

Education (General Provisions) Bill 2006

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Education (General Provisions) Bill 2006.

Policy Objectives of the Legislation

The primary objective of the Bill is to put in place a legislative regime that facilitates the making available to each Queensland child or young person a high-quality education that will help to maximise his or her education potential.

For chapters 10 and 11 of the Bill, the objectives are:

- To implement initiatives to ensure young people participate in a period of education or training after they turn 16 years or complete year 10; and
- To outline a range of education and training options for them during this period; and
- To provide for their participation and learning achievements during his period to be recorded.

Reasons for the Bill

The *Education (General Provisions) Act 1989* has underpinned education in Queensland for the past 17 years. Since its introduction in 1989, the Act has been amended many times, to incorporate reforms to the education sector including the Education and Training Reforms for the Future. In 2004, the Government commenced a review of the *Education (General Provisions) Act 1989* to ensure that the legislative regime underpinning education in Queensland reflects contemporary society and educational practice.

The Education (General Provisions) Bill 2006, which will replace the *Education (General Provisions) Act 1989* and the *Youth Participation in*

Education and Training Act 2003, has been drafted with the objective of ensuring that the legislative regime supports the broad strategic direction of education in Queensland and the effective establishment and operation of State educational institutions.

Achieving the Objectives

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

- Placing responsibilities on parents and the State in relation to the education of children and young people; and
- Providing for the establishment of State educational institutions, and facilitating their operation as safe and supportive learning environments; and
- Ensuring education programs are responsive to the individual learning needs of children and young people; and
- Encouraging a parent's involvement in his or her child's education; and
- Encouraging parental and community involvement in the operation of State educational institutions by enabling:
 - the establishment of school councils for State schools; and
 - the formation of parents and citizens associations for State instructional institutions.

Administrative costs

There will be additional costs related to the registration regime for home education, however these costs will be met within the Department's existing budgetary allocation.

Elements of the Bill may result in slightly increased administrative costs for some State and non-State schools, such as reporting requirements for schools. In relation to school reporting requirements, the vast majority of schools will already be meeting these requirements as a matter of good practice but there will be a small number that will have to adopt the new standard of reporting, incurring a slight administrative cost. These costs will not be significant and will be managed by the State and non-State schools.

Fundamental Legislative Principles

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation must have sufficient regard to the rights and liberties of individuals. Aspects of the Bill that raise fundamental legislative principles in relation to the rights and liberties of individuals are outlined below.

Validation of past charging and waiving for the charging of overseas students

Clause 440 of the Bill validates past charging and waiving for non-domiciled students. This represents a breach of the fundamental legislative principle in section 4(3)(g) of the *Legislative Standards Act 1992* which states that legislation should not adversely affect rights and liberties, or impose obligations retrospectively.

The effect of decisions made to waive fees is to excuse parents from paying for their child to enrol in and attend a State school. Not validating these decisions would leave these parents in a situation where they would be required to pay for a service that has already been provided, and for which they had previously thought would not have to be paid for. For this reason retrospectively validating the decisions is justified.

With respect to validation of the fees charged, it is significant that the instrument under which the fees were charged was presumed to be valid. There was no reason for the administrator to question its validity in light of this. Furthermore, the collection of fees was done in good faith and in accordance with government policy about non-domiciled students accessing state education. The retrospective validation of the fee does not signify any policy change with respect of the fee; it merely rectifies a technical legal problem.

Parents and Citizens Associations

Clause 130 of the Bill restricts the number of staff members of a school, who are not parents of students at the school, who may be executive committee members of a P&C association. The section also allows the chief executive to relieve an association from compliance with this section of the Bill, if the chief executive reasonably believes the restriction would prevent all the positions being filled.

This raises a potential breach of the fundamental legislative principle in section 4(4)(a) of the *Legislative Standards Act 1992* which provides that legislation must have sufficient regard to the institution of Parliament, in

particular that the legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons.

This breach is considered to be relatively minor, in that the number of P&Cs to which the relaxation is likely to apply will be minimal (primarily those in rural and remote areas that have smaller school communities), and that P&Cs are statutory bodies subject to the direction of the Minister for Education. Other ways to achieve the desired policy position were explored, all of which rely on discretion on the part of the chief executive. The criteria put in place to fetter the chief executive's discretion are considered appropriate for this purpose.

Parental access to student accounts

Clause 267(6) outlines that the Queensland Studies Authority (QSA) may provide parental access to a young person's account if the parental details have been recorded in the student account for that person. Granting a parent access to a young person's account will assist them to comply with section 243 which places an obligation on a parent of a young person to ensure that person is meeting their compulsory participation requirements.

From a privacy perspective, the legislation does not explicitly provide that the student must consent to or can object to their parents having access to the account. This may potentially affect the rights and liberties of individuals under section 4(2) of the *Legislative Standards Act 1992*. However, the department will develop administrative guidelines to assist schools and other learning providers in identifying circumstances in which it is not appropriate to provide parental information to the QSA and in monitoring subsequent changes in the student's family circumstances. The department will consult with a number of government agencies on the development of appropriate guidelines, and will also develop administrative guidelines requiring learning providers to explain to both students and parents why parents are getting access to the student account.

The proposal will not give parents access to information that they cannot already access by other means (e.g. through school reports, parent-teacher interviews, discussions with their child and communication with the learning provider). The administrative guidelines around explaining the student account process support the privacy principle of providing adequate notification to a young person about what may happen to their personal information and for an administrative regime to allow students to deny their parents access to their records in appropriate circumstances. These decisions are already made a school level in relation to a range of records and it would be an unnecessary duplication that could lead to differing decision if the QSA were provided with this role. The QSA does not have

established relationships with parents to enable it to undertake a decision-making role regarding parental access. Any breach of fundamental legislative principles is therefore considered justifiable.

Transfer notes

Clauses 390 and 391 require that principals must make copies of transfer notes available to parents and other schools in certain circumstances. Clause 393 of the Bill provides a specific liability protection relating to the transfer of student information. The clause has been included to address concerns about the potential for litigation that may arise from principals forwarding the transfer note. For example, a parent may take legal action if they believe a transfer note contains defamatory information.

Clause 393 codifies exiting Common Law protections and provides that a state or non-state school principal or delegated staff member does not incur any liability for an act done, or omission made honestly and without negligence in regard to their obligations under chapter 13 of the Bill. If despite this protection, there was any remaining liability this would need to attach to the State for state school principals or the governing body for non-state school principals.

This raises a potential breach of fundamental legislative principles under section 4(3)(h) of the *Legislative Standards Act 1992*. This section provides that legislation must have sufficient regard to the rights and liberties of individuals, in particular, the legislation does not confer immunity from proceeding or prosecution without adequate justification. This breach is considered to be justifiable given that this will transparently provide adequate protection for principals who perform their required functions and meet their prescribed legislative obligations under the Bill. The legislative protections are not afforded if a principal has acted dishonestly or with malice.

Transitional regulation making power

Given the complexity of the Bill, clause 514 confers the power to make transitional regulations to allow for the transition from the operation of the current *Education (General Provisions) Act 1989* to the Bill. The power allows for transitional regulations to operate retrospectively, with the limitation that the regulations cannot commence prior to the commencement day for the Bill. However, the scope of the power is limited by the provision that any transitional regulations made under the clause, as well as the clause itself, will expire 1 year after the commencement day for the Bill.

This raises a potential breach of fundamental legislative principles under section 4(4)(a) of the *Legislative Standards Act 1992*. Although it may be argued that this power does not have sufficient regard to the institution of Parliament, it is considered necessary in view of the complexity of the matters dealt with in the Bill and it is in the public interest that there be no gaps in the legislative scheme. Therefore any potential breach is justified.

Consultation

Community

Extensive consultation has been conducted during the review of the *Education (General Provisions) Act 1989*. In 2004 the Consultation Paper, *Education Laws for the Future* was released for a five month consultation period. During the consultation period, public forums were held in locations throughout the State with stakeholders and interested members of the general public. Over 2200 submissions were received in response to the issues raised in the Consultation Paper that helped inform the development of the new Bill.

In December 2005, an exposure draft of the Bill and an explanatory document was released for a three month consultation period ending on 17 March 2006. The exposure draft of the Bill and the explanatory document was displayed on the Department's website. Stakeholders including ministerial advisory committees, State school principals, parent associations, principal associations, unions, youth organizations and representative bodies for the independent and non-state schooling sectors were notified of the release of the exposure draft of the Bill and the explanatory document. Targeted meetings took place with key stakeholders.

Government

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

- Commission for Children and Young People and the Child Guardian
- Department of Aboriginal and Torres Strait Islander Policy
- Department of Child Safety
- Department of Communities
- Department of Corrective Services

- Department of Employment and Training
- Department of Industrial Relations
- Department of Justice and Attorney-General
- Department of Local Government, Planning, Sport and Recreation;
- Department of Natural Resources, Mines and Water
- Department of the Premier and Cabinet
- Department of Primary Industries and Fisheries
- Department of State Development, Trade and Innovation
- Department of Tourism, Fair Trading and Wine Industry Development
- Disability Services Queensland
- Office of Public Service Merit and Equity
- Queensland Health
- Queensland Ombudsman
- Queensland Police Service
- Queensland Studies Authority
- Queensland Treasury.

Notes on Provisions

Chapter 1 Preliminary

Part 1 Introduction

Short title

Clause 1 establishes the short title of the Act as the Education (General Provisions) Act 2006.

Commencement

Clause 2 provides for the commencement of the Act.

Subclause (1) provides that section 515(2) and schedule 2, which contains consequential amendments to a number of Acts, commence on 1 January 2007.

Subclause (2) provides that section 515(3) and schedule 3, which contains amendments to this Act, commence on 1 January 2008.

Subclause (3) provides that subject to subsections (1) and (2), this Act commences on a day to be fixed by proclamation.

Part 2 Application

Act binds all persons

Clause 3 provides that the Act will bind all persons, including the State, the Commonwealth and the other States. The Commonwealth and the other States will only be bound so far as the legislative power of the Parliament permits.

Subclause (2) provides that the State, the Commonwealth and another State will not be liable to be prosecuted for an offence.

Interaction with other legislation

Clause 4 explains how the Act interacts with other legislation.

Subclause (1) provides that this Act includes provisions requiring young people to continue their schooling until they are 16 years or have completed year 10, whichever happens first. This Act also includes provisions that require young people to continue in education and training for a further period for the purpose of achieving a senior certificate, certificate III or certificate IV. *Senior certificate* is defined by the dictionary in schedule 4 to mean a certificate of achievement of that type issued under the *Education (Queensland Studies Authority) Act 2002*. *Certificate III* is defined by the dictionary to mean a qualification by that name under the Australian Qualifications Framework. *Certificate IV* is defined by the dictionary to mean a qualification by that name under the Australian Qualifications Framework. This framework defines all qualifications recognised nationally in education and training within

Australia. The Ministerial Council on Education, Employment, Training and Youth Affairs endorsed the Australian Qualifications Framework to commence on 1 January 1995.

Subclause (2) explains that the *Vocational Education, Training and Employment Act 2000* includes provisions about some of the eligible options available to young people during this further period of learning. **Eligible options** are defined by section 236 of the Bill, and include a course of vocational education and training provided by a TAFE institute or a registered training organisation under that Act, a departmental employment skills development program, and an apprenticeship or traineeship under that Act. The *Vocational Education, Training and Employment Act 2000* includes provisions about these options.

Subclause (3) explains that the *Education (Queensland Studies Authority) Act 2002* includes provisions about the maintenance of student accounts to record young people's participation in education and training.

Part 3 Objects

Objects of Act

Clause 5 explains the objects of the Act.

Subclause (1) provides that the objects of the Act are:

- (a) to make available to each Queensland child or young persons a high-quality education that will:
 - (i) help maximise his or her educational potential; and
 - (ii) enable him or her to become an effective and informed member of the community; and
- (b) to provide universal access to high-quality State education; and
- (c) for chapters 10 and 11:
 - (i) to implement initiatives to ensure young people participate in a period of education or training after they turn 16 years or complete year 10; and
 - (ii) to outline a range of education and training options for them during this period; and

- (iii) to provide for their participation and learning achievements during this period to be recorded.

Subclause (2) provides that the objects are to be achieved mainly by:

- (a) placing responsibilities on parents and the State in relation to the education of children and young people; and
- (b) providing for the establishment of State educational institutions, and facilitating their operation as safe and supportive learning environments; and
- (c) ensuring education programs are responsive to the individual needs of children and young people; and
- (d) encouraging a parent's involvement in his or her child's education; and
- (e) encouraging parental and community involvement in the operation of State educational institutions, by enabling:
 - (i) the establishment of school councils for State schools; and
 - (ii) the formation of parents and citizens associations for State educational institutions.

Activities to achieve objects of chs 10 and 11

Clause 6 provides for activities that the chief executive of the Department of Education and the Arts may carry on to achieve the objects of the Bill. Firstly, clause 6(a) sets out planning activities in terms of monitoring the operation and effectiveness of chapters 10 and 11, by carrying out planning relating to the matters dealt with under chapters 10 and 11 and developing strategies to better achieve the objects of chapters 10 and 11.

In performing these activities the chief executive may request statistical information about the success of the reforms under the provisions relating to the student account (see chapter 11, section 267(3)). Information aggregated from the student account system will enable the chief executive to monitor the pathways of young people across the range of education and training options. Such information is critical for the government to assess whether or not the reforms are effective in achieving the goals of the *Education and Training Reforms for the Future* and to assist the development of better options for young people to give them better chances for future success.

Secondly, clause 6(b) sets out re-engagement activities in terms of re-engaging young people who are not participating in education or training during the compulsory participation phase.

The first re-engagement activity is about identifying young people in the compulsory participation phase who are not participating full-time in an eligible option. **Compulsory participation phase** is defined by section 235 to start when the young person stops being of compulsory school age and ends when the young person either gains a senior certificate or a certificate III or a certificate IV, has participated in eligible options for 2 years or turns 17 years of age. **Eligible options** are set out in section 236 of the Bill, and include educational programs at school, higher education courses at university or non-university providers, vocational education and training at TAFE or a registered training organisation, an apprenticeship or traineeship or a departmental employment skills development program. **Full-time** is defined by the dictionary in schedule 4 to mean participation that is full-time either under section 239 (for a program or course) or section 242 (for an apprentice or trainee). Section 239 sets out that **full-time** is a reference to participation in an eligible option at a level that is full-time under the requirements of the option, and includes part-time participation in 2 or more eligible options to the extent that is at least equivalent to full-time participation in 1 option. Section 242 provides that participation in apprenticeships and traineeships is taken to be full-time where the young person is an apprentice or trainee under the *Vocational Education, Training and Employment Act 2000*. In essence, this activity is about identifying young people who are not participating and are in breach of the requirements of the legislation, or who are not in breach, but are participating through employment or non-departmental employment skills development programs.

The second re-engagement activity is about giving these young people information about the options available to them. The third activity is to encourage the young people to participate in a way that achieves the best learning outcomes for them, and the fourth activity is about encouraging and helping their parents play a role in the matters stated in the first to third activity.

The student account provisions in chapter 11 are critical to the chief executive's re-engagement activities. Under section 267(5) the chief executive may ask for the prescribed information from the QSA about young people who are not engaged full-time in eligible options, and have not been engaged for a period of three months. **Prescribed information** is defined in section 267(8). Once the chief executive has received this information, section 268 will enable the chief executive to provide the

information, at the local level, to appropriate entities to help the chief executive carry out the other re-engagement functions. The strategies for re-engagement will depend on the local community and the strategies set out in the District Youth Achievement Plan for the local area. The effectiveness of the re-engagement functions depends on the ability of the local community to galvanise resources to make appropriate options available to young people and ensure that those options are relevant to the needs of the young people of that local community.

It should be noted that it is not intended that the provisions create an enforceable duty on the chief executive, which may expose the chief executive to a legal liability for failure to follow up a young person in a particular way. The provision is intended as merely enabling for the chief executive to carry out these activities if it is appropriate to do so.

Part 4 Guiding principles for achieving Act's objects

Guiding principles

Clause 7 provides the guiding principles for the administration of the Act. In administering the Act, sufficient regard should be had to these guiding principles.

The principles intended to guide the achievement of this Act's objects are the following:

- (a) parents have the responsibility of choosing a suitable education environment for their children;
- (b) education should be provided to a child or young person in a way that provides positive learning experiences and promotes a safe and supportive learning environment and recognises his or her educational needs;
- (c) children and young people should be actively involved in decisions affecting them to the extent that is appropriate having regard to their age and ability to understand;
- (d) the State, parents, teachers, school communities and non-government entities should work collaboratively to foster a commitment to achieving the best educational outcomes for children and young people;

(e) for chapters 10 and 11:

- the State should develop practical ways to improve the social, educational and employment outcomes of young people, in particular, for young people who are at risk of disengaging from education and training; and
- the State should foster a community commitment to young people by involving members of the community and community organisations in developing education and training opportunities for young people; re-engaging young people in education and training and developing ways to improve the social outcomes of young people; and
- the State should work with parents to achieve the best outcomes for young people; and
- the State should work in consultation with non-government entities to achieve the objects of chapters 10 and 11. For the *Education and Training Reforms for the Future* to be successful it is critical that government and non-government entities work together to provide the best learning outcomes for young people. The Bill reinforces this guiding principle in relation to the involvement of certain non-state school entities in chapter 11, part 5 of the Bill.

Part 5 Interpretation

Definitions

Clause 8 provides that particular words used in the Act are defined in the dictionary in schedule 4 of the Bill.

Meaning of compulsory school age

Clause 9 provides the meaning of the term *compulsory school age*.

Subclause (1) provides that a child is of compulsory school age if the child is at least 6 years and less than 16 years.

Subclause (2) clarifies however, that a child is no longer of compulsory school age if the child has completed year 10.

Meaning of parent

Clause 10 provides the meaning of the term *parent*.

Subclause (1) provides that a *parent* of a child is any of the following persons:

- (a) the child's mother;
- (b) the child's father;
- (c) a person who exercises parental responsibility for the child.

Subclause (2) clarifies however, that a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.

Subclause (3) provides that a parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.

Subclause (4) provides that a parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

Subclause (5) provides that despite subsections (1), (3) and (4), if:

- (a) a person is granted guardianship of a child under the *Child Protection Act 1999*; or
- (b) paragraph (a) does not apply, a person who otherwise exercises parental responsibility for a child under a decision or order of a federal court or a court of a State;

then a reference in this Act to a parent of a child is a reference only to a person mentioned in paragraph (a) or (b).

The word "parent" has a broad meaning and can include anyone caring in an ongoing way for the child like a parent, e.g. step-parents, or grandparents with whom the child lives. "Parent" does not include temporary carers, e.g. relatives with whom the child stays for a few weeks or neighbours who mind the child each day. It does not include persons standing in temporary "loco parentis" for the parent, for example school principals. The definition for Aboriginal and Torres Strait Islander parents is able to be interpreted broadly to include customary relationships within a community or tribal grouping.

In situations where the chief executive (child safety) has custody, but not guardianship, of a child under the *Child Protection Act 1999*, then pursuant to section 10(1)(c) the chief executive (child safety) will be regarded as the child's "parent" although section 10(5) will not operate to exclude the child's mother or father.

Meaning of basic allocation, remaining allocation etc

Clause 11 explains the meaning of the terms *basic allocation* and *remaining allocation*.

Subclause (1) provides that *basic allocation* is the allocation of 24 semesters of State education.

Subclause (2) clarifies that some students do not have the basic allocation but another number of semesters of State education is allocated to the student by a State school's principal.

Subclause (3) provides that *remaining allocation*, for a student is:

If the student was a student with a basic allocation—the basic allocation less the number of semesters of State education provided to the student; or

If the student did not have a basic allocation—the number of semesters allocated to the student less the number of semesters of State education provided to the student.

Subclause (4) provides that neither *basic allocation* nor *remaining allocation* includes an extra semester or further semester.

Chapter 2 State educational institutions

Part 1 State education

Clause 12 provides for the provision of State education.

Subclause (1) provides that for each student attending a State instructional institution, there must be provided an educational program approved by the Minister that:

- (a) has regard to the age, ability, aptitude and development of the student and whether enrolment in the educational program is compulsory or non-compulsory; and
- (b) is an integral element within the total range of educational services offered with the prior approval of the Minister; and

- (c) takes account, and promotes continuity of the student's learning experiences; and
- (d) recognises, and takes account of, the nature of knowledge.

Subclause (2) provides that the duration of the education program must be based on the basic allocation to a student.

Part 2 Establishment and naming of State educational institutions

Power to establish State schools

Clause 13 provides that the Minister may establish schools at which the State provides primary, secondary or special education.

Power to establish institutions that provide educational instruction to persons enrolled at State schools

Clause 14 provides the Minister may establish institutions at which the State provides educational instruction to persons enrolled at State schools as an adjunct to the educational programs provided to the persons at the State schools, including for example, environmental education centres and outdoor education centres.

Power to establish other educational institutions

Clause 15 provides if the Minister considers it necessary or convenient for the purposes of this Act, the Minister may establish educational institutions other than State instructional institutions, including for example centres for the support and development of teachers and officers of the department and student hostels or student residential colleges. *State instructional institutions* is defined in schedule 4 as institutions established under sections 13 and 14.

Naming, and changing of name, of a State educational institution

Clause 16 provides that the Minister may name, and change the name of a State educational institution.

Part 3 Amalgamation or closure of State schools

Definition for pt 3

Clause 17 provides that in this part, *closure* of a State school, does not include the temporary closure of the school or the permanent closure of the school if the Minister is reasonably satisfied exceptional circumstances exist that justify the closure.

Notice of proposed closure or amalgamation

Clause 18 provides that if the Minister proposes closing a State school or amalgamating 2 or more State schools, the Minister must publish a notice about the proposal in the gazette.

Consultation

Clause 19 provides for the consultation by the Minister that is to occur prior to closing a school or amalgamating 2 or more State schools.

Subclause (1) provides that before closing a State school there must be adequate consultation by the Minister with the following:

- (a) the school community;
- (b) if there is a school council established for the school—the school council;
- (c) if there is an association formed for the school—the association.

Subclause (2) provides that before amalgamating 2 or more State schools, there must be adequate consultation by the Minister with each of the following:

- (a) the school communities;
- (b) if there is a school council for any of the schools—the school council;
- (c) if there is an association formed for any of the schools—the association.

Time to elapse before closure or amalgamation

Clause 20 provides that if a notice about a proposed closure of a State school or amalgamation of 2 or more State schools is published under section 18, the closure or amalgamation must not happen within 6 months after the publication.

Part 4 Bases for education provided, and testing, at State instructional institutions**Curriculum framework for State instructional institutions**

Clause 21 provides for the curriculum framework for certain State instructional institutions.

Subclause (1) provides that the Minister may decide on a curriculum framework that is to apply to a State instructional institution.

Subclause (2) provides that in this clause, *curriculum framework* means the framework under which the institution's principal may decide the range of learning experiences to be offered to students attending the institution.

Development and revision of 1-12 syllabuses and preschool guidelines

Clause 22 relates to the development and revision of 1-12 syllabuses and preschool guidelines.

Subclause (1) provides that the Minister may develop and revise 1-12 syllabuses and preschool guidelines.

Subclause (2) provides that in this section:

1-12 syllabuses means syllabuses for areas of learning in 1 or more of the years 1 to 12 years of schooling.

area of learning includes a subject and a vocational education program and a course of study.

preschool guidelines means guidelines for the preschool year of schooling.

Implementation of syllabus, course or preschool guideline at State instructional institutions

Clause 23 relates to the implementation of a syllabus, course of learning or preschool guideline at a State instructional institution.

Subclause (1) provides that in providing education in an area of learning, a State instructional institution may only implement:

- (a) an approved syllabus or accredited syllabus for the area of learning; or
- (b) for an institution that is a registered training organisation—an accredited course.

Subclause (2) provides that the Minister may direct the principal of a State instructional institution to ensure that the institution provide education in a stated area of learning.

Subclause (3) provides that the Minister may direct the principal of a State instructional institution that in providing education in an area of learning the institution must implement:

- (a) a stated approved syllabus or accredited syllabus for the area of learning; or
- (b) for an institution that is a registered training organisation—a stated accredited course.

Subclause (4) provides that the Minister may direct the principal of a State instructional institution that, in providing education in the preschool year of schooling, the institution must implement a stated approved preschool guideline or accredited preschool guideline.

Subclause (5) provides the definitions of terms for this section.

accredited course means a course accredited under the *Vocational Education, Training and Employment Act 2000*.

accredited preschool guideline means a preschool guideline, accredited by the authority under the *Education (Queensland Studies Authority) Act 2002* for the preschool year of schooling.

accredited syllabus, for an area of learning, means a 1-12 syllabus accredited by the authority under the *Education (Queensland Studies Authority) Act 2002* for the area of learning.

approved preschool guideline means a preschool guideline approved by the authority under the *Education (Queensland Studies Authority) Act 2002* for the preschool year of schooling.

approved syllabus for an area of learning, means a 1-12 syllabus developed or revised, and approved, by the authority under the *Education (Queensland Studies Authority) Act 2002* for the area of learning.

area of learning includes a subject and a vocational education program and a course of study.

registered training organisation means a registered training organisation under the *Vocational Education, Training and Employment Act 2000*.

Direction by Minister about tests

Clause 24 provides that the Minister may give direction about tests.

Subclause (1) provides that the Minister may direct the principal of a State instructional institution, providing education to students in the year of schooling to which an approved test or common national test relates, to administer the test at the institution.

Subclause (2) provides that in this section.

approved test means a test, relating to a year of schooling, developed or revised by the QSA under the *Education (Queensland Studies Authority) Act 2000*.

common national test means a common national test specified in the regulations made under the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004* (Cwlth), section 19(4).

Part 5 Provisions relating to mature age students

Division 1 Preliminary

Definitions for pt 5

Clause 25 provides the definitions for terms used in part 5.

charge for an offence, in relation to a charge made outside Queensland, means any allegation of an offence made in a way that is the same as, or substantially the same as, a charge under the law of the State.

criminal history of a person, means every conviction of the person for an offence, in Queensland or elsewhere, at any time and whether before or after the commencement of this division; and every charge made against the person for an offence, in Queensland or elsewhere, at any time and whether before or after the commencement of this part and whatever the outcome of the charge.

mature age State school, means a State school other than a school of distance education or a special school.

mature age student in relation to a mature age State school, means an adult enrolled with the school.

mature age student notice means a mature age student notice issued under section 29.

The term ***negative notice*** is defined in section 29(1)(b).

The term ***positive notice*** is defined in section 29(1)(a).

This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986

Clause 26 provides that part 5 applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*. Removing the application of this Act from the consideration of criminal histories under the part means that expired convictions and charges against a person may be provided to the chief executive and taken into account when making a decision about whether or not it would harm the best interests of children to allow a person to be enrolled as a mature age student in certain State schools.

Division 2 Obligation relating to mature age student notices

Obligation of mature age State school's principal

Clause 27(1) prevents a principal of a mature age State school from enrolling a person as a mature age student with the school unless the person has a current positive notice for that school.

Subclause (2) provides that subsection (1) does not apply if the person has previously been enrolled with a non-State school or State school and the person's last day of attendance at that school is not more than 12 months

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

Division 3 Issue of mature age student notices

Application for mature age student notice

Clause 28 establishes the application process that certain persons must undertake prior to being considered for enrolment at certain State schools.

Subclause (1) provides that the section applies to persons, other than student visa holders, who wish to be a mature age student of a particular mature age State school.

Student visa holder is defined in schedule 4 as a person who holds a student visa issued under the Commonwealth *Migration Act 1958*.

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

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

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

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

Subclause (6) establishes the grounds on which the person is taken to have withdrawn their application. These grounds are that after giving the person

a notice containing specified information, including a stated time and a warning:

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

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

Decision on application

Clause 29 establishes the basis on which the chief executive is to decide applications for mature age student notices and the process for notifying persons of those decisions.

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

Subclause (2) requires the chief executive to issue a positive notice if the chief executive is unaware of any convictions or charges against the person.

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

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

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

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

the commission or alleged commission of the offence the chief executive must have regard to:

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

Subclause (7) requires that on deciding the application the chief executive must issue a mature age student notice to the person and provide a copy of that notice to the relevant school's principal. The principal is provided a copy of the notice so that if the person seeks enrolment at the school the principal is aware of the person's suitability.

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

Chief executive to invite submissions from person about criminal history

Clause 30 sets out the process by which the chief executive must invite a person, to whom it is intended to issue a negative notice, to make submissions about the person's criminal history.

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

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

Subclause (3) requires the chief executive to consider any submissions received from the person within the stated time prior to deciding the application.

Currency of positive notice

Clause 31 limits the period in which a positive notice remains current to six (6) months after it is issued. Six months is chosen to enable a prospective mature age student to receive the mature age student notice in sufficient time to seek enrolment at the school for which the notice has been issued. The period will also provide the principal of that school with sufficient time to make their enrolment decisions prior to the expiry of the positive notice and the commencement of the school year or semester etc. The period also minimises the risk of the person to whom the notice has been issued of having a changed criminal history prior to their seeking enrolment at the school. If the enrolment does not take place during the 6 month period, the positive notice will lapse and the person will be required to apply for a new mature age student notice should they wish to enrol as a mature age student with that school or any other mature age State school.

Division 4 Provisions about criminal history

Criminal history check etc

Clause 32 enables the chief executive to request from the Commissioner of the Police Service criminal history information on certain persons, and sets out the duties of the Commissioner in respect of those requests.

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

- (a) Persons from whom the chief executive has received an application for a mature age student notice and the application remains on foot;
- (b) Persons who have already been issued with a positive notice but who are not yet enrolled in the particular mature age State school for which the notice has been issued. This category is included because the positive notice remains current for six (6) months and it may be some months between the issuing of the notice and the person being enrolled at the relevant school. The ability to seek criminal history information on these persons during that intervening period will limit the potential for a person with a

positive notice whose criminal history has subsequently changed to be enrolled without an assessment being made of this change;

- (c) Persons who are mature age students of a mature age State school and who were adults on the day of their enrolment with the school.

Subclause (2) enables the chief executive to request from the Commissioner of the Police Service a written report about the criminal history of those persons.

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

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

Subclause (5) limits the duty imposed on the Commissioner of the Police Service to comply with a request for information to only that information in the possession of the Commissioner or to which the Commissioner has access.

Notice of change in criminal history

Clause 33 enables the Commissioner of the Police Service to notify the chief executive about changes to a person's criminal history where that person is a person under section 32(1)(a) to (c) and that person has been charged with an offence.

Subclause (1) enables the Commissioner of the Police Service to notify the chief executive about changes to a person's criminal history. The Commissioner must reasonably suspect that a person who is charged with an offence and about whom the notification is to be made is a person under section 32(1)(a) to (c). These will be persons who have a current application for a mature age student notice, persons with a current positive notice, or persons who are mature age students.

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

Subclause (3) permits the chief executive to confirm the Commissioner's suspicions under subclause (1) that the person is a person under section 32(1)(a) to (c).

Subclause (4) applies in cases where the person is a person who is required to disclose a change in their criminal history under section 34(2). In such a case, if the chief executive has received a notice from the Commissioner for the Police Service under subclause (1) that relates to a person with a duty to disclose, the chief executive may write to the person informing the person of their obligation to disclose the change in their criminal history.

Subclause (5) sets out the information that the chief executive may provide to the Commissioner of the Police Service under subclause 3. The information that may be provided is:

- (a) information as to whether the person is a person mentioned in section 32(1)(a) to (c); and
- (b) if the person is a person under section 32(1)(a) to (c), identifying information about the person including the name, date of birth, place of birth and any alias.

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

Disclosure of change in criminal history

Clause 34 requires mature age students to disclose changes in their criminal history.

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

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

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

Requirements for disclosure

Clause 35 sets out the way in which a person must disclose a change in their criminal history.

Subclause (1) requires that disclosures under section 34(2) must be in the approved form.

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

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

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

Use of criminal history information

Clause 36 prevents the chief executive from using information obtained under this part about a person's criminal history other than for the purposes under this part or chapter 12, part 4, division 3.

Confidentiality of information about criminal history

Clause 37 provides for the confidentiality of criminal history information obtained under this part.

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

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

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

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

Division 5 Cancellation and replacement of positive notices

Wrong, incomplete or new information

Clause 38 provides the circumstances, grounds and process on which the chief executive may cancel a positive notice and substitute a negative notice.

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

Subclause (2) permits the chief executive to cancel a positive notice and substitute a negative notice if the chief executive is satisfied:

- (a) the decision to issue the positive notice was based on wrong or incomplete information; and
- (b) based on the correct or complete information the chief executive should issue the new notice (a negative notice).

Subclause (3) establishes another ground for cancellation of a positive notice and substitution of a negative notice. This ground relies on criminal history information provided by the Commissioner of the Police Service under section 33(1).

Subclause (4) requires the chief executive to comply with the requirements of section 30 before substituting a negative notice for a positive notice. The application of section 30 is applied as though:

- (a) a reference in section 30(1) is taken to be a reference to the substituting of a negative notice for a positive notice; and
- (b) the reference in section 30(3) is taken to be a reference to the substituting of a negative notice for a positive notice.

Subclause (5) requires the chief executive to issue a new notice to the person and to provide a copy of that new notice to the school's principal.

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

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

Division 6 Review of decisions

Definition for div 6

Clause 39 provides the definition of *original decision* for the purpose of division 6 by referring to section 40.

Who may apply for review

Clause 40 provides that a person may apply to the chief executive for a review of the decision (the *original decision*) to issue the person with a negative notice for a mature age State school.

Applying for review

Clause 41 provides how a person may apply for a review.

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

Subclause (2) provides that the chief executive may at any time extend the time for applying for a review.

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

Review decision

Clause 42 provides for the conduct of the review.

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

Subclause (2) provides that the chief executive must give the applicant a reasonable opportunity to make written representations to the chief executive.

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

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

Subclause (5) provides that as soon as practicable, the chief executive must give the applicant notice of the review decision. This notice is called a review notice.

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

Subclause (7) provides that if the review decision is to cancel the negative notice and to substitute a positive notice, the chief executive must issue the positive notice to the person and give a copy of the positive notice to the school's principal.

Division 7 General provisions

False or misleading information or documents

Clause 43 places an onus on persons not to provide false or misleading information to the chief executive and sets out penalties for breaches of that requirement.

Subclause (1) provides that a person must not give information to the chief executive under this part that the person knows is false or offence with a maximum penalty of 20 penalty units.

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

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

Time limit on new application for mature age student notice

Clause 44 establishes a period within which a person issued a negative notice for a particular mature age State school may not make another application for a mature age student notice for that school.

Subclause (1) provides that the section applies if:

- (a) a person makes an application for a mature age student notice for a particular mature age State school; and
- (b) the chief executive decides the application by issuing a negative notice.

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

Part 6 Miscellaneous provisions

Inspection of State educational institution

Clause 45 provides that the Minister may arrange for a State educational institution's premises to be inspected at a time and in the way the Minister believes appropriate.

Investigation of complaint

Clause 46 provides the chief executive must, as soon as practicable, investigate any complaint about the administration, management or operation of a State educational institution that, in the chief executive's opinion, is not a frivolous or vexatious complaint.

Use of State educational institution's premises

Clause 47 provides for the use of a State educational institution's premises.

Subclause (1) provides the Minister may permit a person to use a State educational institution's premises located on reserve land for any purpose, including a purpose not connected with education.

Subclause (2) provides that permission may be given under subsection (1) on reasonable conditions the Minister considers appropriate.

Subclause (3) provides that in this clause, *reserve land* means land dedicated as a reserve under the *Land Act 1994*, section 31 for educational purposes.

Chapter 3 Cost of providing State Education**Definitions for ch 3**

Clause 48 provides that in this chapter:

chief executive (transport) is defined to mean the chief executive of the department in which the *Transport Operations (Passenger Transport) Act 1994* is administered.

nearest applicable school for a person, means the nearest State school with the required year level for the person.

permanent resident means the holder of a permanent visa as defined by the *Migration Act 1958* (Cwlth), section 30(1).

Meaning of remote area

Clause 49 provides that a person lives in a *remote area* if:

- (a) the person's principal place of residence:
 - (i) is not less than 16 kilometres from the nearest applicable school; and
 - (ii) is not less than 4.5 kilometres from a school transport services approved by the chief executive (transport) or a public transport service to the nearest applicable school; or
- (b) the person's principal place of residence:
 - (i) is not less than 16 kilometres from the nearest applicable school; and
 - (ii) is less than 4.5 kilometres from a school transport service approved by the chief executive (transport) or a public transport service to the nearest applicable school; and
 - (iii) is:
 - (A) not less than 56 kilometres from the nearest applicable school using the route travelled by the transport service; or
 - (B) not less than 3 hours travelling time per day from the nearest applicable school using the transport service.

State education to be free

Clause 50 details the circumstances where State education is free.

Subclause (1) provides that subsection (2) applies to a person enrolled at a State school who is an Australian citizen or permanent resident or a child of an Australian citizen or permanent resident.

Subclause (2) provides that the cost of providing instruction, administration and facilities for the education of the person at the school must be met by the State.

Subclause (3) provides that this clause applies subject to sections 51, 52 and 55.

Subclause (4) provides that in this section:

person enrolled at a State school does not include a person who is also enrolled at a non-State school unless the person's enrolment at the State school preceded the person's enrolment at the non-State school.

The aim of this provision is to define what education the State provides free to its citizens, permanent residents and their children.

Power to charge particular persons or for particular educational services

Clause 51 establishes heads of power in relation to the charging of certain categories of persons for their education at a State school. The clause also establishes heads of power to charge persons for certain educational services for their education at a State school.

Subclause (1) provides that subsection (3) applies to persons enrolled in a State school who are not an Australian citizen, permanent resident or child thereof. These persons will generally be overseas students.

Subclause (2) provides that subsection (3) also applies to persons enrolled at both a State school and a non-State school, but whose enrolment in the non-State school preceded their State school enrolment. This category of persons will generally be those students who undertake the majority of their education at a non-State school, but who also access subjects at a State school. However, the workload undertaken by the student at either the State school or non-State school is not a relevant determinant of whether this section applies to them.

Subclause (3) provides a head of power for the chief executive to charge the persons mentioned in subsections (1) and (2) a fee for the education of the person at the State school. As these persons are not persons who are entitled to have part of the costs of their education defrayed by the State (under section 50(2)) they may be charged for the entire cost of their education at the school, including for instruction, administration and facilities.

Subclause (4) provides heads of power for the chief executive to charge persons mentioned in section 50(1) a fee for:

- (a) providing an educational service to the person not met by the State under section 50(2); or
- (b) the provision of an educational service by an entity to the person if the State school at which the person is enrolled has been charged by the entity for the provision of the educational service.

The power to charge under subsection (4)(a) relates to any education service provided to the person that is outside of the component defrayed by the State, i.e. outside of instruction, administration and facilities for the education of the person at the State school. For example, as part of the student's education at the school, the student may be charged for consumables used by the student.

The power to charge under subsection (4)(b) relates to an educational service provided by a third party to the person for the person's education at the State school, but where the school has been charged for the service. For example, as part of the student's education at the school, the student accesses a computer course provided by a registered training organisation partly. If the registered training organisation charges the school for the student's access to the course, the school is able to pass that charge on to the student. To avoid any doubt, access to such services is on a user pays basis. If a student is unable to pay the fee, their access to the service may be denied.

Subclause (5) provides a head of power for the chief executive to charge a person who is not enrolled at a State school a fee for the education of the person at the school. There are a range of persons who are unable to enrol at a State school, including those persons who are provisionally registered or registered for home education and persons who no longer have an allocation of State education. This head of power makes it explicit that despite these persons not being enrolled in a State school at which they are being provided education, they may be charged for the entire cost of their education at the school, including for instruction, administration and facilities.

It should be noted that the charges for these matters will not be prescribed in regulation.

Subclause (6) provides a head of power for the chief executive to exempt, waive, or refund the fees charged under this section.

Fee for distance education provided by a State school

Clause 52 provides that a fee may be charged for distance education provided by a State school.

Subclause (1) provides that this section applies to:

- (a) a person enrolled in a program of distance education at a State school; or
- (b) a person, other than a non-State school student or a State school student, who is:
 - (i) not enrolled in a program of distance education at a State school; and
 - (ii) undertaking a component of the program at the school.

Subclause (2) provides that the fee prescribed under a regulation must be paid for the provision of distance education to the person under subsection (1).

Subclause (3) provides that despite subsection (2), the fee is not payable in the circumstances prescribed under a regulation.

Subclause (4) provides the definitions for the terms *non-State school student* and *State school student* for this section.

When fee for distance education is not payable

Clause 53 sets out the circumstances where the fee mentioned in section 52(2) is not payable by a person mentioned in section 52(1)(a).

Subclause (1) provides that despite section 52(2), the fee is not payable if the person is a person to whom section 52(1)(a) applies and:

- (a) the person lives in a remote area; or
- (b) the person:
 - (i) cannot attend a State school, other than a school of distance education, for more than 80 consecutive school days because of the person's state of health; and
 - (ii) gives the chief executive a medical certificate stating that fact; or
- (c) the person has an itinerant lifestyle; or
- (d) the person:
 - (i) is excluded from 1 or more, but not all, State schools, other than schools of distance education, under section 297 or 306; and
 - (ii) would live in a remote area if the school, or schools, from which the person is excluded were taken not to be a nearest applicable school for the definition of *remote area*; or
- (e) the person is excluded from all State schools, other than schools of distance education, under section 306;
- (f) the person cannot attend a State school, other than a school of distance education, because the person is caring for the person's child, or a child for whom the person has or exercises parental responsibility; or
- (g) the person:

-
- (i) cannot attend a State school, other than a school of distance education, because the person is caring for someone, other than a child mentioned in paragraph (f), on a regular basis; and
 - (ii) gives the chief executive a medical certificate stating that fact; or
 - (h) the person cannot be a mature age student of a mature age State school because the person has been issued with a negative notice under section 29; or
 - (i) the person is in the custody of the chief executive (corrective services) at a corrective services facility under the *Corrective Services Act 2000*.

