner's possession or to which the Commissioner has access. The Minister must ensure that a criminal history report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

The *criminal history*, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

Clause 248 Vacation of office

Clause 248 provides that the office of a member of the Board becomes vacant if the member resigns, is disqualified, is absent without the Board's permission from three consecutive meetings of which proper notice has been given, or is removed from office by the Governor in Council. Also, the office of a member becomes vacant if:

- (a) the member was nominated for membership of the Board under clause 239(1)(e), (g), (i) or (j) and the member stops being a practising teacher or practising teacher educator; or
- (b) the member was nominated for membership of the Board under clause 239(1)(f) and the member stops being a registered teacher; or
- (c) the member was elected by registered teachers under clause 239(1)(j) and:
 - (i) if the member was elected under clause 239(1)(i)(j)—the member is employed by the employing authority for a non-State school; or

- (ii) if the member was elected under clause 239(1)(j)(ii)—the member is employed by the State.

The Governor in Council may remove a member from office if member is incapable of properly discharging the functions of a member of the Board or is performing the member's duties carelessly, incompetently or inefficiently.

For this clause *meeting* means—

- (a) if the member does not attend—a Board meeting with a quorum present; or
- (b) if the member attends—a Board meeting with or without a quorum present.

Clause 249 Requirement for Board members to disclose changes in criminal history

Clause 249 provides a member of the Board must, unless the member has a reasonable excuse, immediately disclose any change in their criminal history to the Minister. A maximum penalty of 100 penalty units (\$7,500) attaches to this provision. Under this clause, there is taken to be a change in the member's criminal history if the member who does not have a criminal history acquires a criminal history. The criminal history information that must be provided under this clause includes:

- a) the existence of the conviction;
- b) when the offence was committed;
- c) details sufficient to identify the offence;
- d) whether or not a conviction was recorded; and
- e) the sentence imposed on the member.

In this clause, 'criminal history', of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

Clause 250 Leave of absence

Clause 250 enables the Minister to approve a leave of absence for a member of the board (the *approved absent member*). The Minister can appoint someone else to act in the office of the approved absent member while the member is absent on leave. If the approved absent member is an eligible person for a nominating entity, the Minister must, before making

the appointment, give the entity a notice stating a reasonable time within which it may nominate a person to act in the office of the approved absent member while the member is absent on the leave. However, if the entity does not make the nomination within the time stated in the notice, the Minister may appoint a person who is an eligible person for the nominating entity under clause 250(4). A person is a member of the Board during the term of the person's appointment to act in the office of an approved absent member.

The Minister's powers under this clause does not limit the Governor in Council's powers under the *Acts Interpretation Act 1954*, section 25(1)(b)(v). If the approved absent member is the deputy chairperson, the authority may appoint another member to act in the deputy chairperson's office while the deputy chairperson is absent on the leave.

Clause 250(8) defines the terms *eligible person* and *nominating entity* for the purpose of clause 250.

Clause 251 Filling vacancies—Board members nominated by Minister or another entity etc.

Clause 251 provides that the Minister must nominate a person to fill a vacancy in the membership of the Board if the vacancy happens because a member's office becomes vacant, other than because the member's term of appointment has ended, and the member was nominated for membership. If the Minister considers it is practicable to fill the vacancy the person nominated must be appointed for the remainder of the vacating member's term of appointment.

Clause 252 Filling vacancies—Board member elected by registered teachers

Clause 252 provides that this clause applies if a vacancy in the membership of the Board happens because a member's office becomes vacant, other than because the member's term of appointment has ended and the member was elected by registered teachers under clause 239(1)(j). If the Minister considers it is practicable to fill the vacancy before the end of the vacating member's term of appointment:

- (a) the director must nominate for appointment the person who obtained the next highest number of votes in the election at which the vacating member was elected and who is willing and able to be a member; or
- (b) if there is no person suitable for nomination under paragraph (a), the Minister must nominate a practicing teacher for appointment.

The person nominated must be appointed for the remainder of the vacating member's term of appointment. A person nominated under this clause is taken to have been elected under clause 239(1)(j).

Clause 253 Conduct of business

Clause 253 provides that subject to clauses 254 to 270, the Board may conduct its business, including its meetings, in the way it considers appropriate.