Subclause (2) provides that for subsection (1)(c), a person has an itinerant lifestyle if:

- (a) because of the nature of the occupation in which the person or a parent of the person is engaged:
 - (i) the person's principal place of residence changes at least twice in the relevant school year or at least 5 times in the period consisting of the relevant school year and the school year immediately before or after the relevant school year; or
 - (ii) the person spends at least 60 school days of the relevant school year (consisting of periods of 5 consecutive school days or more) away from the person's principal place of residence; or
 - (iii) the person's principal place of residence is a caravan and the location of the caravan changes at least twice in the relevant school year or at least 5 times in the period consisting of the relevant school year and the school year immediately before or after the relevant school year; or
 - (iv) the place where the person lives changes at least twice in the relevant school year and the person does not have a principal place of residence; and
- (b) the person spends at least 120 school days of the relevant school year in the State.

Subclause (3) provides the definitions for terms in this section:

caravan means a caravan under the *Residential Tenancies Act 1994*.

medical certificate means a certificate signed by a registrant under the *Psychologists Registration Act 2001* or a medical practitioner.

relevant school year means the school year in relation to which the person is enrolled in a program of distance education at a State school.

Waiver of fee for distance education

Clause 54(1) provides the chief executive may waive, entirely or partly, payment of the fee mentioned in section 52(2) for a person if:

- (a) the chief executive is satisfied:
 - (i) the person is or has been enrolled in, or undertaking a component of, a program of distance education and would suffer a significant educational disadvantage if the person were not able to continue in the program; and
 - (ii) payment of the fee would cause financial hardship to the person liable to pay it; or
- (b) for a person enrolled in a program of distance education—the chief executive is satisfied the waiver is appropriate and reasonable because exceptional circumstances exist in relation to the person.

Subclause (2) provides that in making a decision under subsection (1)(b) about waiving payment of the fee for a person, the chief executive may have regard to any relevant matter of which the chief executive is aware, including for example:

- (a) whether the person would suffer a significant educational disadvantage if the person were not able to enrol in a program of distance education; or
- (b) whether a program of distance education is the most appropriate educational program for the person.

Charging for specialised educational program

Clause 55 provides for the charging for the provision of a specialised educational program.

Subclause (1) provides that this section applies to a State school prescribed under a regulation that offers a specialised educational program prescribed under a regulation.

Subclause (2) specifies that the charge, for the program, prescribed under a regulation must be paid for the undertaking of the program.

Subclause (3) provides that for subsection (2):

- (a) if a child is undertaking the program—a parent of the child must pay the charge; or
- (b) if an adult is undertaking the program—that person must pay the charge.

Subclause (4) clarifies however, that the chief executive may waive, entirely or partly, payment of the fee if the chief executive is satisfied:

- (a) payment of the fee would cause financial hardship to the person liable to pay it; and
- (b) the person wishing to undertake the program would suffer a significant educational disadvantage if the person cannot undertake the program.

Subclause (5) provides that in this clause, *specialised educational program* means an educational program not usually offered by a State school.

Voluntary financial contribution

Clause 56 relates to voluntary financial contributions.

Subclause (1) provides that despite section 50, a State school's principal may ask the parents of a student of the school to make a voluntary financial contribution towards the cost of providing instruction, administration and facilities for the education of the student at the school.

Subclause (2) provides that the student must still be provided the education even if the parents do not make the financial contribution.

Subclause (3) provides that if the student is an adult, subsections (1) and (2) apply as if the reference in the subclauses to the student's parents were a reference to the student.

Chapter 4 Allocation of State Education

Part 1 Preliminary

Definition for ch 4

Clause 57 provides a definition for the chapter of *student*. *Student* includes a person who is not enrolled at a State school.

Application of part to student under 16 years

Clause 58 provides that a student who is under 16 years of age at the time they start a semester, and who does not have any remaining allocation, at a State school may attend the State school for all of the semester without having to apply for extra or further semesters. The purpose of the clause is allow a student to access a semester of education without having to go through the process of applying for extra or further semesters.

Allocation of semesters for each student

Clause 59 sets out the purpose of the chapter and some of the basic principles in relation to semester allocation.

Subclause (1) provides that the purpose of the chapter is to ensure that each student who enrolls at a State school has an allocation of semesters, whether that allocation is a basic allocation, extra semesters or further semesters.

Subclause (2) provides that if a student begins schooling in year 1 at a State school before the student turns 7 years, the student has the basic allocation of 24 semesters, as defined in section 11.

Subclause (3) provides that for a student not mentioned in subsection (2) a State school's principal must calculate a students remaining allocation under section 58.

Subclause (4) provides that a student's allocation may be increased, in certain circumstances, by a State school's principal or the chief executive.

Part 2 Basic allocation and remaining allocation

Basic allocation

Clause 60 provides that if a student begins schooling in year 1 in a State school before they turn 7, the student has the basic allocation calculated from the start of the semester in which they begin schooling.

Remaining allocation

Clause 61 provides further details of calculation for students other than those to whom section 60 applies.

Subclause (1) provides that the section applies to certain students:

- (a) a student who received schooling at a non-State school or who received home education under chapter 9, part 5;
- (b) a student who received schooling outside of Queensland;
- (c) a student who, at any time before the end of semester 2 in 1997, was enrolled at a State school, other than a student enrolled in a year level mentioned in column 1 of subsection (3) at the end of semester 2 in 1997; and
- (d) a student beginning schooling who is beginning schooling in year 2 or later or who is 7 years or more.

Subclause (1)(d) is a concept not previously contained in the Act. It relates to persons who come into the State school system later than usual (year 1 before turning 7 years) without having been involved in schooling elsewhere. Generally these students will be persons from overseas who have received no formal education.

Subclause (2) provides that if a student makes an application for enrolment under section 159, the State school principal must decide the student's remaining allocation.

Subclause (3) provides that subject to subsection (4), if a student, other than a student mentioned in subsection (1), was enrolled at a State school in a year level mentioned in column 1 at the end of semester 2 in 1997, the principal is taken to have decided that the student has a remaining allocation mentioned opposite in column 2.

Subclause (4) provides State school principals with a discretion in relation to calculation of remaining allocation, based on the table in subsection (3). The principal may exercise this discretion if they consider it is inappropriate to calculate the remaining allocation in that way.

Subclause (5) provides that decisions made under subsection (3) are, for section 62(2), decisions about the student's remaining allocation. This brings the decision making criteria and review processes of that clause into being.

Subclause (6) provides that where a student has not been undertaking an educational program for a period and has had an exemption in place, under chapter 9, part 3, the period of exemption is not to be included in calculating the student's remaining allocation.

Principal must consider remaining allocation for certain students

Clause 62 relates to decisions made under section 61.

Subclause (2) provides that principal's decisions about remaining allocation must be made in an appropriate way after considering relevant matters. A range of the relevant matters that may be considered is included as an example.

Subclause (3) requires the principal to make a decision within a reasonable time after the application was made to enrol the student at the school.

Subclause (4) requires the principal, after making the decision, to immediately advise the student of the decision, and to give the student a notice of the decision within 7 days after advising the student.

Subclause (5) provides the details that the notice must contain: the decision, reasons for the decision, the student's ability to make a submission about the decision, to whom and the way in which a submission may be made. The notice must also include that a submission may be made within 14 days of the notice being given or a later time allowed by the supervisor.

Notice to certain students about remaining allocation

Clause 63 applies to a student who is enrolled in semester 2 in a year at a State school and whose remaining allocation will be not more than 4 semesters or less at the end of that year.

Subclause (2) requires the principal to give the student a notice about the student's remaining allocation as at the end of semester 2 of that year. The notice must be given before the end of the year. The purpose of the notice is to advise student's of their remaining allocation, thereby making them aware of the possibility that they may have to apply for extra or further semesters.

Subclause (3) allows the notice to be included within another report or document given to the student. It is likely such a document would be an end of year student report card or statement of results.

Information to be given to repeating student

Clause 64 applies to a State school student who has been approved by the school's principal to repeat a year of schooling for which the student has already been enrolled at a State school. The principal is required to give the student written information about the allocation of State education under this chapter. The principal must give this information as soon as practicable after the approval to repeat.

Part 3 Extra semesters may be granted by principals

Application for extra semesters if no remaining allocation

Clause 65 applies to a student who does not have a remaining allocation of semesters.

Subclause (2) provides that a student may apply to a State school principal, in the approved form, for the granting of up to an extra to 2 semesters.

Subclause (3) provides the time within which the application for extra semesters must be given to the principal. The times are more than 12 weeks before the start of the semester (or the first of the two semesters) to which the application relates, or before a later time allowed by the principal. The time periods are provided to ensure that the decision can be made prior to commencement of the semester to which the application relates, minimising the potential for the student to miss part of the semester.

Principal must consider and decide application for extra semesters

Clause 66 requires that the principal's decisions about the extra semesters must be made in an appropriate way after considering relevant matters. A range of the relevant matters that may be considered is included as an example: whether the student is of compulsory school age; the likely educational outcome of the granting of the extra semesters; and the likely resource impact for the State school.

Subclause (2) requires the principal to make the decision within a reasonable time, allowing for the need to collect and analyse information about the student and the student's performance at school.

Subclause (3) requires the principal, after making the decision, to immediately advise the student of the decision, and to give the student a notice of the decision within 7 days after advising the student.

Subclause (4) provides the details that the notice must contain if the application is not granted for all the semesters applied for: the decision; reasons for the decision; the student's ability to make a submission about the decision; to whom and the way in which a submission may be made. Such a submission must be made within 14 days after the student is given notice of the decision or a later time if allowed by the supervisor.

Limitation on extra semesters granted by principals

Clause 67 limits the number of semesters that a principal may grant under this part to 2.

Part 4 Submissions against principal's decision

Submissions against principal's decision

Clause 68 applies to decisions made by a State school's principal about the allocation of semesters under part 2, including decisions under section 61(2) or (4), or applications for extra semesters under part 3.

Subclause (2) enables the student to make a submission against the principal's decision to the principal's supervisor.

Subclause (3) provides that the submission must be in writing and fully state the grounds for the submission and the facts relied on for those grounds.

Subclause (4) provides that the submission must be given to the principal's supervisor within 14 days of the notice of the decision being given to the person or a later time as allowed by the principal's supervisor.

Dealing with submissions against principal's decision

Clause 69 provides the way in which the principal's supervisor must deal with submissions.

Subclause (1) required the principal's supervisor to immediately consider the decision and the submission and affirm the decision, vary the decision or set aside the decision and substitute a new decision.

Subclause (2) requires the principal's supervisor to, after having made their decision, immediately advise the student of the decision and within 7 days give the student a notice about the decision. The notice must advise of the decision, the reasons for the decision, and the student's right to appeal against the decision under section 406.

Subclause (3) provides that, as soon as practicable after making a decision under this section, the supervisor must give notice of the supervisor's decision to the principal. This will inform the principal as to whether the student has been successful in their application.

Part 5 Further semesters may be granted by chief executive

Definition for pt 5

Clause 70 provides definition for the part of *stated State school* as per section 71(2).

Application for further semesters if no remaining allocation and after extra semesters

Clause 71 applies to a student who does not have a remaining allocation of semesters and who has been granted 2 extra semesters under part 3.

Subclause (2) provides that a student may apply to the chief executive, in the approved form, for the granting of up to 2 further semesters at a stated State school.

Subclause (3) provides the time within which the application for further semesters must be given to the chief executive. The times are more than 12 weeks before the start of the semester (or the first of the two semesters) to which the application relates, or before a later time allowed by the chief executive. The time periods are provided to ensure that the decision can be made prior to commencement of the semester to which the application relates, minimising the potential for the student to miss part of the semester.

Chief executive must consider and decide application for further semesters

Clause 72 requires that the chief executive's decisions about the further semesters must be made in an appropriate way after considering relevant matters. A range of the relevant matters that may be considered is included as examples: whether the student is of compulsory school age; the likely educational outcome of the granting of the further semesters; and the likely resource impact for the State school.

Subclause (2) requires the chief executive to make the decision within a reasonable time, allowing for the need to collect and analyse information about the student and the student's performance at school.

Subclause (3) requires the chief executive, after making the decision, to immediately advise the student of the decision, and to give the student a notice of the decision within 7 days after advising the student.

Two distinct review and appeal processes are put in place in relation to decisions under this part. If the student has not previously been granted 2 further semesters by the chief executive, the student must be given an information notice (as defined) about the decision. The giving of this notice enlivens the ability for an internal review of the decision.

If the student has previously been granted 2 further semesters by the chief executive, the student is given a notice about: the decision; reasons for the decision; the student's right to appeal against the decision under section 406.

The split review and appeal processes are put in place as there has been a change made from the previous Act to the decision-makers for the extra and further semesters. Previously the principal was able to grant an extra 4 semesters, decisions in relation to which were subject of an internal review. The chief executive was the decision-maker in relation to 2 further semesters, with those decisions being subject to an external appeal. Given that the chief executive has been given authority for decision-making

around an additional 2 further semesters, it was considered appropriate to continue to allow an internal review of those decisions.

Chief executive to give notice to principal if further semesters granted

Clause 73 requires the chief executive to give a notice of the decision to the stated State school's principal if the decision is to grant the application.

Subclause (2) requires the notice to state the student's name, educational level, period of extension (further semesters), and any other information the chief executive is reasonably satisfied the principal should be aware of in relation to the decision.

Limitation on further semesters granted by chief executive

Clause 74 limits the number of further semesters the chief executive may grant to 4.

Part 6 Copy of notice to be given to parent

Copy of notice under this part to be given to parent

Clause 75 provides that if a person is required under this chapter to give a notice to a student and the student is a child, the person must, as soon as practicable, give a copy of the notice to a parent of the child.

Subclause (2) provides that for giving the copy of the notice to a parent, the person may rely on the relevant State school's records about the child's parents and their current residential address.

Subclause (3) provides that subsection (1) does not apply if the person is satisfied it would be inappropriate in the circumstances to give the copy of the notice to the parent.

Subclause (4) provides that in this clause, *parent* of a child, includes a person standing in the place of a parent of the child on a temporary basis.

Chapter 5 Instruction in a religious or other belief

Definitions for ch 5

Clause 76 sets out three definitions that relate specifically to chapter 5 including the following.

Approved entity means an entity approved under section 78 to give instruction in a religious or other belief. The term ‘entity’ has been used in the way set out in section 36 of the *Acts Interpretation Act 1954* which includes (but not limited to) persons and an unincorporated body. It could also include for example: corporations, incorporated bodies or associations.

Belief is limited to not include political beliefs. The Bill reflects the spirit and intent of the 2003 amendments to the *Anti-Discrimination Act 1991* relating to ‘religious belief’ and ‘religious activity’. Thus providing an inclusive framework and enabling those students who are currently unable to receive instruction in their belief of choice, to do so, if an approved provider is available at that school. An example this is where parents would like their child to attend instruction in humanism if an approved provider is available at the school. However, there are restrictions on the types of beliefs, which a limitation that these can not include political beliefs.

State school for the purposes of the chapter does not include a State preschool centre. Section 77(8) below outlines further related restrictions about students in State preschool centres.

Giving instruction in a religious or other belief

Clause 77 outlines when a student may be given instruction in a religious or other belief.

Subclause (1) provides that a student may be given instruction in a religious or other belief at the school only by an approved entity. The approval requirements are outlined in the regulation.

Subclause (2) provides that for subsection (1), the instruction may be given by an approved entity on behalf of 2 or more approved entities. This clause has been included to specifically reflect the types of co-operative arrangements that currently take place where providers voluntarily agree to join together.

Subclause (3) provides that subsection (1) applies subject to subsections (4) to (6).

Subclause (4) provides that a student of a State school may be given instruction at the school in a religious or other belief if a parent of the student gives the school's principal a notice stating that the student holds the religious or other belief.

Subclause (5) provides that even if a parent of a student of a State school does not give a notice under subsection (4) for the student, the student may be given instruction in a religious or other belief at the school if the parent gives the school's principal a notice stating that the parent consents to the student being given the instruction. This covers circumstances where the parent may choose not to disclose their religious or other belief.

Subclause (6) provides that despite a parent of a student of a State school giving the school's principal a notice under subsection (4) for the student, the student may be given instruction at the school in a religious or other belief not covered by the notice if the parent gives the school's principal a notice stating that the parent consents to the student being given the instruction. This may occur for example, where a school does not have an appropriate provider in the student's religious or other belief, however the parent consents to the student attending the specified instruction.

Subclause (7) provides that despite a parent of a student of a State school giving the school's principal a notice under subsection (4), (5) or (6), the student may not be given instruction at the school in a religious or other belief covered by the notice if a parent of the student later gives the principal a notice stating that the parent does not wish the student to be given instruction at the school in the religious or other belief. This enables a parent to withdraw their child or opt-out.

Subclause (8) clarifies beyond doubt that a student of a State preschool centre must not be given religious or other belief instruction at either the centre, or at the primary school at which the centre is part of.

Approval of entity

Clause 78 provides the chief executive with the head of power to approve entities to give instruction in a religious or other belief. The approval criteria are prescribed under the regulation.

Subclause (2) outlines that an approval under this clause entitles the entity to give instruction in a religious or other belief in a State school and that the approval is State-wide. However, this approval is subject to section 80,

which means that the approved entity can not actually give instruction in any school until the principal allows time. The principal must allow time if there is an approved entity or representative of the approved entity available to give the instruction and a parent of each student who is to be given instruction has given a notice or consented under section 77. Section 80(2) also places further restrictions about what days and how often religious or belief instruction can occur.

Subclause (3) provides that an approved entity may give instruction in a religious or other belief through a representative of the entity.

When notice under s 77(4),(5) or (6) may not be given by parent

Clause 79 provides that if the State school's principal is satisfied that it would be inappropriate in the circumstances for a parent of a student under section 77(4),(5) or (6) to the principal, the student may give the notice in place of the parent. One example of this is provided and includes where a student is living independently of his or her parents.

When instruction to be given

Clause 80 requires that the principal must allow time for instruction in a religious or other belief if the following occurs:

- (a) there is an approved entity available to give the instruction; and
- (b) a parent of each student who is to be given instruction has given a notice to the school's principal under section 77(4), (5) or (6) in relation to the instruction; and
- (c) section 77 (7) does not apply to the student.

Subclause (2) provides that the time allowed for religious or other belief instruction must:

- (a) be on the days and at the times approved by the principal; and
- (b) not be more than 40 hours in each school year. This is a maximum relating to the total allowed hours in a school year and has been inserted to provide flexibility for a principal to decide how they want to structure the instruction. For example in rural or remote areas, providers may only be able to give instruction one day a term instead of weekly. However, it is the principal's decision as to which day and time that instruction in a religious or other belief occurs.

Chapter 6 School councils

Part 1 Preliminary

Definitions for ch 6

Clause 81 provides a number of definitions for the chapter.

Alternative association member is referenced to section 92(1).

Appointed member, means a member of the council appointed by the council under the council's constitution.

Chairperson means a person elected as chairperson under section 93.

Coopted student member, of a State school that does not offer secondary education, means a year 7 student of the school coopted as a member under the council's constitution.

Elected member means a person who is an elected member under section 90.

Elected parent member means a parent of a child attending the school who is elected either under a the school's parents and citizens association constitution, where the constitution provides for such election, or otherwise, by a secret ballot under the council's constitution.

Elected staff member means a member of the school's staff who is elected by a secret ballot held under the council's constitution. The ballot is to be among all persons employed by the department and assigned to the school or otherwise employed full-time or part-time at the school.

Elected student member means a student in year 10, 11 or 12 at the school offering secondary education for year 10, 11 or 12 who is elected by a poll in which only year 10, 11 or 12 students may vote. The council's constitution will detail the conduct of the poll.

Official member means a person who is an official member under section 89.

Part 2 Object of part

Object

Clause 82 provides that the object of the chapter is to improve student learning outcomes by providing for the establishment and operation of school councils. The clause also states that a school council has particular functions for guiding the broad strategic direction of the school for which it is established.

Part 3 Establishment, name, functions and other matters

Establishment

Clause 83 empowers the chief executive to establish a school council for a State school by publishing a notice in the gazette. This provision is subject to section 113(6) and (7).

Subclause (2) makes it clear that a school council only has functions in relation to the school for which it was established.

Name

Clause 84 provides the way in which school councils are named. If the name of the school for which the council is established ends with “school”, the council is called “... (name of school) Council”. Otherwise the name of the council is “... (name of school) School Council”.

Functions

Clause 85 provides the functions of a school council, all of which relate to strategic matters:

- monitoring the school’s strategic direction;
- approving a school’s strategic plans and policies and other documents affecting strategic matters. This includes the annual estimate of revenue and expenditure for the school;

- monitoring the implementation of the plans, policies and other documents that they have approved;
- advising the school's principal about strategic matters.

The council must perform its functions in a way that achieves the best learning outcomes for the school's students.

Subclause (3) makes it clear that despite subsections (1) and (2) a school council may not do certain things:

- interfere with the principal's day-to-day management of the operations of the school and its curriculum; or
- make operational decisions about the use of teaching or learning resources at the school; or
- make decisions about the individual teaching style used, or to be used, at the school; or
- make a decision that is contrary to law or a written policy of the department.

School councils do not have certain powers

Clause 86 makes it clear that school councils may not:

- control funds; or
- enter into contracts; or
- acquire, hold, dispose of or deal with property; or
- sue or be sued.

Part 4 Membership

Membership of school council

Clause 87 provides that a school council consists of three types of members: official members, elected members and appointed members.

Subclause (2) provides that if the school does not offer secondary education, the school council may also include another type of member, a coopted student member.

Number

Clause 88 requires the number of members of a school council to be at least 6 and not more than 15.

Subclause (2) provides that a school council must include at least 1 elected parent member and 1 elected staff member. The number of elected parent members and the number of elected staff members of a council must be equal.

Subclause (4) requires the number of elected student members of a council to be not more than 2. The number of appointed members of a council is to be not more than 2.

Subclause (5) requires a school council to have at least 1 elected student member, if the school provides secondary education for years 10, 11 or 12.

Official members

Clause 89 provides that the official members of a school council are the school's principal and if there is an association formed for the school, the association's president.

Subclause (2) removes an official member of a school council from eligibility to be an elected member or appointed member of a council.

Elected members

Clause 90 provides that the elected members of a school council are: the elected parent members, the elected staff members, and the elected student members, where the school provides education for year 10, 11 or 12.

Subclause (2) provides that a poll for an elected student member of a council may take place at the same time as other polls involving students.

Subclauses (3) and (4) provide for the situation where the number of persons nominating to become elected members, by the time for closure of nominations, is less than the number of persons required to be elected. If this is the case the person responsible for conducting the election is required to declare the properly nominated persons to be elected. This must all be carried out in accordance with the council's constitution.

Coopted student member

Clause 91 provides that a coopted student member does not have the power to vote on a matter before the council, despite section 105(1), (2) and (3). Also, the coopted student member may not be elected as the council's

chairperson under section 93 or be chosen to preside at a council meeting under section 104(2).

Alternative association member

Clause 92 provides that is the president of a parents and citizens association can not attend a school council meeting the president may appoint another association member to attend in the president's place. The appointment of the other member must be done in accordance with the association's constitution.

Subclause (2) makes it clear that the association member attending the meeting in the president's place has the same voting rights and duties as the president.

Subclause (3) provides that an elected member or an appointed member is ineligible for appointment by the president as the member taking the president's place.

Chairperson

Clause 93 requires a school council to elect one of the council's members as chairperson. The school's principal may not be elected as chairperson of the council.

Subclause (3) provides that a council's chairperson hold office for the term decided by the council unless the person's term of office as a member ends sooner than the chairperson's term.

Subclause (4) and (5) deal with circumstances where the parents and citizens association president is also the chairperson of the council and a person is attending the meeting in place of the president. Despite section 92(2), the person may not preside at the meeting unless the person is chosen to preside at the meeting under section 104(2).

Term of office for elected member or appointed member

Clause 94 provides that elected members and appointed members are appointed for the terms of office stated in the council's constitution, but which are not longer than 2 years.

Subclause (2) provides for relaxation of the terms of office in relation to a number of the council's first elected members. These certain members may hold officer for a term of not longer than 3 years. If one-half of the number of the first elected members is an even number, then on-half of the first

elected members may have a 3 year term. If one-half of the number of first elected members is an odd number, then the whole number next higher than one-half of the number of first elected members may have a 3 year term.

Casual vacancy in office of elected member or appointed member

Clause 95 provides that when a vacancy occurs in the office of an elected member or in the office of an appointed member during their term of office another person must be elected or appointed under this part to fill the vacancy. The person elected or appointed to the vacancy holds office for the remainder of the vacating member's term of office, or until the person sooner vacates the office.

Subclause (3) provides that if the vacancy occurs in the office of an elected member the new member must be of the same type of elected member as the vacating member. Section 90 is relevant in determining the type of member.

Vacation of office

Clause 96 provides the circumstances in which the office of an elected member or an appointed member becomes vacant. The circumstances are if the officer:

- dies;
- is the chairperson, resigns by signed notice to the principal's supervisor;
- is another council member, given to the council chairperson;
- is absent from 3 consecutive meetings without leave and without reasonable excuse. The officer has to have been given prior notice of the meetings in accordance with the association's constitution.

Subclause (2) provides that a notice of resignation takes effect when the notice is given or if a later time is stated in the notice, the later time.

Subclause (3) provides that if there is a vacancy in an the office or an elected member or an appointed member, and because of the vacancy the membership of the council does not comply with section 88, the council is taken to be validly constituted until the earlier of the day the vacancy is filled, or the expiry of 3 months after the day the vacancy arose.

Subclause (4) provides a definition of *meeting* for the section as meaning a meeting where the officer did not attend, if there was a quorum for the council, or a meeting without a quorum for the council if the officer did attend.

Disqualification from membership

Clause 97 prohibits a person from becoming or continuing as an elected parent member, elected staff member or appointed member of a school council if the person has been convicted of an indictable offence, unless the Minister may give a person an approval under this section.

Subclause (2) provides the Minister with discretion in relation to members convicted of an indictable offence. If the Minister considers it would be reasonable, in regard to the circumstances of the offence, the Minister may:

- if the person was a member when convicted, give the chairperson and the person notice that the person is restored as a member. The notice may also advise that the person may be re-elected or re-appointed despite the conviction;
- otherwise, give written approval for the person to be elected or appointed as a member despite the conviction.

Subclause (3) deals with the circumstances that occur when the chairperson and person have been given notice that the person is restored as a member. On the day the chairperson receives the notice, the person is restored as a council member, and if another person has been elected or appointed to fill the vacancy, that other person's appointment ends.

Part 5 Constitution

Constitution for school council

Clause 98 requires a school council to have a constitution.

The constitution must provide for certain matters:

- membership of the council;
- election of, and other matters relating to, the council's chairperson;
- conduct of council business;

- the way the council performs its functions.

Subclause (3) provides that the constitution may also provide for other matters the council considers appropriate for inclusion.

Subclause (4) requires the provisions of a council's constitution about membership to comply with part 4 and are subject to the parents and citizens association constitution provisions about the election of an elected parent member of the council.

Amendment of school council's constitution

Clause 99 enables a school council to prepare and adopt amendments of its constitution. A council is required to have regard to the model constitutions when preparing a proposed amendment. An amendment has no effect unless it is approved by the chief executive.

Subclause (4) prohibits the chief executive from approving an amendment unless the chief executive is satisfied:

- appropriate notice of the meeting that considered the proposed amendment;
- the amendment was adopted by at least the number of members constituting a quorum for the council;
- the amendment is consistent with the Act and otherwise lawful.

Subclause (5) requires the chief executive to have regard to a range of matters when considering whether to approve an amendment:

- whether it provides for membership that allows adequate representation of certain groups and takes into account the demographics of the school community;
- whether it provides for the council to perform its functions in an effective and fair way;
- whether its provisions are otherwise adequate, clear and appropriate.

Model constitutions for school councils

Clause 100 empowers the chief executive to prepare model constitutions for school councils.

Part 6 Council business

Conduct of business

Clause 101 provides that a school council may conduct its business in a way it considers appropriate. This is subject to the council's constitution and this part of the Act.

Subclause (2) requires councils to only make decisions about how it will carry out its functions at a council meeting at which a quorum for the council is present.

Time and place of meetings

Clause 102 provides that council meetings must be held at the times and places the council decides. Despite this, the chairperson is empowered to call a meeting at any time, and must call a meeting if asked, in writing to do so by the Minister, the chief executive or at least the number of its members required to form a quorum for the council.

Subclause (3) provides that a school council must meet at least twice in each semester.

Quorum

Clause 103 provides that a quorum for a meeting of a school council is two-thirds of the number of its members. If that number is not a whole number, the quorum is to be the next highest whole number.

Presiding at meetings

Clause 104 requires the council chairperson to preside at all meetings for which the chairperson is present. If the chairperson is absent the other members at the meeting must choose a persons to preside.

Conduct of meetings

Clause 105 provides that questions put at a school council meeting must be resolved by a majority vote of the members present. The one exception to this rule is questions about the amendment of the council's constitution. Section 96 sets out the way in which proposed amendments are made to a council's constitution.

Subclause (2) provides that each member present at a meeting has one vote on each question. If the votes are equal the presiding member has a casting vote. This is in addition to their deliberative vote on the question.

Subclause (3) provides that a member present at a meeting who abstains from voting is taken to have voted for the negative.

Subclauses (4) and (5) allow councils to hold meeting or allow members to take part in meetings, by a range of communications media. A member who takes part in a meeting through use of these media is taken to have been present at the meeting.

Attendance by proxy

Clause 106 prohibits a member of a council attending a meeting by proxy. However, the school's principal may attend up to 2 meetings each year by proxy. *Proxy* is defined for the section not to include an alternative association member for the president of the association.

Disclosure of interest

Clause 107 relates to members of a council who have a direct or indirect financial interest in an issue to be considered by the council, and that interest could conflict with the proper performance of the member's duties in relation to considering that issue.

Subclause (2) requires the member, if the circumstances in subsection (1) apply, to disclose the nature of the interest to a meeting of the council. The disclosure must be made as soon as practicable after the relevant facts come to the member's knowledge.

Subclause (3) requires the member not to be present when the council considers the issue or not to take part in a decision about the issue. The council may make a direction otherwise allowing the member to engage in these considerations.

Subclause (4) requires that the member not be present when the council is considering whether to give a direction under subsection (3).

Subclause (5) requires that another member who has conflict of interest in the same issue must not be present when the council is considering giving a direction or take part in the decision making about the direction.

Subclause (6) provides that if there would have been a quorum of the council but for the members with a conflict of interest not being able to participate in the decision, the remaining members present are taken to

have a quorum for deciding the issue or deciding whether to give a direction.

Subclause (7) requires disclosures under subsection (2) to be recorded in the council's minutes.

Part 7 Application of other laws

Criminal Law (Rehabilitation of Offenders) Act 1986

Clause 108 provides that the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 9A applies to the office or an elected member, or an appointed member if the person consents to be appointed or the person stands for election. The section of that Act does not apply to an elected student member of the council.

Public Records Act 2002

Clause 109 provides that a school council is a public authority under the *Public Records Act 2002*.

Freedom of Information Act 1992

Clause 110 provides that for the purposes of the *Freedom of Information Act 1992*, a school council is taken to form part of the department.

Subclause (2) is included to remove any doubt that part 2 of the *Freedom of Information Act 1992* does not apply to a school council. Part 2 of that Act deals with publication of a statement of affairs. The effect of the provision is that a school council's information is included within the department's statement of affairs.

Public Sector Ethics Act 1994

Clause 111 sets out how the *Public Sector Ethics Act 1994* applies to school councils. For the application of that Act a school council is a public sector entity and members are public officials and the chief executive is the chief executive of the entity.

Subclause (3) provides that for section 15 of that Act must ensure that a code of conduct required to be prepared under section 17 of that Act applies to school councils.

Subclause (4) provides that for section 20(4) of that Act a reference to the entity's head office or regional office is a reference to the department's head office or other departmental office.

Subclause (5) provides that for section 23 of that Act a reference to the entity's annual report is a reference to the department's annual report.

Part 8 Starting up

Purpose and application

Clause 112 provides that this part of the Act is about the establishment and initial operation of a school council.

Subclause (2) deals with any inconsistencies between this part and another provision in this chapter. If there is an inconsistency this part prevails to the extent of the inconsistency.

Initial constitution

Clause 113 requires the State school's principal to draft a constitution for a proposed school council for the school.

Subclause (2) provides that section 99(1) to (3) and (5) apply to the preparation of the constitution as if a reference in those sections to amending the constitution were a reference to the principal preparing the constitution for the proposed school council.

Subclause (3) requires the principal to consult when preparing the draft constitution. The consultation must be with the parents of children attending the school and the school's staff and students. The principal may also consult with other appropriate entities.

Subclause (4) requires the president of a school's parents and citizens association to call a special meeting of the association for approving the draft constitution. The meeting is to be called in accordance with the association's constitution.

Subclause (5) requires a school's principal to call a meeting for approving the draft constitution. If there is no parents and citizens association for the school, a meeting of the parents of children attending the school. A meeting of the school's staff must also be called.

Subclause (6) prohibits the school principal from establishing a school council for the school unless the association meeting or parent meeting, and the staff meeting are called and the draft constitution is approved as follows:

- for the association meeting—by secret ballot by a majority of the association’s members attending the meeting;
- for the parent meeting—by secret ballot by a majority of the parents attending the meeting;
- by secret ballot by a majority of the staff attending the staff meeting.

Subclause (7) provides that despite the draft constitution not being approved in accordance with subsection (6), the chief executive may establish a school council for the school. In order to do so the chief executive must be satisfied of each of the following:

- if there is an association for the school and the meeting under subsection (6) did not approve the constitution—that there were at least 3 association meetings held to discuss the draft constitution during a 3 month period;
- if there is not an association for the school and the parents at the meeting under subsection (6) did not approve the constitution—that there were at least 3 parent meetings held to discuss the draft constitution during a 3 month period;
- if the meeting of the school’s staff under subsection (6) did not approve the constitution—that there were at least 3 parent meetings held to discuss the draft constitution during a 3 month period.

In addition to the above, the chief executive must also have regard to the concerns of the association, parents or staff raised at the meetings at which the draft constitution was not approved.

Subclause (8) provides that the approved constitution applies to the council on its establishment.

Initial membership

Clause 114 provides that on establishment a school council consists only of its official members.

Subclause (2) limits a school council that consists only of its official members to performing only those functions necessary for the election of the council's elected members.

First elected members and appointed members

Clause 115 requires a council's official members to organise the election of the council's elected members. The organisation for the election must be done under the council's constitution and as soon as practicable after the council is established.

Part 9 Dissolution

Dissolution of a school council

Clause 116 provides that a council is dissolved when either the school for which it is established is closed or in the other circumstances prescribed under a regulation occur. When a council is dissolved the member of the council immediately before the closure go out of office.

Records

Clause 117 requires the principal to ensure that a school council's records are given to the chief executive as soon as practicable after the council is dissolved. For the section, *records* is defined to include all documents held by the council that it had created or acquired in the course of performing its functions.

Part 10 Miscellaneous

School council not to establish committee or subcommittee

Clause 118 prohibits a council from establishing a committee or subcommittee.

Expense of attending meetings

Clause 119 provides the chief executive with the discretion to decide the allowance payable to a member for attending a meeting of the council or to reimburse the member for the whole or part of the member's reasonable expenses incurred in attending a meeting of the council. The allowance payable may be determined based on the class of membership of the council.

Minister's power to give directions in the public interest

Clause 120 empowers the Minister to give a council a written direction about a matter relevant to the performance of the council's functions under section 85. The Minister may only give the direction if the Minister is satisfied the direction is necessary in the public interest.

Subclause (2) provides a number of matters for which a direction may be given, but does not limit the Minister's discretion to these matters. The matters include compliance with a policy, standard or instrument of a public sector unit, or another document including, for example, a policy, standard or instrument.

Subclause (3) requires the council to comply with the direction.

Subclauses (4) to (6) provide that the direction must be addressed to the council chairperson and the methods it may be sent to that person. A copy of the direction must also be given to the chief executive. The chief executive must include a copy of the direction in the department's annual report.

Protection from liability

Clause 121 provides members of a council with protection against civil liability in certain circumstances. Members are protected for acts done, or omissions made, honestly and without negligence under this Act. Where the section prevents liability attaching to a member the liability attaches to the State. This protection is worded in identical fashion to that provided to other Government authorities and persons carrying out functions under an Act, e.g. parents and citizens association members. It is intended to protect member from incurring personal liability where they have acted appropriately in carrying out their functions under the Act.

Chapter 7 Parents and citizens associations

Part 1 Formation, objectives etc. of an association

Formation of parents and citizens association

Clause 122 provides for the formation of parents and citizens associations for State instructional institutions. The expansion from State schools to State instructional institutions is deliberate, and aimed at allowing bodies such as Environmental and Outdoor Education Centres (established under section 14) to establish associations. Previously these bodies were not permitted to establish such associations and many established advisory councils to carry out a similar range of functions. The expansions will allow these institutions the option of establishing an association.

The regulation prescribes the way in which an association may be formed.

Subclause (2) provides that certain persons are eligible to be members of an association formed for a State school: parents of a child attending the school; staff members of the school; and other adults interested in the school's welfare.

Subclause (3) provides that certain persons are eligible to be members of an association formed for an educational institution established under section 14: staff members of the institution; and other adults interested in the institution's welfare.

A distinction is made between schools and institutions as only State schools are able to "enrol" students and therefore have "children of the school".

Subclause (4) provides that the State instructional institution's principal must be a member of the association formed for the institution.

Formation of interim parents and citizens association

Clause 123 provides for the formation of an interim parents and citizens associations for proposed State instructional institutions. The regulation prescribes the way in which an interim association may be formed. The

formation must take place within 2 years before the institution's first proposed day of operation. This provision enables interested members of the community to have input into the institution prior to it commencing operation.

Subclause (2) provides for the eligible membership of an interim association. Any adult interested in the welfare of the proposed institution is eligible.

Subclause (3) provides that an interim association is taken to be the association once the institution commences operation.

Objectives of an association

Clause 124 states the objectives of an association as promoting the interests of, and facilitate the development and further improvement of, the State instructional institution or proposed State instructional institution for which it is formed.

Functions of an association

Clause 125 provides the associations functions:

- fostering community interest in educational matters;
- trying to bring about closer cooperation between parents, community members and staff of a school; and community members and staff of an institution;
- giving advice and recommendations to the principal, if asked, about issues relating to students at the institution;
- giving advice and recommendations to the principal, if asked, about the general operations and management of the institution;
- giving or assisting in the provision of financial or other resources or services for the benefit of students at the institution;
- to assisting a State preschool centre associated with the school, if an appropriate resolution is passed at an appropriate meeting of the school;
- to performing any other function that is not inconsistent with the Act, that the Minister decides.

Subclause (2) requires an association, in performing its functions, to comply with this Act and any written directions from the Minister about

complying with departmental policies or matters relevant to performance of the association's functions.

Dissolution of an association

Clause 126 provides that an association is dissolved: if the institution for which it is formed is closed; if the number of members is 2 or less; in other circumstances prescribed under a regulation.

Part 2 Officers of an association

Officers

Clause 127 requires an association to elect from its members a range of officers. The election must take place at each annual general meeting. The officers that must be elected are: president; at least 1 vice-president; secretary; treasurer; and any additional officers decided by the association. All officers hold office in an honorary capacity.

Subclause (3) prohibits the person who holds the office of treasurer from holding the office of president or secretary.

Subclause (4) provides that the principal of the institution for which the association is formed may not be an office holder of the association.

Vacation of office

Clause 128 provides the circumstances in which an association office become vacant. The circumstances are if the officer:

- dies;
- is the president and resigns their position by signed notice to a vice-president, secretary or treasurer;
- is another officer and resigns their position by signed notice to the president;
- is absent from 3 consecutive meetings without leave and without reasonable excuse. The officer has to have been given prior notice of the meetings in accordance with the association's constitution.

Subclause (2) provides that a notice of resignation takes effect when the notice is given or if a later time is stated in the notice, the later time.

Subclause (3) provides a definition of *meeting* for the section as meaning a meeting where the officer did not attend, if there was a quorum for the association, or a meeting without a quorum if the officer did attend.

Part 3 Executive committee of an association

Executive committee

Clause 129 provides that there is an executive committee of an association. The executive committee consists of the president, vice-president/s, secretary and treasurer of the association.

Restriction on who may be a member of executive committee

Clause 130 places a restriction on who may be a member of an executive committee and applies only at the time of election of the office holders of an association under section 127.

Subclause (2) limits the number of relevant staff members of an institution who may be members of the executive committee of the association to not more than one-third of the number of members of the executive committee. For example, if the executive committee comprises only the basis members of president, treasurer, secretary and 1 vice-president, the maximum number of relevant staff members permitted to be on the executive committee will be 1. The limit is put in place to ensure that citizens, in particular parents, are able to become members of the executive committee and are encouraged to do so. School staff members have many other relevant ways in which to influence school decision-making and should be encouraged to use those ways, rather than take up positions through the association.

Subclause (3) allows relaxation of the limit under subsection (2) on the grounds that:

- the chief executive reasonably believes that complying with the requirement will prevent all positions on the executive committee being filled; and
- the chief executive notifies the association that it is not required to comply with the requirement.

This provision is put in place to ensure that associations, particularly those in smaller communities or in regional or remote areas, operate with a complete executive committee. In many of these communities institution staff form a large proportion of interested adults and the prohibition on them taking up office may effect the ability of the association to elect a complete executive committee.