Clause 254 Presiding at meetings

Clause 254 provides that the chairperson of the Board must preside at all Board meetings at which the chairperson is present. If the chairperson is absent from a Board meeting, but the deputy chairperson is present, the deputy chairperson of the Board must preside. If both the chairperson and deputy chairperson are absent from a board meeting, a member chosen by the members present must preside.

Clause 255 Quorum for meetings

Clause 255 provides that a quorum for a meeting of the Board is the number equal to one-half of the number of its members for the time being holding office or, if one-half is not a whole number, the next highest whole number.

Clause 256 Attendance by proxy by member

Clause 256 provides that a member may, attend a Board meeting by proxy, no more than twice in a year. A member is not entitled to preside at a Board meeting merely because the member is the proxy holder for another member who, if present, would be entitled to preside.

Clause 257 Conduct of meetings

Clause 257 provides that a question at a Board meeting is to be decided by a majority of the votes of the members present. Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote. A member who abstains from voting is taken to have voted for the negative.

The clause also provides that the Board may hold meetings, or allow members to take part in meetings, by using any technology allowing

reasonably contemporaneous and continuous communication between members taking part in the meetings, including, for example, teleconferencing. A member who takes part in such a meeting of the Board is taken to have been present at the meeting. The Board is also taken to validly make a resolution, even if it is not passed at a Board meeting, if notice of the resolution is given under procedures approved by the Board and a majority of members agrees in writing to the resolution.

Clause 258 Minutes

Clause 258 provides that the Board must keep minutes of its meetings.

Clause 259 Committees

Clause 259 provides that the Board may establish committees for effectively and efficiently performing the Board's functions. A committee may include any person, whether or not the person is a member of the Board. The functions of a committee are to advise and make recommendations to the Board about matters relevant to the Board's functions that are referred by the Board to the committee and to exercise any powers delegated to it by the Board. The committee must keep a record of the decisions it makes when exercising a power delegated to it by the Board and may decide its own procedures.

Clause 260 Disclosure of interest

Clause 260 provides that this clause applies to a member of the Board or a committee (the *interested person*) who has a direct or indirect interest in an issue being considered, or about to be considered, by the Board or the committee, which could conflict with the proper performance of the interested person's duties for considering the issue. As soon as practicable after becoming aware of the relevant facts, the interested person must disclose the nature of the interest to a meeting of the Board or committee.

Unless the Board or committee otherwise directs, the interested person must not be present when the Board or committee considers the issue or take part in a decision of the Board or committee about the issue. The interested person must not be present when the Board or committee is considering whether to give a direction under clause 260(3). Further, if there is another person who must, under 260(2), also disclose an interest in the issue, clause 260(5) provides that the other person must not be present when the Board or committee is considering whether to give a direction

under clause 260(3) about the interested person or take part in making the decision about giving the direction.

Clause 260(7) applies if, because of this clause, a member of the Board or a committee is not present at a Board or committee meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under clause 260(3) and there would be a quorum if the member were present. When clause 260(7) applies, the remaining members present are a quorum of the board or committee for considering or deciding the issue, or considering or deciding whether to give the direction, at the meeting.

A disclosure under clause 260(2) must be recorded in the Board or committee's minutes.

Clause 261 Attendance of Director at meetings

Clause 261 provides that the director may attend Board meetings, but has no voting rights.

Clause 262 Requirement for Board approval before College enters into agreements

Clause 262 provides that before the College enters into an agreement, the Board must have first passed a resolution to enter into the agreement. Failure to comply with this requirement does not affect the validity of the agreement.

Clause 263 Remuneration of board members and committee members

Clause 263 provides that a member of the Board or a committee is entitled to be paid the fees and expenses decided by the Governor in Council.

Clause 264 Delegation

Clause 264 provides that the Board may delegate the Board's powers under this Bill to a member of the Board, a committee or the director. The chairperson of the Board may delegate the chairperson's powers under this Bill, other than the power under clause 125(2), to any person. This applies subject to clause 254.

Clause 265 College is statutory body under the Financial Administration and Audit Act 1977

Clause 265 provides that the College is a statutory body under the *Financial Administration and Audit Act 1977*.

Clause 266 College is statutory body under the Statutory Bodies Financial Arrangements Act 1982

Clause 266 provides that the College is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*. Part 2B of that Act sets out the way in which the College's powers under this Bill are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 267 College's financial year

Clause 267 provides that the financial year of the College is a period of 12 months beginning on 1 January.

Clause 268 Money borrowed other than under the Statutory Bodies Financial Arrangements Act 1982

Clause 268 provides that this clause applies if the College borrows money that it is not lawfully authorised to borrow under the *Statutory Bodies Financial Arrangements Act 1982*. All the members of the Board who consented to the borrowing of the money (the **consenting Board members**) are jointly and severally liable to repay the money, and to pay interest on it, to the person from whom the money was borrowed. The money and interest mentioned in clause 269(2) may be recovered from the consenting board members by the Minister as a debt in a court of competent jurisdiction.

If money is appropriated from a fund to repay the borrowed money or interest on it, the members of the board who consented to the misappropriation of the money are jointly and severally liable to refund the misappropriated money and interest at the rate of 12% per year. The misappropriated money and interest may be recovered from the board members mentioned in the subsection by the Treasurer as a debt in a court of competent jurisdiction. The Treasurer must pay the amount recovered into the fund from which the money was appropriated and is entitled to recover from the board members the full costs incurred in recovering the amount, including legal costs.

Clause 269 Budget

Clause 269 provides that the College must, for each financial year, develop, adopt and submit to the Minister a budget by the day the Minister directs. The budget has no effect until approved by the Minister. The College may also develop, adopt and submit to the Minister amendments to its approved budget, which also have no effect until approved by the Minister.

Clause 270 Compliance with approved budget

Clause 270 requires the College to comply with its approved budget. If the College makes a disbursement in a financial year that is not provided for in its approved budget, the members who knowingly agreed to the disbursement (the *relevant members*) are jointly and severally liable to repay the amount of the disbursement to the College. A person appointed in writing by the Minister for the purpose may recover, on the College's behalf, the amount from the relevant members as a debt.

Part 3 Relationship of the College with the Minister**Clause 271 Performance of College**

Clause 271 provides that the Minister is responsible for ensuring the College operates to best practice standards. The College must report to the Minister, when and in the way required by the Minister, on the efficiency, effectiveness, economy and timeliness of the College and its systems and processes, including operational processes. The College must comply with a Ministerial request under this clause.

Clause 272 Minister's power to give directions to the College

Clause 272 provides that the Minister may give the College a written direction about a matter relevant to its functions if the Minister is satisfied it is necessary to give the direction in the public interest. The College must comply with the direction. Without limiting this, the direction may be that the College must comply with a policy, standard or other instrument applying to a public sector unit, or another document, including, for example, another policy, standard or instrument. A direction cannot be given about:

- (a) a decision to grant, or refuse to grant, an application for the grant of registration or permission to teach, the renewal or restoration of full registration, or the renewal of permission to teach;
- (b) a decision to approve or not approve a pre-service teacher education program;
- (c) a disciplinary order made or to be made by a disciplinary committee;
- (d) a decision about whether to take or continue proceedings for an offence against this Bill; and
- (e) a review decision made or to be made by the College.

Clause 273 Minister's power to require production of document

Clause 273 provides that the Minister may, by notice given to the College, require it to make available for inspection by the Minister, or produce to the Minister for inspection, a stated Act document in the possession or control of the College. The Act document must be made available for inspection, or produced, at a reasonable time and place stated in the notice. The Minister may copy the Act document and must return it to the College after copying it. For this clause, *Act document* means a document relevant to the College's functions.

Clause 274 Ministerial request or direction to be included in College's annual report

Clause 274 provides that, in the College's annual report for a financial year under the *Financial Administration and Audit Act 1977*, the College must include copies of all requests, directions or notices given to it by the Minister under this part in the financial year.

Clause 275 College must give annual report to the Minister

Clause 275 provides that the College must, not later than 30 April in each year, give the Minister a report about its work and activities during the previous year.

Part 4 Office of the Queensland College of Teachers

Clause 276 Establishment of Office

Clause 276 establishes the Office of the Queensland College of Teachers, consisting of the director and the staff of the Office.

Clause 277 Office's functions and powers

Clause 277 provides that the office's function is to help the College in the performance of its functions. The Office may do anything necessary or convenient to be done in performing its function.

Clause 278 Appointment, function and powers of director

Clause 278 provides that there is to be a director of the Office. The director is to be appointed under the *Public Service Act 1996*. Subject to direction by the College, the director is to control the office and is responsible for its efficient and effective administration and operation.