Subclause (4) defines *relevant staff member* for the section as meaning:

- for a State school—a staff member of the school who is not a parent of a child attending the school; or
- for a section 14 institution—a staff member of the institution.

Urgent matters

Clause 131 empowers an association's executive committee to take action in relation to an association function, only if there is an urgent matter. Despite the requirement for a quorum and the way in which votes are usually taken under section 133(1), the action may be taken by a majority vote of the executive committee. However the power may not be used to remove a person as a member of the association or as an officer of the association.

Subclause (4) provides that if the executive committee acts in such a way in relation to an urgent matter, the committee must table details of the action at the next scheduled general meeting or special meeting called for that purpose.

Subclause (5) provides that despite the requirement to table details of the action a failure to comply does not affect the validity of the action.

Part 4 Business of an association

Presiding at meetings

Clause 132 provides that the president is to preside at association meetings. If the president is absent the vice-president (confirmed by a majority vote of the meeting) is to preside. If the president and vice-presidents are absent or if the offices are vacant, a member chosen by a majority vote at the meeting presides.

Voting

Clause 133 provides that voting at association meetings is by majority. The person presiding at association meetings has both a deliberative vote and a casting vote. Each member at an association meeting has a vote on each question put at a meeting.

Part 5 Subcommittees of an association

Subcommittees

Clause 134 enables associations to establish subcommittees and to appoint members to those committees, under a regulation. A subcommittee may be established in connection with a State preschool centre associated with the school. Details around the conduct of subcommittee meetings are prescribed under a regulation, and, subject to the regulation, the way the association considers appropriate.

This provision makes it completely clear that subcommittees are formed by an association and are subject to the way in which the association wishes them to operate, subject to matters prescribed under a regulation. While not stated, it is without doubt that funds raised by a subcommittee are the funds of the association, for the association to apply in ways in accordance with its functions.

Part 6 Constitution of an association

Constitution

Clause 135 requires an association to have a constitution. An association must adopt or amend its constitution in accordance with the regulation. An association's constitution or amendment to its constitution has no effect until it is approved by the chief executive.

Part 7 Financial provisions

Use of money received by association

Clause 136 provides that an association's funds must be applied at the direction of the Minister towards two purposes: paying lawfully incurred expenses, and in achieving the objectives and performing the association's functions. The application of funds in this provision is subject to section 141(4).

Association is statutory body under the Statutory Bodies Financial Arrangements Act 1982

Clause 137 provides clarity that an association is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* and that part 2B of that Act sets out the way that Act affects an association's powers.

Financial year

Clause 138 provides that associations must have a financial year that is 1 January to 31 December.

Audit of accounts

Clause 139 requires association accounts for each financial year to be audited in accordance with the regulations. This provision is subject to section 74 of the *Financial Administration and Audit Act 1977*. Associations must give the give executive a copy of the audited accounts for the financial year by 31 May of each year.

Part 8 Relevant agreements

Definition for div 8

Clause 140 defines *relevant agreements* for the part. Relevant agreement, for an association, means an agreement benefiting persons receiving educational instruction at the State instructional institution for which the association is formed.

Power to enter into relevant agreements

Clause 141 provides that the Minister or association, acting jointly or severally, may enter into a relevant agreement with any person. This provision operates despite this Act or another Act.

Subclause (2) requires an association to obtain the written approval of the Minister for entering into the agreement, if the association proposes to enter into a relevant agreement without the Minister. The Minister may give such approvals generally for a type of agreement or for a particular agreement.

Subclause (4) requires an association to deal with money it receives under a relevant agreement as the Minister directs or in accordance with the association's objectives.

Subclause (5) requires any relevant agreement entered into by an association to contain conditions required by the Minister. The Minister must give notice of these conditions to the association or by publishing the conditions in the gazette.

Subclause (6) provides that the Ministerial conditions may relate to a stated relevant agreement or relevant agreements of a stated type.

President to sign relevant agreement for an association

Clause 142 authorises the association president to sign a relevant agreement for the association if the association makes a resolution to enter into the agreement.

Part 9 General provisions**Regulation may provide for membership**

Clause 143 provides that a regulation may be made providing for the way in which a person becomes a member of an association. These ways, are of course, subject to section 122, which sets out the parameters for who may be a member.

Subclause (3) provides that a person's membership is annual and renewable each year at the association's annual general meeting.

Subclause (4) allows a person who is refused membership of an association to make a submission to the Minister about the refusal. The person may

also appeal to the Magistrates Court as if the person were a member of the association and had been removed from the association.

Register of members

Clause 144 requires an association to establish and maintain a register of members of the association in the way prescribed under a regulation.

Protection from liability

Clause 145 provides members of an association with protection against civil liability in certain circumstances. Members are protected for acts done, or omissions made, honestly and without negligence under this Act. Where the section prevents liability attaching to a member the liability attaches to the State. This protection is worded in identical fashion to that provided to other Government authorities and persons carrying out functions under an Act, e.g. school council members. It is intended to protect member from incurring personal liability where they have acted appropriately in carrying out their functions under the Act.

Association may employ

Clause 146 provides associations with the power to employ persons it considers necessary to achieve the association's objectives mentioned in section 124.

Mandatory insurance cover

Clause 147 requires an association to purchase and maintain insurance cover as required by the chief executive. The chief executive publishes a notice in the gazette advising of these requirements. At present the peak association of parents and citizens associations takes out one policy with the Queensland Government Insurance Fund in order to meet these requirements.

Proceedings

Clause 148 sets out how legal proceedings are to be started and conducted in relation to associations. Given associations are unincorporated bodies, such provisions are necessary as the usual rules of court and service may not be applicable.

Subclause (1) allows a proceeding to be started and conducted in the association's name by either the president or a member appointed by the president to do so.

Subclause (2) requires an association to obtain the Minister's approval before starting a proceeding.

Subclause (3) allows a proceeding to be started and conducted against an association in the association's name. Such a provision is necessary to put it beyond doubt that the association may be sued in its own right, rather by reference to its members.

Subclause (4) requires any documents starting proceedings or relevant to proceedings against an association to be served on a member of the association's executive committee.

Subclause (5) requires a person served with a document initiating proceedings against an association to provide a copy of the document to the chief executive as soon as practicable after being served. Such a provision is designed to alleviate difficulties experienced in the past whereby the chief executive has been unaware that legal proceedings have been commenced against an association.

Subclauses (6) and (7) provide the Minister with the power to give an association a written direction about a proceeding started by or against an association under this section. The association must comply with such a direction.

Notice of claim given under Personal Injuries Proceedings Act 2002, s9(1)

Clause 149 sets out specific provisions in relation to claims commenced under the *Personal Injuries Proceedings Act 2002*. As these claims are not the commencement of legal actions they must be dealt with separately to those matters under section 145.

Subclause (1) amends the operation of section 9(1) of the PIP Act, by requiring that a notice of claim under that Act is given to a member of the association's executive committee. The PIP Act requires the notice of claim to be given to the person against whom the claim is proceeded to be commenced. As associations are not legal entities an amendment to the effect of section 149(1) is necessary.

Subclause (2) requires a person who receives a notice of claim against an association to provide a copy of the notice to the chief executive as soon as practicable after receiving the notice.

Subclauses (3) and (4) provide the Minister with the power to give an association a written direction about a notice of claim given to an association under section 9(1) of the PIP Act. The association must comply with such a direction.

Subclause (5) defines two terms for this section:

claim references the definition in the PIP Act schedule.

PIP Act is defined to mean the *Personal Injuries Proceedings Act 2002*.

Authority of an association

Clause 150 provides the association with the power to exercise an authority in relation to the institution for which it is formed that is consistent with the functions of the association in section 125. However, the clause makes it clear that provision of this power does not derogate from the authority of the institution's principal's capacity as the person in charge of the institution.

Subclause (3) clarifies that an association is not empowered to exercise any authority over the teaching staff, or over control or management, of the institution for which it is formed.

Disclosure of interests by members of an association

Clause 151 relates to members of an association who have a direct or indirect financial interest in an issue to be considered by the association, and that interest could conflict with the proper performance of the member's duties in relation to considering that issue.

Subclause (2) requires the member, if the circumstances in subsection (1) apply, to disclose the nature of the interest to a meeting of the relevant entity. The disclosure must be made as soon as practicable after the relevant facts come to the member's knowledge. Relevant entity is defined in subsection (8) to mean the association, executive committee or subcommittee of an association.

Subclause (3) requires the member not to be present when the entity considers the issue or not to take part in a decision about the issue. The relevant entity may make a direction otherwise allowing the member to engage in these considerations.

Subclause (4) requires that the member not be present when the entity is considering whether to give a direction under subsection (3).

Subclause (5) requires that another member who has conflict of interest in the same issue must not be present when the entity is considering giving a direction or take part in the decision making about the direction.

Subclause (6) provides that if there would have been a quorum for the entity but for the members with a conflict of interest not being able to participate in the decision, the remaining members present are taken to have a quorum for deciding the issue or deciding whether to give a direction.

Subclause (7) requires disclosures under subsection (2) to be recorded in the entity's minutes.

Honorary life membership of an association

Clause 152 enables an association to award honorary life membership to a person who was or is a member of the association. An interim association may not award life memberships.

Subclause (2) provides that the only basis on which an award may be made is that the person has given long and meritorious service to the association.

Subclause (3) requires that a decision to award life membership must be made by a two-thirds majority vote of the members present at an annual general meeting of the association.

Subclause (4) requires that a person the subject of a proposed resolution for the award of life membership must not be present during discussions about the proposal, and must not exercise the member's right to vote of the proposal, despite section 133(2).

Part 10 Removal of members and officers of an association

Definitions for pt 10

Clause 153 provides definitions for the part.

Nominated person, for an association, means a member or officer of an association.

Notice of removal, means a notice under section 156(3), from an association to a nominated person for the association removing the nominated person.

Remove, a nominate person for an association, means removal of a person as a member of an association, or removal of a person as a member and an officer of an association, or only as an officer.

Removed person is defined by reference to section 157(1).

Removal of nominated person

Clause 154 provides an association with power to remove a nominated person for the association only under the provisions of this part.

Grounds for removal

Clause 155 provides a number of grounds for removing a nominated person for an association:

- the nominated person has been convicted of an indictable offence;
- the nominated person contravenes the Act or the association's constitution without reasonable excuse;
- the nominated person fails to perform the duties of their office without reasonable excuse;
- the nominated person engages in conduct that is injurious or prejudicial to promotion of the interests of, or the facilitating of the development and further improvement of, the institution, or the good order of management of the institution.

Procedure for removal of nominated person

Clause 156 sets out the procedure to be followed by an association in seeking a person's removal. A show cause notice must be given to the person, which includes an invitation to make submissions within a period of at least 14 days.

Subclause (2) provides that if, after considering any written representations, the association still considers the ground to take the proposal action exists, the association may that the action proposed in the show cause notice.

Subclauses (3) to (5) require the association to notify the person of the decision within 14 days of the association making its decision. If the association decides to remove the person, the notice must include particulars of the decision and the way in which a submission may be made in review or appeal of the decision.

Subclause (6) provides that the decision to remove a person takes effect on the latter day of the day the notice is given to the person or the day of effect stated in the notice.

Subclause (7) provides when the removal of a person from office takes place if the removal is because the person was convicted of an indictable offence. The removal does not take effect until the end of the time to appeal against the conviction and if an appeal is made, the time the appeal is finally decided. The removal has no effect if the conviction is quashed on appeal.

Submissions against removal

Clause 157 provides a review process for persons removed by an association under section 156. The person may make a submission to the Minister. The submission must include a range of particulars about the decision and be given to the Minister within 14 days of the notice of removal being given to the person, or a later time allowed by the Minister.

Subclause (4) provides that, if after receiving the notice of removal, the person resigns or purports to resign as a member or officer, the person may not make a submission to the Minister under subsection (1).

Dealing with submissions against removal

Clause 158 requires the Minister to consider submissions and the decision the subject of the submission made under section 157 as soon as practicable.

Subclause (2) provides the Minister's powers in relation to the review. The Minister may confirm the removal decision, amend the removal decision, or substitute another decision for the removal decision.

Subclause (3) requires the Minister to give the removed person and the relevant association a notice about the Minister's decision on the review. The notice must advise of the review decision, the reasons for that decision and the person's right to appeal the review decision under section 406.

Chapter 8 Enrolment at State schools

Part 1 Applications for enrolment

Division 1 Requirements for enrolment

Application

Clause 159 provides how applications for enrolment in State school are to be made. They are to be made to the school's principal in the approved form and be accompanied by satisfactory evidence of eligibility to apply and any other documents identified in the form that the principal reasonably requires to decide the application. Satisfactory evidence is likely to include a prospective student's birth certificate, confirmation of identity of both the prospective student and the parent, and confirmation of the prospective student's principal place of residence.

Subclause (2) provides that the application may only be made by the child's parent or the adult student themselves.

Subclause (3) provides that despite subsection (2)(a) requiring a child's parent to make the application, the principal may deal with an application for enrolment of a child if the principal reasonably believes it is in the child's best interests for the child to make the application. The circumstances in which this may occur include where a child is living independently of their parents.

Enrolment

Clause 160 requires the principal to enrol the prospective student if the prospective student is entitled to enrolment under the Act. The subsection is subject to subsections (2) and (3).

Subclause (2) requires the principal to refer certain applications to the chief executive for consideration under division 2. The applications the principal must refer are those where the principal reasonably believes the prospective student would, if enrolled at the school, pose an unacceptable risk to the safety or wellbeing of members of the school community.

Subclause (3) requires principals of State special schools to refer all applications for enrolment at those schools to the chief executive for consideration under division 3.

Division 2 Applications relating to prospective students who are a risk to the safety or wellbeing of certain persons

Application of div 2

Clause 161 provides that the division applies when applications are referred to the chief executive under section 160(2).

Not a risk to safety or wellbeing

Clause 162 applies when the chief executive is referred an application under section 160(2) and the chief executive reasonably believes that the prospective student's enrolment at the school does not pose an unacceptable risk.

Subclause (2) requires the chief executive to, as soon as practicable, refer the application back to the principal to be dealt with under section 160.

Subclause (3) provides that if the application is referred by to the principal under subsection (2), section 160(2) does not apply. This means that once the chief executive has made a decision that a prospective student's enrolment would not pose an unacceptable risk, the principal must abide by that decision. If the prospective student is entitled to enrolment under the other provisions of the Act, the prospective student must be enrolled.

Risk to safety or wellbeing

Clause 163 applies if the chief executive reasonably believes a prospective student would, if enrolled at the school, pose an unacceptable risk to the safety or wellbeing of members of the school community. The chief executive must give the applicant a show cause notice that includes a range of information:

- that the chief executive is proposing to refuse the prospective student's enrolment;
- the grounds for that refusal;

- an outline of the facts and circumstances forming the basis for the grounds;
- an invitation to the prospective student to show cause why the refusal should not occur;
- the period within which a submission may be made.

Subclause (2) provides that the show cause period must not be at least 14 days after the show cause notice is given to the applicant.

Representations about show cause notice

Clause 164 allows the applicant to make written representations about the show cause notice within the show cause period.

Subclause (2) requires the chief executive to consider all written representations made under subsection (1).

Ending show cause process without further action

Clause 165 provides that if, after considering the prospective student's representations, the chief executive does not reasonably believe the prospective student's enrolment would pose an unacceptable risk the chief executive must:

- not take further action about the show cause notice;
- as soon as practicable, give the applicant a notice that no further action is to be taken;
- as soon as practicable, refer the application back to the principal.

Subclause (2) provides that if the application is referred by to the principal under subsection (2), section 160(2) does not apply.

Refusal of enrolment

Clause 166 applies if, after considering the prospective student's representations, the chief executive reasonably believes the prospective student's enrolment would pose an unacceptable risk.

Subclause (2) also applies if there are no accepted representations about the show cause notice.

Subclause (3) requires the chief executive to refuse the prospective student's enrolment at the school.

Subclause (4) requires the chief executive, as soon as practicable, to give the applicant an information notice about the decision and give the principal a notice about the decision.

Subclause (5) provides that if the chief executive refuses the prospective student's enrolment the chief executive's decision is binding on the principal.

Time limit on making another application for enrolment

Clause 167 prevents a prospective student, who is refused enrolment and given an information notice under section 166(4), from making a later application for enrolment at that school for 1 year.

Division 3 Enrolment at special schools

Application of div 3

Clause 168 provides that the division applies when applications are referred to the chief executive under section 160(3).

Meaning of person with a disability

Clause 169 provides a definition of *person with a disability*. The definition relies on a determination being made under the Ministerial policy approved under subsection (2) that a person is unlikely to attain the levels of development of which the person is capable unless the person receives special education.

Subclause (2) provides a head of power requiring the Minister to approve a policy about the criteria to be considered in deciding whether a person is a person with a disability. The Minister must approve such a policy as a number of definitions for the Act, for example, special education, relate to the Ministerial policy.

Subclauses (3) to (5) provide generic requirements for the chief executive to keep a copy of the policy available for inspection without charge. The chief executive must also have a copy of the policy available to supply to a person without charge. The policy must also be kept on the department's website on the Internet.

Requirements for enrolment satisfied

Clause 170 provides that subsection (2) applies if the chief executive is satisfied the prospective student is a person with a disability (as defined) and the special school to which they have applied is able to cater for their educational needs.

Subclause (2) requires the chief executive to, as soon as practicable, refer the application back to the principal to be dealt with under section 160.

Subclause (3) provides that if the application is referred by to the principal under subsection (2), section 160(3) does not apply. If the prospective student is entitled to enrolment under the other provisions of the Act, the prospective student must be enrolled.

Requirements for enrolment not satisfied

Clause 171 applies if the chief executive is not satisfied that the prospective student is both a person with a disability and that the special school is able to cater for the prospective student's educational needs. For example, a person with a hearing impairment may be determined to be a person with a disability. However, the special school to which they have applied for enrolment may be a school which only caters for students with multiple intellectual impairments. If this were the case, the second limb of the chief executives considerations would not be met.

Subclause (2) requires the chief executive to refuse the enrolment.

Subclause (3) requires the chief executive to, as soon as practicable, give the applicant an information notice about the decision and give the principal a notice of the decision.

Subclause (4) provides that if the chief executive refuses the prospective student's enrolment the chief executive's decision is binding on the principal.

Part 2 Enrolment agreements**Requirements relating to enrolment agreements**

Clause 172 requires State school principals to ensure an up-to-date enrolment agreement applies to the school. Subclause (4) defines enrolment agreement for the section as meaning a document that states the

respective rights and obligations, about the education of persons at the school, of students, parents of students and school staff. The purpose of the agreement is to ensure that, particularly, students and parents are aware of the school's expectations in relation to such matters as conduct and behaviour. It is envisaged that the enrolment agreement will have a number of school policies attached to it to better inform students and parents. The agreement is not intended in any way to be legally enforceable or to bind the parties.

Subclause (2) requires principals to give a copy of the school's enrolment agreement to the person who has lodged an application for enrolment and prior to enrolling the prospective student. This will generally be the parent of a child or an adult prospective student.

Subclause (3) requires the principal to try to have the person to whom the agreement has been given sign a copy of the agreement and return it to the principal, or have that person acknowledge that they have received a copy of the agreement. The principal may not refuse to enrol the prospective student if the person does not sign the agreement or does not acknowledge receipt of the agreement.

Part 3 Enrolment management plans

Definitions for pt 3

Clause 173 provides a number of definitions for the part.

Catchment area, for a State school is defined in relation to the geographic area from which a school is to have its principal intake of students. The chief executive determines this geographic area. This area is generally equidistant by trafficable routes between like State schools.

Effective enrolment management plan, for a State school, means a plan that has been given effect in accordance with section 174.

Enrolment management plan, for a State school, means a document that stating:

- the school's catchment area;
- the school enrolment capacity for persons whose principal place of residence is outside the catchment area. "Principal place of residence" is used deliberately to ensure that persons may not

take up a temporary residence in a school's catchment area merely to obtain enrolment, then revert to residing at what was always their principal place of residence;

- the requirements for enrolment of persons whose principal place of residence is outside the catchment area.

Preparation of enrolment management plan

Clause 174 provides a head of power to the chief executive to prepare enrolment management plans. State schools are not required to have such plans, and will generally only require such plans when there is concern over the school's enrolment capacity, either immediately or in the future.

Subclause (2) requires the chief executive to publish a notice in the gazette as soon as practicable after preparing an enrolment management plan. The gazette notice must state that a plan has been prepared, that a copy of the plan is available for inspection without a charge.

Subclause (3) states that an enrolment management plan only has effect on and from the day the notice about the plan is published in the gazette or a later day stated in the notice.

Application for enrolment residing in catchment area

Clause 175 applies if an enrolment application is received and the school has an effective enrolment management plan and the prospective student's principal place of residence is in the school's catchment area.

Subclause (2) requires the prospective student to be enrolled, if they are otherwise entitled to be enrolled under the Act.

Applicant for enrolment residing outside of catchment area

Clause 176 applies if:

- an enrolment application is received from a person whose principal place of residence is outside the catchment area; and
- there is an effective enrolment management plan for the school; and
- the school's enrolment capacity for persons from outside the catchment area is not satisfied.

Subclause (2) requires that the prospective student to be enrolled, if:

- the person satisfies the requirements for enrolment stated in the effective enrolment management plan. For example, the plan may set out that a prospective student must achieve a certain level on an academic merit test; and
- they are otherwise entitled to be enrolled under the Act.

Part 4 Enrolment eligibility plans

Definitions for pt 4

Clause 177 provides a number of definitions for the part.

Effective enrolment eligibility plan, for a State school, means a plan that has been given effect in accordance with section 178.

Enrolment eligibility plan, for a State school, means a document that stating:

- the school enrolment capacity;
- the requirements for enrolment at the school.

State schools with enrolment eligibility plans do not have a catchment area from which their usual intake of students is draw. The geographic proximity of a prospective student's residence to a State school with an effective enrolment eligibility plan does not entitle the prospective student to enrolment in the school.

Preparation of enrolment eligibility plan

Clause 178 provides a head of power to the chief executive to prepare enrolment eligibility plans. State schools are not required to have such plans, and will generally only require such plans where the school has been established to provide some form of highly specialised educational program.

Subclause (2) requires the chief executive to publish a notice in the gazette as soon as practicable after preparing an enrolment eligibility plan. The gazette notice must state that a plan has been prepared, that a copy of the plan is available for inspection without a charge.

Subclause (3) states that an enrolment eligibility plan only has effect on and from the day the notice about the plan is published in the gazette or a later day stated in the notice.

Application for enrolment

Clause 179 applies if:

- an enrolment application is received from a person; and
- there is an effective enrolment eligibility plan for the school; and
- the school's enrolment capacity is not satisfied.

Subclause (2) requires that the prospective student to be enrolled, if:

- the person satisfies the requirements for enrolment stated in the effective enrolment eligibility plan. For example, the plan may set out that a prospective student must achieve a certain level on an academic merit test; and
- they are otherwise entitled to be enrolled under the Act.

Chapter 9 Compulsory schooling

Part 1 Compulsory schooling requirement

Division 1 Parents' obligations

Obligation of each parent

Clause 180 provides for the parental obligation for a child who is of compulsory school age.

Subclause (1) provides that each parent of a child who is of compulsory school age must, unless the parent has a reasonable excuse:

- (a) ensure the child is enrolled at a State school or non-State school; and

- (b) ensure the child attends the State school or non-State school, on every school day for the educational program in which the child is enrolled.

The maximum penalty is for a first offence, penalty units. The maximum penalty for a second or subsequent offence, whether or not relating to the same child of the parent is 12 penalty units.

Subclause (2) provides that without limiting subsection (1), it is a reasonable excuse for a parent (the *relevant parent*) that:

- (a) the child lives with another parent and the relevant parent believes, on reasonable grounds, that the other parent is complying with subsection (1); or
- (b) in all the circumstances, the relevant parent is not reasonably able to control the child's behaviour to the extent necessary to comply with subsection (1).

Subclause (3) provides that subsection (1) applies subject to parts 2 to 4.

What is attendance

Clause 181 clarifies what constitutes attendance.

Subclause (1) provides that a child attends a State school or non-State school only if the child complies with the school's requirements about physically attending, at particular times, its premises or another place.

Subclause (2) clarifies however, that despite subsection (1):

- (a) a child enrolled in a program of distance education is taken to attend the school of distance education offering the program by completing and returning the assigned work for the program; and
- (b) a child enrolled in an external program is taken to attend the State school or non-State school offering the program by complying with its requirements about communicating with or contacting the school for the purpose of participating in the program.

Notice to, and meeting with, parent

Clause 182 provides for the giving of a notice and the holding of a meeting with a parent who is in breach of the obligation under section 180(1).

Subclause (1) provides that this clause applies if an authorised officer reasonably suspects:

- (a) a child who is of compulsory school age is not enrolled at a State school or non-State school; or is not attend the State school or non-State school at which the child is enrolled, on every school day, for the educational program in which the child is enrolled; and
- (b) parts 2 to 4 do not apply to the child.

Subclause (2) provides the officer may give a parent of the child a notice in the approved form about the parent's obligation under section 180(1).

Subclause (3) provides that the officer may also meet with the parent to discuss the obligation.

Subclause (4) if despite the officer taking reasonable steps to meet with the parent under subclause 3 no meeting is held, the officer may give the parent a warning notice in the approved form.

Subclause (5) provides that for section 14 of the *Police Powers and Responsibilities Act 2000*, an authorised officer acting under this section is a public official performing a function authorised by this Act.

Subclause (6) provides that in this clause an *authorised officer* means the chief executive or an officer of the department authorised by the chief executive for this section.

Limits on proceedings against a parent

Clause 183 provides for the limits on proceedings against a parent.

Subclause (1) provides that proceedings for an offence against section 180(1) may be brought against a parent:

- (a) only by the chief executive or with the chief executive's consent; and
- (b) only if the time when the parent is alleged to have committed the offence is after the parent has been given a notice under section 182(2) and at least 1 meeting has been held with the parent under section 182(3) or the parent has been given a warning notice under section 182(4).

Subclause (2) provide the chief executive (families) is not liable to be prosecuted for an offence against section 180(1) in relation to a child of whom the chief executive (families) has been granted guardianship under the *Child Protection Act 1999*.

Division 2 Chief executive may obtain information from non-State schools

Clause 184(1) provides the chief executive may by notice given to the principal of a non-State school, ask the principal for information about the enrolment or attendance at the school of a child who is of compulsory school age.

Subclause (2) provides that without limiting subsection (1), the chief executive may ask for information that the chief executive believes may:

- (a) help in the investigation of an alleged contravention of section 180(1); or
- (b) help the chief executive or an authorised person acting under section 182; or
- (c) otherwise help the chief executive or an authorised person to decide whether or not a parent is contravening section 180(1).

Protection from liability

Clause 185(1) provides this clause applies to a principal of a non-State school for complying with a request of the chief executive under section 184.

Subclause (2) provides the principal is not civilly liable for an act done, or omission made, honestly and without negligence for complying with the request.

Subclause (3) provides that subclause (2) prevents a civil liability attaching to the principal, the liability attaches instead to the non-State school's governing body.

Part 2 Flexible arrangements

Flexible arrangements – non-State school

Clause 186 sets out a framework for the approval of flexible arrangements for a student enrolled in a non-State school. Flexible arrangements are able to be approved for a young person on a case-by-case basis in circumstances

where the young person would benefit from participating in a program other than the school's educational programs.

Subclause (1) provides the authorised entity for a non-State school may approve arrangements for a student enrolled at the school that are to apply to the student instead of participation in the school's educational programs in the usual way.

Subclause (2) provides that the authorised entity may approve the arrangements only if:

- (a) a teacher has prepared written assessments of the student's educational and other needs; and the learning outcomes that the proposed arrangements are intended to achieve; and the suitability of each provider for the arrangements; and
- (b) the entity has considered the written assessments prepared under paragraph (a); and how and by whom, the student's participation in the arrangements is to be monitored; and how and by whom, each provider's involvement in the arrangements is to be monitored and its effectiveness evaluated; and
- (c) the entity is satisfied the arrangements are appropriate, having regard to the student's individual needs and circumstances; and what the authorised entity considers is most likely to achieve the best learning outcomes for the student; and the desirability, unless it would be inappropriate in all the circumstances, of the arrangements requiring the student's participation at a level that is equivalent to full-time participation in the school's educational programs in the usual way. In addition, the entity must have regard to any other matter prescribed under a regulation.

Subclause (3) clarifies however that the authorised entity must not approve the arrangements unless:

- (a) if the student is of compulsory school age, a parent of the student has given written agreement to the arrangements and the entity has discussed the proposed arrangements with the student to the extent the authorised entity considers appropriate, having regard to the student's age and other relevant circumstances; or
- (b) if the student is in the compulsory participation phase, the student gives written agreement to the arrangements and the authorised entity has discussed the proposed arrangements with the student's parents to the extent the entity considers is practicable and appropriate in the circumstances.

Subclause (4) provides that the non-State school's governing body must keep, for at least 5 years after the arrangements stop applying to the student:

- (a) the written assessments prepared under subsection (2)(a); and
- (b) a record of the authorised entity's consideration of the matters stated in subsection (2)(b); and
- (c) the written agreement obtained under subsection (3).

Subclause (5) provides that the requirement to obtain the written agreement of the parent of a child who is of compulsory school age to the arrangements does not apply if the authorised entity is satisfied it would be impracticable or inappropriate in the circumstances to require the written agreement of a parent.

Subclause (6) provides that in this section:

Authorised entity, for a non-State school, means the school's governing body under the *Education (Accreditation of Non-State schools) Act 2001*, or a staff member of the school given written authorisation by the governing body for this section.

Provider, in relation to arrangements for a student, means an entity directly involved in providing a program to the student under the arrangements.

Student means a student who is of compulsory school age or in the compulsory participation phase.

Flexible arrangements – State school

Clause 187 provides the chief executive may approve arrangements for a student enrolled at a State school that are to apply to the student instead of participation in the school's educational programs in the usual way.

Subclause (2) provides that section 186(2), 182(3), 182(4) and 182(6), except the definition **authorised entity**, apply to the chief executive and the student as if:

- (a) a reference to the authorised entity were a reference to the chief executive; and
- (b) a reference to the non-State school were a reference to the State school.

Part 3 Exemption from compliance with compulsory schooling requirement

Division 1 Preliminary

Definition for pt 3

Clause 188 provides that in this part, *exemption* means an exemption from compliance with section 180(1).

Division 2 Bases for granting an exemption

Attendance is impossible or should not be required

Clause 189 provides that the chief executive may issue an exemption for a child if the chief executive is reasonably satisfied the child cannot attend a State school or non-State school or it would be unreasonable in all circumstances to require the child to attend a State school or non-State school.

Division 3 Application process

Application for exemption

Clause 190 provides for how an application for an exemption must be made.

Subclause (1) provides that a parent of a child who is of compulsory school age may apply for an exemption for the child for a stated or indefinite period.

Subclause (2) provides that the application must be made to the chief executive and be in the approved form.

Subclause (3) provides the applicant must provide any other relevant information reasonably required by the chief executive to decide the application.

Lapsing of application

Clause 191 provides for the lapsing of an application for an exemption.

Subclause (1) provides the chief executive may make a requirement under section 190(3) for information to decide the application, by giving the applicant a notice stating:

- (a) the required information; and
- (b) the time by which the information must be given to the chief executive; and
- (c) that if the information is not given to the chief executive by the stated time, the application will lapse.

Subclause (2) provides that the time stated must be reasonable and in any case, at least 14 days after the requirement is made.

Subclause (3) provides the chief executive may withdraw the requirement, or part of the requirement, at any time.

Subclause (4) provides that before the state time ends, the chief executive may give the applicant a further notice extending the stated time if the chief executive is satisfied it would be reasonable in all the circumstances to give the extension.

Subclause (5) provides that if the applicant does not comply with the requirement within the stated time, or any extension, the application lapses.

Temporary exemption until application is decided

Clause 192 provides that section 180(1) does not apply to a parent of the child until 14 days after the chief executive gives notice to the applicant under section 193 or the application lapses.

Decision

Clause 193 provides that the chief executive must make a decision about an application for an exemption.

Subclause (1) provides that the chief executive must consider the application and either grant, or refuse to grant, the application.

Subclause (2) provides that if the chief executive decides to grant the application, the chief executive must as soon as practicable issue the exemption to the applicant.

Subclause (3) provides that if the chief executive decides to refuse to grant the application, the chief executive must as soon as practicable give the applicant an information notice about the decision.

Contents of exemption

Clause 194 provides for what must be included in an exemption, if the chief executive decides to issue an exemption.

Subclause (1) provides that this clause applies if the chief executive decides to issue an exemption.

Subclause (2) provides the exemption must state each of the following:

- (a) the day the exemption is issued;
- (b) the name of the child to whom the exemption relates;
- (c) if the exemption does not apply for an indefinite period—the day of its expiry;
- (d) any conditions on which the exemption is granted.

Imposition of conditions

Clause 195 provides that the chief executive may impose conditions on an exemption.

Subclause (1) provides that the chief executive, may in granting an application for an exemption, decide to impose conditions on the exemption that are relevant and reasonable.

Subclause (2) provides that if the chief executive decides to issue an exemption on conditions, the chief executive must as soon as practicable give the applicant an information notice about the decision.

Lesser period of exemption than that applied for

Clause 196 provides that the chief executive may grant an application for an exemption for a lesser period than applied for.

Subclause (1) provides that the chief executive may in granting the application decide to issue the exemption for a lesser period than that applied for by the applicant for the exemption.

Subclause (2) provides that if the chief executive decides to issue an exemption for a lesser period than that applied for by the applicant for the

exemption, the chief executive must as soon as practicable give the applicant an information notice about the decision.

Division 4 Cancellation of exemption

Grounds for cancellation

Clause 197 provides that each of the following is a ground for cancelling an exemption for a child:

- (a) the ground for the issue of the exemption no longer applies to the child; or
- (b) a condition of the exemption has been contravened.

Show cause notice

Clause 198 provides that the chief executive must give a parent of a child who is the subject of an exemption a show cause notice where the chief executive reasonably believes a ground exists to cancel the exemption for the child.

Subclause (1) provides that if the chief executive reasonably believes a ground exists to cancel the exemption for a child, the chief executive must give a parent of the child a notice under this section (a *show cause notice*).

Subclause (2) provides that the show cause notice must state the following:

- (a) the action (the *proposed action*) the chief executive proposes taking under this division;
- (b) the ground for the proposed action;
- (c) an outline of the facts and circumstances forming the basis for the ground;
- (d) an invitation to the parent to show within a stated period (the *show cause period*) why the proposed action should not be taken.

Subclause (3) provides that the show cause period must be a period ending at least 30 days after the show cause notice is given to the parent.

Representations about show cause notice

Clause 199 provides the parent may make written representations about the show cause notice to the chief executive in the show cause period.

Subclause (2) provides that the chief executive must consider all written representations (the ***accepted representations***) made under subsection (1).

Ending show cause process without further action

Clause 200 provides that if after considered the accepted representations for the show cause notice, the chief executive no longer believes the ground to cancel the exemption exists, the chief executive:

- (a) must not take further action about the show cause notice; and
- (b) must as soon as practicable, give notice to the parent that no further action will be taken about the show cause notice.

Cancellation

Clause 201 provides for the cancellation of an exemption.

Subclause (1) provides that this clause applies if, after considering the accepted representations for the show cause notice, the chief executive still believes the ground existing to cancel the exemption and believes cancellation of the exemption is warranted.

Subclause (2) provides that this clause also applies if there are no accepted representations for the show cause notice.

Subclause (3) provides that this chief executive may decide to cancel the exemption.

Subclause (4) provides that chief executive must as soon as practicable give an information notice about the decision to the parent.

Subclause (5) provides that the decision does not take effect until the last day to apply for a review of the decision or if the decision is reviewed, the last day to appeal against the review decision, or the day the appeal is decided.

Subclause (6) inserts three definitions for the section:

appeal, against a review decision, means appeal against the decision under chapter 15, part 2.

review decision, referencing section 396(2).

review, of a decision, means review of the decision under chapter 15, part 1.

Part 4 Other circumstances in which compulsory schooling requirement does not apply

Activities under Commonwealth law

Clause 202 provides that section 180(1) does not apply to the extent it is inconsistent with a law of the Commonwealth under which a person who is of compulsory school age may carry on an activity other than attending a State school or non-State school.

Home education

Clause 203 provides that section 180(1) does not apply to a child who is provisionally registered or registered for home education under part 5.

Subclause (2) provides that section 180(1) does not apply to a child:

- (a) if an application has been made, under part 5 for the provisional registration, or registration of the child for home education; and
- (b) the applicant has not been given notice of the decision on the application.

Child's exclusion or suspension

Clause 204 makes provision for where a child has been excluded or suspended.

Subclause (1) provides that section 180(1) does not apply:

- (a) to a child who is excluded from all State schools; or
- (b) for a child who is excluded from a particular State school, during the time reasonably required, after the exclusion for a parent of the child to arrange the child's enrolment with another State school or non-State school or to provisionally register, or register the child for home education under part 5; or
- (c) for a child who is excluded from particular State schools, during the time reasonably required, after the exclusion for a parent of the child to arrange the child's enrolment with a State school not affected by the exclusion or a non-State school; or to provisionally register, or register the child for home education.

Subclause (2) provides that section 180(1)(b) does not apply:

- (a) for a child who is suspended from a State school at which the child is enrolled, while the child is suspended and the child's access to an educational program under section 290(2) or 295 has not been arranged; or
- (b) for a child who is suspended from a non-State school at which the child is enrolled, while the child is suspended.

Subclause (3) provides that in this clause:

excluded means excluded under chapter 12, part 4.

suspended means suspended under chapter 12, part 4.

Child's illness

Clause 205 provides that section 180(1)(b) does not apply to a child for a period of not more than 10 consecutive school days during which the child is too ill to attend the State school or non-State school at which the child is enrolled.

Subclause (2) provides that a regulation may provide for the obligations of the parents of a child mentioned in section 205(1).

Infectious or contagious disease

Clause 206 provides that section 180(1)(b) does not apply to a child who is prevented from attending school because the child is, or is a member of a class of persons that is, subject to a direction given, or declaration, order or requirement made, under an Act or other law about an infectious or contagious disease or condition.

Application for enrolment pending

Clause 207 provides that section 178(1) does not apply to a child:

- (a) if an application has been made, under section 159, for the enrolment of the child at a State school; and
- (b) the applicant has not received notice of the decision on the application.

Apprentice or trainee under the VETE Act

Clause 208 provides that section 180(1) does not apply to a child who is, or for whom an arrangement has been made for the child to become, an apprentice or trainee under the VETE Act.

Part 5 Home Education

Division 1 Preliminary

Definitions for pt 5

Clause 209 provides a number of definitions for the part.

Home education, for a child, means education provided by the child's parents or a registered teacher, primarily at the child's usual place a residence. One or both of the child's parents may provide the education. The education is provided instead of enrolment and attendance at a school.

Provisional registration, of a child for home education, is defined in terms of provisional registration under section 211.

Registration, of a child for home education, is defined in terms of registration under section 217.

Standard conditions of registration are defined in section 221(1).

Who is eligible for provisional registration or registration

Clause 210 restricts who is eligible for provisional registration or registration for home education to those children who are of compulsory school age or in the compulsory participation phase.

Division 2 Applications for provisional registration

Provisional registration

Clause 211 requires applications for provisional registration for home education of a child to:

- be made in writing to the chief executive;

- state the applicant's name, the child's name and date of birth and the child's usual place of residence;
- be accompanied by evidence that is satisfactory to the chief executive that:
 - the child is eligible for registration or provisional registration; and
 - the applicant is a parent of the child. This requirement will primarily relate to evidence, or potentially a declaration, that the child is not enrolled at a State or non-State school.

Subclause (2) requires the chief executive to provisionally register the child and to notify the applicant as soon as practicable after the application is received. If the application is made compliance with section 211, the chief executive does not have discretion to refuse the provisional registration.

Subclause (3) provides that provisional registration ends 60 days after the notice is given under subsection (2).

Subclause (4) provides that if an application for registration (as opposed to an application for provisional registration) is made during the provisional registration period, the provisional registration continues until the day the chief executive notifies the applicant for registration of the decision on the application.

Division 3 Applications for registration

Procedural requirements for application

Clause 212 requires applications for registration for home education of a child to:

- be made in writing to the chief executive in the approved form;
- be accompanied by:
 - evidence that is satisfactory to the chief executive that:
 - the child is eligible for registration;
 - that the applicant is a parent of the child;
 - a summary of the educational program to be used or the learning philosophy to be followed. The summary should provide the chief executive with sufficient information on

which to be satisfied that the standard conditions of registration will be complied with, in particular that the child will receive a high-quality education;

- any other documents, identified in the approved form that the chief executive reasonably requires to decide the application.

Subclause (2) allows for the approved form to require information in the application to be verified by a statutory declaration.

Subclause (3) requires a separate application to be made for each child.

Withdrawal of application

Clause 213 allows a person to withdraw the application for registration by giving written notice to the chief executive. If a person's application for registration is withdrawn the child's provisional registration under section 216 is cancelled.

Chief executive must ensure compliance with procedural requirements

Clause 214 requires the chief executive to ensure that applications for registration meet the procedural requirements. If the chief executive considers that the requirements are not met, the chief executive must give a written notice to the applicant, requiring them to comply with the requirements. The notice must state a reasonable period of at least 28 days for compliance.

Subclause (2) allows the chief executive and the applicant to agree to an extended period for compliance with a notice under subsection (1). Such agreement must be reached prior to the end of the stated period in the notice.

Subclause (3) allows the chief executive to decide to refuse to grant an application if the procedural requirements are not met within the stated period or the agreed extended period.

Subclause (4) requires the chief executive to give the applicant an information notice if the application is refused under subsection (3). The decision also cancels the child's provisional registration under section 216.