The director has all of the functions and powers of the chief executive of a department, to the extent the functions and powers relate to the organisational unit comprising the staff of the office.

Clause 279 Delegation by director

Clause 279 provides that the director may delegate the director's powers to an appropriately qualified member of the Office's staff. For this clause *appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power. An example of the standing relevant to this consideration is the staff member's classification level in the office.

Clause 280 Acting Director

Clause 280 provides that the Minister may appoint a person to act as the director during a vacancy in that office, during any period, or during all periods, when the director is absent from duty or cannot, for another reason, perform the functions of that office.

Clause 281 Office staff

Clause 281 provides that the staff of the Office of the College are to be appointed under the *Public Service Act 1996*.

Chapter 11 Miscellaneous

Part 1 Disclosure and use of information

Clause 282 Definition for Pt 1

Clause 282 outlines that in this part ‘relevant personal information’ means information about a person received by the College under the listed clauses.

Clause 283 Confidentiality of particular information

Clause 283 applies to a person who, in performing functions under the Bill, has acquired information about another person, including relevant personal information. The person must not disclose the information to anyone else, unless the disclosure is permitted under clause 283 (3). A maximum amount of 40 penalty units (\$3,000) attaches to this offence. Clause 283 (3) states that the person may disclose the information to someone else:

- To the extent necessary to perform the person’s functions under this Bill;
- If the disclosure is authorised under this or another Act;
- If the disclosure is otherwise required or permitted by law;
- If the person to whom the information relates is an adult and consents to the disclosure;
- If the disclosure is in a form that does not disclose the identity of the person to whom the information relates;
- If the information is, or has been, accessible to the public, including, for example, because it is or was recorded in the publicly available part of the register;

- If the disclosure is to a disciplinary committee in relation to a disciplinary matter being heard by the committee;
- If the disclosure is to a foreign regulatory authority and is necessary for the authority to perform its functions;
- If the disclosure is to the Minister to allow the Minister to act under paragraph (j); or
- If the Minister considers the disclosure is in the public interest and authorises the person to disclose the information.

If the Minister authorises information to be disclosed if the Minister considers it to be in the public interest and the matters concerns an approved teacher, the Minister must inform the College of the authorization and its purpose.

Clause 284 Guidelines for dealing with relevant personal information

Clause 284 states that the College must make guidelines about dealing with relevant personal information. The purpose of the guidelines is to ensure that natural justice is observed, only relevant information is used for deciding whether a person is suitable to teach, and decisions made under the Bill about whether a person is suitable to teach, based on the information, are made consistently. On request, the College must give a copy of the guidelines to an applicant for the grant, renewal or restoration of registration or permission to teach.

Clause 285 College may give information about teachers to Commissioner for Children in particular circumstances

Clause 285 applies if the College suspends an approved teacher's registration or permission to teach if it has exercised its discretionary power under clause 49, or a disciplinary committee makes a decision about disciplinary proceedings. The College may give notice of the decision to the Commissioner for Children and Young People if the College reasonably believes the decision is relevant to the functions or powers of the Commissioner under the *Commission for Children and Young People and Child Guardian Act 2000*, Part 6. The notice must state the teacher's name, address, date of birth, the decision, when the teacher's conduct giving rise to the suspension happened and the nature of the conduct. However, if a notice relates to a particular child, the notice must not contain information that identifies, or is likely to identify, the child.

Clause 286 College may enter into information sharing arrangement with Commissioner of Police

Clause 286 allows the College to give information to the Commissioner of Police or the Commissioner of Police to give information, including criminal history information, to the College. This applies only to the extent another provision of the Bill allows the giving of information. The College and the Commissioner may enter into a written arrangement and may provide for the electronic transfer of information, including on a daily basis. However, the arrangement must provide for any limitations set out in this Bill.

Clause 287 Other information sharing agreements

Clause 287 allows the College to enter into an information sharing agreement with a Department, the Crime and Misconduct Commission or an interstate regulatory authority for the purpose of sharing or exchanging information. The information is limited to that which helps the College in the exercise of its functions under the Bill or the relevant agency in the exercise of its functions and is not information about a person's criminal history. "Criminal history" is defined in the Dictionary in Schedule 3. Despite any other Act or law of the State, the College and agency are authorized to request and receive the information and disclose the information to the other party.