Chief executive may require further information or documents

Clause 215 enables the chief executive to require an applicant to provide further information or documents in order to decide the application. Such requirements must be in writing and give the applicant a reasonable period of at least 28 days to provide the information or documents.

Subclause (2) allows the chief executive to require the information or documents to be verified by a statutory declaration.

Subclause (3) allows the chief executive and the applicant to agree to an extended period for compliance with a notice under subsection (1). Such agreement must be reached prior to the end of the stated period in the notice.

Subclause (4) allows the chief executive to decide to refuse to grant an application if the requirement for information or a document is not met within the stated period or the agreed extended period.

Subclause (5) requires the chief executive to give the applicant an information notice if the application is refused under subsection (4). The decision also cancels the child's provisional registration under section 216.

Child taken to be provisionally registered while application decided

Clause 216 applies where an application for registration for home education is made under section 212.

Subclause (2) provides that where the application for registration has been made, the child is provisionally registered, under this section, until the day the chief executive decides to grant the registration or the day the chief executive refuses to grant the registration and gives the applicant an information notice about the decision under section 218(2).

Subclause (3) requires the chief executive to notify the applicant of the provisional registration as soon as practicable after receiving the application for registration.

Decision

Clause 217 requires the chief executive to consider applications for registration and to decide whether the standard conditions of registration will be complied with. This is, of course, after the procedural requirements have been met.

Subclause (2) requires the chief executive to register a child if the chief executive is satisfied the standard conditions of registration will be complied with.

Steps to be taken after application decided

Clause 218 requires the chief executive to issue a certificate of registration to an applicant as soon as practicable after deciding to register the child for home education.

Subclause (2) requires the chief executive to give an applicant an information notice about the decision if the chief executive decides to refuse to grant the registration.

Failure to decide application

Clause 219 deals with the circumstances whereby the chief executive fails to decide an application within 90 days after its receipt. If these circumstances occur, the chief executive is taken to have decided to refuse to grant the registration. This section applies subject to subsection (3).

Subclause (2) provides that subsection (3) applies if the chief executive, under section 215(1), required an applicant to provide further information or a document.

Subclause (3) provides that the chief executive is taken to have decided to refuse to grant the application if the chief executive fails to decide the application within 90 days after either the application or the further information or document is received by the chief executive.

Minimum details to be recorded on certificate of registration

Clause 220 sets out the minimum details that must be included on a certificate of registration of a child. The details are relatively straightforward and factual.

Division 4 Conditions of registration

Standard conditions

Clause 221 provides that the registration of a child for home education is subject to a number of standard conditions. These are:

- that the child's parent must ensure the child receives a high-quality education. This is roughly equivalent to the requirement on parents who enrol their children in school to ensure that they attend;
- that the parent gives the chief executive a written report about the child's educational progress during their home education;
- that the child's parent notifies the chief executive of any change of address within 28 days of the change occurring. This will ensure that the registration details are always current.

Subclause (2) sets out further requirements in relation to the report mentioned in subsection (1)(b). The report must:

- be given to the chief executive at least 2 months before each anniversary of the registration, but not more than 3 months before that anniversary. This is to ensure that the report contains information about a significant portion of the student's progress during each year of registration;
- be in the approved form;
- be accompanied by any other documents identified in the approved form that the chief executive reasonably requires.

Imposition of conditions

Clause 222 enables the chief executive to impose relevant and reasonable conditions on a registration. The chief executive may impose these conditions at the time of granting the registration.

Subclause (2) requires the chief executive to give the applicant an information notice about any conditions imposed on the registration. The notice must be given as soon as practicable. It is likely that for administrative convenience the information notice requirements will be contained within the notice of the granting of registration.

Changing conditions

Clause 223 allows the chief executive to change the conditions of registration if there is a reasonable basis to make the change.

Subclause (2) requires the chief executive to give a notice to the parent of a child prior to changing the conditions. The notice must give particulars of the proposed change and notify the parent of their ability to make submissions within a reasonable period of at least 21 days. The chief

executive must then have regard to any written submissions made during that reasonable period.

Subclause (3) requires the chief executive to give the parent an information notice about the decision, if the decision is to change the conditions.

Subclause (4) provides that the change to the conditions takes effect on the day an information notice about the decision is given to the parent. The change to the conditions does not depend on the timing of a replacement certificate being issued.

Subclause (5) makes it clear that the chief executive's power to change conditions includes the power to add conditions to a registration that is not subject to conditions imposed by the chief executive. For example, a child is registered for home education without conditions, other than the standard conditions of registration. The chief executive may, under section 223, add conditions to that registration.

Replacing certificate of registration

Clause 224 applies if a child's parents receive an information notice about a change of conditions under section 223(3). The parent is required to return the certificate of registration to the chief executive within 14 days of receiving the information notice. The chief executive must issue a new certificate to replace the one returned by the parent.

Division 5 Cancellation of registration

Grounds for cancellation

Clause 225 sets out the grounds for cancellation of a child's registration for home education:

- a parent of the child has contravened a condition of the registration. This includes both the standard conditions of registration and those imposed or changed under division 4;
- the chief executive is not reasonably satisfied about the educational progress made by the child;
- the child was registered because of a materially false or misleading representation or declaration.

Show cause notice

Clause 226 requires the chief executive to issue a show cause notice to the parent of a child whose registration the chief executive proposes to cancel. In order to seek a cancellation the chief executive reasonable believe the grounds exist to cancel the registration.

Subclause (2) requires the show cause notice to state:

- the proposed action, i.e. the cancellation;
- the grounds for the proposed action;
- an outline of the facts and circumstances forming the basis of the grounds;
- an invitation to the parent to make a submission about the proposed action.

Subsection (3) requires that the show cause period, in which a submission may be made, must be at least 30 days after the show cause notice is given to the parent.

Representations about show cause notice

Clause 227 allows the parent to make written representations about the proposed cancellation within the period stated in the notice. The chief executive must consider all written representations provided within that period.

Ending show cause process without further action

Clause 228 deals with the situation where the chief executive has considered the parent's representations and does not believe the ground exists to cancel the registration. The chief executive must take no further action in relation to the show cause notice and give a notice to the parent that no further action will be taken on the show cause notice. The chief executive must give this notice as soon as practicable.

Cancellation

Clause 229 deals with the situation where the chief executive has considered the parent's representations, whether there are any or not, and still believes the ground exists to cancel the registration and believes the cancellation is warranted.

Subclause (3) provides the chief executive with the power to cancel the registration. If this is the chosen course of action, the chief executive must give an information notice about the decision to the parent as soon as practicable (subsection (4)).

Subclause (5) provides that the decision to cancel the registration takes effect on the day an information notice about the decision is given to the parent.

Return of cancelled certificate of registration to chief executive

Clause 230 applies if the chief executive decides to cancel the registration and the information notice has been given to the parent under section 229. The parent must return the certificate of registration to the chief executive within 28 days after being given the information notice.

Subclause (3) provides that the parent does not have to return the certificate until the last day to apply for a review of the decision, or if the decision is reviewed:

- the last day to appeal against the review decision; or
- if an appeal is started—the day the appeal is decided.

Subclause (4) provides definitions for the section:

appeal, against a review decision, means appeal against the decision under chapter 15, part 2.

review decision, referencing section 396(2).

review, of a decision, means review of the decision under chapter 15, part 1.

Division 6 Surrender of provisional registration or registration

Surrender

Clause 231 allows a parent to surrender the provisional registration or registration of a child. The surrender is to be in writing to the chief executive. The surrender takes effect on either the day the notice is given to the chief executive, or a later day if stated in the notice.

Subclause (3) requires the parent to return the certificate of registration to the chief executive within 14 days of the surrender taking effect.

Obligation to surrender

Clause 232 applies when a child who is provisionally registered or registered for home education stops receiving home education. A parent of the child must:

surrender the provisional registration or registration as soon as practicable by giving a written notice to the chief executive under section 231; and

advise the chief executive if the parent has enrolled the child in a school or has made application for enrolment in a school and advise of the name of the school.

Division 7 Miscellaneous**Simultaneous enrolment at State school prohibited**

Clause 233 prohibits a child who is provisionally registered or registered for home education from being enrolled at a State or non-State school at the same time as they are provisionally registered or registered.

Subclause (2) provides that a child is not eligible to be provisionally registered or registered for home education while the child is enrolled at a State school or non-State school.

Part 6 Employment of children**Employment of child who is of compulsory school age**

Clause 234 prohibits a parent of a child who is of compulsory school age employing or allowing the child to be employed in certain circumstances.

Subclause (1) provides that a parent of a child who is of compulsory school age must not employ the child, or allow the child to be employed during the time the child is required under this chapter to attend a State school or non-State school. The maximum penalty is 6 penalty units.

Subclause (2) provides that for subsection (1), a parent of a child who causes or allows the child to engage in any calling carried on by the parent by way of trade or for gain is taken to employ the child.

Subclause (3) provides that subsection (1) does not apply:

- (a) to the employment of a child under arrangements approved for the child:
 - (i) under chapter 9, part 2; or
 - (ii) under an apprenticeship or traineeship under the VETE Act;
- (b) while there is in force an exemption for the child under chapter 9, part 3.

Subclause (4) provides that subsection (1) applies subject to a law of the Commonwealth under which a person who is of compulsory school age may be employed.

Subclause (5) provides that a parent of a child who is of compulsory school age must not give to any of the following persons information which the parent knows to be false, about the age of the child or any other matter to which subsection (1) or (2) relates:

- (a) any person employing the child;
- (b) any person who, after the giving of the information, employs the child;
- (c) any person appointed under this Act.

The maximum penalty for this offence is 6 penalty units.

Chapter 10 Compulsory participation in education or training

Part 1 Key terms

Compulsory participation phase

Clause 235 defines the key term *compulsory participation phase*. This phase commences when a young person stops being of compulsory school age; that is when the young person turns 16 years of age or completes Year 10, whichever comes first.

The compulsory participation phase will conclude when the young person either gains a senior certificate, a certificate III or a certificate IV, has participated for 2 years in education or training options after the phase commences, or turns 17 years of age. **Senior certificate** is defined by the dictionary in schedule 4 to mean a certificate of achievement of that type issued under the *Education (Queensland Studies Authority) Act 2002*. **Certificate III** is defined by the dictionary to mean a qualification by that name under the Australian Qualifications Framework. **Certificate IV** is defined by the dictionary to mean a qualification by that name under the Australian Qualifications Framework. This framework defines all qualifications recognised nationally in education and training within Australia. The Ministerial Council on Education, Employment, Training and Youth Affairs endorsed the Australian Qualifications Framework to commence on 1 January 1995.

This term is key to the obligation placed on young people through their parents in section 243 of the Bill. When a young person is no longer in the compulsory participation phase, the obligations will cease.

Eligible options and providers

Clause 236 defines the terms *eligible option* and *provider* for each option. These terms are key terms setting out the types of options in which a young person can choose to participate to meet the obligation, and the providers who are able to provide each option. Each of the options is an eligible option for the purpose of the obligation in section 243. In addition, a young person may participate across a number of these options, provided the participation amounts to a full-time program. This is further explained in section 239.

Clause 236 sets out a table with each eligible option in the left hand column and the provider for the option in the right hand column.

The first education or training option is an educational program provided by a State school under this Act. State schools are established under section 15 of this Act.

Enrolment in a State school and participation in the educational program provided for the student is one option.

The second option is an educational program provided by a non-State school under the *Education (Accreditation of Non-State Schools) Act 2001*. Under that Act, non-State schools must be accredited or provisionally accredited to operate as a school (see section 10 of that Act). Furthermore, to be accredited, a school must meet accreditation criteria prescribed under

section 9 of that Act in a regulation. One of these accreditation criteria (subsection (c)) relates to a school's educational program. Sections 6 to 9 of the *Education (Accreditation of Non-State Schools) Act 2001* set out the criteria for the educational program.

Enrolment in a non-State school and participation in the educational program provided is another option.

The third option is a higher education course under the *Higher Education (General Provisions) Act 2003*. Under that Act, a higher education course may be provided by a university or by a non-university provider if the course has been accredited. This option is included to enable young people to continue a practice that occurs now, where the young person is enrolled with a school part-time, and also enrolled with a university in one or more first year subjects. In addition, the option will enable the academically brilliant young person to attend university full-time, even though the young person is still in the compulsory participation phase, and may not have achieved a senior certificate.

Enrolment at a higher education institution, including a university, and participation in a higher education course is the third option.

The fourth option is to participate in a course of vocational education and training by enrolling either with a TAFE institute or a registered training organisation. This option arises out of the framework established by the *Vocational Education, Training and Employment Act 2000*. This Act sets out the framework for the registration of training organisations and the accreditation of vocational education and training courses delivered by registered training organisations, including TAFE institutes. **Registered training organisations** are defined by the dictionary in schedule 4 by reference to section 14 of the *Vocational Education, Training and Employment Act 2000*.

Chapter 2, part 2 of the *Vocational Education, Training and Employment Act 2000* provides a scheme for the registration of training organisations, the accreditation of vocational education and training courses, and the issuing of nationally recognised qualifications and statements of attainment. Accredited courses ensure that the young person is able to be issued with a vocational education and training qualification or statement of attainment provided for under the Australian Qualifications Framework.

Enrolment with a TAFE institution or registered training organisation and participation in an accredited vocational education and training course is the fourth option.

The fifth option contains two options, namely an apprenticeship or a traineeship under the *Vocational Education, Training and Employment Act 2000*. Apprenticeships and traineeships are administered under chapter 3 of that Act. The vocational education and training component of an apprenticeship or traineeship is provided by a training organisation registered under that Act.

The final option is a departmental employment skills development program delivered by the chief executive of the department that administers the *Vocational Education, Training and Employment Act 2000*. Section 106C of that Act obliges the chief executive to ensure that employment skills development programs are developed to meet the diverse needs of young people in the compulsory participation phase, and that these programs are accessible by those young people. In addition, the chief executive may deliver departmental employment skills development programs under section 106C. The definition of *departmental employment skills development programs* in the dictionary in schedule 4 of the Bill makes reference to section 106C(2) of the *Vocational Education, Training and Employment Act 2000*. If an employment skills development program is provided by the chief executive under that section, it is an eligible option for participation.

Part 2 Participation in a program or course

Application of pt 2

Clause 237 explains that the part contains relevant definitions about what it means to participate in an eligible option, other than an apprenticeship or traineeship under the *Vocational Education, Training and Employment Act 2000*. Participation in an apprenticeship or traineeship is dealt with in part 3, section 242 of the Bill. The definitional provisions in part 2 apply to participation in any program or course and are essential to determine whether or not a parent is meeting their obligation under section 243.

What is participation

Clause 238 provides a definition of *participation* in a program or course.

Subclause (1) provides that a young person is participating in an eligible option only if the young person is enrolled with the provider in the relevant

program or course, and complying with the provider's attendance requirements for the program or course.

Subclause (2) clarifies that a provider's attendance requirements are the requirements about physically attending, at particular times, the provider's premises or another place. This means that a young person is participating in an eligible option, for example, if the young person is enrolled at a school for an educational program, and is physically attending the school or other place as directed by the school for the educational program.

Subclause (3) makes special provision for programs delivered in ways other than face-to-face. Despite subsection (2), where the program is a program of distance education, the requirement for attendance is to complete and return assigned work for the program. ***School of distance education*** is defined in the dictionary in schedule 4 to mean either a State school providing distance education, or a non-State school accredited or provisionally accredited under the *Education (Accreditation of Non-State Schools) Act 2001* to provide distance education.

Subclause (3) also provides that despite subsection (2) where the program is an external program, the provider's attendance requirements are its requirements about communicating with or contacting the provider for the purpose of participating in the program or course. ***External program*** is defined by the dictionary in schedule 4 to include an educational program under section 290(2), a program under arrangements approved under section 186 or 187 or another program or course for which the provider's requirements do not include physically attending, at particular times, the provider's premises or another place.

Full-time participation

Clause 239 provides a definition of what it means to be participating full-time in an eligible option. The obligation on parents in section 243 is to ensure that the young person is participating full-time. A reference to ***full-time*** participation is a reference to participation in an eligible option at a level that is full-time under the requirements of the option, and full-time participation includes part-time participation in two or more options to an extent that is at least equivalent to full-time participation in one option.

For example, a full-time state school program for a Year 11 student may consist of study of five subjects, requiring attendance at the school for 25 hours. Where a young person chooses to study only two subjects at the school (40% of a full-time load), the young person must fill the remaining 60% of another full-time program which is an eligible option, for example

a 60% full-time program at a TAFE. Another example may be a student engaged in one university subject worth 25% of a full-time load. This student would have to participate in one or more education or training options for the remaining 75% of a load. This may mean participation in four school subjects.

Note that this provision does not cater for the situation where a young person might want to study a part-time load, and part-time work. For the young person to do this, a decision would be required to be made, either by the Training Employment and Recognition Council under the *Vocational Education, and Training and Employment Act 2000*, or as a flexible arrangement under either this Act where the young person is enrolled in a school.

Where a young person wants to participate in a way that is less than full-time, the young person may apply for an exemption under section 249 of the Bill.

Allowed absence

Clause 240 provides that participation is taken to continue during an absence allowed by the requirements of the education or training option chosen by the young person. For example, where a young person is enrolled at a learning provider who requires written notice in case of absences caused by an illness, the young person will continue to be participating, even if the young person is not attending the program or course during the illness. The clause allows for the flexibility required across the range of settings and gives a great deal of autonomy to each learning provider in determining its administrative requirements.

Suspension or exclusion

Clause 241 makes provision for the situation where a young person is suspended or excluded from a provider.

Subclause (1) provides that if a young person stops attending the provider because the person has been suspended from the provider, the person's participation is taken to continue during the period of the suspension.

Subclause (2) provides that subsection (1) does not apply where a young person is suspended from a State school under chapter 12, part 4, division 1 or 2, if the person has been placed in an educational program under section 290(2) or 295. Under these sections, the principal is obliged to ensure the student has access to an educational program that allows the student to continue with their education during the suspension. The effect of

subsection (2) is that the young person must be participating in accordance with the requirements of that program, to meet the parental obligation in section 243.

Subclause (3) provides that if a young person stops attending a provider because the young person has been excluded from the provider, the person is taken to be continuing to participate in an eligible option at the same level as before the exclusion for the time reasonably required to resume participation in an eligible option. This means that a parent of a young person excluded from a provider will not be in breach of their obligation in section 243 for the reasonable time required to enrol and commence attending with another provider.

Clause 241 presupposes a system of suspension or exclusion with all the relevant providers of a program or course. These systems are diverse and determined differently for each type of provider. For example, suspensions and exclusions from State schools are governing by chapter 12. For non-State schools, rules about suspension and exclusions do not have any statutory basis, but may form part of the contractual relationship with the parent of the student.

Part 3 Participation in an apprenticeship or traineeship

Participation in an apprenticeship or traineeship

Clause 242 provides for participation in an apprenticeship or traineeship under the *Vocational Education, Training and Employment Act 2000*. Where a young person is an apprentice or trainee under that Act, the young person is taken to be participating full-time. This means that so long as the young person remains an apprentice or trainee, their parent will be meeting the obligation in section 243.

Part 4 Parents' obligation

Obligation to ensure participation

Clause 243 places an obligation on parents of a young person in the compulsory participation phase to ensure that the young person is participating full-time in an eligible option, unless the parent has a reasonable excuse.

Subclause (1) provides that it is an offence for parents to fail to ensure the young person's participation. The maximum penalty for the first offence is 5 penalty units, which currently would equate to a maximum fine of \$375, and the maximum penalty for the second and subsequent offences is 10 penalty units, which would equate to \$750. The key terms in this provision are defined in part 2 and part 3 of chapter 10. *Compulsory participation phase* is defined in clause 235, *Eligible option* is defined in section 236, and sections 238 to 242 clarify what it means to participate in an option. *Full-time* participation is defined in section 239.

Subclause (2) provides a non-exhaustive list of reasonable excuses for parents. Firstly, it is a reasonable excuse if the young person lives with another parent and the first parent believes, on reasonable grounds, that the other parent is ensuring the young person's participation. This excuse is to cater for the situation where the young person lives with one parent, and the other parent believes that the first parent is meeting the obligation. Secondly, it is a reasonable excuse if in all the circumstances, the parent is not reasonably able to control the young person's behaviour to the extent necessary to ensure the young person participates. This may be the situation where the parent has no say in the young person's life, perhaps because the young person has moved away from home. It may also be a reasonable excuse if the parent is suffering some illness or disability and is unable to ensure the young person's participation because of the illness or disability. It is important to note that these two reasonable excuses are simply examples and not intended to limit the scope of reasonable excuses in any way. Other situations may exist where the parent should be reasonably excused for reasons that are very different from those set out in subsection (2).

Exceptions to obligation

Clause 244 provides for exceptions to the obligation under section 243. These exceptions recognise that young people may want to choose employment or a non-departmental employment skills development

program, but highlights the fact that the underpinning policy of the legislation is that it is preferable that young people are participating in an eligible option. Employment and non-departmental employment skills development programs have been included in the legislation as exceptions in recognition that a young person's learning opportunities may be diminished by undertaking one of these exceptions and that the primary objective is for young people to be participating in education or training.

Subclause (1) provides that the obligation in section 243(1) does not apply to the extent provided under an exemption in force under chapter 10, part 5. Chapter 10, part 5 sets out the grounds for granting an application and the process for applying for an exemption.

Subclause (2) provides that the obligation in section 243(1) does not apply where the young person is in paid employment for at least 25 hours each week. Subclause (2) further provides that the obligation does not apply where the young person has an employment exemption and is in paid employment for less than 25 hours each week, or unpaid employment. **Employment exemption** is defined in the dictionary in schedule 4 to mean an employment exemption in force under chapter 5, part 3, division 5A of the *Vocational Education, Training and Employment Act 2000*. Under that Act, the Training and Employment Recognition Council has the power to grant an employment exemption to a young person who wishes to participate through employment for less than 25 hours.

Subclause (3) provides that the obligation in section 243(1) does not apply if the young person is enrolled with an entity providing a non-departmental employment skills development program and attending the entity for the program. Under section 183D of the *Vocational Education, Training and Employment Act 2000*, the Training and Employment Recognition Council can recognise non-departmental employment skills development programs that are not provided by the department within which the Act is administered (the Department of Employment and Training). These programs may be provided by the Commonwealth or by community organisations, but need to be recognised and included on the register before a young person's participation in the program will excuse a parent from the obligation under section 243(1).

Subclause (4) clarifies that the obligation in section 243(1) does not apply to the extent of any inconsistency with a law of the Commonwealth under which the young person in the compulsory participation phase may carry on an activity other than participation in an education or training option. For example, where a young person is job-seeking as an eligible activity under the Youth Allowance Scheme.

Subclause (5) provides that the obligation in section 243(1) does not apply if the young person is provisionally registered or registered for home education under chapter 9, part 5.

Subclause (6) defines *employment exemption* for the section as meaning an employment exemption in force under the VETE Act, chapter 5, part 3, division 5A.

Notice to, and meeting with, parent

Clause 245 provides for the giving of an information notice to, and the holding of a meeting with a parent who is in breach of the obligation.

Subclause (1) clarifies that the clause applies if an authorised officer reasonably suspects that a young person is in the compulsory participation phase and is not participating full-time in an eligible option. *Authorised officer* is defined by subsection (6) to mean the chief executive or an officer of the department authorised by the chief executive for section 245. Before the processes in section 245 can take place, the authorised officer must firstly reasonably suspect that the young person is in the compulsory participation phase, and secondly reasonably suspect that the young person is not participating full-time in an eligible option.

Subclause (2) provides that the officer may give a parent of the young person a notice in the approved form about the parent's obligation under section 243(1). The form is to be approved by the chief executive under section 437. The notice will inform the parent of their legal obligation to ensure the young person's full-time participation in an eligible option. In addition, the notice may include information about specific eligible options available in the particular area.

Subclause (3) provides that the officer may also meet with the parent to discuss the obligation. This is an important step that must be fulfilled before the commencement of a proceeding against the parent (see section 246).

Subclause (4) provides that if the officer has taken reasonable steps to meet with the parent, but no meeting is held, the officer may give the parent a warning notice in the approved form. This second notice is an alternative to holding the meeting under section 246, which sets out the steps that must be taken before a proceeding can be commenced against a parent. While this step represents the final step in the official process undertaken by an authorised officer prior to commencing a proceeding for the offence, it should be noted that in practice several notices may be issued to a parent

and several meetings may be held with a parent over a period of time to ensure compliance with the requirements.

Subclause (5) clarifies that an authorised officer under this clause is a public official performing a function authorised by this Act for the purpose of section 14 of the *Police Powers and Responsibilities Act 2000*. This will enable an authorised officer to seek help from a police officer in giving the warning notice to the parent or hold the meeting with the parent.

Subclause (6) provides the definition of an authorised officer for section 245. The authorised officer is either the chief executive, or an officer of the department authorised by the chief executive to undertake these roles.

Limits on proceedings against a parent

Clause 246 provides for the limits on proceedings against a parent. Firstly, proceedings for an offence may only be brought by the chief executive or with the chief executive's consent. Secondly, a proceeding is not to be brought unless the parent has been given a notice under section 245(2), and at least one meeting has been held under section 245(3) or the parent has been given a warning notice under section 245(4).

Subclause (2) provides that the chief executive of the department in which the *Child Protection Act 1999* is administered is not liable to be prosecuted for an offence in relation to a young person of whom the chief executive has been granted guardianship under the *Child Protection Act 1999*.

Part 5 Exemptions from compliance with compulsory participation requirements

Division 1 Bases for granting an exemption

Explanation

Clause 247 explains that the division provides for the bases on which the chief executive may grant an exemption to a young person. If the chief executive grants an exemption, the parent will not have to comply with section 243(1) to the extent of the exemption.

Participation is impossible or should not be required

Clause 248 provides that the chief executive may grant an exemption, which either fully or partially excuses a young person from participation, in two circumstances. Firstly, the chief executive may grant an exemption if satisfied the young person cannot participate in any education or training option. For example, a young person may not be able to participate in any education or training option because of a long-term illness. The second basis for granting an exemption is when the chief executive is satisfied that it would be unreasonable in all the circumstances to require the young person to participate in any education or training option. For example, it may be unreasonable to require a young person whose parent is terminally ill, or a young person who has just become a parent, to participate full-time.

Division 2 Application process

Application for exemption

Clause 249 provides for the process of applying for an exemption.

Subclause (1) provides that a young person or a parent of a young person may apply to the chief executive for an exemption.

Subclause (2) sets out the requirements for the application:

- it must be made in the approved form;
- it must state the period for which the exemption is sought; and
- if the application is made by a young person, it must include the signed consent of a parent of the young person.

Subclause (3) deals with the requirement for the application to include the parent's signed consent. If the chief executive is satisfied that it would be appropriate in all the circumstances, the chief executive may accept the application which does not include parental consent. This may be relevant where the young person lives independently, or where the young person's parent is simply not interested in the young person's participation, or relevant in the young person's life. In addition, the chief executive may also accept an application made by the parent, where the young person is not capable of making their own application.

Subclause (4) provides that the young person or their parent, applying for an exemption must provide any other relevant information reasonably required by the chief executive to decide the application. For example, the

chief executive may require further information about the young person's medical condition if an exemption is sought on the ground that it would be unreasonable to require participation because of the young person's health. This subclause should be read in conjunction with section 250, which sets out the way in which the chief executive makes such a request.

Subclause (5) provides that the chief executive must make the decision on the application as soon as practicable. This subclause should be read in conjunction with section 251 which provides that once a young person or their parent, has applied to the chief executive for an exemption, the young person does not have to participate while the chief executive is making the decision. This will ensure that the young person, or parent, is not disadvantaged by a delay in decision-making.

Lapsing of application

Clause 250 provides for circumstances where the application may lapse where an applicant has not complied with a request for further information (see subsection (5)). If the chief executive wishes to make a requirement under section 249(4), this may be done by giving the applicant a notice stating the information which is required, the time by which the information is to be provided and that, if the information is not provided by that time, the application will lapse.

Subclause (2) provides that the time within which the information is to be given must be reasonable, and must be at least 14 days after the requirement is made.

Subclause (3) provides that the chief executive may withdraw the request or part of the request at any time.

Subclause (4) provides that the chief executive may give the applicant a further notice extending the time stated, where the chief executive is satisfied that it would be reasonable in all the circumstances to extend the time. This clause serves to prevent a situation where a person is excused from participating under section 251 only because they have applied for an exemption without providing sufficient information for the application to be decided.

Subclause (5) provides that the application lapses if the applicant does not provided the further information requested. Once the application has lapsed, the obligation is again on the parent to ensure the young person participates.

Temporary exemption until application is decided

Clause 251 provides for a temporary exemption for the time after an application has been lodged and before a decision is made.

Subclause (1) provides that if the application is made before the young person starts the compulsory participation phase, the obligation on the parent to ensure a young person participates (see section 243(1)) does not apply until 14 days after the chief executive gives notice to the applicant under section 252 or until the application lapses.

Subclause (2) makes it clear that if an application is made while an existing exemption is in force, the existing exemption continues to apply until 14 days after the chief executive gives notice to the applicant under section 252, or until the application lapses.

Decision

Clause 252 provides that the chief executive must make a decision about an application for an exemption.

Subclause (1) provides the chief executive must consider the application for an exemption and either grant, or refuse to grant, the application.

Subclause (2) provides that if the chief executive decides to grant the application, the chief executive must as soon as practicable, issue the exemption to the applicant.

Subclause (3) provides that if the chief executive decides to refuse to grant the application, the chief executive must as soon as practicable give the applicant an information notice about the decision.

Contents of exemption

Clause 253 provides for the contents of an exemption where the chief executive has decided to issue the exemption. The exemption is required to state the day on which it is granted, the name of the young person to whom it relates, and whether it is full or partial. If it is partial, the exemption must also state the extent to which the person is excused from participation. For example, an exemption may be approved for the young person to participate only part-time at school or TAFE. In addition, the exemption must also state whether it applies until the end of the person's compulsory participation phase or only until a stated earlier time. For example, the exemption may be for one term only, or may be until the young person turns 17, in which case the participation requirement no longer applies. Finally, the exemption must include any conditions on which the

application is granted. For example, the exemption may be issued on the basis that the young person is travelling overseas for a stated period. The exemption may be issued on the condition that the young person is overseas, and that it falls away if the young person returns home before anticipated.

Imposition of conditions

Clause 254 provides that the chief executive may impose conditions in granting an application for an exemption.

Subclause (1) provides that the chief executive may in granting an application for an exemption, decide to impose conditions on the exemption that are relevant and reasonable.

Subclause (2) provides that if the chief executive decides to issue an exemption on conditions, the chief executive must as soon as practicable give the applicant an information notice about the decision.

Lesser period of exemption than that applied for

Clause 255 provides that the chief executive may grant an application for a lesser period of time than applied for.

Subclause (1) provides that chief executive may, in granting an application for an exemption, decide to issue the exemption for a lesser period than that applied for by the applicant.

Subclause (2) provides that if the chief executive decides to issue an exemption for a lesser period than that applied for by the applicant for the exemption, the chief executive must as soon as practicable give the applicant an information notice about the decision.

Chapter 11 Student accounts

Part 1 Preliminary

Explanation and purposes

Clause 256 explains the purposes for keeping a student account for every young person in the compulsory participation phase. The purposes are: to support the QSA in performing its certification function and to enable the chief executive to carry on planning and re-engagement activities, as set out in section 6. The requirements regarding student accounts in this part are underpinned by the purposes set out in this section.

Part 2 Opening student accounts for young persons of compulsory school age

When an account must be opened

Clause 257 requires that a student account be opened within one year before the end of a young person's compulsory attendance phase and before the start of their compulsory participation phase. For most young people, it is anticipated that a student account will be opened when the young person is in Year 10.

Who must open an account

Clause 258 requires that the account be opened either by the principal of a State school or non-State school if the young person is enrolled at a school, or by the chief executive. To ensure a young person who has received an exemption has an account with the QSA, the chief executive may open the account for this young person in the absence of a school principal undertaking this function.

How an account is opened

Clause 259 explains the process for opening a student account. To open an account for a young person, the responsible person under section 258 must give notice to the QSA of the following information: name and any previous names; address; date of birth; sex; parent's name and address; if the person is an Aborigine or Torres Strait Islander or from a non-English speaking background; the eligible option in which the young person

proposes to participate in when the start the compulsory participation phase; whether their participation in the eligible option will be full-time and other information prescribed under a regulation.

Young person's telephone number

Clause 260 relates to the provision of a young person's telephone number to the QSA when opening a student account for a young person under section 259.

Subclause (1) provides that subsection (2) applies if a student account is opened for a young person under section 259.

Subclause (2) provides that the person opening the student account may give a notice to the QSA advising of the young person's telephone number. The number may only be provided to the QSA if the young person has consented to the giving of the notice to the QSA. It is intended that consent need not be given in writing.

Subclause (3) requires the QSA to record the information in the young person's student account as soon as practicable after receiving the notice.

Part 3 Student account phase

The student account phase

Clause 261 defines the student account phase for the purposes of the requirements of this part. The *student account phase* is the period when a young person is in the compulsory participation phase or when they are not yet in that phase but a student account has been opened for them, for example, to ensure that changes to enrolment details are captured for a young person that changes their enrolment with a provider before completing Year 10 or turning 16.

Obligation to notify enrolment

Clause 262 provides that if a young person in the student account phase enrolls in a program or course with a provider, the provider must give notice to the QSA of the following information: name and any previous names; address; date of birth; the eligible option in which the young person is participating in, or proposes to participate in; the components of the eligible option being undertaken, or proposed to be undertaken; the date of

enrolment in the program or course; the date the young person started or proposes to start, to comply with the provider's attendance requirements for the program or course; if the young person's participation in the eligible option is or will be full-time and the name and type of the provider.

Obligation to open an account

Clause 263 sets out the process for opening a student account for a young person where the QSA receives a notice under section 262 and the young person does not have a student account.

Subclause (1) provides that this section applies if the QSA receives a notice under section 262 about a young person who is in the compulsory participation phase but does not have a student account.

Subclause (2) provides that the QSA may give the provider a notice asking it to open a student account for the young person.

Subclause (3) provides that on receiving the request, the provider must open a student account for the young person by giving the QSA the following information: the information mentioned in section 259(a) to (g) and (j); the eligible option of the provider in which the person is participating or proposes to participate; whether the person's participation is or will be full-time and any other eligible options in which person is participating, or has participated in since starting the compulsory participation phase of which the provider is aware.

Young person's telephone number

Clause 264 relates to the provision of a young person's telephone number to the QSA when a student account is opened for a young person under section 263(3).

Subclause (1) provides that the subclause (2) applies to a student account that is opened for a young person by a provider under section 263(3).

Subclause (2) provides that the provider opening the account may give notice to the QSA of the young person's telephone number if the young person has consented to the giving of the notice to the QSA. It is intended that consent need not be giving in writing.

Subclause (3) requires the QSA to record the information in the young person's student account as soon as practicable after receiving the notice.

Obligation to notify other matters

Clause 265 requires providers to give notice to the QSA about matters in certain circumstances.

Subclause (1) provides that this clause applies to a provider with which a young person in the student account phase is enrolled.

Subclause (2) requires a provider to give notice to the QSA at the times prescribed under a regulation, if:

- (a) the provider is aware that information previously notified to the QSA under this part, has changed or is incorrect. The notice should also give the QSA the new or correct information.
- (b) the young person stops being enrolled with the provider. The notice should also give the QSA the date the young person stopped being enrolled with the provider.
- (c) the provider is aware that the young person has died. The notice should give notice to the QSA of the young person's death.

Subclause (3) provides that subsection 264(2)(a) does not apply to information mentioned in section 259(h).

Chief executive of VETE department may give notice on behalf of certain providers

Clause 266 allows the chief executive of the Department of Employment and Training to provide information required as part of the student account to the QSA on behalf of TAFE institutes, registered training organisations and any entity registered as an approved employment skills development program with that Department. This must occur with the written agreement of the chief executive of the Department of Employment and Training through a notice from the provider. Where the Department of Employment and Training provides this information to the QSA, the provider will be taken to comply with the requirements of providers under chapter 11.

Part 4 Use and disclosure of information**Use and disclosure by the QSA**

Clause 267 sets out the requirements for the use and disclosure of information contained in the student account.

Subclause (1) provides that the QSA will be able to utilise student account information for the purpose of its certification function under the *Education (Queensland Studies Authority) Act 2002*.

Subclause (2) provides that the QSA may disclose student account information to providers to verify the accuracy of the information.

Subclause (3) provides that the QSA must provide the chief executive with the aggregated information that the chief executive asks for, to enable the chief executive to carry on planning activities as set out in section 6(a).

Subclause (4) provides that each request for aggregated information made by the chief executive must be detailed in the QSA's annual report. ***Aggregated information*** is defined in the dictionary in schedule 4.

Subclause (5) provides that to enable the chief executive to carry out the chief executive's re-engagement activities as set out in section 6(b), the QSA must give the chief executive any of the prescribed information that the chief executive asks for about a stated young person or all young persons who according to their student account:

- (a) is or are in the compulsory participation phase; and
- (b) has or have stopped being enrolled with a provider; and
- (c) after a period of at least 3 months, has or have not re-enrolled with a provider.

Subclause (6) provides that if the name and address of a young person's parent are recorded in a student account for the young person, the QSA must give the parent access to the student account information about the young person to assist the parent to comply with their obligation in section 243(1).

Subclause (7) provides that if there is a student account for a person, the QSA must give the person access to the information recorded in the account.

Subclause (8) defines the terms ***prescribed information*** and ***student account information*** for the purposes of this clause.

Disclosure by chief executive to appropriate entities

Clause 268 provides for the chief executive to disclose information about a young person in the compulsory participation phase for the purpose of carrying out the chief executive's re-engagement activities. Only the following information can be provided: name and any previous names; address; date of birth; the last eligible option in which the young person

participated or the chief executive is aware that the young person have participated and other information prescribed under a regulation. The chief executive may only disclose this information to an entity that the chief executive considers appropriate. In practice, the chief executive or chief executive's delegate should only be providing this information as necessary to a particular entity that is directly assisting with the re-engagement of a particular young person.

It is envisaged that at a local level this may be a provider of education or training, a youth support organisation or a Commonwealth, State or local government entity which provides services or support to young people in the areas of education, family support, health or housing. This clause recognises the importance of working collaboratively with other entities who may already be case-managing a young person or who would be an important stakeholder in the young person's re-engagement. Whilst the clause does not name all potential entities and set out the exact process for disclosure by the chief executive, it is intended that protocols at a local level will govern the way in which information is shared and ensure that young people's privacy is protected. Importantly, section 276 also serves to safeguard young people's information by attaching a penalty to the misuse of information by these entities.

Part 5 Involvement of certain non-State school entities

Entities to which this division applies

Clause 269 explains that part 5 applies to the Association of Independent Schools of Queensland Inc (the "AISQ"), the Queensland Catholic Education Commission (the "QCEC") and the VETE chief executive. The part is about the involvement of these bodies in relation to the chief executive's planning activities, making of certain regulations under the Act and the provision by the QSA of aggregated information to those entities. The part recognises the special role played by the AISQ and QCEC in the delivery of senior secondary education in Queensland.

Consultation about planning

Clause 270 provides that in carrying on the planning activities provided for in section 6(a), the chief executive must consult regularly with the AISQ, QCEC and the VETE chief executive.

Consultations about proposed regulations

Clause 271 provides that before recommending to the Governor in Council about making a regulation under section 259(j), 265(2) or 272, the Minister must consult with the AISQ, QCEC and the VETE chief executive. The regulation that may be made under section 259(j) relates to other information which may be required to be provided for the purpose of opening a student account. The regulation to be made under section 265(2) is to provide for the times when the provider must give notice to the QSA about any change to student account information or the young person stops being enrolled with the provider or the young person dies. The regulation to be made under section 272 will govern the times when aggregated information is to be provided by the QSA to the AISQ, QCEC and the VETE chief executive as well as the type of aggregated information that is to be provided.

The requirement that the Minister must consult with those bodies will ensure that their views are taken into account before the regulations are made. This will not preclude the Minister from consulting with other bodies who will be affected by the making of a regulation, such as, for example, other learning providers.

Aggregated information

Clause 272 provides that the QSA must give the AISQ, QCEC and the VETE chief executive the aggregated information prescribed by regulation, at the times prescribed by regulation. *Aggregated information* is defined in the dictionary in schedule 4 to mean information about young people in the student account phase that comprises or includes, or is derived from, information given to the QSA under chapter 11 and could not reasonably be expected to result in the identification of any of the persons to whom it relates. Information which may be provided under this clause could be, for example, statistical information about the intended learning options of young people in schools affiliated with AISQ or QCEC respectively, or statistical information about the number of young people disengaging from learning from those schools.

Part 6 Miscellaneous

Student visa holder

Clause 273 applies to part 2 which relates to opening student accounts for young people of compulsory school age and part 3 which relates to the student account phase requirements. The clause removes student visa holders from any requirements regarding the student account unless the student visa holder provides their written agreement to have a student account opened and information stored with the QSA.

Student visa holder means a person who holds a student visa issued under the *Migration Act 1958* (Cwlth).

Closing of account

Clause 274 requires the QSA to close a student's account as soon as practicable after the QSA becomes aware of the student's death. The section only applies if the QSA has an open student account for the person and the person dies.

Transitional

Clause 275 clarifies that despite section 235, a young person is not in the compulsory participation phase if the person turned 15 years or completed year 10 before 1 January 2006.

Confidentiality

Clause 276 is a confidentiality provision, which protects personal information collected about a student in the student account phase under the Bill. *Student account phase* is defined by section 261.