Part 2 Register of approved teachers**Clause 288 Register of approved teachers to be kept**

Clause 288 mandates the College to keep a register about approved teachers. It may be kept in the way the College considers appropriate, including electronic form. The clause outlines what details must be recorded. The register also outlines the details that must be recorded when a person has had their registration or permission to teach cancelled. However, the information about cancellation must be removed from the register 3 years after the cancellation date.

Clause 289 Inspection of register

Clause 289 outlines what details on the register are publicly available. This is so privacy of the approved teacher is reserved. However, an employing

authority may be authorised by the College to inspect parts of the Register that are not publicly available. This is necessary, as employing authorities require information such as conditions on the registration or Permission to Teach. Clause 289 also outlines how the register may be inspected, or a copy obtained.

Part 3 Codes of practice

Clause 290 College may develop codes of practice

Clause 290 allows the College to develop codes of practice to provide guidance to approved teachers about appropriate professional conduct or practice. In developing or amending a code, the College must consult with the chief executive and the representative entities. “Representative entities” are defined in the Dictionary in Schedule 3. However, this does not prevent the College from consulting with another person or entity. A code of practice or an amendment does not have effect until the Minister has approved it by gazette notice. The College must ensure approved teachers are notified of the approval or amendment of a code.

Clause 291 Inspection of code of practice

Clause 291 requires the College to make a code available for inspection on its Internet site and ensure copies are kept for inspection at the office.

Clause 292 Use of code of practice in disciplinary proceedings

Clause 292 allows a code of practice to be used in disciplinary proceedings only to provide evidence of appropriate professional conduct or practice for the teaching profession.

Part 4 Other provisions

Clause 293 Higher education entities must not misrepresent approval of pre-service teacher education programs

Clause 293 states that a higher education entity offering a pre-service teacher education program that has not been approved by the College must

not claim or represent to another person that the program has been approved by the College under this Bill. A maximum penalty of 20 units (\$1,500) attaches to this clause.

Clause 294 Protection from liability

Clause 294 protects certain people from civil liability, provided that the person has acted honestly and without negligence. However, to provide recourse for persons who suffer loss or damage as a result of the actions of an official, the liability that would have attached to the official attaches to the State or the College, depending on who the official is.

Clause 295 Delegation by Minister

Clause 295 allows the Minister to delegate the Minister's powers to an appropriately qualified person. However, the Minister may not delegate power under clause 272 (Minister's power to give directions to the College), or clause 273 (Minister's power to require production of document).

Clause 296 Administrative support for College etc

Clause 296 allows the College to make arrangements for administrative support services for the College, Office and Teachers Disciplinary Committee. If the College makes arrangements with the chief executive, the arrangement must include provision about the College paying the Department a reasonable amount for the service.

Clause 297 Approved forms

Clause 297 allows the College to approve forms for use under the Bill.

Clause 298 Regulation-making power

Clause 298 provides that the Governor in Council may make regulations under the Bill. A regulation may provide for fees and waiving and refunding of fees. It may prescribe a penalty of not more than 20 units (\$1,500) for a contravention of the regulation.

Chapter 12 Repeal and transitional provisions

Part 1 Interpretation

Clause 299 Definitions for Ch 12

Clause 299 outlines the definitions for Chapter 12.

Part 2 Repeal

Clause 300 Repeal of Education (Teacher Registration) Act 1988

Clause 300 repeals *the Education (Teacher Registration) Act 1988* No.96.

Part 3 Provisions relating to former Board and College

Clause 301 Dissolution of former Board

Clause 301 dissolves the former Board and members of the former Board go out of office. Not compensation is payable to a member because of this.

Clause 302 College is legal successor of former Board

Clause 302 states that the College is the legal successor of the former Board. Clause 303 does not limit this.

Clause 303 Assets and liabilities etc.

Clause 303 states that assets, liabilities or property of the former Board are transferred to the College, and that agreements or arrangements entered

into by the former Board are taken to be agreements or arrangements with the College.

Clause 304 Conduct of election for new Board before commencement

Clause 304 allows the former Board and director to conduct an election of practicing teachers for the purpose of making an appointment of members of the new Board, before the Bill commences. It allows the former Board to perform the functions and powers of the College or the new Board under the Bill and the former director may perform the functions and exercise the powers of the director under this Bill. This applies in addition to section 17 of the *Acts Interpretation Act 1954*.