Subclause (1) provides that the section applies to a person who, in connection with administration of chapter 10 or this chapter, has gained or has access to personal information about a young person in the student account phase. It applies to the chief executive or a public service employee of the Department of Education and the Arts (note that teachers in state schools are public service employees). It applies to employees of providers and the QSA, and it applies to an entity or its employees to whom the chief executive has provided information under section 268. Section 268 provides that the chief executive may disclose certain personal information about a young person who has disengaged from education or

training to another entity to help carry on re-engagement activities. The re-engagement activities are set out in section 6(b). The range of persons covered by the section thus is very wide. **Employee** is defined for this section by subclause (4). It should be noted that the provision captures employees who have since left the department, the QSA, a provider or entity (see subsection (3)).

Subclause (2) makes it an offence for the person to make a record of the information or disclose the information to anyone else, except in certain circumstances. A person may disclose the information for a purpose of chapter 10 or this chapter. This exception enables the QSA to provide the chief executive with personal information about young people who have disengaged from education or training, and it enables the chief executive to provide the information to another entity for the purpose of carrying on the re-engagement activities. However, it does not enable that other entity to disclose the personal information to another entity, even if it is for the purpose of following up with the young person, unless the entity has the consent of the young person. The second exception listed in subclause (2) is where the person to whom the information relates has consented to the recording, disclosure or access to the information by someone else. The third exception is where the disclosure occurs in compliance with lawful processes requiring production of documents or giving of evidence before a court or tribunal. This would enable the information to be, for example, subpoenaed for production in court. The final exception is where the use or disclosure is permitted or required by another Act, such as for example a disclosure made under the *Evidence Act 1977*.

A maximum penalty of 50 penalty units applies to recording information or disclosing the information to someone else in contravention of subclause (2).

Subclause (3) provides that subclause (2) continues to apply to personal information about a young person in the student account phase after the phase ends.

Subclause (4) defines key terms for this section only.

Disclose is defined to include giving access to the information.

Employee of a provider, the QSA or another entity is defined inclusively to include a person appointed to a position with the entity, a person engaged by the entity under a contract for services and an unpaid employee of the entity. For example, a parent volunteer helping at a school may be an employee of a provider captured by the confidentiality provision.

Personal information is defined to mean information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. This definition is intended to capture the same information that is intended to be covered by *Information Standard 42: Information Privacy*. Any information collected or come into contact with as a result of an opportunity provided as a result of this Act, which is capable of identifying an individual young person, will be captured by the confidentiality provision, subject to the stated exceptions.

Delegation by chief executive

Clause 277 provides for the delegation of the chief executive's powers. Under subclause (1) the chief executive may delegate the chief executive's powers under chapter 10 or this chapter to an appropriately qualified officer or employee of the Department of Education and the Arts or the Department of Employment and Training. **Appropriately qualified** is defined by subclause (3) as including having qualifications, experience or standing appropriate to exercise the power. Subclause (3) uses the example of standing of a person's classification level within the public service.

Chapter 12 Good order and management of State educational institutions and non-State schools

Part 1 Preliminary

Definition for ch 12

Clause 278 provides that for chapter 12 **court** means the Childrens Court for an application or appeal relating to a child or otherwise a Magistrates Court.

Part 2 Behaviour plans for State schools

Definition for pt 2

Clause 279 defines for part 2 that an *approved behaviour support plan* for a State school means a student behaviour support plan approved for the school under section 281(5) or 283(3).

Requirement for approved behaviour plan for a State school

Clause 280 requires that a State school principal must ensure that the school has an approved behaviour plan. A transitional provision, at section 457, provides that an existing behaviour management plan for a school is taken to be an approved behaviour plan for 6 months after commencement.

Principal is responsible for developing behaviour plan

Clause 281 provides that the principal is responsible for developing the student behaviour support plan.

Subclause (1) requires that the principal must ensure a process is established for developing the plan.

Subclause (2) provides that in developing the plan, the principal must consult with the following people:

- the parents of children enrolled at the school; and
- the school's staff and students.

Subclause (3) provides that the plan must achieve the following:

- promote a safe and supportive environment at the school so all members of the school community may work together in developing acceptable standards of behaviour to create a caring, productive and safe environment for learning;
- promote an effective teaching and learning environment at the school, that allows positive aspirations, relationships and values to develop; and
- foster mutual respect among staff and students at the school; and
- encourage all students attending the school to take increasing responsibility for their own behaviour and the consequences of their actions.

Subclause (4) requires that the plan must align with the department policies about the management of student behaviour. For example, this includes the department's *The Code of School Behaviour*.

Subclause (5) requires that the plan is required to be approved by the chief executive and the plan does not take effect until it has been approved. It is envisaged that is delegated to the principal's supervisor.

Implementation of plan

Clause 282 requires that the principal must take reasonable steps to ensure that the approved behaviour plan is implemented consistently, fairly and reasonably.

Review of plan

Clause 283 requires that the principal must ensure that the plan is reviewed at least once every three years.

In regard to developing the new plan the plan must be developed in accordance with subclause (2) in relation consultation. Under subclause (3) the reviewed plan does not take effect unless it is approved by the chief executive. It is envisaged that is delegated to the principal's supervisor. The reviewed plan must also meet the requirements of section 281(3) and 281(4).

Plan to be available for inspection

Clause 284 requires that the principal must keep a copy of the approved student behaviour support plan for the school available for inspection by interested persons free of charge at the administration office. The plan can be available in written or electronic form. It is envisaged that the plan will form part of the enrolment package which will include the enrolment agreement and other relevant policies such as the dress code and homework policy.

Copies of plan to be given to parents and students

Clause 285 provides that a copy of the plan must be given to parents and students in prescribed circumstances.

Subclause (1) provides that as soon as practicable after a behaviour plan is approved the State school principal must take reasonable steps to ensure a copy of the plan is given to:

- a parent of each of the school's students who is a child; and
- each other student of the school.

Subclause (2) provides that subsection (1)(a) does not apply if the parent is satisfied that it would be inappropriate in the circumstances for the parent to be given a copy of the plan. The example provided is where the student is living independently of his or her parents.

Subclause (3) provides that if subsection (2) applies the principal must take reasonable steps to ensure that a copy of the behaviour plan is given to the student.

Copies of plan to be given to applicant for enrolment

Clause 286 provides that if a person applies to enrol someone at a State school under section 159, the principal of a State school must give the person a copy of the approved behaviour plan for the school.

Part 3 Detention of students enrolled at State schools

Detention

Clause 287 applies to students enrolled at a State school.

Subclause (2) provides the head of power for a principal or teacher of the school to detain the child as a punishment for the following grounds:

- disobedience;
- misconduct;
- wilful neglect to prepare homework; or
- for another breach of school discipline.

Subclause (3) sets the maximum periods of detention that can be imposed under subsection (2) and these must not be more than:

- 20 minutes during the school lunch recess; or
- one-half hour aft the school program for the day is finished.

This provides for example that if a student chooses not to complete their homework a teacher may detain the student for a maximum of 20 minutes

at lunchtime. The intent of the clause is that for a breach there is one period of detention not exceeding the maximum timeframe allowed. A teacher requesting a student to remain for a couple of minutes after the class is not a detention.

Subclause (4) requires that if the principal or the teacher proposes to impose a period of detention after the school program has finished for the day they must inform the parent of the proposed detention prior to imposing the detention. This clause has been included so that the parent is aware of the proposed detention and can make alternative transport arrangements if the detention is to proceed. The detention must not proceed unless the parent has been informed.

Subclause (5) provides that subsection (4) does not apply where the principal or teacher is satisfied it would be inappropriate in the circumstances to inform a parent of the proposed detention. One example of this is provided which includes where a student is living independently of his or her parents.

Part 4 Suspension, exclusion and cancellation of enrolment of, and behaviour improvement conditions for, State school students

Division 1 Suspension of students

Grounds for suspension of student

Clause 288 sets the grounds for suspending a student which include three grounds:

- disobedience by the student;
- misconduct of the student; or
- other conduct of the student that prejudicial to the good order and management of the school or State school.

Suspension of student

Clause 289 provides the head of power for the principal to suspend a student if he or she is reasonably satisfied a ground required under section 288 exists.

Subclause (2) provides that the principal may suspend the student from the school for either:

- not more than 5 school days; or
- if the principal is satisfied the behaviour was so serious that the suspension should be for longer than 5 school days then can suspend but not more than 20 school days.

Subclause (3) requires that the principal must give the student a notice stating that the student is suspended, the reason for the suspension and the period of suspension.

Subclause (4) requires that if the suspension is for more than 5 school days the notice must also state that the student may make a submission against the suspension to the principal's supervisor and the title, name and address of the principal's supervisor and the way in which the submission can be made.

Subclause (5) provides if the student is a child, as soon as practicable after the giving of the notice, the principal must take reasonable step to:

- if the suspension is not more than 5 school days—contact a parent of the student to discuss the student's behaviour that led to the suspension.
- if the suspension is more than 5 school days—meet with a parent of the student to discuss the student's behaviour that led to the suspension.

Subclause (6) provides that subsection (5) does not apply where the principal or teacher is satisfied it would be inappropriate in the circumstances to contact, or meet with the parent. One example of this is provided which includes where a student is living independently of his or her parents.

Subclause (7) provides that if subsection (6) applies in regard to subsection (5)(b) the principal must take reasonable steps to meet with the student to discuss the behaviour that led to the suspension. The student may be accompanied by an adult during the meeting.

Continuing education during suspension

Clause 290 sets requirements about continuing education during suspension.

Subclause (1) requires that if a student is suspended from the school under section 289 for not more than 5 school days, the school's principal must take reasonable steps to ensure the student is given school work to complete during the suspension.

Subclause (2) requires that if the student is suspended under section 289 for more than 5 school days, the principal must arrange for the student's access to an educational program that allows the student to continue with their education during the suspension.

Submissions against suspensions for more than 5 school days

Clause 291 requires that if a student is suspended for more than 5 school days they may make a submission against the suspension. The submission must be made to the principal's supervisor and state full the grounds the submission and the facts relied on.

Dealing with submission against suspensions

Clause 292 sets the procedural requirements for dealing with the submission.

Subclause (1) requires that if a submission is made under section 291 to a principal's supervisor, they must immediately consider the decision and the submission and decide to:

- confirm the decision; or
- amend the decision; or
- set aside the decision and make a new decision in substitution for the decision to suspend.

Subclause (2) requires that after the supervisor has decided to confirm, amend or set aside the decision to suspend they must:

- as soon as practicable tell the student and the principal about their decision and if the decision allows the student to return to the school earlier or later than if the principal's decision has been confirmed; and
- within 7 days of telling the student about the decision the principal's supervisor must give the student and the principal a

notice of the decision and the reasons for the supervisor's decision.

Division 2 Exclusion of students by principals' supervisors

Grounds for exclusion of student by principal's supervisor

Clause 293 outlines the grounds under which a student may be excluded by the principal's supervisor.

Subclause (1) prescribes that a student may be excluded from a State school at which they are enrolled or certain schools, but not all schools. Exclusion from all State schools is addressed in section 301. The grounds under this division include any of the following: disobedience by the student, misconduct of the student, other conduct of the student that prejudicial to the good order and management of the school or State schools. This part also requires that the student's disobedience, misconduct or other conduct must be so serious that suspension of the student is inadequate to deal with the behaviour.

Subclause (2) introduces a new ground that prescribes that a student may be excluded from a State school at which they are enrolled because they have contravened the behaviour improvement condition imposed, for the student's challenging behaviour, imposed or agreed to under division 8.

Suspension pending dealing with recommendation for exclusion

Clause 294 outlines the procedural requirements for a suspension pending a recommendation for exclusion.

Subclause (1) provides that this section applies if the State school principal is reasonably satisfied that grounds exist to exclude student from the State school at which the student is enrolled or certain State schools.

Subclause (2) enables the principal to:

- (a) recommend to the principal's supervisor that the student be excluded from the school or schools for a stated period of not more than 1 year or permanently; and

- (b) suspend the student from the school at which the student is enrolled pending the supervisor's decision about the recommendation.

Subclause (3) requires the principal to give the student a notice (the *notice recommending exclusion*) stating that:

- (a) the principal has recommended to the principal's supervisor that the student be excluded from the school or stated State schools for a period of not more than 1 year or permanently;
- (b) the student is suspended from the school at which the student is enrolled pending the exclusion decision;
- (c) the student may make a submission to the principal's supervisor against the suspension and the recommendation for exclusion no later than 5 school days after the notice is given to the student or a longer period allowed by the supervisor under section 296(3);
- (d) the title name and address of the principal's supervisor; and
- (e) the way in which the submission may be made.

Subclause (4) requires that the principal must as soon as practicable after giving the notice recommending exclusion to the student, give a copy to the principal's supervisor.

Subclause (5) requires that if the student is a child, that as soon as is practicable after giving the notice recommending exclusion to the student, the principal must take reasonable steps to meet with the parent of the student to discuss the behaviour that led to the giving of the notice.

Subclause (6) provides that subclause (5) does not apply where the principal is satisfied that it would be inappropriate in the circumstances to meet with the parent to discuss the student's behaviour. One example of these circumstances is provided which includes where a student is living independently of his or her parents.

Subclause (7) provides that if subclause (6) the principal must take reasonable steps to meet with the student to discuss the behaviour that led to the giving of the notice. The student may be accompanied by an adult during the meeting.

Continuing education during suspension

Clause 295 provides that if a student of a State school is suspended under section 294 from the school, the school's principal must arrange for the

student's access to an educational program that allows the student to continue with the student's education during the suspension.

Submissions against suspension and recommendation for exclusion

Clause 296 outlines the process for making a submission against the suspension and recommendation for exclusion.

Subclause (1) provides that a student given a notice recommending exclusion may make a submission against the suspension and recommendation for exclusion in the way stated in the notice.

Subclause (2) provides the submission must:

- be made to the principal's supervisor no later than 5 school days after the notice is given to the student; and
- state fully the grounds for the submission and the facts relied on.

Subclause (3) provides that if within 5 school days after the day the notice is given to the student, the student or another person who may make a submission contacts the supervisor asking for a longer period within which to make the submission, the supervisor may, by notice given to the student, state a longer period allowed for submissions.

Exclusion of student by principal's supervisor

Clause 297 provides for the exclusion of a student by a principal's supervisor.

Subclause (1) provides that if:

- (a) a State school's principal, under section 294(2), recommends to the principal's supervisor that a student of the school be excluded from the school or certain State schools for a period or permanently and gives the student a notice recommending exclusion; and
- (b) the period of 5 school days after the day the student was given the notice, or the longer period allowed by the supervisor under section 296(3) has expired and the supervisor:
 - has not, before the expiry, received a submission against the suspension and recommendation for exclusion; or
 - has received a submission before the expiry and considered the submission; and

- (c) the supervisor is reasonably satisfied grounds exist to exclude the student from the school or schools;

the supervisor may, no later than 20 school days after the day the notice was given to the student, exclude the student from the school or schools for a period of not more than 1 year or permanently.

Subclause (2) provides that even though a State school's principal did not recommend to the principal's supervisor that a student of the school be excluded from the school or certain State schools, the supervisor may exclude the student from the school or certain State schools for a period of not more than 1 year or permanently, if the supervisor is reasonably satisfied grounds exist to exclude the student from the school or schools under section 293(1).

Subclause (3) provides that if the supervisor decides, under subsection (1) or (2) to exclude a student of a State school from the school or certain State schools, the supervisor must give the student a notice stating:

- (a) the student is excluded from the school or schools for a stated period of not more than 1 year or permanently and the reason for the exclusion;
- (b) that the student may make a submission to the chief executive against the exclusion;
- (c) the title, name and address of the chief executive; and
- (d) the way in which the submission may be made.

Subclause (4) provides the supervisor may not decide, under subsection (1) to exclude a student of a State school for a longer period than the period of the proposed exclusion stated in the notice recommending exclusion given to the student.

Subclause (5) provides that the power under subsection (1) or (2) to exclude a student of a State school from certain State schools applies to a State school only if the principal's supervisor is the supervisor of that school.

Decision not to exclude student

Clause 298 provides that even if the supervisor may under section 297(1) exclude a student of a State school from the school or certain State schools on a ground mentioned in section 293(1), the supervisor may decide not to exclude the student if the supervisor is reasonably satisfied the student may

be allowed to resume attendance at the school without compromising the good order and management of the school.

Subclause (2) provides that if the supervisor decides not to exclude a student of a State school from the school or certain State schools, the supervisor must:

- (a) as soon as practicable tell the student and the school's principal about the decision and that the suspension has ended and the student may resume attendance at the school; and
- (b) within 7 days after telling the student about the decision—give notice to the student, and the principal, about the supervisor's decision and the reasons for the decision.

Subclause (3) provides that if the supervisor decides not to exclude a student of a State school from the school on the ground mentioned in section 293(2), the student's resumed attendance at the school is remains subject to the student complying with the relevant behaviour improvement condition for the student's challenging behaviour.

Meeting with excluded student's parent

Clause 299 provides that if a student is excluded under section 272(2) by a principal's supervisor and they are a child, the supervisor or an officer of the department must take reasonable steps to meet with the child's parents to discuss the student's behaviour that led to the exclusion. These steps are to be taken as soon as practicable after giving the notice under section 297(3).

Subclause (2) provides that the requirement to meet with the student's parents does not apply if the principal's supervisor or the officer is satisfied it would be inappropriate in the circumstances to meet with the student's parents. An example is provided where the student is living independently of his or her parents.

Subclause (3) provides that if subsection (2) applies the supervisor or officer must take reasonable steps to meet with the student to discuss the student's behaviour that led to the exclusion. The section also provides that the student may be accompanied by an adult during the meeting.

Effect of exclusion on enrolment

Clause 300 provides that if a student is excluded under section 297 from a State school at which the student is enrolled, the enrolment is taken to be cancelled.

Division 3 Exclusion of students by chief executive

Chief executive's power to exclude student

Clause 301(1) provides that the chief executive may, under this division, exclude a student from a State school at which the student is enrolled, certain State schools or all State school, if the chief executive is satisfied a ground mentioned in section 302 exists for the exclusion.

Subclause (2) provides that the chief executive may act under this division whether or not the student has already been suspended or excluded from a State school under this part.

Grounds for exclusion of student by chief executive

Clause 302 provides the grounds for excluding a student from a State school at which the student is enrolled, certain State schools or all State school under this division are:

- the student's attendance at the school or schools poses an unacceptable risk to the safety or wellbeing of other students or staff of the school or schools; or
- the student has persistently engaged in gross misbehaviour that adversely affects the education of other students of the school at which the student is enrolled.

Grounds for exclusion of mature age student by chief executive

Clause 303 provides the grounds on which the chief executive may exclude a mature age student who was 18 years or more at the time of their enrolment at the school. The section applies without limiting section 302(a) (which sets out certain grounds for exclusion by the chief executive). The grounds for excluding a mature age student under this division are:

- (a) the student has been convicted of a serious offence. *Serious offence* is defined for the relevant division in section 27;
- (b) the student has been convicted of an offence, other than a serious offence and the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the student to continue to be enrolled at the relevant school;
- (c) if the student has been charged with an offence and the chief executive is satisfied it is an exceptional case in which it would

not be in the best interests of children for the student to continue to be enrolled at the relevant school.

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

Suspension pending final decision about exclusion

Clause 304(1) provides that if the chief executive is reasonably satisfied a ground exists to exclude a student from a State school at which the student is enrolled, certain State schools or all State schools, and the student is not already suspended or excluded from the school or schools, the chief executive must immediately suspend the student from the school or schools pending a final decision about the exclusion.

Subclause (2) provides that the chief executive must give the student a notice stating:

- (a) that the student is immediately suspended from the school or schools or, if the student is already suspended or excluded from the school or schools, that the suspension or exclusion continues until a final decision is made about the chief executive's proposed exclusion;
- (b) that the chief executive proposes to exclude the student from the school or schools for a stated period of not more than 1 year or permanently;
- (c) the reason for the proposed exclusion;
- (d) that the student may make a submission to the chief executive against the proposed exclusion within 5 school days after the day the notice is given to the student or the longer period allowed by the chief executive;
- (e) the title, name and address of the chief executive; and
- (f) the way in which the submission may be made.

Subclause (3) provides that the chief executive must immediately give copies of the notice to the principal of the school at which the student is enrolled and the principal's supervisor.

Subclause (4) provides that if the student is a child, as soon as practicable after giving the notice, the chief executive must take reasonable steps to meet with a parent of the student to discuss the student's behaviour that led to the giving of the notice.

Subclause (5) provides that subsection (4) does not apply if the chief executive is satisfied it would be inappropriate in the circumstances to meet with a parent of the student to discuss the student's behaviour that led to the giving of the notice.

Subclause (6) provides that if subsection (5) applies the chief executive must take reasonable steps to meet with the student to discuss the student's behaviour that led to the exclusion. The section also provides that the student may be accompanied by an adult during the meeting.

Submissions against proposed exclusion

Clause 305(1) provides that a student given a notice under section 304 may make a submission against the proposed exclusion in the way stated in the notice.

Subclause (2) provides the submission must:

- be made to the chief executive no later than 5 school days after the notice is given to the student; and
- state fully the grounds for the submission and the facts relied on.

Subclause (3) provides that if within 5 school days after the notice is given to the student, the student or another person who may make a submission asks the chief executive for a longer period to make the submission, the chief executive may, by notice given to the student, state a longer period allowed for submissions.

Exclusion of student by chief executive

Clause 306(1) provides that after considering any submissions received under section 305, the chief executive must decide whether to exclude the student from the school or schools and, if so, the period of the exclusion.

Subclause (2) provides the chief executive may not decide to exclude the student for a longer period than the period of the proposed exclusion stated in the notice given to the student under section 295.

Subclause (3) provides if the chief executive is reasonably satisfied a ground exists to exclude the student from a State school at which the

student is enrolled or certain State schools, the chief executive must give the student a notice stating:

- (a) that the student is excluded from the stated school or schools for a stated period of not more than 1 year or permanently;
- (b) the reason for the exclusion;
- (c) that the student may make a submission asking the chief executive to review the exclusion;
- (d) the title, name and address of the chief executive; and
- (e) the way in which the submission may be made.

Subclause (4) provides that if the chief executive is reasonably satisfied a ground exists to exclude the student from all State schools, the chief executive must give the student a notice stating:

- (a) that the student is excluded from all State schools for a stated period of not more than 1 year or permanently;
- (b) the reason for the exclusion; and
- (c) that the student has a right to appeal, under section 406, against the decision about the exclusion and the time within which the student may appeal.

Subclause (5) provides if the chief executive decides not to exclude the student, the chief executive must, as soon as practicable, give the student a notice stating:

- (a) the decision; and
- (b) that the suspension has ended and the student may return to the State school at which the student was enrolled on the day before the suspension.

Subclause (6) provides if the chief executive gives a notice under subsection (5), the suspension of the student under section 304 ends.

Subclause (7) provides the chief executive must give a notice of the decision about the exclusion to the principal of a State school at which the student is or was enrolled and the principal's supervisor.

Effect of exclusion on enrolment

Clause 307 provides that if a student is excluded under section 306 from a State school at which the student is enrolled, the enrolment is taken to be cancelled.

Continuing education of certain excluded student

Clause 308(1) provides that this clause applies to a student of a State school who is of compulsory school age or a young person in the compulsory participation phase.

Subclause (2) provides that if the student is excluded under section 306 from all State schools, the chief executive must take reasonable steps to arrange for the student's access to an educational program that allows the student to continue with the student's education during the exclusion.

Division 4 Exclusion of prospective students by chief executive

Application of div 4

Clause 309 provides that this division applies if:

- a State school's principal, under section 160(2), refers an application for enrolment of a prospective student at the school to the chief executive; and
- the chief executive gives the applicant a show cause notice under section 163.

Risk to safety or wellbeing

Clause 310(1) provides that if the chief executive reasonably believes the prospective student's attendance at certain State schools or all State schools would pose an unacceptable risk to the safety or wellbeing of other students or staff of the schools, the chief executive must give the prospective student a notice (a *show cause notice*) stating the following:

- (a) that the chief executive proposes to exclude the prospective student from the schools for a stated period of not more than 1 year or permanently (the *proposed action*);
- (b) the grounds for the proposed action;
- (c) an outline of the facts and circumstances forming the basis for the grounds; and
- (d) an invitation to the prospective student to who within a stated period (the *show cause period*) why the proposed action should not be taken.

Subclause (2) provides the show cause period must be a period ending at least 14 days after the show cause notice is given to the prospective student.

Representations about show cause notice

Clause 311(1) provides the prospective student may make written representations about the show cause notice to the chief executive in the show cause period.

Clause 311(2) provides the chief executive must consider all written representations (the *accepted representations*) made under subsection (1).

Ending show cause process without further action

Clause 312 provides that if after considering the accepted representations for the show cause notice, the chief executive no longer reasonably believes the prospective student's attendance at certain State schools or all State schools would pose an unacceptable risk to the safety or wellbeing of other students or staff of the schools the chief executive:

- must not take further action about the show cause notice; and
- must, as soon as practicable, give notice to the prospective student that no further action is to be taken about the show cause notice.

Exclusion

Clause 313(1) provides that this clause applies if after considering the accepted representations for the show cause notice, the chief executive still reasonably believes the prospective student's attendance at certain State schools or all State schools would pose an unacceptable risk to the safety or wellbeing of other students or staff of the schools.

Subclause (2) clarifies that this clause also applies if there are no accepted representations for the show cause notice.

Subclause (3) provides the chief executive must decide to exclude the prospective student from the schools.

Subclause (4) provides that the chief executive may not decide to exclude the prospective student for a longer period than the period of the proposed exclusion stated in the show cause notice given to the prospective student under section 310.

Subclause (5) provides that if the decision relates to certain State schools, the chief executive must give the prospective student a notice stating:

- (a) that the prospective student is excluded from the stated schools for a stated period of not more than 1 year or permanently;
- (b) the reason for the exclusion;
- (c) that the prospective student may make a submission asking the chief executive to review the exclusion under division 5;
- (d) the title, name and address of the chief executive; and
- (e) the way in which the submission may be made.

Subclause (6) provides if the decision relates to all State schools, the chief executive must give the prospective student a notice stating:

- (a) that the prospective student is excluded from all State schools for a stated period of not more than 1 year or permanently;
- (b) the reason for the exclusion; and
- (c) that the prospective student has a right to appeal, under section 406, against the decision about the exclusion, and the time within which the student may appeal.

Continuing education of certain excluded student

Clause 314(1) provides that this clause applies to a prospective student of a State school who is of compulsory school age or a young person in the compulsory participation phase.

Subclause (2) provides that if the prospective student is excluded under section 313 from all State schools, the chief executive must take reasonable steps to arrange for the student's access to an educational program that allows the prospective student to continue with the student's education during the exclusion.

Division 5 Review of particular exclusion decisions

Application of div 5

Clause 315 provides that this division applies to a person (the *excluded person*) who is excluded, under section 297, 306(3) or 313(5), from a State school at which the student is enrolled or certain State schools.

Submission against exclusion decision

Clause 316(1) provides the excluded person may make a submission against the decision to exclude the excluded person (the *exclusion decision*).

Subclause (2) provides the submission must:

- be made to the chief executive within 30 school days after the day the excluded person is given notice of the exclusion decision under section 297, 306(3) or 313(5); and
- state fully the grounds for the submission and the facts relied on.

Dealing with submissions against exclusions

Clause 317 provides for how submissions against exclusions must be dealt with.

Subclause (1) provides that if a submission is made to the chief executive, the chief executive must, within 40 school days after receiving the submission, consider the exclusion decision and the submission and:

- (a) confirm the exclusion decision; or
- (b) amend the exclusion decision; or
- (c) set aside the exclusion decision and make a new decision in substitution of the exclusion decision.

Subclause (2) provides that if the exclusion decision was made under section 297 or 306(3), after the chief executive has decided to confirm, amend or set aside the exclusion decision, the chief executive must:

- (a) as soon as practicable tell the excluded person and relevant principal:
 - (i) about the chief executive's decision; and
 - (ii) if the chief executive's decision allows the excluded person to attend the school or schools earlier than if the exclusion decision had been confirmed when the excluded person may attend the school or schools; and
- (b) within 7 days after telling the excluded person about the chief executive's decision, give notice of the chief executive's decision and the reasons for the chief executive's decision to the person and the relevant principal and the relevant principal's supervisor.

Subclause (3) provides that if the exclusion decision was made under section 313(5), after the chief executive has decided to confirm, amend or set aside the exclusion decision, the chief executive must:

- (a) as soon as practicable tell the excluded person:
 - (i) about the chief executive's decision; and
 - (ii) if the chief executive's decision allows the excluded person to attend the school or schools earlier than if the exclusion decision had been confirmed when the excluded person may attend the school or schools; and
- (b) within 7 days after telling the excluded person about the chief executive's decision, give the person notice of the chief executive's decision and the reasons for the chief executive's decision.

Subclause (4) provides that if the exclusion decision was made under section 306(3) or 313(5) and was not made by the chief executive personally, the chief executive must ensure the submission is not dealt with under this section by:

- (a) the person who made the exclusion decision; or
- (b) a person in a less senior office than the person who made the exclusion decision.

Subclause (5) provides in this clause, *relevant principal* means the principal of the State school at which the excluded person was enrolled immediately before the exclusion started.

Division 6 Periodic review of certain decisions to exclude permanently

Periodic review of decision to exclude permanently on ground mentioned in s293 or 302—person under 17 years

Clause 318(1) provides that this clause applies to:

- (a) a person under 17 years who is excluded permanently from a State school at which the person was enrolled immediately before the exclusion, or certain State schools, on a ground mentioned in section 293(1); or

- (b) a person under 17 years who is excluded permanently from a State school at which the person was enrolled immediately before the exclusion on the ground mentioned in section 293(2);
or
- (c) a person under 17 years who is excluded permanently from a State school at which the person was enrolled immediately before the exclusion, certain State schools or all State schools on a ground mentioned in section 302.

Subclause (2) provides that as soon as practicable after each anniversary of the exclusion, the chief executive must send to the person at the person's last known address a notice stating:

- (a) that the person may make a written submission to the chief executive about whether the exclusion should be revoked;
- (b) the title, name and address of the chief executive;
- (c) the way in which the submission may be made; and
- (d) the time, not less than 30 school days after the notice is given, by which the submission must be made.

Subclause (3) provides that subsection (2) does not apply if the person gives the chief executive a notice stating that the person does not wish to receive a notice under subsection (2) in relation to the exclusion.

Subclause (4) provides that at any time before time expires for making a submission under subsection (5), the chief executive may extend the time for making a submission.

Subclause (5) provides that if the person receives a notice under subsection (2), the person may make a written submission, in the way stated in the notice, within the time stated in the notice or the later time allowed under subsection (4).

Subclause (6) provides that after considering any submissions are made under subsection (5), the chief executive must, within 40 school days:

- (a) decide whether to revoke the exclusion; and
- (b) give notice of the decision and the reasons for the decision to:
 - (i) the person; and
 - (ii) the principal of the State school at which the person was enrolled immediately before the exclusion started; and

- (iii) if the person was excluded on the ground mentioned in section 302(b)—the principal’s supervisor.

Subclause (7) provides the chief executive must revoke the exclusion to the extent it applies to a State school if the chief executive is reasonably satisfied:

- (a) if the person was excluded on a ground mentioned in section 293(1)—the disobedience, misconduct or other conduct is unlikely to recur if the student were allowed to attend the school; or
- (b) if the person was excluded on the ground mentioned in section 293(2)—the relevant behaviour is unlikely to recur; or
- (c) if the person was excluded on the ground mentioned in section 302(a)—the ground no longer applies; or
- (d) if the person was excluded on the ground mentioned in section 302(b)—the gross misbehaviour is unlikely to recur if the student were allowed to attend the school.

Subclause (8) clarifies that otherwise, the chief executive must not revoke the exclusion.

Subclause (9) provides that in this clause, *revoke* an exclusion means revoke the exclusion entirely or amend the exclusion so it not longer applies to a particular State school.

Periodic review of decision to exclude permanently on ground mentioned in s 293 or 302—person aged from 17 to 24 years

Clause 319 provides a mechanism for a person aged from 17 to 24 years who has been permanently excluded to make a written submission to the chief executive about whether the exclusion should be revoked. Instead of writing to the person each year the person will be required to approach the department.

Clause 319(1) provides that this section applies to:

- (a) a person aged from 17 to 24 years who is excluded permanently from a State school at which the person was enrolled immediately before the exclusion, or certain State schools, on a ground mentioned in section 293(1); or
- (b) a person aged from 17 to 24 years who is excluded permanently from a State school at which the person was enrolled

immediately before the exclusion on the ground mentioned in section 293(2); or

- (c) a person aged from 17 to 24 years who is excluded permanently from a State school at which the person was enrolled immediately before the exclusion, certain State schools or all State schools on a ground mentioned in section 302.

Subclause (2) provides that within one month before each anniversary of the exclusion or the later time allowed under subsection (3) the person may make a written submission to the chief executive about whether the exclusion should be revoked.

Subclause (3) provides that during the period of 1 month before the anniversary of the exclusion, the chief executive may extend the time for making a submission under subclause (2).

Subclause (4) provides that chief executive must within 40 school days of after any submissions are made under subsection (2) consider the submissions and:

- (a) decide whether to revoke the exclusion; and
- (b) give notice of the decision and the reasons for the decision to:
 - (i) the person; and
 - (ii) the principal of the State school at which the person was enrolled immediately before the exclusion started; and
 - (iii) if the person was excluded on the ground mentioned in section 302(b)—the principal's supervisor.

Subclause (5) provides the chief executive must revoke the exclusion to the extent it applies to a State school if the chief executive is reasonably satisfied:

- (a) if the person was excluded on a ground mentioned in section 293(1)—the disobedience, misconduct or other conduct is unlikely to recur if the student were allowed to attend the school; or
- (b) if the person was excluded on the ground mentioned in section 293(2)—the relevant behaviour is unlikely to recur; or
- (c) if the person was excluded on the ground mentioned in section 302(a)—the ground no longer applies; or

- (d) if the person was excluded on the ground mentioned in section 302(b)—the gross misbehaviour is unlikely to recur if the student were allowed to attend the school.

Subclause (6) clarifies that otherwise, the chief executive must not revoke the exclusion.

Subclause (7) provides that in this clause, *revoke* an exclusion means revoke the exclusion entirely or amend the exclusion so it not longer applies to a particular State school.

Division 7 Cancellation of enrolment of students above compulsory school age

Ground for cancelling enrolment of student more than compulsory school age

Clause 320(1) provides that the enrolment at a State school of a student who is more than the compulsory school age may be cancelled under this division on the ground that the student's behaviour amounts to a refusal to participate in the educational program provided at the school.

Subclause (2) provides that the enrolment of a student who is of compulsory school age may not be cancelled under this division.

Show cause notice

Clause 321(1) provides that subsection (2) applies if a State school's principal is reasonably satisfied the ground exists to cancel the enrolment at the school of a student who is more than compulsory school age.

Subclause (2) provides the principal must give the student a notice (a *show cause notice*) stating the following:

- (a) the action (the *proposed action*) the principal proposes taking under this division;
- (b) the grounds for the proposed action;
- (c) an outline of the facts and circumstances forming the basis for the grounds;
- (d) an invitation to the student to show within a stated period (the *show cause period*) why the proposed action should not be taken.

Subclause (3) provides the show cause period must be a period ending at least 5 school days after the show cause notice is given to the student.

Subclause (4) provides if the student is a child, as soon as practicable after the giving of the show cause notice, the principal must taken reasonable steps to meet with a parent of the student to discuss the student's behaviour that led to the giving of the show cause notice.

Subclause (5) provides that subsection (4) does not apply if the principal is satisfied it would be inappropriate in the circumstances to meet with a parent of the student to discuss the student's behaviour that led to the giving of the show cause notice.

Subclause (6) provides that if subsection (5) applies the chief executive must take reasonable steps to meet with the student to discuss the student's behaviour that led to the giving of the show cause notice. This subclause also provides that the student may be accompanied by an adult during the meeting.

Representations about show cause notice

Clause 322(1) provides the student may make written representations about the show cause notice to the principal in the show cause period.

Subclause (2) provides the principal must consider all written representations (the *accepted representations*) made under subsection (1).

Ending show cause process without further action

Clause 323 provides that if after considering the accepted representations for the show cause notice, the principal no longer believes the ground exists to cancel the enrolment, the principal:

- must not take further action about the show cause notice; and
- must, as soon as practicable, give notice to the student that no further actions is to be taken about the show cause notice.

Cancellation of student's enrolment

Clause 324(1) provides that this clause applies if after considering the accepted representations for the show cause notice, the principal:

- still believes the ground exists to cancel the enrolment; and
- believes cancellation of the enrolment is warranted.

Subclause (2) clarifies that this clause also applies if there are no accepted representations for the show cause notice.

Subclause (3) provides the principal may cancel the enrolment of the student (the *person under the cancellation*) at the school.

Subclause (4) provides the principal must give the person under the cancellation a notice stating:

- (a) the person's enrolment at the school is cancelled and the reason for the cancellation; and
- (b) an application for the enrolment of the person at the school may not be made for a stated period of not more than 12 months after the giving of the notice;
- (c) the person may make a submission against the cancellation to the principal's supervisor;
- (d) the title, name and address of the principal's supervisory; and
- (e) the way in which the submission may be made.

Subclause (5) provides that the principal must also give a copy of the notice to the principal's supervisor.

Subclause (6) provides that if a person under the cancellation receives a notice under subsection (4), an application for the enrolment of the person at the school may not be made during the period stated in the notice under subsection (4)(b).

Submission against cancellation of enrolment

Clause 325 (1) provides that the person under the cancellation may make a submission against the cancellation.

Subclause (2) provides that the submission must be made to the principal's supervisor and state fully the grounds for the submission and the facts relied on.

Dealing with submission against cancellation of enrolment

Clause 326 provides for how submissions against a cancellation of enrolment must be dealt with.

Subclause (1) provides that if a submission is made to the principal's supervisory, the supervisor must immediately consider the decision and the submission and:

- confirm the decision; or
- amend the decision; or
- set aside the decision and make a new decision in substitution of the decision to cancel the student's enrolment.

Subclause (2) provides that after the supervisor has decided to confirm, amend or set aside the decision, the supervisor must:

- (a) as soon as practicable tell the person under the cancellation and the principal –
 - (i) about the supervisor's decision; and
 - (ii) if the supervisor's decision allows for an application for enrolment of the person at the school to be made earlier than if the principal's decision had been confirmed when the application for enrolment may be made; and
- (b) within 7 days after telling the person about the decision—give notice to the person, and the principal, about the decision and the reasons for the decision.

Division 8 Behaviour improvement conditions

Definitions for div 8

Clause 327 outlines four definitions for division 8. These include:

Appropriately qualified, for a person conducting a behaviour management program means the person has the qualifications, experience, skills, or knowledge appropriate to conduct the program. For example, a guidance officer may have the appropriate qualifications or experience or skills or knowledge appropriate to provide an anger management program.

Behaviour improvement condition, for the challenging behaviour of a State school student, means a condition requiring the student to undertake a behaviour management program arranged by the school's principal for the challenging behaviour. The condition must be a reasonable condition that is appropriate and accessible. For example, a student may have exhibited aggressive behaviour that usually would have been grounds to proceed with a suspension pending exclusion recommendation. However, the principal decides that an alternative approach would suit this student and still enable the student to continue attending school. The principal decides that the student can continue to attend the school if they attend a behaviour

management program conducted by the guidance officer for two hours a week for two months.

Behaviour management program, for the challenging behaviour of a State school student, means a program conducted by an appropriately qualified person that is designed to help the student not to re-engage in the challenging behaviour. For example this may be an anger management program provided by the guidance officer to address aggressive behaviour.

Challenging behaviour (see section 328(1)).

Imposition of behaviour improvement condition by principal

Clause 328 provides under subsection (2) that the principal may decide that a student's continued attendance at the school be subject to the student complying with a behaviour improvement condition.

Subsection (1) provides that subsection (2) applies if the State school's principal is reasonably satisfied that the student has engaged in behaviour that is the basis for the ground for the exclusion from the school or certain schools under section 293(1). This behaviour is defined as ***challenging behaviour*** for the purposes of division 8.

Subclause (3) provides that if under subsection (2) a principal decides to impose a behaviour improvement condition the principal must give the student a notice stating that:

- the student's continued attendance at the school be subject to the student complying with the behaviour improvement condition;
- the details of the behaviour improvement condition and the grounds for imposition of behaviour improvement condition;
- the facts and circumstances forming the basis for the grounds;
- the stated period that the student must continue to comply with the behaviour improvement condition (this is limited to a maximum period of not more than 3 months);
- the student may apply to the supervisor within 5 schools days after the notice is given to the student for a review of the decision;
- the title, name and address of the supervisor; and
- the way in which the application may be made.

Subclause (4) provides that if the student is a child, that as soon as is practicable after giving the notice to the student the principal must take

reasonable steps to meet with the parent of the student to discuss the behaviour that led to the giving of the notice.

Subclause (5) provides that subsection (4) does not apply where the principal or teacher is satisfied it would be inappropriate in the circumstances to meet with the parent to discuss the student's behaviour. One example of these circumstances is provided which includes where a student is living independently of his or her parents.

Subclause (6) provides that if subsection (5) applies the principal must take reasonable steps to meet with the student to discuss the student's behaviour that led to the giving of the notice. This subclause also provides that the student may be accompanied by an adult during the meeting.

Review of decision about imposition of behaviour improvement condition

Clause 329 enables the review of a decision under section 328.

Subclause (2) provides that the student may apply to the supervisor of the principal who made the decision, within 5 school days after the notice was given under section 328, for a review of the decision.

Subclause (3) requires that the application must state fully the grounds for the submission and the facts relied on.

Subclause (4) requires that after reviewing the behaviour improvement condition the supervisor must decide on the following:

- to confirm the behaviour improvement condition; or
- to remove the behaviour improvement condition; or
- to change the behaviour improvement condition.

Subclause (5) provides that the behaviour improvement condition may only be confirmed or changed for the reasons that the behaviour improvement condition was initially imposed.