Clause 305 Former Board's budget for 2006

Clause 305 states that the budget for the year ending on 31 December 2006 is taken to have been adopted by the new Board and approved by the Minister for the new Board's 2006 financial year.

Clause 306 Former Board's annual report for 2005

Clause 306 states that the College must prepare the annual report required under the *Financial Administration and Audit Act 1977*, section 46J and otherwise comply with the former Board's obligations. To enable this, section 7(4) of the repealed Act continues to apply in relation to the annual report.

Clause 307 Proceedings

Clause 307 states that a proceeding that could have been started by or against the former Board before commencement may be started by or against the College. An existing proceeding may be continued and finished by or against the College. Clause 307 outlines what constitutes an 'existing proceeding'.

Clause 308 Proceedings for offences against the repealed Act

Clause 308 states that proceedings for an offence against the repealed Act may be continued or started by the College. The provisions of the repealed Act continue to apply for this purpose. This is also not limited by section 20 of the *Acts Interpretation Act 1954*.

Clause 309 Appeals

Clause 309 states that if a person has appealed to the District Court under the repealed Act against a decision or order in clause 72(1) of the repealed Act and the appeal has not been decided before the commencement, the District Court may hear, or continue to hear and decide the appeal under the repealed Act. This also applies to the situation where a person could have appealed under the repealed Act.

Clause 310 Continuing effect of Ministerial directions given before commencement

Clause 310 applies to a direction given to the former Board by the Minister under section 7 of the repealed Act and with which the former Board would have had to comply. If the context permits, on the commencement the direction is taken to have been given by the Minister to the College under clause 272.

Clause 311 References to former Board

Clause 311 states that a reference in an Act or document to the former Board may, if the context permits, be taken to be a reference to the College.

Part 4 Provisions relating to the former office**Clause 312 Dissolution of former office**

Clause 312 dissolves the former office.

Clause 313 Staff of former office

Clause 313 transitions existing staff of the Office of the Board of Teacher Registration over to the new Office of the College. This includes the director. The terms and conditions of employment continue to apply and it is declared that continuity of service is not interrupted.

Part 5 Provisions relating to registration etc.

Clause 314 Existing registrations

Clause 314 transitions those recorded in the existing register as having full registration under this Bill until 31 December 2010. This is subject to the registration being suspended or cancelled. Those currently on the register recorded as having provisional registration are transitioned over with provisional registration until 31 December 2007, subject to their registration being suspended or cancelled. A person's registration is subject to the same conditions, if any, to which the registration was subject to under the repealed Act. Registration is also subject to the annual fee being paid not later than 31 March 2006. As soon as practicable after the annual fee is paid, the College must issue a certificate of registration.

Clause 315 Existing authorisations

Clause 315 transitions authorised teachers to hold Permission to Teach under this Bill. The Permission to Teach is subject to the same conditions, if any, as applied to the authorisation. The annual fee payable must be paid no later than 31 March 2006.

Clause 316 Deciding existing applications for registration

Clause 316 applies if an application was made before the commencement under the repealed Act for full or provisional registration and the former Board has not decided the application before commencement. The application must be decided by the College under this Bill. Criminal history reports received under the repealed Act, or notices given under the repealed Act are taken to be reports received and notices given under the Bill.

Clause 317 Deciding existing applications for restoration of registration

Clause 317 states that any application for restoration made under the repealed Act, but not yet decided before commencement of the Bill, must be decided under the repealed Act. The applications cannot be decided under the Bill, as restoration is applied differently under the Bill. If the application is granted, the restoration of the registration is taken to have had effect from 31 December 2005. This allows a restored registrant to be transitioned over to the new regime. If the application is not granted, the

applicant may appeal against the College's decision under Part 6 of the repealed Act as if it had not been repealed.

Clause 318 Particular higher education courses taken to be approved pre-service teacher education programs

Clause 318 states that all courses of pre-service teacher education within the meaning of the repealed *Education (Teacher Registration) By-law 1989* that were provided by a higher education entity and recognized by the former Board as being a prescribed course of higher education, is taken to be a pre-service teacher education program approved by the College under clause 236.

Clause 319 continuation of existing register until 30 June 2006

Clause 319 carries the existing register over as the register for the Bill. However, this stops applying on 30 June 2006.