Subclause (6) requires that the supervisor must, as soon as practicable, give a notice to the student and the principal about the supervisor's decision on the application and the reasons for the decision.

Subclause (7) provides that if the principal's supervisor fails to decide the application within 7 days after its receipt, the failure is taken to be a decision by the supervisor to remove the behaviour improvement condition.

Removal of behaviour improvement condition

Clause 330 outlines the procedural requirements for the removal of a behaviour improvement condition.

Subclause (1) provides that this section applies if a student's continued attendance at a State school is subject to the student complying with a behaviour improvement condition imposed or changes agreed to, under this division and the school's principal reasonably believes the condition is no longer necessary.

Subclause (2) requires that the principal must decide to remove the behaviour improvement condition.

Subclause (3) requires that the principal must as soon as practicable give a notice to the student about the principal's decision and the reasons for the decision.

Change of behaviour improvement condition

Clause 331 outlines the procedural requirements for the change of a behaviour improvement condition.

Subclause (1) provides that this section applies if a student's continued attendance at a State school is subject to the student complying with a behaviour improvement condition imposed or change agreed to, under this division and the school's principal reasonably believes that the behaviour improvement condition is no longer appropriate for the challenging behaviour.

Subclause (2) enables the principal to change the behaviour improvement condition in a way agreed to in writing:

- if the student is a child, by a parent of the student; or
- if the student is an adult, by the student.

Subclause (3) provides that subsection (2)(a) does not apply, and agreement must be by the student, if the principal is satisfied it would be inappropriate in the circumstances for agreement to be by a parent of the student. One example of these circumstances is provided which includes where a student is living independently of his or her parents.

Subclause (4) however, requires that the behaviour improvement condition may only be changed for the reasons that the behaviour improvement condition was initially imposed.

Division 9 Other provisions

Definition for div 9

Clause 332 provides definitions in this division.

parent, of a child, includes a person standing in the place of a parent of the child on a temporary basis.

student includes:

- (a) an excluded person; or
- (b) a person whose enrolment at a State school has been cancelled under division 7.

No entitlement to enrolment at another State school during suspension

Clause 333 provides that a student suspended from a State school is not entitled to be enrolled at another State school during the period of the suspension. It should be noted that the period of suspension continues until it would have otherwise ended, regardless of whether the student's enrolment at the State school has been ceased by the parent or student.

Copy of notices under this part to be given to parent

Clause 334(1) provides that if a person is required, under this part, to give a notice to a student and the student is a child, the person must as soon as practicable give a copy of the notice to the a parent of the student.

Subclause (2) provides that in giving a copy of the notice to a parent, the person may rely on the relevant State school's records about the student's parents and their current residential address.

Subclause (3) provides that subsection (1) does not apply if the person is satisfied it would be inappropriate in the circumstances to give the copy of the notice to the parent.

Submissions, representations or applications about suspensions etc.

Clause 335 provides that the section applies if under a provision of this part, a student or prospective student may make a submission, representation or an application in relation to a suspension, suspension and

recommendation for exclusion, exclusion or cancellation or a behaviour improvement condition under division 8, and the student or prospective student is a child.

Subclause (2) provides that the submission, representation or application may also be made under the provision by a parent of the student or prospective student. The section essentially provides that the parent may make the submission on behalf of the student.

When decisions take effect

Clause 336 specifies when decisions take effect.

Subclause (1) provides that notice of a decision under this part about a student must be given to the student under the clause under which the decision is made.

Subclause (2) provides that a decision takes effect:

- (a) if the student must be told about the decision and under the decision, the student may return to school earlier than if the decision was to confirm another decision—on the day the student is told about the decision; or
- (b) otherwise—on the day the student is given notice of the decision or a later day stated in the notice.

Part 5 Wilful disturbance and trespass at State educational institutions

Wilful disturbance

Clause 337(1) provides that a person must not wilfully disturb the good order or management of a State educational institution. The maximum penalty is 20 penalty units.

Subclause (2) provides that a person must not insult a staff member of a State educational institution in the presence or hearing of a student of the institution who is, at the time in question:

- (a) in or about the institution; or
- (b) assembled with others for educational purposes at or in any place.

The maximum penalty is 20 penalty units.

Subclause (3) provides that subsections (1) and (2) do not apply to a person who was, at the time in question, a student of the State educational institution.

Subclause (4) provides that in this clause, *insult* includes abuse.

Trespass

Clause 338 provides that a person must not be on the premises of a State educational institution unless the person has lawful authority or a reasonable excuse for being on the premises. The maximum penalty is 20 penalty units.

Part 6 Directions and orders about conduct or movement at, or entry to, premises of State instructional institutions

Division 1 Preliminary

Definitions for pt 6

Clause 339 sets out two definitions for the purposes of this part:

An *employee* of the department is defined to mean an employee or a contractor of the department, including an employee or subcontractor of a contractor.

An *exempt person* is defined, for State instructional institutions, as a student of the institution or a person employed by the department to perform work at the institution's premises. Read together these definitions mean that exempt persons include not only the State instructional institution's students, but also its teachers, ancillary staff, those who maintain the grounds and also those contracted by the department to undertake other work on school premises such as tradespersons.

Division 2 Powers relating to name and address

Person may be required to state name and address

Clause 340 sets out the power for a principal to require a person to state their name and address. Subclause (1) states that the principal of a State instructional institution may require a person to provide their name and address. The principal may make this request if the principal proposes to make a direction under sections 341 or 343.

Subclause (2) states that when making the requirement to provide name and address, the principal person must warn the person of the requirement to comply.

Subclause (3) states that the principal may ask for evidence of the accuracy of the name and address provided by the person if the principal reasonably suspects that the stated name and address is false.

Subclause (4) states that the person must comply with the requirement to provide name and address unless they have a reasonable excuse. The maximum penalty imposed will be 10 penalty points (\$750).

Division 3 Directions about conduct or movement at premises of State instructional institutions

Direction about conduct or movement

Clause 341 sets out procedures associated with the power of a principal of a State instructional institution to make directions about the conduct or movement of persons, other than exempted persons, on school premises.

Subclause (1) provides the power in the principal to direct another person, about their conduct or movement whilst on school premises. The principal must provide the direction in writing. The direction may be about the person's conduct or movement for a period of up to 30 days. The principal must be reasonably satisfied that the direction is necessary:

- to ensure the safety or wellbeing of other persons lawfully at the premises; or
- to prevent or minimise damage to property comprising, or located at the premises; or
- to maintain good order at the premises; or

- for the proper management of the institution.

The purpose of giving a direction is so that students and teachers may go about their day-to-day business without disruption. For example, following a disagreement between a teacher and a parent of a child, the parent is unable to address that teacher in a respectful manner and actively seeks further contact with the teacher in order to continue the argument. A principal may direct that parent to come to the principal's office, rather than the classroom when delivering the child to the school. The parent's behaviour, if left unchecked, would have had the effect of preventing the teacher from carrying out his or her obligations to the students and may also have damaged the teacher's standing in the eyes of the students or depending on their age, distressed the students, had they witnessed the offending behaviour.

The behaviour must be such that a reasonable person would be satisfied that the direction was necessary for one of the above reasons. This provision does not empower a principal to direct a person to leave the premises.

Subclause (2) states that a direction given under subsection (1) may not be given to a person who is exempt from directions as defined for the part under section 339.

Subclause (3) lists the information to be included in a written direction. This includes the terms and grounds of the direction, an outline of the facts and circumstances forming the basis for the grounds and the time period for the direction. In addition, the direction must outline the process to be followed if a directed person wishes to apply to have their direction reviewed. Under section 341 the directed person may apply to the principal's supervisor to have the direction reviewed. The contact details for the principal's supervisor must be provided on the written notice. The review process protects a person from being the unfair or inappropriate target of a principal's attention.

Subclause (4) states that the direction will not take effect until it is served in writing on the person. This means that while a principal might give an informal, oral direction to a person whose behaviour is objectionable, the person will not be committing an offence until the direction is given to the person in writing, with the appropriate details as outlined under subsection (3).

Subclause (5) states that a directed person must comply with the direction unless they have a reasonable excuse. A person may have a reasonable excuse to breach a direction if, for example, there is a case of an emergency

such as a life-threatening situation involving the person's child. A breach of a direction may lead to a maximum penalty of \$1500.

Review of direction under s 341

Clause 341 sets out a review procedure for those persons who have been given a direction about conduct or movement and who wish to seek a review. This provision is designed to uphold the natural justice of those to whom directions apply.

Subclause (2)(a) states that a person may apply to the principal's supervisor for a review of a direction within 7 days of the person receiving the direction and (b) states that if the direction is for a period of time less than 7 days, then the review must be sought before that time elapses. The applications must be made in writing and must outline the grounds on which the person wants the direction to be reviewed.

Subclause (4)(a) and (b) state that the principal's supervisor will consider the grounds on which the direction was made and must either confirm the direction or cancel it. The principal's supervisor may not alter the direction or make another direction. In this way, the principal's supervisor will be able to monitor the use of this power to minimise any possible abuse.

Subclause (5) provides that as soon as the review decision is made by the principal's supervisor, written notification of the decision must be provided to the applicant and the institution's principal.

Subclause (6) provides that a principal's supervisor must give notice within 5 days of the application, or the direction will be taken to have been cancelled. This section protects the directed person against delay by the principal's supervisor, and ensures that appeals are addressed expeditiously.

Division 4 Directions to leave and not re-enter premises of State instructional institutions for 24 hours

Direction to leave and not re-enter

Division 4 concerns directions to leave and not re-enter premises of State instructional institutions for up to 24 hours. Sometimes, a circumstance may arise which will not be alleviated by the principal issuing a direction alone about conduct on the school premises. Instead, a stronger measure is

required. An example may be where a parent has lost control of their emotions and is abusing the principal or a staff member and is refusing to behave in a reasonable manner. Their abusive behaviour may significantly impede the ability of the principal and staff to go about their duties. In such circumstances the principal may decide to issue the direction to leave, to allow the person to go away, calm down and return in a less volatile state.

Clause 343 sets out the power for a principal to issue a written direction to a person (referred to as the prohibited person) to leave the school premises and not return for at least 24 hours. The written direction can be issued if the principal reasonably suspects that the prohibited person:

- has or is about to commit an offence on the school premises; or
- has or is about to use threatening, abusive or insulting language towards another person on the premises; or
- has or is about to engage in threatening or violent behaviour towards another person on the premises; or
- has disrupted or is about to disrupt the good order of the premises; or
- does not have a good and lawful reason to be at the premises.

Subclause (2) states that a direction given under subsection (1) may not be given to a person who is exempt from directions as defined in the Interpretation section.

Subclause (3) lists the information to be included in a written direction to leave and not re-enter. This includes the terms of and the grounds for the direction as well as an outline of the facts and circumstances forming the basis for the grounds. In addition the direction must state the time during which the person is not permitted to re-enter the school premises.

Division 5 Prohibition from entering premises of State instructional institutions for up to 60 days

Prohibition from entering premises

Clause 344 sets out a procedure for making a direction under this subdivision for up to 60 days. Subclause (1) enables the chief executive to issue a direction to a person prohibiting them from entering the school premises for up to 60 days, commencing on the day on which the direction

is given. The chief executive must be satisfied that unless the direction is made, the prohibited person is likely to:

- cause physical harm to, or apprehension or fear of physical harm, in another person when the other person is at the premises;
- to damage property comprising , or located at, the premises; or
- to disrupt the good order or management of the institution.

Subclause (2) states that a direction given under subsection (1) may not be given to a person who is exempt from directions as defined in the definitions for the part.

Subclause (3) lists the information to be included in the direction, including the terms of, grounds for and period of the direction as well as outline the facts and circumstances forming the basis for the grounds. In addition the direction must include information about a person's right of appeal to the Magistrates Court if they do not agree with the terms and conditions of the direction. The appeals provisions are set out in section 401.

Subclause (4) states that the prohibition from entering premises will not take effect until it is given to the person.

Subclause (5) states that a person subject to a prohibition from entering premises must comply with the direction unless they have a reasonable excuse or incur a penalty. An emergency such as a student at the school falling ill may constitute a reasonable excuse. The maximum penalty is set at 30 penalty units (\$2250).

Division 6 Prohibition from entering premises of State instructional institutions for more than 60 days, but not more than 1 year

Prohibition from entering premises

Clause 345(1) enables the chief executive to apply to a court for an order prohibiting a person from entering school premises for more than 60 days but for less than 12 months. The power includes the ability to commence an order at a later date.

Subclause (2) states that a direction given under subsection (1) may not be given to a person who is exempt from directions as defined in the Interpretation section of the Act.

Subclause (3) states that the court must be satisfied that unless the order is made, on the balance of probabilities, the person is likely to:

- cause physical harm to or apprehension or fear of physical harm in another person who has a lawful reason for being at the school;
- damage property located at the school; or
- disrupt the good order or management of the institution.

This means that the court must be satisfied that on the evidence presented, it is more likely than not that the person will engage in conduct of the above nature.

Appeal to District Court

Clause 346 provides that a person aggrieved may appeal a decision made in a court to the District Court but only on a question of law. This gives a person against whom a direction has been made by a court an avenue of appeal to the District Court. Conversely, where the court has refused to make a direction, the chief executive may challenge that refusal in the District Court.

Part 7 Directions and orders about conduct or movement at, or entry to, premises of non-State schools

Division 1 Preliminary

Definitions for pt 7

Clause 347 provides two definitions for this part:

An *employee* of a non-State school's governing body means a person or a contractor employed by the governing body, or an employee or sub-contractor of the contractor employed by the governing body.

An *exempt person* is defined as a student of the school and also employees of the school's governing body.

Division 2 Powers relating to name and address

Person may be required to state name and address

Clause 348 inserts a power for a principal of a non-State school to require a person to state their name and address, if the principal proposes to exercise their powers of direction (under sections 350 or 352). Subclause (1) states that the non-State school principal can require a person to provide their name and address.

Subclause (2) states that while making the requirement to provide name and address, the non-State school principal must warn the person of the requirement to comply unless they have a reasonable excuse.

Subclause (3) states that the principal of a non-State school may ask for evidence of the accuracy of the name and address provided by the person if the authorised person reasonably suspects that the stated name and address is false.

Subclause (4) states that the person must comply with the requirement to provide name and address. The maximum penalty imposed will be 10 penalty points (\$750).

Division 3 Directions about conduct or movement at premises of non-State schools

Review body

Clause 349 relates to a review body of a non-State school.

Subclause (1) defines the term *review body* to be where the governing body has nominated a person to conduct a review, that person, or otherwise the school's governing body.

Subclause (2) states that the governing body cannot nominate the school's principal for this role. This will avoid the possible circumstance of a principal reviewing his or her own decision.

Direction about conduct or movement

Clause 350 sets out procedures associated with the power of a non-State school principal to make directions about the conduct or movement of persons on non-State school premises.

Subclause (1) provides the power in the principal to direct another person, other than an exempted person, about their conduct or movement whilst on school premises. The principal must provide the direction in writing. The direction may be about their conduct or movement for a period of up to 30 days. The principal must be reasonably satisfied that the direction is necessary:

- to ensure the safety or welfare of those lawfully at the premises; or
- to prevent or minimise damage to property located at the premises; or
- to maintain the good order at the premises; or
- for the proper management of the school.

Subclause (2) states that a direction given under subsection (1) may not be given to a person who is exempt from directions as defined for the part under section 347. The purpose of giving a direction is so that students and teachers may go about their day-to-day business without disruption. For example, following a disagreement between a teacher and a parent of a child, the parent is unable to address that teacher in a respectful manner and actively seeks further contact with the teacher in order to continue the argument. A principal may direct that parent not to go within a certain distance of the child's classroom or the teacher for a certain period of time. The parent's behaviour, if left unchecked, would have had the effect of preventing the teacher from carrying out his or her obligations to the students and may also have damaged the teacher's standing in the eyes of the students or depending on their age, distressed the students, had they witnessed the offending behaviour.

The behaviour must be such that a reasonable person would be satisfied that the direction was necessary for one of the above reasons.

Subclause (3) lists the information to be included in a written direction. This includes the terms and grounds of the direction, an outline of the facts and circumstances forming the basis for the grounds and the time period for the direction. In addition, the direction must outline the process to be followed if a directed person wishes to apply to have the direction reviewed. The review process protects a person from being the unfair or inappropriate target of a principal's attention.

Subclause (4) states that the direction will not take effect until it is given to the person in writing. This means that while a principal might give an informal, oral direction to a person whose behaviour is objectionable, the

person will not be committing an offence until the direction is given to the person in writing.

Subclause (5) states that a directed person must comply with the direction unless they have a reasonable excuse. A person may have a reasonable excuse to breach a direction if, for example, there is a case of an emergency such as a life-threatening situation involving the person's child. Maximum penalty of 20 penalty units (\$1500).

Review of direction under s350

Clause 351 sets out a review procedure for those who have been given a direction about conduct or movement and who wish to apply for a review of the direction. This provision is designed to uphold the natural justice of those to whom directions apply.

Subclause (2)(a) states that a person may apply to the review body for a review of a direction within 7 days of the person receiving the direction and (b) states that if the direction is for a period of time less than 7 days, then the review must be sought before that time elapses.

The application for review must be made in writing and must outline the grounds on which the person wants the direction to be reviewed.

Subclause (4)(a) and (b) state that the review body must consider the grounds on which the direction was made and either confirm the direction or cancel it. It may not alter the direction or make another direction. In this way, the person reviewing the direction will be able to monitor the use of this power to minimise any possible abuse.

Subclause (5) states that once the review decision is made, the review body must immediately give both the applicant and the school's principal written notice of the decision.

Subclause (6) provides that the review body must give notice within 5 days of the application, or the direction will be taken to have been cancelled. This section protects the directed person against delay by the review body, and ensures that appeals are addressed expeditiously.

Division 4 Directions to leave and not re-enter premises of non-State schools for 24 hours

Direction to leave and not re-enter

Division 4 concerns directions to leave and not re-enter premises of non-State schools for up to 24 hours. Sometimes, a circumstance may arise which will not be alleviated by the principal issuing a direction alone about conduct on the school premises. Instead, a stronger measure is required. An example may be where a parent has lost control of their emotions and is abusing the principal or a staff member and is refusing to behave in a reasonable manner. Their abusive behaviour may significantly impede the ability of the principal and staff to go about their duties. In such circumstances the principal may decide to issue the direction to leave, to allow the person to go away, calm down and return in a less volatile state.

Clause 352(1) inserts a power for a principal of a non-State school to issue a written direction to a person (referred to as the prohibited person) to leave the school premises and not return for at least 24 hours. The written direction can be issued if the principal reasonably suspects that the prohibited person:

- has committed, or is about to commit, an offence at the premises; or
- has used, or is about to use threatening, abusive or insulting language towards another person at the premises; or
- has engaged, or is about to engage, in threatening or violent behaviour towards another person on the premises; or
- has otherwise disrupted, or is about to disrupt, the good order of the premises; or
- does not have a good and lawful reason to be at the premises.

Subclause (2) states that a direction given under subsection (1) may not be given to a person who is exempt from directions as defined for the part under section 347.

Subclause (3) lists the information to be included in a written direction to leave and not re-enter. This includes the terms of and grounds for the direction as well as an outline of the facts and circumstances forming the basis for the grounds. In addition, the direction must state the time during which the person is not permitted to re-enter the school premises.

Subclause (4) states that the direction to leave and not re-enter will not take effect until it is given in writing to the person. This means that a person will not be committing an offence by staying at the premises, until the direction is given to the person in writing.

Subclause (5) states that a person subject to the direction to leave and not re-enter must comply unless they have a reasonable excuse. An emergency situation, such as where a student at the school may fall ill and the prohibited person who is the student's parent enters the school premises to collect the student, would be a reasonable excuse for failure to comply with the direction. A breach of the direction may lead to the imposition of a maximum penalty of 20 penalty units or \$1500.

Division 5 Prohibition from entering premises of non-State schools for up to 60 days

Prohibition from entering premises

Clause 353 sets out a procedure for making a direction under this division for up to 60 days. Subclause (1) enables a non-State school's governing body, or its nominee to issue a direction to a person prohibiting them from entering the school premises for up to 60 days. The governing body must be reasonably satisfied that unless the direction is made, the prohibited person is likely to:

- to cause physical harm to, or apprehension or fear of physical harm in, another person who has a lawful reason for being at the premises; or
- to damage property comprising, or located at the premises; or
- to disrupt the good order or management of the school.

Subclause (2) states that a direction given under subsection (1) may not be given to a person who is exempt from directions as defined for the part under section 347.

Subclause (3) lists the information to be included in the direction including the terms of, grounds for and period of the direction as well as the facts and circumstances forming the basis for the grounds. In addition, the direction must include information about a person's right of appeal to the Magistrates Court if they do not agree with the terms and conditions of the direction. The appeals provisions are set out in section 401.

Subclause (4) states that the prohibition from entering premises will not take effect until it is given in writing on the person.

Subclause (5) states that a person subject to a prohibition from entering premises direction must comply with the direction unless they have a reasonable excuse or incur a penalty. An emergency such as a student at the school falling ill may constitute a reasonable excuse. The maximum penalty is set at 30 penalty units (\$2250).

Subclause (6) states that for subsection (1), a governing body may not nominate the principal of the school in the exercise of these powers.

Division 6 Prohibition from entering premises of non-State schools for more than 60 days, but not more than 1 year

Prohibition from entering premises

Clause 354(1) enables the governing body of a non-State school, or its nominee to apply to a court for an order prohibiting a person from entering school premises for more than 60 days but for less than 12 months. The power includes the ability to commence an order at a later date.

Subclause (2) states that a direction given under subsection (1) may not be given to a person who is exempt from directions as defined in the Interpretation section.

Subclause (3) states that the court must be satisfied, on the balance of probabilities, that unless the order is made the person is likely to:

- to cause physical harm to, or apprehension or fear of physical harm in another person, when the other person is at the premises;
- to damage property comprising, or located at the premises; or
- to disrupt the good order or management of the school.

This means that the court must be satisfied that on the evidence presented, it is more likely than not that the person will engage in conduct of the above nature.

Subclause (4) states that for subsection (1), a governing body may not nominate the principal of the school to make the application.

Appeal to District Court

Clause 355 provides that a person may appeal a decision made in a court at the District Court. Conversely, where a court has refused to make a direction, the governing body can challenge that refusal in the District Court.

Part 8 Prohibition from entering premises of all State instructional institutions and non-State schools for up to 1 year

Prohibition from entering premises of all State instructional institutions and non-State schools

Clause 356(1) enables the chief executive to apply to a court to prohibit a person from entering all State instructional institutions and non-State schools for a period of up to 12 months. The power includes the ability to commence an order at a later date. The person subject to such an application would be considered an unacceptable risk to all members of school communities in general.

This is a provision which endeavours to address behaviour of a much more serious nature than can be addressed by the previous provisions.

Subclause (2) states that an application under subsection (1) may not be made in respect a person who is a student of either a State instructional institution or a student of a non-State school.

Subclause (3) gives the Court power to prohibit a person from entering all State instructional institutions and non-State schools if they pose an unacceptable risk to members of school communities in general. The Court may make the order if the Court is satisfied on the balance of probabilities. Such an order will not be easily obtained. An example where an order may be sought could be where a person has assaulted, abused or threatened members of the school community at a number of schools on a number of occasions to the degree that it could be shown that they pose an unacceptable risk to all Queensland school communities based on their past conduct. Evidence of such past conduct would need to satisfy the court that it is more likely than not that the person poses an unacceptable risk. For example, certificates of indictment in relation to criminal offences

committed at schools may be brought as evidence in such an application to substantiate the person's past conduct.

Prohibition from entering premises of all State instructional institutions

Clause 357(1) enables the chief executive to apply to a court to prohibit a person from entering all State instructional institutions for a period of up to 12 months. The power includes the ability to commence an order at a later date. The person subject to such an application would be considered an unacceptable risk to members of the communities of State instructional institutions.

Subclause (2) states that an application under subsection (1) may not be made in respect of a person who is a student of a State instructional institution.

Subclause (3) gives the Court power to prohibit a person from entering all State instructional institutions if, on the balance of probabilities, they pose an unacceptable risk to members of school communities in general.

The orders under sections 356 and 357 can be made for a maximum of 12 months. If the chief executive wishes to prohibit a person from entering school premises for longer than 12 months, a new application must be made to the Magistrates Court. This ensures that prohibitions do not remain in place indefinitely and that the court is able to reconsider the circumstances for such an order after 12 months.

Appeal to District Court

Clause 358 provides that a person may appeal the decision made in the Magistrates Court to the District Court but only on a question of law.

Part 9 Provisions relating to parts 6 to 8

Non-application of pts 6 and 7 to particular persons

Clause 359 states that parts 6 and 7 do not apply to persons who are exercising their lawful powers under another Act, for example an authorised industrial officer under the *Industrial Relations Act 1999*, or emergency services officers under the various emergency services legislation such as the *Ambulance Service Act 1991*.

Notification of application or direction

Clause 360 relates to the notification of an application made under sections 345, 354, 356 or 357 in relation to a child. Subclause (2) provides that the applicant must give the parent of the child written notice of the application as soon as practicable unless the parent cannot be found after reasonable inquiry.

Subclause (3) states that subsection (4) applies if a direction given under sections 344 or 353 is to a child.

Subclause (4) then provides that the person giving the direction must give the parent of the child written notice of the direction as soon as practicable unless the parent cannot be found after reasonable inquiry.

Subclause (5) defines a parent of a child for the purposes of this section to be someone who is apparently the parent of the child.

Non-compliance with court order

Clause 361 creates offences for non-compliance with court orders under sections 345, 354, 356 and 357.

Subclause (1) creates an offence for those persons who do not comply with an order of a court under sections 345 and 354. The maximum penalty for this offence is 40 penalty units.

Subclause (2) creates an offence for those persons who do not comply with an order of a court under sections 356 and 357. The maximum penalty for this offence is 40 penalty units or 1 year's imprisonment. The differential penalties are imposed as sections 356 and 357 relate specifically to persons who pose an unacceptable risk to safety, whereas sections 345 and 354 relates to a broader range of grounds including fear, property damage and disruption.

Annual report of department to include report on various matters

Clause 362 provides that the chief executive must include certain matters relating to the new provisions in the Department of Education's annual report made under the *Financial Administration and Audit Act 1977*. For example, the annual report is to include statistical information about the number of directions and orders given under the various sections, including the number given to children, as well as any reviews and appeals started during the year under various sections. The information to be collected regarding appeals includes the number of directions confirmed or cancelled

during the year. Publishing information about the use of these provisions in the annual report is an important accountability mechanism in relation to the use of these powers.

Subclause (2) obliges the chief executive to include the information obtained by the Minister under section 363 in the annual report.

Non-State school's governing body to give particular information to Minister

Clause 363 obliges the governing bodies of non-State schools to give to the Minister, within two months after the end of the financial year the number of applications, directions and orders relating to the school during the financial year made under sections 352, 353, 354 and 351, including those relating to children.

Part 10 Dress code

Development of dress code

Clause 364(1) provides that a State school's principal may develop a dress code for the school's students that is to apply when the students are attending or representing the school.

Subclause (2) provides the dress code may provide for:

- the standards of what is acceptable in relation to the clothing worn by the students, including headwear and footwear;
- standards of what is acceptable in relation to other aspects of the personal presentation of the students.

Subclause (3) provides that in developing the dress code, the principal must consult with the following persons:

- the parents of children enrolled at the school;
- the school's staff and students.

Subclause (4) clarifies that in developing the dress code, the principal must ensure the dress code is consistent with any guidelines made under section 365.

Guidelines for dress code

Clause 365(1) provides that the chief executive may make guidelines about dress codes for State schools.

Subclause (2) provides that issues that may be addressed by a guideline:

- the scope of operation of a dress code;
- the extent of consultation to be undertaken by a State school's principal when developing a dress code;
- the issues to be considered in the development of a dress code, including for example:
 - the availability and affordability of items of clothing; and
 - the functionality of items of clothing; and
 - health and safety issues; and
 - anti-discrimination issues; and
 - the process to be followed in dealing with the special circumstances of particular students;
- the consistency of a dress code with other Acts or laws;
- the consistency of a dress code with government policies;
- the ongoing monitoring of the operation of a dress code.

Subclause (3) provides that a guideline may be amended or replaced by a later guideline made under this section.

Subclause (4) provides that a guideline must be made available to each principal of a State school.

Noncompliance with dress code

Clause 366(1) provides that if a student of a State school does not comply with a dress code for the school's students, developed under section 364, the school's principal may only impose one of the following sanctions for a breach:

- (a) detention of the student for a period allowed under section 287(3);
- (b) prevent the student from attending, or participating in, any activity for which the student would have been representing the school;

- (c) prevent the student from attending, or participating in, any school activity that in the reasonable opinion of the school's principal, is not part of the essential educational program of the school.

It should be noted as a separate issue, if there are breaches in the dress code policy that relate to safety issues (for example, closed in shoes needed for laboratory work; hard hat for industrial; wearing uniform during excursion). The principal has the ability to prevent the student from participating in the essential program, given the principal's duty of care obligations.

Subclause (3) provides that part 4, divisions 1 to 3 and 7 do not apply to the noncompliance.

Subclause (4) provides that, for subsection (1)(a), section 287(4) and (5) applies for that purpose a reference in section 287(4) to 'subsection (2)' is taken to be a reference to subsection (1)(a) of this section.

Dress code to be available for inspection

Clause 367(1) provides that a State school's principal must keep an up-to-date copy of a dress code for the school's students developed under section 364 available for inspection, free of charge, by interested persons at the school's administration office.

Subclause (2) provides the plan may be made available in written or electronic form.

Part 11 Reporting of sexual abuse

Definition for pt 11

Clause 368 provides a definition of *employee* for the part. Employee is defined as meaning a person engaged to carry out work at the school for financial reward. The definition applies to both State and non-State schools. The definition does not include persons who are volunteers at a school.

Obligation to report sexual abuse of student under 18 years attending State school

Clauses 369 and 370 create a mandatory reporting requirement for school staff (teaching and non-teaching) who become aware of, or reasonably suspect that another school employee of the school has sexually abused a child attending the school. The reporting arrangements differ between the State and non-State school sectors. These provisions are identical to those in the previous Act at sections 146A and 146B.

Clause 369 sets out the reporting arrangements for the State school sector. This section requires school staff to report the matter immediately to the school principal or the principal's supervisor, who must then immediately report the matter to a person nominated by the chief executive for the purpose, who must then immediately report the matter to the Queensland Police Service. Failure to comply with the reporting requirements is an offence punishable by a maximum penalty of 20 penalty units.

Subclauses (6) & (7) confer immunity from liability (including civil liability for defamation or breach of confidentiality) on a person who makes a report or provides a copy of it under these provisions.

Obligation to report sexual abuse of student under 18 years attending non-State school

Clause 370 sets out the reporting arrangements for the non-State school sector. This section requires school staff to report the matter immediately to the school principal or a director of the school's governing body, who must then immediately report the matter to the Queensland Police Service. Failure to comply with the reporting requirements is an offence punishable by a maximum penalty of 20 penalty units.

Subclauses (5) & (6) confer immunity from liability (including civil liability for defamation or breach of confidentiality) on a person who makes a report or provides a copy of it under these provisions.

Chapter 13 Schools in receipt of subsidy

Part 1 Preliminary

Definitions for ch 13

Clause 371 provides for a number of definitions for the chapter:

Allowance is defined inclusively to include a grant, subsidy or supplement.

Approved policy means a policy approved by the Minister under section 373.

Part 2 Scholarships and allowances

Provision of scholarships and payment of allowances

Clause 372 provides the Minister with a head of power to provide scholarships and a range of allowances in relation to education. The provision of the scholarships and allowances may be under an approved Ministerial policy. The scholarships may be provided to prospective students or students of schools in receipt of subsidy. Allowances may be paid to the governing bodies of non-State schools in receipt of subsidy for use in the operation of the school; to persons to offset their costs of attending school; to persons to offset their costs in receiving home education; and to student hostel operators to defray the cost of operating the hostel.

Subclause (2) allows the Minister to pay an allowance under subsection (1)(b) (to non-State school governing bodies) on conditions the Minister considers appropriate.

Subclause (3) defines student hostel for the section as meaning a hostel for the accommodation of students attending a school in receipt of subsidy. The intention of the definition is to not include school boarding houses with the category of student hostels. A deliberate decision was made during drafting that an amendment to specifically exclude school boarding houses from the definition was not necessary as such facilities were not student hostels.

Minister's policy

Clause 373 provides the Minister with a head of power to approve a policy about the:

- criteria for provision of a scholarship, or payment of an allowance under section 372;
- the basis for calculating the amount of the scholarship or allowance;
- how a person may apply to the Minister for the scholarship or allowance.

Subclauses (2) to (5) provide generic requirements for the chief executive to a copy of the policy available for inspection without charge. The chief executive must also have a copy of the policy available to supply to a person without charge. The policy must also be kept on the department's website on the Internet.

Part 3 Financial data**Requirement to give financial data**

Clause 374 sets out the purpose of the section, which is to enable the Minister to obtain information about a non-State school that will allow the Minister to decide the amount of allowance to be paid to the school under section 372(1)(b).

Subclause (2) requires the non-State school's governing body to provide the Minister financial data for the school for the previous year of operation. The financial data must be provided on or before a date prescribed under a regulation.

Subclauses (3) and (4) require the data to be provided in the approved form and to be sourced from the audited financial statements of the school's governing body for the previous year.

Subclause (5) provides that, despite subsection (1) the Minister may take other matters into consideration when deciding the amount of allowance to pay the governing body.

Subclause (6) provides that the subsection (2) requiring data from the previous year does not apply to a school that has been in operation for less than the whole of the relevant year.

Further information or documents relating to financial data

Clause 375 applies to a school that has given data to the Minister under section 374 for provision of an allowance. The Minister may require the governing body of a non-State school to provide further information. The requirement must be put in a written notice and provide a reasonable time of at least 28 days to provide the information or documents required by the Minister under the notice. The governing body must comply with the notice.

False or misleading information or documents

Clause 376 requires the governing body to not give information to the Minister in relation to sections 374 or 375 that the governing body knows is false or misleading in a material particular. To do so constitutes an offence punishable by a maximum penalty of 20 penalty units.

Subclause (2) creates an offence for a governing body to give to the Minister a document containing information in relation to sections 374 or 375 that the governing body knows is false or misleading in a material particular. A maximum penalty of 20 penalty units is imposed.

Subclause (3) provides that the offence under subsection (2) does not apply to a school's governing body if the governing body: tells the Minister the how the information is false or misleading; and if reasonably possible, gives the Minister the correct information.

Confidentiality of financial data

Clause 377 applies to the Minister, and person's who were the Minister and persons involved in the administration of this part of the Act. Such persons would generally be public servants and they are used as an example.

Subclause (2) creates an offence for such persons who disclose protected information to anyone else. A maximum penalty of 50 penalty units applies.

Subclause (3) provides that the offence does not apply if:

- the information is disclosed in performance of functions under this part of the Act or with the written consent of the governing body of the school to which the information relates; or
- the information is otherwise publicly available; or
- the disclosure is permitted or required under an Act or other law.

Subclause (4) defines *protected information* for the section as meaning information disclosed to, or obtain by, a person to whom the section applies under section 374 or 375.

Part 4 Giving of allowance acquittal details

Allowance acquittal details

Clause 378 applies to a non-State school that is being paid an allowance under section 372(1)(b). The school's governing body must give to the Non-State Schools Accreditation Board, in the approved form, allowance acquittal details for the school. This is an annual requirement and must be met within 6 months after the end of each year.

Subclause (3) provides that a governing body is taken to comply with the acquittal if an authorised nominee gives the information on their behalf. This subsection does not limit subsection (2).

Subclause (4) makes it clear that non-compliance with the section is a ground for stopping payment of the allowance.

Subclause (5) defines *allowance acquittal details*, for the section as meaning details of how the allowance has been expended by the school's governing body.

Annual report

Clause 379 requires the Non-State Schools Accreditation Board to give to the Minister a written report about the details received by the board under section 378 for the year. The report must be given as soon as practicable after the end of each year.

Show cause notice

Clause 380 applies if the Non-State Schools Accreditation Board reasonably believes the section 378(4) ground exists for stopping payment of an allowance.

Subclause (2) requires the board to give the governing body a show cause notice stating:

- that the board proposes to make a recommendation for stopping payment of an allowance;

- the grounds for the proposed recommendation and an outline of the facts and circumstances forming the basis for the ground;
- that the governing body may make a written submission within a state period why the recommendation should not be made.

Subclause (3) provides that the show cause period in which to make a submission must be at least 30 days after the notice is given to the governing body.

Representations about show cause notice

Clause 381 allows the governing body to make written representations about the show cause notice within the period state in the notice. The board must consider all written representations made during that period.

Ending show cause process without further action

Clause 382 applies if the Non-State Schools Accreditation Board considers the representations and no longer believes the ground exists for stopping payment of the allowance. The board must take no further action in relation to the show cause notice and must give a notice to the governing body to that effect. The notice must be given as soon as practicable.

Recommendation by board

Clause 383 applies if the Non-State Schools Accreditation Board considers the representations, if any were made, and the board still believes the ground exists for stopping payment of the allowance. The board must make a recommendation that payment of the allowance be stopped. As soon as practicable after making the recommendation the board must give the recommendation to the Minister.

Subclause (5) defines *recommendation* as including reasons for the decision.

Decision of Minister

Clause 384 applies is the Minister receives a recommendation from the Non-State Schools Accreditation Board under section 383(4). The Minister must decide whether the payment is stopped and in doing so must have regard to the recommendation of the board. However, the Minister must have regard to the recommendation, but is not bound by the board's recommendation.

Subclauses (4) and (5) require the Minister to give the governing body a notice of the decision, regardless of whether or not the decision is to stop the payment of the allowance. If the decision is to stop the payment the notice must also contain the reasons for the decision. The notice must be given as soon as practicable.

Subclause (7) defines *recommendation* as including reasons for the decision.

While not specifically stated in the provision, the Minister's decision to stop the payment of an allowance may effectively delay the payment until the acquittal details that have led to the stoppage are provided to the Minister. The Minister may then resume the payments.

Minister's discretion not limited

Clause 385 provides that the grounds for stopping payment of an allowance set out in section 378(4) do not limit the Minister's discretion in relation to stopping payment for other reasons.

Subclause (2) makes it clear that despite the Minister deciding that an allowance should not be stopped under section 384, this decision does not limit the Minister's discretion to stop payment at a later time.

Part 5 Other provisions

False or misleading statement

Clause 386 creates an offence in relation to persons who make an application for a scholarship or allowance. The offence relates stating anything that the person knows is false or misleading in a material particular or omits from the application anything without which the statement is, to the person's knowledge, misleading in a material particular. The maximum penalty is 5 penalty units.

Subclause (3) provides that subsection (2) does not apply to a person if the person, when giving the document, tells the Minister or chief executive how it is false or misleading or if the person corrects the information.

Chapter 14 Transfer notes

Part 1 Preliminary

Definition for ch 14

Clause 387 provides that for the purposes of this chapter a *relevant person* for a student of a State or non-State school means either:

- (a) if the student is a child—a parent of the student; or
- (b) if the student is an adult—the student.

This clause establishes, for the purposes of this chapter, who is able to request and receive the transfer note.

Meaning of *transfer note*

Clause 388 defines a *transfer note* as a document containing the information including personal information about the former or continuing State or non-State school student prescribed under a regulation. Subclause (2) provides that without limiting subsection (1) the information about the former or continuing student may include results of the student's assessment in an area of learning. This for example may include the latest report card or results of specified tests. Subclause (2) also outlines that the transfer note may include information about behavioural issues identified during the student's attendance at school.

Purpose of giving transfer note

Clause 389 provides the purpose of giving a transfer note to a school principal. The purpose is to ensure the continuity of the student's educational program and to meet the principal's duty of care obligations in relation to the student and the school community.

Part 2 Request for transfer notes

Cessation of enrolment

Clause 390 enables a *relevant person*, as defined in section 387, to request a copy of the transfer note when the relevant person requests to cease the enrolment of the student. The timeframe for the request has been limited to provide that the request must be made at the time of requesting to cease the enrolment. It is envisaged that these clauses will specifically assist where a family is moving overseas and wishes to take a copy of the student's transfer note with them. It should be noted that this chapter specifically addresses where a student moves within the State and there is another specific system which commenced at the beginning of 2006 for the inter-State transfer of student information which is required under the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004* (Cwlth).

Subclause (2) requires the principal to prepare and give the transfer note as soon as possible after the cessation of enrolment (and copies of the documents mentioned in the transfer note which may include for example a copy of the most recent report card). However, if the relevant person for the student is a parent of the student the principal does not have to prepare the transfer note, if the principal is reasonably satisfied it would be inappropriate in the circumstances to allow the parent to receive the transfer note and copies of the documents referred to in the transfer note. One example of this is provided and includes where a former student is living independently of his or her parents. In these circumstances, subsection (4) requires that the principal must as soon as practicable after the cessation of enrolment, prepare and give the transfer note and copies of the documents referred to in the transfer note to the former student.

Application for enrolment

Clause 391 provides for the forwarding of the transfer note and envisages two types of potential circumstances where these requirements would apply. Firstly, in subclause (1) where the student has ceased their enrolment (the *former student*) and has not enrolled since the cessation and is applying to enrol. Secondly, in subclause (2) where a student is still enrolled (the *continuing student*) and applying for enrolment in another school.

Subclause (3) provides the discretionary power for the principal of the new school to give the previous school principal a notice (the *first notice*)

requesting the previous school's principal to give the new school's principal a transfer note for the former or continuing student. This power is discretionary only, given that a principal may determine that they have already obtained sufficient information about the new student to assist in transitioning the student into the school.

Subclause (4) requires that the previous school's principal must prepare and give the new school's principal the transfer note and copies of the documents mentioned in the transfer note within 10 school days of receiving the first notice. School days have been used in this clause to enable preparation of the transfer note, where requests are forwarded for example during a school holiday period. It should be noted that these provisions also provide for the electronic transfer or access to the transfer note where schools are part of the one systemic database.

Subclause (5) requires that the new school's principal must at the time of giving the first notice to the previous school's principal notify the relevant person for the former or continuing student that the first notice has been made. This has been included to ensure that parents are aware that the transfer note has been requested, given that parental consent is not required to request or receive the transfer note.

Subclause (6) requires that the new school's principal must give the relevant person a copy of the transfer note (and copies of the documents mentioned in this). However, this requirement is limited to only where the relevant person requests the copy. For example, a parent may have already requested the transfer note (and copies of the documents mentioned in this) under the section 390 at the time of cessation of enrolment.

Subclause (7) envisages circumstances where it may be inappropriate to allow a parent to receive a copy of the transfer note and copies of the documents. One example of this is provided and includes where a former student is living independently of his or her parents. In these circumstances, subclause (8) requires that the principal must as soon as practicable after receiving the transfer note and copies of the documents give these to the former or continuing student.

Transfer of records between State schools

Clause 392(1) provides that this section applies if the enrolment of a student (the *former student*) at a State school (the *previous school*) has ceased and the former student is later enrolled at another State school (the *new school*).

Subclause (2) provides this part does not prevent the former school's principal transferring records, in the possession of the former school's principal, relating to the former student to the new school's principal.

Part 3 Protection from liability

Protection from liability

Clause 393(1) provides that a school principal is not civilly liable for an act done, or omission made, honestly and without negligence under this chapter.

Subclause (2) provides that if subsection (1) prevents a civil liability attaching to a school principal, the liability attaches instead:

- (a) for a State school's principal—to the State; or
- (b) for a non-State school's principal—the school's governing body.

Chapter 15 Reviews and appeals

Part 1 Reviews of decision by chief executive

Who may apply for review

Clause 394 provides that a person who is given or is entitled to be given an information notice for a decision (the *original decision*) and who is dissatisfied with the decision may apply to the chief executive for a review of the decision.

Application for review

Clause 395 provides for making an application for review.

Subclause (1) provides that the application must be made:

- (a) if the person is given an information notice about the decision—within 30 school days after the person is given the information notice; or
- (b) if paragraph (a) does not apply—within 30 school days after the person otherwise becomes aware of the decision.

Subclause (2) provides that the chief executive may extend the time for making the application.

Subclause (3) provides that the application must be in the approved form and supported by enough information to enable the chief executive to decide the application.

Review decision

Clause 396 outlines the review decision process.

Subclause (1) provides that unless the chief executive made the original decision personally, the chief executive must ensure the application is not dealt with by:

- (a) the person who made the original decision; or
- (b) a person in a less senior office in the department than the person who made the original decision.

Subclause (2) provides that within 40 school days after the making of the application, the chief executive must review the original decision and make a decision (the *review decision*):

- (a) confirming the original decision; or
- (b) amending the original decision; or
- (c) substituting another decision for the original decision for the original decision.

Subclause (3) provide the chief executive must make the review decision on the material that led to the original decision and any other material the chief executive considers relevant.

Subclause (4) provides that immediately after making the review decision, the chief executive must give the applicant notice of the review decision.

Subclause (5) provides that if the review decision is not the decision sought by the applicant, the notice must state:

- (a) the review decision; and

- (b) the reasons for the decision; and that within 28 days after receiving the notice, the applicant may appeal against the review decision to a Magistrates Court.

Part 2 Appeal against review decisions

Application of pt 2

Clause 397 provides that this part applies if the chief executive makes a review decision and the applicant is dissatisfied with the review decision.

Appeal to Magistrates Court

Clause 398 provides that an applicant may appeal a review decision to the Magistrates Court.

Subclause (1) provides that the applicant may appeal against the review decision to a Magistrates Court.

Subclause (2) provides that the appeal must be stated:

- (a) if the applicant receives the notice of the review decision under section 396(5)—within 28 days after the notice is received; or
- (b) otherwise—within 28 days after the applicant becomes aware of the review decision.

Subclause (3) clarifies however, that the court may extend the time for making the appeal.

Conduct of appeal

Clause 399 provides for the conduct of the appeal.

Subclause (1) provides that the appeal is started by filing a notice of appeal in the court.

Subclause (2) provides that the appeal is by way of rehearing, unaffected by the review decision, on the material before the chief executive and any further evidence allowed by the court.

Subclause (3) provides that the court may allow the appeal and make any order it considers appropriate or dismiss the appeal.

Part 3 Appeals against directions under s 344 or 353

Definition for pt 3

Clause 400 provides that in this part, *court* means:

- (a) for an appeal relating to a child—the Childrens court; or
- (b) otherwise—a Magistrates Court.

Who may appeal

Clause 401 provides that a person (the *appellant*) who is given a direction under section 344 or 353 (the *original decision*) may appeal against the original direction to a court.

Starting an appeal

Clause 402 provides the notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed with the registrar of the court within 10 days after the appellant is given the original direction.

Hearing procedures

Clause 403 provides for how an appeal will be heard.

Subclause (1) provides that in deciding the appeal the court:

- (a) has the same powers as the person who gave the original direction;
- (b) is not bound by the rules of evidence;
- (c) must comply with natural justice;
- (d) must allow a child to be represented by an associated adult; and
- (e) may not make an order for costs, other than for filing fees.

Subclause (2) clarifies that to remove any doubt, it is declared that the *Childrens Court Act 1992*, section 20 applies if the appeal is heard by the Childrens Court.

Subclause (3) provides the appeal is by way of rehearing on the material before the person who gave the original direction and may further evidence allowed by the court.

Subclause (4) provides that the respondent to the appeal may be represented by a lawyer at the hearing of the appeal only if the appellant is also represented by a lawyer.

Subclause (5) provides that in this clause:

associated adult, for a child means an adult who:

- (a) is the child's parent, step-parent or guardian; or
- (b) is the child's spouse; or
- (c) has parental rights and duties for the child; or
- (d) might reasonably be expected to have authority over the child's conduct.

Powers of court on appeal

Clause 404 provides for the powers of the court on appeals.

Subclause (1) provides that in deciding the appeal the court may:

- (a) confirm the original direction; or
- (b) amend the original direction ; or
- (c) substitute another direction for the original direction; or
- (d) set aside the original direction and return the issue to the person who gave the original direction with the directions the court considers appropriate.

Subclause (2) provides that if the court amends the original direction or substitutes another direction of the original direction, the amended or substituted direction is, for this Act (other than this part), taken to be the direction of the person who gave the original direction.

Part 4 Appeal against decision under s69, 72, 158, 306(4) or 313(6)

Definitions for pt 4

Clause 405 provides that in this part:

aggrieved person means:

- (a) a student aggrieved by the decision of a principal's supervisor under section 69; or
- (b) a student aggrieved by the chief executive's decision under section 72, 306(4) or 313(6); or
- (c) a person who made a submission to the Minister about the person's removal from an association and who is aggrieved by the Minister's decision under section 158.

court means a Magistrates Court.

Appeal

Clause 406 provides that an aggrieved person may appeal to a court against the decision about which the person is aggrieved.

Subclause (2) provides that the appeal must be started:

- (a) if the aggrieved person receives notice of the decision under this Act—within 28 days after the aggrieved person receives the notice;
- (b) otherwise—within 28 days after the aggrieved person becomes aware of the decision.

Subclause (3) provides that the court may extend the time for making the appeal.

Subclause (4) requires the appeal to be started by filing a notice of appeal in the court.

Subclause (5) provides that the appeal is by way of rehearing on the material that was before the person whose decision is appealed against and any further evidence allowed by the court.

Subclause (6) provides that the court may:

- (a) allow the appeal and make any order it considers appropriate; or
- (b) dismiss the appeal.

Chapter 16 Legal proceedings

Part 1 Evidence

Application of pt 1

Clause 407 provides that this part applies to a proceeding under this Act.

Definition for pt 1

Clause 408 provides that in this part *authorised officer* means a person who is an authorised officer under section 182(6) or 245(6).

Appointments and authority

Clause 409 provides that it is not necessary to prove the appointment of the chief executive or an authorised officer, or the authority of the chief executive or an authorised officer to do anything under this Act, unless a party to a proceeding under this Act, by reasonable notice, requires proof of the appointment or authority.

Signatures

Clause 410 provides that a signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

Other evidentiary aids

Clause 411 provides for the other evidentiary aids where the chief executive has signed a certificate, the certificate becomes evidence of the matter stated.

Subclause (1) provides that a certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter:

- (a) a stated document is an approval, decision or requirement made under the Act; or an exemption issued under chapter 9, part 3; or an exemption issued under chapter 10, part 5; or a notice given under the Act;

- (b) a stated document is a copy of a document mentioned in paragraph (a);
- (c) on a stated day, or during a stated period, an authorisation as an authorised officer was, or was not in force for a stated person;
- (d) on a stated day, or during a stated period, an exemption issued under chapter 9, part 3 for a stated child was, or was not, in force;
- (e) on a stated day, or during a stated period, an exemption issued under chapter 10, part 5 for a stated young person was or was not, in force;
- (f) on a stated day, a stated person was given a stated notice under this Act;
- (g) on a stated day, a stated requirement was made of a stated person.

Subclause (2) provides that in a proceeding for an offence against section 180(1):

- (a) a certificate purporting to be signed by a State school's or non-State's principal:
 - (i) that a stated child is or is not enrolled at the school; or
 - (ii) stating the details of attendance of a stated child at the school;
 is evidence of the matter; and
- (b) a certificate purporting to be signed by the chief executive that the chief executive consents to the bringing of the prosecution is evidence of the consent; and
- (c) a statement in a complaint that a child was of compulsory school age at the time of the offence is evidence of the matter.

Part 2 Offence proceedings

Summary proceedings for offences

Clause 412 provides that a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

Subclause (2) provides that the proceeding must start within the later of the following periods to end:

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

Statement of complainant's knowledge

Clause 413 provides in a complaint starting proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

Evidence of chief executive's consent

Clause 414 provides a certificate, purporting to be signed by the chief executive, that the chief executive consents to the brining of proceedings for an offence against section 243(1) is evidence of the consent.

Chapter 17 Minister's powers

Power of Minister to be member of entity

Clause 415 provides the Minister or a person authorised by the Minister for this clause, may by invitation from or agreement with an entity:

- (a) be a member of the entity if:
 - (i) its objects include education, research or any other matter associated with the process of learning or teaching (the *relevant objects*); or
 - (ii) in the opinion of the Minister, it is engaged in the promotion of education; and
- (b) enter into an agreement with an entity whose objects include the relevant objects, in relation to the objects.

Subclause (2) provides that if the Minister is a member of an entity under subsection (1)(a), the Minister may be a member of the governing body of the committee, group or body.

Subclause (3) provides the Minister may incur any expenses, or pay any contributions, that membership of an entity under subsection (1) requires.

Establishment of advisory committees

Clause 416 provides the Minister with a head of power to establish advisory committees to advise the Minister in relation to any aspect of education. While not strictly necessary to legislate for such matters, the provision puts the matter beyond doubt. The membership, role, procedures etc of the advisory committees is entirely at the Minister's discretion.

Forming or establishing entities for furthering education

Clause 417 provides the Minister with a head of power to form or establish entities, or participate in forming or establishing entities, that directly or indirectly further education in any way and sets out how those entities are to be treated in relation to certain other relevant Acts.

Subclause (1) allows the Minister to establish the entities, or participate in the forming or establishing of, an entity for any purpose that may directly or indirectly further education in any way.

Subclause (2) provides that an entity formed or established under subsection (1) is a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Subclause (3) provides the *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the powers under this Act of an entity formed or established under subsection (1) are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Chapter 18 International educational institutions

Definitions for ch 18

Clause 418 provides the definitions for chapter 18. In this chapter:

approved entity of a country means an entity the Minister reasonably believes ordinarily authorises persons to teach primary or secondary curriculums of the country.

criminal history, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, and:

despite sections 6 and 9 of that Act, includes a conviction of the person to which any of the sections applies; and

despite section 5 of that Act, includes a charge made against the person for an offence.

international educational institution means an institution, facility, school or college in Queensland that offers, or proposed to offer, an overseas curriculum.

overseas curriculum means a curriculum that is, or is a variation of, the whole or part of the primary or secondary curriculum of a foreign country.

Limitation on operation of international educational institution

Clause 419 provides a person must not operate an international educational institution in Queensland unless the person has the Governor in Council's approval under this chapter. The maximum penalty is 100 penalty units.

Recommendation by Minister

Clause 420 provides that before recommending that the Governor in Council give an approval to a person to operate an international education institution in Queensland, the Minister must have regard to the financial viability of the institution.

Subclause (2) provides that subsection (1) does not limit the matters the Minister may have regard to in deciding whether to make a recommendation under subsection (1).

Conditions of approval

Clause 421 provides for the conditions that may apply to an approval to operate an international educational institution.

Subclause (1) provides the Governor in Council may in giving an approval under this chapter to a person to operate an international educational institution in Queensland, impose conditions on the approval that are relevant and reasonable.

Subclause (2) provides that without limiting subsection (1), the following conditions apply to an approval given under this chapter by the Governor in

Council to a person to operate an international educational institution in Queensland:

- (a) a person who teaches at the institution must be authorised under a law, or by an approved entity, of the country in which the institution's overseas curriculum is ordinarily offered to teach the curriculum;
- (b) a person must not teach at the institution if the Minister reasonably considers the person may pose a risk to the safety of children attending the institution;
- (c) a student who successfully completes the institution's overseas curriculum must be eligible to receive an academic award for its completion from an entity of the country in which the curriculum is ordinarily offered;
- (d) the institution must have written guidelines about the appropriate conduct of its staff and students that accord with legislation applying in the State about the care or protection of children.

Subclause (3) provides the conditions of an approval, other than the conditions mentioned in subsection (2), must be stated on the approval.

Subclause (4) provides that a person who is approved, under this chapter to operate an international educational institution in Queensland must comply with the conditions of the approval. The maximum penalty is 10 penalty units.

Criminal history reports

Clause 422 provides that for section 421(2)(b), the Minister may ask the commissioner of the police service for a written report about the criminal history of a person who will be teaching, or teaches, at an international educational institution.

Subclause (2) provides that the commissioner of police service must comply with the request.

Subclause (3) provides the duty imposed on the commissioner of the police service to comply with the request applies only to information in the commissioner's possession or to which the commissioner has access.

Payment of allowances

Clause 423 provides that a regulation may provide for the payment of allowances to persons enrolled at an international educational institution that a person is approved to operate under this chapter.

Chapter 19 Miscellaneous

Special Education

Clause 424 provides the Minister with two heads of power in relation to persons with a disability.

Subclause (1) provides the Minister with a head of power to provide, or assist in the provision of, special education to persons with a disability who are enrolled at non-State schools. This allows the Minister to, for example, make available a specialised teacher to provide instruction to persons with a disability in a non-State school.

Subclause (2) provides the Minister with a head of power to provide, or assist in the provision of, special education to persons with a disability who are below the compulsory school age. The agreement of the parent of the person with a disability must be obtained, prior to the Minister exercising this power. This power will be used to provide special education to young children with a disability to better prepare them for entry into school.

Transportation assistance for certain students

Clause 425 enables the Minister to provide certain students with transport assistance in relation to their attendance at school.

Subclause (1) provides a head of power for the Minister to give assistance to eligible students for their transportation to and from schools in receipt of subsidy. *School in receipt of subsidy* is defined in schedule 4 as a State school or a non-State school in receipt of subsidy.

Subclause (2) provides an inclusive list of the ways in which the Minister may give the assistance. The list provides a great deal of flexibility in relation to how the assistance may be given. For example, a family may receive an amount of money to subsidise the cost of driving a child with a disability to and from a nominated school.

Another example is where a taxi firm provides transport assistance to a student with a disability to and from school. If the cost of transportation exceeds the amount paid by the Department, the student or their parents may make an arrangement with the transport provider to pay the balance of the cost.

Subclause (3) defines *eligible student* for the section to mean a person who is attending a school in receipt of subsidy and who has a disability that necessitates transport to and from school in a way appropriate to their disability. The definition of eligible student is deliberately broader than that for *person with a disability*, as per section 169(1). *Person with a disability* is defined to relate to those persons who may be eligible for enrolment in a special school or who require special education. There are a range of persons who may have a disability who do not require special education. For example, a child requiring use of a wheelchair may require a specialised form of transport to and from school, but does not require special education. Such a child would not necessarily be eligible for special education, but would be eligible for transport assistance.

Grants to entities

Clause 426 provides the Minister with a head of power to give grants to entities for the purposes of helping children in education and promoting re-engagement of children in education and training. The power is formed broadly to allow the Minister to provide funding to entities assisting children in their education.

Annual reporting by State school's principal or non-State school's governing body

Clause 427 establishes requirements for annual reporting by State and non-State schools.

Subclause (1) provides the Minister with a head of power to approve a policy about the publication by schools of annual reports. The Ministerial policy will relate to the State school's principal and the non-State school's governing body publishing the reports. The policy will set out the matters which are to be included in the school annual report. Information about two types of matters are to be included in the report: information relating to the school and its policies; and aggregate data about student outcomes in the previous year. This information is likely to include such matters as: school's address, total enrolments, year levels offered, details of curriculum

offerings, pastoral care programs; and aggregate results of reading, writing and numeracy tests.

Subclause (2) requires a State school's principal and a non-State school's governing body to comply with the Ministerial policy.

Subclauses (3) to (6) provide generic requirements for the chief executive to a copy of the policy available for inspection without charge. The chief executive must also have a copy of the policy available to supply to a person without charge. The policy must also be kept on the department's website on the Internet.

Parent and teacher discussions

Clause 428 places a requirement on the principals of both State and non-State schools to provide parents with an opportunity to discuss their child's educational performance with the child's teachers. While not expressly stating when the opportunities for discussions are to be provided, it is implicit that schools would provide such opportunities in relation to each semester of education at the school.

Subclause (2) provides that a principal does not have to comply with the subsection (1) requirement where it would be inappropriate in the circumstances to give the parent the opportunity to have the discussions. An example of where it would be inappropriate is provided, being where a child is living independently of their parents.

Student reports

Clause 429 places a requirement on the principals of both State and non-State schools to provide written reports on student educational performance. The reports must be given at least twice a year to either the parent of the child, or the adult student. While not expressly stating when the reports are to be provided, it is implicit that schools would provide a report in relation to each semester of education at the school.

Subclause (2) provides subsection (1)(a) does not apply if the principal is satisfied it would be inappropriate in the circumstances to give a parent of the student the report. If this is the case, the report is to be given to the student. An example of where it would be inappropriate is provided, being where the person is living independently of their parents.

Confidentiality

Clause 430 is a confidentiality provision, which protects personal information collected about a student, prospective student or former student at a State school. This provision also protects personal information about a non-State school student in limited, specified circumstances. The non-State schools that are captured for the purposes of this clause only are defined in subsection (4) and relate only to the personal information contained only in the transfer note under chapter 14 of the Bill. The relevant non-State schools (see subclause 4) are those where the governing body of which is not an organization within the meaning of the *Privacy Act 1988* (Cwlth), section 6C. The purpose of specifically capturing these non-State schools is to ensure that all schools are captured by an adequate privacy regime in regard only to the transfer note, given that the transfer note will be required to move between State and non-State school settings.

Subclause (1) provides that the confidentiality provision applies to a person who, is or has been in a specified role and has gained or has access to personal information about a student, prospective student or former student of State school. It applies to the chief executive or a public service employee of the Department of Education (note that teachers in State educational institutions are public service employees). It also applies to an employee of a State school, an approved entity or a representative of the approved entity or a member of an association.

Subclause (2) provides that the confidentiality provision applies to a person who, is or has been an employee of a relevant non-State school, and, who in that capacity has gained or has access to personal information about a former student, continuing student of a relevant non-State school contained in the transfer note for the former or continuing student. ***Relevant non-State school*** is defined in subsection (4) below.

Subclause (3) makes it an offence for the person to make a record of the information, use the information or disclose the information to anyone else, except in certain specified circumstances.

- A person may disclose the information for a purpose of the Act. This exception for example enables a State school principal to forward a copy of a student's transfer note to a non-State school principal upon request.
- The second exception listed in subsection (3) is with the consent of the person to whom the information relates, or if the person is a child unable to consent, with the consent of the parent of the child. This exception means that if the person is a child and

unable to consent, parent of the child can give the consent on behalf of the child in every instance.

- The third exception is where the disclosure occurs in compliance with lawful processes requiring production of documents or giving of evidence before a court or tribunal. This would enable the information to be, for example, subpoenaed for production in court.
- The fourth exception is where the use or disclosure is permitted or required by another Act, such as for example a disclosure made under the *Evidence Act 1977*. Another example is section 159N of the *Child Protection Act 1999*. This section essentially requires that the chief executive of the Department of Education (except in specified circumstances) must provide relevant information (as per the definition in the *Child Protection Act 1999*), if requested by the chief executive of the Department of Child Safety or an authorised officer.
- The fifth exception is with the written consent of the chief executive who may consent under two circumstances. Firstly, if he or she is reasonably satisfied the recording, use or disclosure is necessary to assist in averting a serious risk to the life, health or safety of a person. This also includes the person to whom the information relates. Secondly the chief executive may consent if he or she is reasonably satisfied the recording, use or disclosure is in the public interest.

A maximum penalty of 50 penalty units (\$3750) applies to recording, disclosure or giving access to someone else in contravention of subsection (3).

Subclause (4) defines key terms for section 430 only.

Approved entity is defined as an entity approved under section 78. Section 78 provides the head of power for the chief executive to approve entities to give instruction in a religious or other belief to students of a State school.

Disclose information includes giving access to the information.

Employee of a State school or relevant non-State school is defined inclusively to include a person appointed to a position in a State school, a person engaged by the chief executive, the State school's principal, or the relevant non-State school's governing body, under a contract for services and a volunteer who performs a task at the school. The contract could be a verbal or written contract. For example, a parent volunteer helping at a

school may be a volunteer who performs tasks at the school and captured by the confidentiality provision.

Personal information is defined to mean information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. This definition is intended to capture the same information that is intended to be covered by *Information Standard 42: Information Privacy*. Any information collected or come into contact with as a result of an opportunity provided as a result of the role that they perform at the school, which is capable of identifying an individual young person, will be captured by the confidentiality provision, subject to the stated exceptions.

Relevant non-State school means a non-State school, the governing body of which is not an organization within the meaning of the *Privacy Act 1988* (Cwlth), section 6C. Section 6C of the *Privacy Act 1988* (Cwlth) has the effect of providing that if a non-State school has an annual turnover of more than \$3 million, it will be subject to the privacy obligations imposed by the *Privacy Act 1988* (Cwlth) as it cannot rely on the small business operator exemption. A small business with an annual turnover of \$3 million has to comply only with Privacy Act if (and not limited to) for example it is a health service provider or related to a business that is not a small business.

Homework guidelines for State schools

Clause 431 provides the chief executive with a head of power to make guidelines about homework for State schools. While not strictly necessary, the power and the guidelines are aimed at providing a consistent standard of homework practices across the State school sector.

Subclause (2) provides an inclusive list of matters that may be addressed in the guidelines. Generally, these matters relate to what sort of homework tasks should be undertaken by each age cohort, the time allocated to such tasks, and the responsibilities of teachers, parents and students in relation to the tasks.

Subclause (3) allows the guidelines to be amended or replaced.

Subclause (4) requires the guidelines to be made available to all State school principals.

Collection of demographic information

Clause 432 provides a head of power for the chief executive to collect demographic information about State school students and their parents. The power is limited in that the purpose of collection must only be for giving effect to, or managing, an education funding arrangement. Subclause (3) defines *education funding arrangement* as a funding arrangement for educational services provided by the State entered into between the Commonwealth and the State. A present this agreement is known as the “Quadrennium funding agreement”. Under that agreement the State is required to collect a range of information about students and their parents, solely for the purposes of passing that information to the Commonwealth. This information may include what is known in privacy terms as “sensitive information”. Given that the information is only collected for passing to the Commonwealth, rather than for a purpose under the Act, it is considered that a specific head of power is required to avoid any privacy concerns about the collection.

Subclause (2) puts it beyond doubt that collection of demographic information about State school students and their parents for the purposes of the Act is not prevented by subsection (1).

Chief executive’s directions about State school records and reports

Clause 433 provides the principal of a State school must comply with the chief executive’s written directions to the principal about the following matters:

- (a) the school records that must be kept;
- (b) the reports about the school that must be given to the chief executive;
- (c) the times by which, and the way in which, the records must be kept or the reports given.

Failure to decide application

Clause 434 provides that this clause applies if under this Act, the chief executive is taken to have decided to refuse to grant an application.

Subclause (2) provides that to remove any doubt, it is declared the chief executive must as soon as practicable give the applicant an information notice about the decision.

Delegation by Minister

Clause 435 provides that the Minister may delegate the Minister's powers under the Act to an appropriately qualified person.

Subclause (2) provides that in this clause, *appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

Delegation by chief executive

Clause 436 provides that the chief executive may delegate the chief executive's powers under this Act to an appropriately qualified officer of the department.

Subclause (2) provides that in this section *appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

Approval of forms

Clause 437 provides that the chief executive may approve forms for use under this Act.

Regulation-making power

Clause 438 provides that the Governor in Council may make regulations under this Act.

Subclause (2) provides that a regulation may be made about the following:

- (a) fees, including the refunding of fees, for this Act other than the fees mentioned in section 51;
- (b) the management, administration and control of the operations of a State educational institution;
- (c) the use of a State educational institution's premises;
- (d) the dissolution of an association or school council;
- (e) imposing a penalty of not more than 10 penalty units for a contravention of a provision of a regulation.

Subclause (3) provides that without limiting subsection 2(a), a regulation may be made about fees for the provision of education, including distance education, by a State school to a person enrolled at a non-State school.

Chapter 20 Repeal, validations and transitional provisions

Part 1 Repeal of Acts

Repeal

Clause 439 provides that the *Education (General Provisions) Act 1989*, No. 30 and the *Youth Participation in Education and Training Act 2003*, No. 62 are repealed.

Part 2 Validations

Validation of fee waiver

Clause 440 validates past waiving of fees by the chief executive.

Subclause (1) provides that this section applies if, before the commencement of this clause, the chief executive waived, wholly or partly, the payment by a person of a fee payable under section 72(4) of the *Education (General Provisions) Regulation 2000*.

Subclause (2) provides that the waiver is taken to be, and to always have been, valid and effective.

Part 3 Transitional provisions

Definitions for pt 3

Clause 441 sets out the definitions for the part.

Commencement means the commencement of the provision in which the term appears.

Corporation sole means the corporation sole named 'The Minister for Education of Queensland', constituted under the repealed E(GP) Act.

Repealed E(GP) Act means the *Education (General Provisions) Act 1989* as in force from time to time before its repeal.

Repealed YPET Act means the *Youth Participation in Education and Training Act 2003* as in force from time to time before its repeal.

References to repealed Acts

Clause 442 provides that a reference in an Act or a document to the repealed *Education (General Provisions) Act 1989* or the repealed *Youth Participation in Education and Training Act 2003* may, if the context permits, be taken to be a reference to this Act.

Dissolution of corporation sole

Clause 443 provides that the corporation sole is dissolved on the commencement.

Vesting of assets, rights and liabilities of corporation sole

Clause 444 provides that on the commencement, the assets, rights and liabilities of the corporation sole vest in the State. Also on the commencement, the State is substituted for the corporation sole in all contracts to which the corporation sole is a party. Additionally, any property held by the corporation sole on trust is held by the State on the terms of the trust.

Subclause (2) provides that despite the State being substituted for the corporation sole in all contracts, the chief executive is substituted for the corporation sole in all contracts entered into under the *Education (Work Experience) Act 1996*, section 8 or 9, to which the corporation sole is a party.

Legal proceedings involving the corporation sole

Clause 445 provides that a legal proceeding that could have been started or continued by or against the corporation sole immediately before the commencement may be started or commenced against the State.

Legal proceedings involving the corporation sole

Clause 446 provides that a legal proceeding that could have been started or continued by or against the corporation sole immediately before the commencement may be started or continued against the State.

References to corporation sole

Clause 447 provides that a reference in an Act or document in existence immediately before the commencement to the corporation sole may, if the context permits, be taken to be a reference to the State.

Offences

Clause 433 provides that proceedings for an offence against the E(GP) Act or the YPET Act maybe continued or started and the provisions of the repealed Acts may continue to apply as if this Act had not commenced.

Subclause (2) provides that the *Acts Interpretation Act 1954*, section 20, applies but does not limit the section.

Power of Minister to be member of committees etc

Clause 448 transitions committee, group and body arrangements under the E(GP) Act section 9, to section 415 of this Act. Agreements entered into by the Minister or a person authorised by the Minister are taken to be agreements mentioned in section 415 of the Act.

Advisory committees

Clause 449 provides that advisory committees in existence at the commencement are taken to be advisory committees established under section 416 of the Act. The members of the committees continue as members.

State educational institutions

Clause 450 provides that:

- A State school established under section 16 of the repealed E(GP) Act, and in existence immediately before the commencement, is taken to be a State school established under section 13; and
- A centre for continuing secondary education established under section 17 of the repealed E(GP) Act, and in existence immediately before the commencement, is taken to be a State school established under section 13; and
- An environmental education centre or outdoor education centre established under section 17 of the repealed E(GP) Act, and in

existence immediately before the commencement, is taken to be a State educational institution established under section 14; and

- A centre, hostel or college established under section 18 of the repealed E(GP) Act, and in existence immediately before the commencement, is taken to be a State educational institution established under section 15.

Curriculum framework and directions

Clause 451(1) provides that a curriculum framework decided on by the Minister under section 19 of the repealed E(GP) Act, and applying immediately before the commencement, is taken to be a curriculum framework applying to the institution under section 21. The curriculum framework will apply only to State instructional institutions, which is the revised way in which the legislation deals with the educational institutions mentioned in the repealed section.

Subclause (2) provides that a direction given under section 19B(2) of the repealed E(GP) Act, and in force immediately before the commencement, is taken to be a direction given under section 23(2).

Subclause (3) provides that a direction given under section 19B(3) of the repealed E(GP) Act, and in force immediately before the commencement, is taken to be a direction given under section 23(3).

Subclause (4) provides that a direction given under section 19B(4) of the repealed E(GP) Act, and in force immediately before the commencement, is taken to be a direction given under section 23(4).

Subclause (5) provides that a direction to administer a test, given by the Minister to the principal of an educational institution under section 19C of the repealed E(GP) Act, and in force immediately before the commencement, is taken to be a direction given under section 24.

Chief executive's directions about State school records and reports

Clause 452 provides that a written direction about school records or reports given by the chief executive to a State school principal under section 25(1) of the repealed E(GP) Act, and in force on the commencement, is taken to be a written direction under section 433 of this Act.

Instruction in a religious or other belief

Clause 453(1) provides that a minister or accredited representative of a religious denomination or society who, immediately before the commencement, was entitled to give religious instruction under section 26 of the repealed E(GP) Act, is taken, for 12 months after the commencement, to be an entity approved to give instruction in a religious or other belief under section 78 of this Act.

Subclause (2) provides that if a student at a State school is, at the commencement, receiving religious instruction under section 26 of the repealed E(GP) Act, a parent of the student is taken to have given a notice to the school's principal under section 77(5) and (6) for the student.

Application for mature age notices

Clause 454 provides that if an application for a mature age student notice was made under section 26AD of the E(GP) Act, but the application had not been decided under section 26AF of that Act before commencement the application is taken to have been made under section 28 of this Act and must be decided under section 29 of this Act.

Currency of positive notice

Clause 455 provides that a positive notice issued under section 26AE of the E(GP) Act and in force at the commencement, is taken to be a positive notice issued under section 29 of this Act; and that the notice remains in force until it would have expired under the E(GP) Act.

Review of decision of negative notice

Clause 456 provides that if, immediately before the commencement, a person was entitled under section 26AP of the E(GP) Act to apply for a review of a decision to issue the person with a negative notice but had not applied that the person may apply for a review under section 40 of this Act.

Subclause (2) provides that an application for review made under section 26AP of the E(GP) Act but not decided under section 26AR of that Act before the commencement is taken to be an application made under section 40 of this Act and that the application must be decided under section 42 of this Act.

Behaviour plans

Clause 457 provides that a behaviour management plan for a State school, developed under section 27 of the repealed E(GP) Act, and in force on the commencement, is taken for 6 months after the commencement, to be a student behaviour support plan for the institution approved under chapter 12, part 2 of this Act.

Time limit on new application for mature student notice

Clause 458 provides that subsection (2) applies if, immediately before the commencement, the chief executive had decided an application under the E(GP) Act for a mature age student notice by issuing a negative notice, and the time limit under section 26AT of the E(GP) Act for making another application had not expired.

Subclause (2) provides that the time limit continues until it would have expired under section 26AT.

Suspension of student

Clause 459 provides that if a student was suspended under section 29 of the repealed E(GP) Act and, on the commencement, the period of suspension has not expired, the period continues after the commencement as if it were suspension under section 289 of this Act.

Submission against suspension for more than 5 days

Clause 460 provides that if, on the commencement, a student was entitled under section 31 of the repealed E(GP) Act to make a submission against a suspension of more than 5 days, the student may, after the commencement, make the submission under section 291 of this Act.

Dealing with submissions against suspension for more than 5 days

Clause 461 provides that a submission made under section 31 of the repealed E(GP) Act but not dealt with under section 32 of that Act before the commencement may, after the commencement be dealt with under section 292 of this Act.

Recommendation to principal's supervisor of exclusion of student

Clause 462 provides a recommendation made under section 34(2) of the repealed E(GP) Act but not dealt with under section 36 of that Act before the commencement is taken, after the commencement, to be a recommendation made under section 294(2) of this Act and may be dealt with under section 297.

Suspension pending dealing with recommendation for exclusion

Clause 463 provides that if on the commencement a student was suspended from a State educational institution, under section 34(2)(b) of the repealed E(GP) Act, but not given a notice under subsection (3) of that section, the suspension is taken, after the commencement, to be a suspension under section 294(2)(b) of this Act and the student must be given a notice under section 294(3).

Submissions against suspension and recommendation for exclusion

Clause 464 provides that if on the commencement, a student was entitled under section 35 of the repealed E(GP) Act to make a submission against a suspension and recommendation for exclusion, the student may, after the commencement, make the submission under section 296 of this Act.

Exclusion of student by principal's supervisor

Clause 465 provides that if a student was excluded under section 36 of the repealed E(GP) Act and, on the commencement, the period of exclusion has not expired, the period continues after the commencement as if it were a exclusion under section 297 of this Act.

Suspension pending final decision about exclusion

Clause 466 provides if a student was suspended under section 36C of the repealed E(GP) Act and, on the commencement, the period of suspension has not expired, the period continues after the commencement as if it were a suspension under section 304 of this Act.

Submissions against proposed exclusion

Clause 467 provides that if on the commencement a student was entitled under section 36D of the repealed E(GP) Act to make a submission against a proposed exclusion the student may after the commencement make the submission under section 305 of this Act.

Exclusion of student by chief executive

Clause 468 provides that if a student was excluded under section 36E of the repealed E(GP) Act and, on the commencement, the period of exclusion has not expired, the period continues after the commencement as if it were an exclusion under section 306 of this Act.

Submission against exclusion decision

Clause 469 provides that if on the commencement, an excluded person was entitled under section 37 of the repealed E(GP) Act to make a submission against the exclusion, the person may, after the commencement, make the submission under section 316 of this Act.

Dealing with submissions against exclusions

Clause 470 provides that if a submission was made to the chief executive under section 37 of the repealed E(GP) Act and, on the commencement, the chief executive has not made a decision about the submission under section 38, the submission is taken to have been made under section 316 of this Act and must be dealt with under section 317 of this Act.

Periodic review of decision to exclude

Clause 471 provides that if on the commencement, a person was entitled under section 38A(4) of the repealed E(GP) Act to make a submission to the chief executive about whether the person's exclusion should be revoked, the person may, after the commencement, make the submission under section 318 of this Act.

Dealing with submission about whether exclusion should be revoked

Clause 472 provides that if a submission was made to the chief executive under section 38A of the repealed E(GP) Act and, on the commencement, the chief executive has not made a decision about the submission, the

submission is taken to have been made under section 318 of this Act and must be dealt with under section 318.

Cancellation of student's enrolment

Clause 473 provides that if a student's enrolment was cancelled under section 40 of the repealed E(GP) Act and, at the commencement, the period of cancellation has not expired, the period continues as if it were a cancellation under section 324.

Submission against cancellation of enrolment

Clause 474 provides that if immediately before the commencement, a person under cancellation was entitled under section 41 of the repealed E(GP) Act to make a submission against the cancellation of enrolment but had not made a submission, the person may make a submission under section 325 of this Act.

Dealing with submission against cancellation of enrolment

Clause 475 provides that if a submission against the cancellation of a person's enrolment was made to the principal's supervisor under section 41 of the repealed E(GP) Act and, on the commencement, the principal's supervisor has not made a decision about the submission, the submission is taken to have been made under section 325 of this Act and must be dealt with under section 326.

Submissions about suspensions, exclusions or cancellations

Clause 476 provides that if, immediately before the commencement, a parent of a student who was under 18 years was entitled, under section 45 of the repealed E(GP) Act, to make a submission about a suspension, suspension and recommendation for exclusion, exclusion or cancellation, but had not made a submission, the parent may make the submission under section 335. Parent is defined to have the meaning of the term under the repealed E(GP) Act and includes an adult who has the care and control of the student.

Directions about conduct or movement at premises of State instructional institutions

Clause 477 provides that a direction given under section 48C of the E(GP) Act and in force at the commencement is taken to be a direction given

under section 341 of this Act and is to remain in force until they would have expired under the repealed Act.

Subclause (2) provides that subsection (3) applies if, immediately before the commencement a person was entitled to apply, under section 48D of the E(GP) Act, for a review of the direction given under section 48C but had not applied and the time for applying had not expired.

Subclause (3) provides that the time for applying for the review continues until it would have expired under section 48D.

Subclause (4) provides that for an application for review of a direction made under section 48D and where the review has not been decided by the commencement, the application is taken to be an application made under section 342 of this Act.

Directions to leave an not re-enter premises of State instructional institutions

Clause 478 provides that a direction given under section 48E of the E(GP) Act and in force at the commencement is taken to be a direction given under section 343 of this Act and remains in force until it would have expired under the repealed Act.

Prohibition from entering premises of State instructional institutions

Clause 479 provides that a direction given under section 48F of the E(GP) Act and in force at the commencement is taken to be a direction given under section 344 of this Act and is to remain in force until they would have expired under the repealed Act.

Subclause (2) provides that an order prohibiting a person from entering a non-State school's premises under section 48G of the E(GP) Act and in force at the commencement is taken to be an order made under section 345 of this Act and is to remain in force until they would have expired under the repealed Act.

Directions about conduct or movement at premises of non-State schools

Clause 480 provides that a direction given under section 48L of the E(GP) Act and in force at the commencement is taken to be a direction given under section 350 of this Act and is to remain in force until they would have expired under the repealed Act.

Subclause (2) provides that subsection (3) applies if, immediately before the commencement a person was entitled to apply, under section 48M of the E(GP) Act, for a review of the direction given under section 48L but had not applied and the time for applying had not expired.

Subclause (3) provides that the time for applying for the review continues until it would have expired under section 48M.

Subclause (4) provides that for an application for review of a direction made under section 48M where the review has not been decided by the commencement, the application is taken to be an application made under section 351 of this Act.

Directions to leave an not re-enter premises of non-State schools

Clause 481 provides that a direction given under section 48N of the E(GP) Act and in force at the commencement is taken to be a direction given under section 352 of this Act and remains in force until it would have expired under the repealed Act.

Prohibition from entering premises of non-State schools

Clause 482 provides that a direction given under section 48O of the E(GP) Act and in force at the commencement is taken to be a direction given under section 353 of this Act and is to remain in force until they would have expired under the repealed Act.

Subclause (2) provides that an order prohibiting a person from entering a non-State school's premises under section 48P of the E(GP) Act and in force at the commencement is taken to be an order made under section 354 of this Act and is to remain in force until they would have expired under the repealed Act.

Prohibition from entering premises of all State instructional institutions and non-State schools

Clause 483 provides that subsection (2) applies if an application was made to a court under section 48R of the E(GP) Act for an order prohibiting a person from entering the premises of all State educational institutions and non-State schools for up to 1 year but the application was not decided before the commencement, the application is taken to have been made under section 356 of this Act.

Subclause (2) provides that orders made under the repealed section are taken to be orders made under section 356 and remain in force until they would have expired under the repealed E(GP) Act.

Prohibition from entering premises of all State instructional institutions

Clause 484 provides that subsection (2) applies if an application was made to a court under section 48S of the E(GP) Act for an order prohibiting a person from entering the premises of all State educational institutions for up to 1 year but the application was not decided before the commencement, the application is taken to have been made under section 357 of this Act.

Subclause (2) provides that orders made under the repealed section are taken to be orders made under section 357 and remain in force until they would have expired under the repealed E(GP) Act.

Appeal to District Court

Clause 485 provides that subsection (2) applies if, under section 48T of the E(GP) Act, an appeal was made from a decision of a court under section 48R of that Act but the appeal was not decided before the commencement, the appeal is taken to be an appeal made under section 358 of this Act.

Department's annual report

Clause 486 provides that the department's annual report for the 2005-06 financial year must be prepared under the repealed E(GP) Act, and that for that purpose the repealed Act continues to apply.

Non-State school's governing body to give particular information to Minister

Clause 487 provides that the information a non-State school's governing body was required to provide to the Minister under section 48X of the E(GP) Act for the 2005-06 financial year, the repealed E(GP) Act continues to apply as if this Act had not commenced.