Clause 320 Particular matters under repealed Act to be included in register

Clause 320 carries over any notation or endorsements about a person contained on the register under the repealed Act. The notation or endorsement must be included in the Register under clause 288 of this Bill until they expire. Clause 288(5) and (6) of this Bill are taken to apply to a person whose registration under the repealed Act was cancelled by the former Board on or after 1 January 2003 under Part 5 of the repealed Act.

Part 6 Disciplinary matters

Clause 321 Existing show cause procedure

Clause 321 states that where the former Board has not decided whether to make the proposed order in a notice given under section 46 of the repealed Act to a provisionally registered teacher, the College must decide under the repealed Act whether to make the proposed order. The repealed Act must be applied to the making of the decision. If the College decides to make the proposed order, the order has effect as if it had been made under clause 47 of this Bill.

Clause 322 Existing inquiries

Clause 322 states that any inquiries not yet completed by the commencement of this Bill, must be completed under the repealed Act as if it had not been repealed. If a committee of inquiry had been appointed, it must complete the inquiry. Otherwise, the members of the former Board must complete the inquiry. For completing the inquiry, a member of a committee of inquiry has the member's entitlements under the repealed Act.

Clause 323 Suspended registrations

Clause 323 states that suspension of registration made under the repealed Act that have not ended before commencement of this Bill are to continue for the purpose of the Bill. The suspension ends when it would have ended under the repealed Act.

Clause 324 Suspension for charge for excluding offence not to apply to particular approved teachers

Clause 324 states that a registered teacher who has been charged with an offence that has not been dealt with before commencement of this Bill, if the offence is an excluding offence, clause 48 of this Bill does not apply to the person. However, if after commencement, the person is convicted of the excluding offence with which the person was charged before the commencement, or another excluding offence, a court may make a disqualification order and if an imprisonment order is imposed, clause 56 of the Bill applies.

Clause 325 Disciplinary information received by former Board

Clause 325 states that if the former Board receives relevant information about a registered or former registered teacher and the former Board has not suspended registration, conducted an inquiry or otherwise dealt with the information, the information is taken to be disciplinary information for Chapter 5 of this Bill.

Part 7 Other provisions

Clause 326 Document taken to be Professional Standards

Clause 326 carries over the current document titled “Professional Standards for Graduates and Guidelines for Pre-service Teacher Education Programs”, as the Professional Standards for this Bill until 31 December 2006. However, the College may amend or replace the Professional Standards under clause 235 before 31 December 2006.

Clause 327 Document taken to be a code of practice

Clause 327 carries over the current document titled “Ethical Standards for Teachers” as a code of practice for this Bill until 31 December 2006. However, the College may amend or replace the code of practice under Chapter 11, Part 3, before 31 December 2006.

Clause 328 Continuation of existing guidelines

Clause 328 carries over any guidelines dealing with criminal history information made under section 42F of the repealed Act. They are taken to be guidelines about dealing with relevant personal information made by the College under clause 284 of this Bill. The guidelines apply with any necessary changes.

Chapter 13 Amendment of Acts

Clause 329 Acts amended in Schedule 2

Clause 329 states that Schedule 2 amends the Acts it mentions.

Schedule 1 Decisions for which information notice must be given

Schedule 1 provides a list of decisions made under this Bill where an information notice must be given. The contents of the information notice are specified in the Dictionary in Schedule 3.

Schedule 2 Amendments of Acts

Commission for Children and Young People and Child Guardian Act 2000

These changes reflect the new title of the Bill and states for the purposes of the *Commission for Children and Young People and Child Guardian Act 2000*, the definition of ‘registered teacher’ is taken to include those granted Permission to Teach under the Bill. This has the effect of excluding those granted Permission to Teach under the Bill from needing a blue card. This is necessary as those granted Permission to Teach are now brought within the screening and disciplinary processes of the Bill. The Schedule 4 definition of ‘teacher registration information’ is omitted, as it is not used elsewhere in the Act.

Criminal Law (Sexual Offences) Act 1978

The new title of the College is inserted into section 8(1)(c).

Education (General Provisions) Act 1989

The new title of the Bill is inserted into section 2(1).

Education (Queensland Studies Authority) Act 2002

The new title of the Bill is inserted into Schedule 2.

Schedule 3 Dictionary

Schedule 3 defines certain terms used in the Bill.

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