Provisions about school councils

Clause 488(1) that this section applies to a school council established under the repealed E(GP) Act, section 50 and in existence immediately before the commencement.

Subclause (2) provides the school council continues in existence, subject to this Act, and is taken to have been established under section 83.

Subclause (3) provides the appointed, elected and official members of the school council holding office under the repealed E(GP) Act immediately before the commencement continue as the appointed, elected and official members of the council under this Act.

Subclause (4) provides the appointed or elected members continue in office, subject to this Act, for the balance of the term for which they were appointed or elected under the repealed E(GP) Act.

Subclause (5) provides the person holding office as chairperson of the school council under the repealed E(GP) Act immediately before the commencement continues in office, subject to section 93(3) of the is Act, for the balance of the person's term of office under the repealed E(GP) Act.

Subclause (6) provides the school council's constitution as in force under the repealed E(GP) Act immediately before the commencement continues, subject to this Act, as the councils constitution under this Act.

Subclause (7) provides an amendment of the school council's constitution prepared and adopted under the repealed E(GP) Act but not approved by the chief executive under that Act may be approved by the chief executive under section 99 of this Act.

Subclause (8) provides a written direction given to the council under the repealed E(GP) Act, section 79 and not complied with before the commencement is taken to be a direction given to the council under section 120.

Subclause (9) provides that without limiting subsection (8), a copy of the direction must also be included in the department's annual report for the financial year in which the direction was given under the repealed E(GP) Act.

Provisions about parents and citizens associations

Clause 489(1) provides this clause applies to a parents and citizens association or an interim parents and citizens association (in either case, the

existing association formed under the repealed E(GP) Act section 81 or 82 and in existence immediately before the commencement.

Subclause (2) provides the existing association continues in existence, subject to this Act and is taken to have been established as a parents and citizens association or an interim parents and citizens associations (in either case, the **new association**) under section 122 or 123.

Subclause (3) provides the persons who were members, including honorary life members, of the existing association immediately before the commencement continue as members, including as honorary life members, subject to this Act, of the new association.

Subclause (4) provides that subject to subsection (4), an officer of the existing association holding office under the repealed E(GP) Act, section 87 immediately before the commencement continues in office, subject to this Act as an equivalent officer of the new association until the first annual general meeting of the new association held under this Act.

Subclause (5) provides that a subcommittee established for the existing association under the repealed E(GP) Act, section 90 and in existence immediately before the commencement continues as a subcommittee of the new association under section 134.

Subclause (6) provides an agreement entered into by the existing association or by the Minister under the repealed E(GP) Act, section 96 and in force immediately before the commencement continues as a relevant agreement entered into by the new association or by the Minister under section 141.

Subclause (7) provides the repealed E(GP) Act, section 100 continues to apply to things done or omitted to be done by a member of the existing association before the commencement as if this Act had not commenced and for that purpose a reference in the section to the Minister is taken to be a reference to the Minister under this Act.

Subclause (8) provides that if the procedure for removal of a nominated person has started but not ended under the repealed E(GP) Act, section 111 immediately before the commencement the procedure may continue as if it had started under section 156.

Subclause (9) provides for a nominated person who was removed under the repealed E(GP) Act, section 111, before the commencement, section 154 applies as if the person had been removed under section 157 and any submission relating to the removal received under the repealed E(GP) Act,

section 112 and not finally dealt with under section 113 of that Act is taken to have been received under section 157.

Subclause (10) provides that subsection (11) applies if:

- (a) immediately before the commencement a person could have appealed to a Magistrates Court against a decision of the Minister under the repealed E(GP) Act, section 113 and had not appealed; or
- (b) a person had appealed to a Magistrates Court against a decision mentioned in paragraph (a) and the appeal has not been finalised before the commencement.

Subclause (11) provides that for the purpose of appealing the decision or for finalising the appeal, the decision is taken to be a decision of the Minister under section 158.

Subclause (12) provides that a parents and citizens association constitution as in force under the repealed E(GP) Act immediately before the commencement, continue, subject to this Act, as the association's constitution under the Act.

Provisions about enrolment at State schools

Clause 490 provides that if a student is enrolled at a State school on commencement, the student's enrolment at the State school continues.

Subclause (2) provides additional clarity around the student's mentioned in subsection (1) through an inclusive list:

- (a) a student who is enrolled at, and attending, a State school;
- (b) a student who is enrolled at but has not started attending the school;
- (c) a student enrolled at the school for 2006 but enrolled at a different State school for 2007;
- (d) a student enrolled at the school but suspended under section 29, 34 or 36C of the E(GP) Act;
- (e) a student enrolled at the school for 2006 and, under section 127 of the E(GP) Act, granted extra semesters at the school for 2007.

Subclause (3) provides that if an application for enrolment at a State school made but not decided before the commencement the application lapses and an application for enrolment may be made under section 159 of this Act.

Transitional provision for compulsory education

Clause 491 is a transitional provision for compulsory education to ensure that a parent of a child who is of compulsory school age is taken to comply with their obligation in section 180(1) if the child is enrolled at a prescribed State school or non-State school, and attending the school, on every school day for a preparatory trial year of instruction.

Exemption from compliance with compulsory enrolment and attendance provisions

Clause 492(1) provides that a dispensation from complying with the enrolment and attendance obligations under section 114 of the repealed E(GP) Act in force at the commencement:

- (a) is taken to be an exemption issued under section 193; and
- (b) remains in force until it would have expired under the repealed E(GP) Act.

Subclause (1) does not apply to a dispensation granted for a reason mentioned in section 115(2)(a)(i) of the repealed E(GP) Act.

Application for exemption from compliance with compulsory enrolment and attendance provisions

Clause 493(1) provides that an application for dispensation from complying with the enrolment and attendance obligations under section 114 of the repealed E(GP) Act, made under section 116 of that Act but not decided before the commencement:

- (a) is taken to be an application under section 190; and
- (b) must be decided under section 193.

Subclause (1) does not apply to an application for dispensation for a reason mentioned in section 115(2)(a)(i) of the repealed E(GP) Act.

Particular dispensation from compliance with compulsory enrolment and attendance provisions

Clause 494 provides that a dispensation from complying with the enrolment and attendance obligations under section 114 of the repealed E(GP) Act, granted for a reason mentioned in section 115(2)(a)(i) of that Act and in force at the commencement, remains in force until it would have expired under that Act.

Particular application for exemption from compliance with compulsory enrolment and attendance provisions

Clause 495 provides that subsection (2) applies to an application for dispensation, for a reason mentioned in section 115(2)(a)(i) of the repealed E(GP) Act, from complying with the enrolment and attendance obligations under section 114 of that Act, made under section 116 of that Act but not decided before the commencement.

Subclause (2) provides that the application is taken to be an application for provisional registration of a child for home education made under section 211.

Dispensation from requirement to participate in an eligible option

Clause 496 provides that a dispensation from the requirement to participate in an eligible option, granted under section 24 of the repealed YPET Act and in force at the commencement is taken to be an exemption granted under section 248; and remains in force until it would have expired under the repealed YPET Act.

Home schooling dispensation from requirement to participate in an eligible option

Clause 497 provides that a dispensation from the requirement to participate in an eligible option, granted under section 25 of the repealed YPET Act and in force at the commencement, remains in force until 31 December 2006.

Application for exemption from requirement to participate in an eligible option

Clause 498 provides that an application under section 26 of the repealed YPET Act for a dispensation under section 24 of that Act from the requirement to participate in an eligible option, made but not decided before the commencement:

- (a) is taken to be an application under section 249; and
- (b) must be decided under section 252.

Application for home schooling exemption from requirement to participate in an eligible option

Clause 499 provides that an application under section 26 of the repealed YPET Act for a dispensation under section 25 of that Act from the requirement to participate in an eligible option, made but not decided before the commencement, is taken to be an application for provisional registration of a child for home education made under section 211.

Flexible arrangements

Clause 500 provides that arrangements approved under section 114A of the repealed E(GP) Act to apply to a student of a non-State school instead of participation in the school's educational programs in the usual way, and in force on the commencement, are taken to be arrangements approved under section 186.

Clause 500 also provides that arrangements approved under section 114B of the repealed E(GP) Act to apply to a student of a State educational institution instead of participation in the institution's educational programs in the usual way, and in force on the commencement, are taken to be arrangements approved under section 187.

Principal's decision about student's remaining allocation

Clause 501 provides that if, immediately before commencement, a State educational institution's principal was required to make a decision under section 123 of the repealed E(GP) Act, and the decision has not been made, the decision must be made under section 61 of this Act.

Notice about student's remaining allocation

Clause 502 provides that if, immediately before commencement, a State educational institution's principal was required to give a notice to a student about their remaining allocation under section 124(4)(b) of the repealed E(GP) Act, but the notice was not given, the notice must be given under section 62(4)(b) of this Act.

Application for extra semesters if no remaining allocation

Clause 503 provides that an application under section 126 of the repealed E(GP) Act but not decided before the commencement is taken to be an application to be made under section 65 of this Act.

Notice about student's extra semesters

Clause 504 provides that if, immediately before commencement, a State educational institution's principal was required to give a notice to a student about their application for extra semesters under section 127(3)(b) of the repealed E(GP) Act, but the notice was not given, the notice must be given under section 66(3)(b) of this Act.

Submissions against decisions about allocation of semesters or application for extra semesters

Clause 505 provides that if, immediately before commencement, a student was entitled under section 129 of the repealed E(GP) Act to make a submission against a decision about either the allocation of semesters, or an application for extra semesters, but had not made a submission, the period for making the submission continues until it would have expired under section 129.

Dealing with submissions against decisions about allocation of semesters or application for extra semesters

Clause 506 provides that if a submission against a decision about an allocation of semesters or an application for extra semesters under section 129 of the repealed E(GP) Act, but not dealt with under section 130 of that Act before the commencement, the submission may be dealt with under section 69 of this Act.

Notice about decisions about allocation of semesters or application for extra semesters

Clause 507 provides that if, immediately before commencement, a notice was required to give a notice to a student about their allocation of semesters or application for extra semesters under section 131 of the repealed E(GP) Act, but the notice was not given, the notice must be given under section 69(2)(b) of this Act.

Application for further semesters if no remaining allocation and after extra semesters

Clause 508 provides that an application for further semesters under section 131 of the repealed E(GP) Act but not decided before the commencement is taken to be an application to be made under section 71 of this Act.

Notice about student's further semesters

Clause 509 provides that subsection (2) applies if, immediately before the commencement, the chief executive was required under section 132(3)(b) of the repealed E(GP) Act to give a notice to a student about an application for further semesters, but the notice has not been given. Subclause (2) provides that the notice or, if relevant, an information notice must be given under section 72(3)(b) of this Act.

Financial data

Clause 510(1) provides that this clause applies if:

- (a) under the repealed E(GP) Act, section 134AC the Minister has given the governing body of a non-State school a notice; and
- (b) the time stated in the notice has not ended before the commencement; and
- (c) the body has not complied with the notice before the commencement.

Subclause (2) provides the governing body must comply with the notice and for that purpose the financial data to which the notice relates or the notice are taken to have been given under section 374 or 375.

Finalising show cause process relating to allowances paid for non-State schools

Clause 511(1) provides that this section applies if:

- (a) immediately before the commencement a show cause process could have been started under the repealed E(GP) Act, section 134D in relation to the governing body of a non-State school but the process had not been started; or
- (b) at the commencement a show cause process had been started as mentioned in paragraph (a) but had not been finalised under the repealed E(GP) Act, section 134H.

Subclause (2) provides the process may be started and finalised or continued and finalised under chapter 13, part 4 and for that purpose the part applies with any necessary or convenient changes.

International education institutions

Clause 512 provides that subsection (2) applies to an approval to establish or conduct an international education institution given under section 144 of the E(GP) Act and in force at the commencement.

Subclause (2) provides that the approval:

- (a) is taken to be an approved under section 421 of this Act;
- (b) continues to be subject to the conditions stated on the approval;
and
- (c) is subject to the conditions mentioned in section 421(2) of this Act.

Appeals

Clause 513 provides that subsection (2) applies if:

- immediately before the commencement a person could have appealed to a Magistrates Court about a decision under section 130 or 132 of the repealed E(GP) Act and had not appealed; or
- a person had appealed against those sections and the appeal had not been finalised.

Subclause (2) provides that for the purposes of appealing the decision of for finalising the appeal a section 130 decision is taken to be a decision under section 69 of this Act, and a section 132 decision is taken to be a decision under section 72 of this Act.

Transitional regulation-making power

Clause 514 provides that a regulation (a *transitional regulation*) may make provision for a matter for which:

- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed E(GP) Act or the repealed YPET Act to the operation of this Act; and
- (b) this Act does not make provision or sufficient provision.

Clause 514 further provides that:

- (a) a transitional regulation may have retrospective operation to a day not earlier than the commencement; and

- (b) a transitional regulation must declare it is a transitional regulation; and
- (c) this clause and any transitional regulation expire 1 year after the commencement.

Chapter 21 Amendment of Acts

Consequential and other amendment of Acts

Clause 515 provides for the consequential and other amendments of Acts.

Subclause (1) provides that schedule 1 amends the Acts mentioned in it.

Subclause (2) provides that schedule 2 amends the Acts mentioned in it.

Subclause (3) provides that schedule 3 amends the *Education (General Provisions) Act 2006*.

Schedule 1 Consequential and other amendments of Acts

Agricultural College Act 2005

Item 1 omits the definition of *compulsory participation phase* in schedule 2 and inserts a new definition. The new definition of *compulsory participation phase* is referenced to section 235 of the *Education (General Provisions) Act 2006*. This amendment is required because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Anti-Discrimination Act 1991

Item 1 amends section 44(1) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Associations Incorporation Act 1981

Item 1 amends section 5(1)(b)(iv) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Building Act 1975

Item 1 amends the definition of *educational institution* in section 12B(3) to omit paragraph (a) and insert a new paragraph (a). The new paragraph (a) updates the reference to the *Education (General Provisions) Act 2006*.

Charitable and Non-Profit Gaming Act 1999

Item 1 amends section 10(1)(b) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Item 2 amends section 39(b) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Child Care Act 2002

Item 1 omits section 36 and inserts a new section 36. The new section 36 updates the references to the *Education (General Provisions) Act 2006* in the definitions for the terms, *association* and *executive officer*.

Item 2 amends section 39(4) to omit '*Education (General Provisions) Act 1989*, section 92' and insert '*Education (General Provisions) Act 2006*, section 136'.

Item 3 amends the definition of *chief executive (education)* in schedule 2 to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Item 4 amends the definition of *school* to omit paragraph (a) and insert a new paragraph (a). The new paragraph (a) updates the reference to the *Education (General Provisions) Act 2006*.

Item 5 omits the definition of *special education* and inserts a new definition. The new definition provides that *special education* has the same meaning as in schedule 4 of the *Education (General Provisions) Act 2006*.

Child Employment Act 2006

Item 1 omits section 7(b) and the note and inserts a new section 7(b) and note. The new section 7(b) and note, update the references to the *Education (General Provisions) Act 2006*.

Item 2 omits the note to section 9(6) and inserts a new note with references to the relevant provision of the *Education (General Provisions) Act 2006*.

Item 3 omits the note to section 11(2) and inserts a new note with references to the relevant provision within the *Education (General Provisions) Act 2006*.

Item 4 omits the definition of *young child* in the schedule and inserts a new definition for the term. The new definition provides that *young child* means a child who is not yet of compulsory school age under the *Education (General Provisions) Act 2006*.

Child Protection Act 1999

Item 1 omits the definition of *student hostel* in section 159D and inserts a new definition. *Student hostel* means:

- (a) a student hostel established under the *Education (General Provisions) Act 2006*, section 15(b); or
- (b) a student hostel operated with an allowance paid under the *Education (General Provisions) Act 2006*, section 372(1)(e).

Item 2 omits the first dot point example in section 159R(2) and inserts ‘*Education (General Provisions) Act 2006*, section 430’ as the new first dot point of the example.

Collections Act 1966

Item 1 amends section 13A to omit ‘*Education (General Provisions) Act 1989*’ and insert ‘*Education (General Provisions) Act 2006*’.

Item 2 amends section 47(3)(za) to omit ‘*Education (General Provisions) Act 1989*’ and insert ‘*Education (General Provisions) Act 2006*’.

Commission for Children and Young People and Child Guardian Act 2000

Item 1 omits the example in the first dot point for section 31EA(2) and inserts ‘*Education (General Provisions) Act 2006*, section 430’ as the new first dot point of the example for the section.

Item 2 amends schedule 1, section 1(1)(b) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Item 3 omits sections 6A(1)(a) and 6A(1)(b) in schedule 1 and inserts new sections 6A(1)(a) and 6A(1)(b) into schedule 1. Section 6A(1) provides that employment is regulated employment if the usual functions of the employment include, or are likely to include, providing services or conducting activities for:

- (a) an educational program under the *Education (General Provisions) Act 2006*, section 290(2), 295 or 308; or
- (b) a program, provided by an entity, under arrangements approved under the *Education (General Provisions) Act 2006*, section 186 or 187.

Item 4 omits section 6A(2)(b) in schedule 1 and inserts a new section 6A(2)(b). The new section 6A(2)(b) updates the reference to section 236 of the *Education (General Provisions) Act 2006*. This amendment is necessary because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 5 omits section 11 in schedule 1 and inserts a new section 11 into schedule 1. The new section 11 provides that a business is a regulated business if:

- (a) the usual activities of the business include, or are likely to include, providing services or conducting activities for:
 - (i) an educational program under the *Education (General Provisions) Act 2006*, section 290(2), 295 or 308; or
 - (ii) a program provided, by the entity carrying on the business under arrangements approved under the *Education (General Provisions) Act 2006*, section 186 or 187; and
- (b) the entity carrying on the business is not a provider under the *Education (General Provisions) Act 2006*, section 236.

Item 6 amends section 15(1) in schedule 1 to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Item 7 amends the definition of *school* in Schedule 4 to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Criminal Law (Rehabilitation of Offenders) Act 1986

Item 1 amends section 9A, column 1, item 5(2) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Criminal Offence Victims Act 1995

Item 1 omits paragraph (f) of the definition of *public entity* and inserts a new paragraph (f). The new paragraph (f) updates the references to the *Education (General Provisions) Act 2006*.

Drugs Misuse Act 1986

Item 1 omits the definition of *educational institution* in section 4 and inserts a new definition. The new definition provides that *educational institution* means:

- (a) a State instructional institution, a non-State school or an international educational institution within the meaning of the *Education (General Provisions) Act 2006*; or
- (b) any other similar institution that may from time to time be established;

but does not include an educational institution conducting only tertiary or adult education.

Duties Act 2001

Item 1 amends section 285(b) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Education (Accreditation of Non-State Schools) Act 2001

Item 1 omits sections 6(2)(a), 6(2)(aa) and 6(2)(b) and inserts new section 6(2)(a), 6(2)(aa) and 6(2)(b). The new sections 6(2)(a) and 6(2)(aa) update references to the *Education (General Provisions) Act 2006*.

The new section 6(2)(b) provides that a non-State school does not include for a child registered or provisionally registered for home education under the *Education (General Provisions) Act 2006* – the child's usual place of residence.

Item 2 amends schedule 3 to omit the definitions of *distance education*, *person with a disability*, *preschool education*, *primary education*,

secondary education, special education and *State school* and insert new definitions for these terms.

Education (Capital Assistance) Act 1993

Item 1 omits the definition of *state school* in section 3 and inserts a new definition. The new definition of *state school* refers to schedule 4 of the *Education (General Provisions) Act 2006*.

Education (Overseas Students) Act 1996

Item 1 omits section 5(1)(a) and inserts a new section 5(1)(a). This amendment inserts a general statement of how the Act's purposes are achieved through registration of providers, placing all providers on an equal footing in this provision rather than naming public sector providers.

Item 2 omits section 19(2). This provision is unnecessary, as a registrant or application for registration is necessarily "a person whose interests are affected".

Education (Queensland College of Teachers) Act 2005

Item 1 amends section 74 to insert new subsections (2) and (3).

The new subsection (2) provides that subsection (3) applies if a child is registered or provisionally registered for home education under the *Education (General Provisions) Act 2006* and the home education is being provided by 1 or both of the child's parents.

The new subsection (3) provides that an institution or place mentioned in subsection (1)(c) does not include the child's usual place of residence.

Item 2 omits the definition of *state school* in schedule 3 and inserts a new definition of *state school*. The new definition provides that a **State school** means a State instructional institution within the meaning of the *Education (General Provisions) Act 2006*, schedule 4.

Education (Queensland Studies Authority) Act 2002

Item 1 omits section 3(1)(d) and inserts a new section 3(1)(d). The new section 3(1)(d) provides that an object of the *Education (Queensland Studies Authority) Act 2002* is to help achieve the objects of the *Education (General Provisions) Act 2006* mentioned in section 5(1)(c) of that Act. This amendment is required because the *Youth Participation in Education*

and Training Act 2003 will be repealed by the *Education (General Provisions) Act 2006*.

Item 2 omits section 14A and inserts a new section 14A. The new section 14A provides the authority has the following functions:

- (a) to keep a student account for each young person in the student account phase under the *Education (General Provisions) Act 2006*, chapter 11;
- (b) to deal with the information recorded in the account in the way permitted or required by that chapter.

This amendment is required because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 3 omits section 15(f)(iv) and inserts a new section 15(f)(iv). The new section 15(f)(iv) updates the references to the department in which the *Education (General Provisions) Act 2006* is administered. This amendment is required because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 4 omits the definition of ***provider*** in section 18A(3) and inserts a new definition for the term. ***Provider*** is defined to mean a provider for an eligible option under the *Education (General Provisions) Act 2006*, section 236. This amendment is required because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 5 omits section 18B(1)(a) and inserts a new section 18B(1)(a). The new section 18B(1)(a) updates the reference to the *Education (General Provisions) Act 2006*. This amendment is required because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 6 omits the definitions of ***preschool education***, ***primary education***, ***school***, ***secondary education***, ***special education*** and ***state school*** from schedule 2 and inserts new definitions for these terms.

Education (Work Experience) Act 1996

Item 1 amends section 5(1) to omit ‘and’ and insert ‘or’.

Item 2 omits section 5(1)(a) and inserts a new section 5(1)(a). The new section 5(1)(a) provides that if a student is enrolled in a State school, the school is the student’s educational establishment.

Item 3 omits sections 5(1)(c) and (d) and inserts a new section 5(1)(c). The new section 5(1)(c) provides that if a student is registered for home education, the home education place is the student's educational establishment.

Item 4 renumbers sections 5(1)(e) to (i) as section 5(d) to (h).

Item 5 omits section 8(2)(a) and inserts a new section 8(2)(a). The new section 8(2)(a) provides that if the student's educational establishment is a State school or a home education place – the chief executive (education) is the responsible body for entering into a suitable contract of insurance with WorkCover Queensland under the *Workers' Compensation and Rehabilitation Act 2003*.

Item 5 omits section 9(3)(a) and inserts a new section 9(3)(a). The new section 9(3)(a) provides that for section 9, if the student's educational establishment is a State school, a home education place or a non-State school—the chief executive (education) is the insuring body.

Item 6 omits the definitions for the terms *home education*, *home education place*, *international educational institution*, *ministerial corporation*, *other non-school based education*, *State educational institution* and *State school* in the schedule and inserts new definitions for *chief executive (education)*, *enrolled in an educational establishment*, *home education*, *home education place*, *international educational institution* and *State school* in the schedule.

Food Act 2006

Item 1 omits the definitions of the terms *parents and citizens association* and *state school* in section 4(2) and inserts new definitions for these terms. The new definitions for these terms make reference to schedule 4 of the *Education (General Provisions) Act 2006*.

Freedom of Information Act 1992

Item 1 omits section 11(1)(w) and inserts a new section 11(1)(w). The new section 11(1)(w) provides that the *Freedom of Information Act 1992* does not apply to a parents and citizens association formed under the *Education (General Provisions) Act 2006*.

Item 2 omits section 11(1)(y)(viii) and inserts a new section 11(1)(y)(viii). The new section 11(1)(y)(viii) updates the reference to the *Education (General Provisions) Act 2006*, schedule 4. This amendment arises because

the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 3 omits paragraph (c) of the definition of **education agencies** in section 11(4) and inserts a new paragraph (c). The amended definition provides that **education agencies** means:

- (a) the Queensland Studies Authority; and
- (b) the department in which the *Education (Queensland Studies Authority) Act 2002* is administered; and
- (c) the department in which the *Education (General Provisions) Act 2006* is administered.

Item 4 amends schedule 3 to omit the item for '*Education (General Provisions) Act 1989*, section 69' and insert '*Education (General Provisions) Act*, section 110'.

Grammar Schools Act 1975

Item 1 omits paragraph (a) of the definition of **non-grammar school** in the schedule and inserts a new paragraph (a). The new definition updates the reference to State school in the *Education (General Provisions) Act 2006*, schedule 4.

Industrial Relations Act 1999

Item 1 omits amends the reference to the *Education (General Provisions) Act 1989* in section 29C(2) to refer to the *Education (General Provisions) Act 2006*.

Mineral Resources Act 1989

Item 1 omits paragraph (a)(vii)(A) in the definition of **reserve** in the schedule and inserts a new paragraph (a)(vii)(A). The new paragraph updates the reference to the *Education (General Provisions) Act 2006*.

Petroleum Act 1923

Item 1 amends the definition of **owner** in section 2, paragraph 1(n) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Petroleum and Gas (Production and Safety) Act 2004

Item 1 amends the definition of *owner* in schedule 2, item 1(n) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Public Health Act 2005

Item 1 omits the definition of *school* in the *Public Health Act 2005* and inserts a new definition. The new definition of *school* provides that it means a State school, State preschool centre or non-State school within the meaning of the *Education (General Provisions) Act 2006*. This amendment is required to update the reference to the *Education (General Provisions) Act 2006*.

Item 2 amends section 172(4) to omit 'for example, the *Child Act 2002*, section 87 and the *Education (General Provisions) Act 1989*, section 25' and inserts 'for example, the *Child Care Act 2002*, section 87 and the *Education (General Provisions) Act 2006*, section 430'. This amendment is required to update the reference to the *Education (General Provisions) Act 2006*.

Item 3 amends section 180(2)(a) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'. This amendment is required to update the reference to the *Education (General Provisions) Act 2006*.

Item 4 amends section 181(2)(a) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'. This amendment is required to update the reference to the *Education (General Provisions) Act 2006*.

Public Sector Ethics Act 1994

Item 1 omits paragraph (i) of the definition of *public sector entity* in the schedule and inserts a new paragraph (i). The new paragraph (i) updates references to the *Education (General Provisions) Act 2006*.

Public Service Act 1996

Item 1 amends section 21(2)(h) to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Residential Services (Accreditation) Act 2002

Item 1 omits the definition of *education department* in schedule 2 and inserts a new definition for this term. The new definition provides that *education department* means the department in which the *Education (General Provisions) Act 2006* is administered.

Item 2 omits paragraph (a) of the definition of *school* in schedule 2 and inserts a new paragraph (a) for the definition of this term. The new paragraph (a) updates the reference to the *Education (General Provisions) Act 2006*.

Vocational Education, Training and Employment Act 2000

Item 1 amends section 106A to omit ‘*Youth Participation in Education and Training Act 2003*’ and insert ‘*Education (General Provisions) Act 2006*’. This amendment is required because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 2 omits section 168(1)(b)(vii) and inserts a new section 168(1)(b)(vii). The new section 168(1)(b)(vii) updates the reference to the *Education (General Provisions) Act 2006*, section 244(3). This amendment is required as the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 3 omits section 168(1)(p) and inserts a new section 168(1)(p). The new section 168(1)(p) updates the reference to the *Education (General Provisions) Act 2006*, section 244(3). This amendment is required as the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 4 amends section 170(4) to omit ‘*Youth Participation in Education and Training Act 2003*’ and insert ‘*Education (General Provisions) Act 2006*’. This amendment is required because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 5 omits section 183D(1) and inserts a new section 183D(1). The new section 183D(1) updates the reference to the *Education (General Provisions) Act 2006*, section 244(3). This amendment is required as the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 6 amends section 196(2) to omit ‘*Youth Participation in Education and Training Act 2003*’ and insert ‘*Education (General Provisions) Act*

2006'. This amendment is required because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Item 7 omits the definition of ***compulsory participation phase*** in schedule 3 and inserts a new definition. The new definition of ***compulsory participation phase*** is referenced to section 235 of the *Education (General Provisions) Act 2006*. This amendment is required because the *Youth Participation in Education and Training Act 2003* will be repealed by the *Education (General Provisions) Act 2006*.

Weapons Act 1990

Item 1 amends the definition of ***school*** in section 51(5) to omit paragraph (a) and insert a new paragraph (a). The new paragraph (a) updates the reference to the *Education (General Provisions) Act 2006*.

Whistleblowers Protection Act 1994

Item 1 omits section 2(2)(b) in the definition of ***public sector entity*** in schedule 5 and inserts a new section 2(2)(b) into schedule 5. The new section 2(2)(b) updates references to the *Education (General Provisions) Act 2006*.

Item 2 amends the definition of ***public sector entity*** section 2(3)(a) in schedule 5 to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Item 3 omits the definition of ***school council*** in schedule 6 and inserts a new definition for this term. The new definition updates the reference to the *Education (General Provisions) Act 2006*, section 83.

Item 4 amends the definition of ***State educational institution*** in schedule 6 to omit '*Education (General Provisions) Act 1989*' and insert '*Education (General Provisions) Act 2006*'.

Schedule 2 Amendments commencing on 1 January 2007

Child Care Act 2002

Item 1 omits section 5(1)(a).

Item 2 amends the definition of *holiday care* to omit ‘or preschool children’.

Item 3 omits the definitions for *preschool child* and *preschool education* from schedule 2.

Item 4 amends the definition of *primary education* in schedule 2 to include the preparatory year.

Item 5 inserts a definition for *preparatory year* into schedule 2. The definition of *preparatory year* provides that it means the year of schooling immediately before year 1.

Item 6 amends paragraph (b) of the definition of *school age carer* in schedule 2 to omit ‘or preschool children’.

Item 7 omits the current definition of *school age care service* in schedule 2 and replaces it with ‘*school age care service* means a licensed centre based service for which, under its licence conditions, the children in care must never include a child who is not a school child.’.

Item 8 amends the definition of *school child* in schedule 2 to omit ‘other than a preschool child’.

Education (Accreditation of Non-State Schools) Act 2001

Item 1 omits section 6(1)(a).

Item 2 amends section 6(2)(c) to omit ‘preschool’.

Item 3 amends the definition of *child care* in section 6(3) to omit ‘preschool education to children in the year immediately before year 1’.

Item 4 omits section 12(1)(a).

Item 5 amends section 12(2). The amended section 12(2) provides that a school may only provide a preparatory year of education if the school is also provisionally accredited or accredited, to provide primary education for at least years 1 to 3.

Item 6 amends section 12(3) to omit ‘preschool education,’.

Item 7 omits section 63(2) and inserts a new section 63(2). The new section 63(2) provides that is also a ground for cancelling a school’s accreditation to provide primary education if the school provides a preparatory year of education without providing primary education for years 1 to 3.

Item 8 omits section 70(2) and inserts a new section 70(2). The new section 70(2) provides that it is also a ground for cancelling a school’s provisional

accreditation to provide primary education if the school provides a preparatory year of education without providing primary education for years 1 to 3.

Item 9 amends section 150 to omit ‘, 98A or 192’ and insert ‘or 98A’.

Item 10 omits chapter 7, part 4.

Item 11 inserts new sections after section 224. The new sections are numbered 225 to 232 and provide as follows:

Section 225 outlines the definitions for chapter 8, part 3. In this part:

- **commencement** means commencement of this section.
- **post-amended Act** means this Act as in force immediately after the commencement of the *Education (General Provisions) Act 2006*, section 515(2) and schedule 2.
- **pre-amended Act** means this Act as in force immediately before the commencement of the *Education (General Provisions) Act 2006*, section 515(2) and schedule 2.

Section 226 outlines the application of division 2. This clause provides that this division applies to a school that:

- (a) is accredited under chapter 7, part 2; and
- (b) is under chapter 7, part 3 a school, the governing body of which is eligible for Government funding for the school; and
- (c) is allowed, at the commencement, to offer years 1 to 3 of schooling under the accreditation; and
- (d) is not allowed, at the commencement, to offer the preparatory year; and
- (e) the school’s governing body applies before the end of 2009, under chapter 2, part 3, division 3, to extend the years of schooling allowed to be offered at the school to include the preparatory year.

Section 227 outlines the application of the provisions, and provides that section 50, as applied by section 59, does not apply to the application; and section 53(3) applies to the application as if the reference to 9 months were a reference to 6 months.

Section 228 applies if the board decides to grant the application, and provides that the school’s governing body must notify the board of the first

day of education of students in the preparatory year within 14 days after the day.

Section 229 applies to a school that, immediately before the commencement, is provisionally accredited for the types of education mentioned in section 12(1)(a) and (b) of the pre-amended Act. The school is taken to be provisionally accredited only for the type of education mentioned in section 12(1)(b) of the post-amended Act. Also, for this Act the school's governing body is taken to have made application, under section 16, to the board for the accreditation of the school only for the type of education mentioned in section 12(1)(b) of the post-amended Act. In addition, the attribute of provisional accreditation applying to the school mentioned in section 16(3)(e) is taken to include the preparatory year. If the school's governing body is eligible for Government funding for the school, the eligibility is not affected by this section.

Section 230 applies to a school that, immediately before the commencement, is:

- (a) accredited for the type of education mentioned in section 12(1)(b) of the pre-amended Act; and
- (b) provisionally accredited for the type of education mentioned in section 12(1)(a) of the pre-amended Act.

The attribute of accreditation applying to the school mentioned in section 16(3)(e) is taken to include the preparatory year. If the student-intake day applying to the school for the provisional accreditation under the pre-amended Act, is on or after the day of commencement, the attributes of accreditation applying to the school are taken to include an attribute of accreditation requiring the school to provide education in the preparatory year on or before the day that is 30 days after the student-intake day. If the school's governing body is eligible for Government funding for the school, the eligibility is not affected by this section.

Section 231 applies to a school that, immediately before the commencement, is provisionally accredited for the type of education mentioned in section 12(1)(a) of the pre-amended Act. The school's governing body must return the school's certificate of provisional accreditation to the board by 1 March 2007, unless the governing body has a reasonable excuse. On receiving the certificate, the board must issue a replacement certificate of provisional accreditation to the governing body that no longer states that the school is provisionally accredited for the type of education mentioned in section 12(1)(a) of the pre-amended Act.

Section 232 applies to a school that, immediately before the commencement, is accredited for the types of education mentioned in section 12(1)(a) and (b) of the pre-amended Act. The school is taken to be accredited only for the type of education mentioned in section 12(1)(b) of the post-amended Act. Also, the attribute of accreditation applying to the school mentioned in section 16(3)(e) is taken to include the preparatory year. If the school's governing body is eligible for Government funding for the school, the eligibility is not affected by this section.

Section 233 applies to a school that, immediately before the commencement, is accredited for the type of education mentioned in section 12(1)(a) of the pre-amended Act. The school's governing body must return the school's certificate of accreditation to the board by 1 March 2007, unless the governing body has a reasonable excuse. On receiving the certificate, the board must issue a replacement certificate of accreditation to the governing body that no longer states that the school is accredited for the type of education mentioned in section 12(1)(a) of the pre-amended Act.

Section 234 applies to an application for the accreditation of a school for the types of education mentioned in section 12(1)(a) and (b) of the pre-amended Act if, immediately before the commencement, the application has not been decided under chapter 2, part 2, division 2, subdivision 2. For this Act, the application is taken to be an application only for the type of education mentioned in section 12(1)(b) of the post-amended Act.

Section 235 applies if:

- (a) a school is accredited to provide the type of education mentioned in section 12(1)(b) of the pre-amended Act; and
- (b) an application has been made for the accreditation of the school for the type of education mentioned in section 12(1)(a) of the pre-amended Act; and
- (c) immediately before the commencement, the application has not been decided under chapter 2, part 2, division 2, subdivision 2.

The application is taken to be a valid application, under section 49 as applied by section 59, to change the attribute of accreditation applying to the school mentioned in section 16(3)(e) to include the preparatory year. Also, chapter 2, part 3, division 2, as applied by section 59, applies to the application with any necessary or convenient changes.

In addition, if the applicant is not eligible for Government funding for the school, the reference in section 53(4), as applied by section 59, to 6 months is taken to be a reference to 9 months.

Section 236 applies if:

- (a) a school is provisionally accredited to provide the type of education mentioned in section 12(1)(b) of the pre-amended Act; and
- (b) an application has been made for the accreditation of the school for the type of education mentioned in section 12(1)(a) of the pre-amended Act; and
- (c) immediately before the commencement, the application has not been decided under chapter 2, part 2, division 2, subdivision 2.

The application is taken to be a valid application, under section 49, to change the attribute of provisional accreditation applying to the school mentioned in section 16(3)(e) to include the preparatory year. Also, chapter 2, part 3, division 2, applies to the application with any necessary or convenient changes. In addition, if the applicant is not eligible for Government funding for the school, the reference in section 53(4) to 6 months is taken to be a reference to 9 months.

Section 237 applies if:

- (a) the board has decided, under chapter 2, part 2, division 2, subdivision 2, to refuse to provisionally accredit a school to provide the type of education mentioned in section 12(1)(a) of the pre-amended Act (the *first decision*); and
- (b) the school is provisionally accredited, or accredited, to provide the type of education mentioned in section 12(1)(b) of the pre-amended Act; and
- (c) an application has been made under section 101 for a review of the first decision; and
- (d) immediately before the commencement, the application has not been decided under section 103.

The Minister must decide the application on the basis that the first decision is taken to be a decision by the board to refuse to grant an application under section 49 to change the attribute of provisional accreditation, or attribute of accreditation, applying to the school mentioned in section 16(3)(e) to include the preparatory year. Also, section 103 applies to the application with any necessary or convenient changes.

Section 238 applies if:

- (a) the board decides, under chapter 2, part 2, division 2, subdivision 3, to refuse to accredit a school to provide the type of education

mentioned in section 12(1)(a) of the pre-amended Act (the ***first decision***); and

- (b) the school is provisionally accredited, or accredited, to provide the type of education mentioned in section 12(1)(b) of the pre-amended Act; and
- (c) an application has been made under section 101 for a review of the first decision; and
- (d) immediately before the commencement, the application has not been decided under section 103.

The Minister must decide the application on the basis that the first decision is taken to be a decision by the board to refuse to grant an application under section 49, as applied by section 59, to change the attribute of provisional accreditation, or attribute of accreditation, applying to the school mentioned in section 16(3)(e) to include the preparatory year. Also, section 103 applies to the application with any necessary or convenient changes.

Item 12 omits the definition of ***preschool education*** from schedule 3.

Item 13 omits paragraph (a) of the definition of ***sector of schooling*** in schedule 3 and inserts a new paragraph (a). The amended definition provides that ***sector of schooling*** means any of the following groups of years of schooling:

- (a) preparatory year to year 3;
- (b) years 4 to 7;
- (c) years 8 to 10;
- (d) years 11 to 12.

Item 14 inserts a new definition of ***commencement***, for chapter 8, part 3, see section 225.

Item 15 inserts a number of new definitions.

post-amended Act, for chapter 8, part 3, see 225.

pre-amended Act, for chapter 8, part 3, see section 225.

preparatory year into schedule 3. The definition of ***preparatory year*** is referenced to schedule 4 of the *Education (General Provisions) Act 2006*.

Education (General Provisions) Act 2006

Item 1 amends section 22 to omit ‘preschool guidelines’ and insert ‘preparatory guidelines’.

Item 2 amends section 22(1) to omit ‘preschool guidelines’ and insert ‘preparatory guidelines’.

Item 3 amends section 22(2) to omit the definition of *preschool guidelines* and insert a definition for *preparatory guidelines*. *Preparatory guidelines* is defined to mean guidelines for the preparatory year.

Item 4 amends the heading for section 23 to omit ‘preschool guideline’ and insert ‘preparatory guideline’.

Item 5 omits section 23(4) and inserts a new section 23(4). The new section 23(4) provides the principal of a State instructional institution must ensure the institution, in providing education in the preparatory year, implements a stated approved preparatory guideline or accredited preparatory guideline.

Item 6 amends section 23(5) to omit the definitions for *accredited preschool guideline* and *approved preschool guideline* and insert definitions for *accredited preparatory guideline* and *approved preparatory guideline*.

Accredited preparatory guideline means a preparatory guideline, accredited by the authority under the QSA Act, for the preparatory year.

Approved preparatory guideline means a preparatory guideline, approved by the authority under the QSA Act, for the preparatory year.

Item 7 amends section 76 to omit the definition of *State school*.

Item 8 omits section 77(5) and inserts a new section 77(5). The new section 77(5) provides that a student enrolled in the preparatory year at a State school must not be given instruction in a religious or other belief at the school.

Item 9 amends section 78(1). The amended section 78(1) provides that the chief executive may approve, as prescribed under a regulation, an entity to give instruction in a religious or other belief to students, other than students enrolled in the preparatory year, of a State school.

Item 10 omits section 125(1)(f).

Item 11 renumbers section 125(1)(g) to become section 125(1)(f).

Item 12 omits section 134(2).

Item 13 renumbers section 134(3) to become section 134(2).

Item 14 amends section 180(1)(a). The amended section 180(1)(a) provides that each parent of a child who is of compulsory school age must ensure the child is enrolled in a year of schooling, other than the preparatory year, at a State school or non-State school.

Item 15 amends section 182(1)(a)(i) as a consequence of the amendment to section 180(1)(a).

Item 16 inserts a new section 433A after section 433. The new section 433A (Prohibition on use of certain terms) provides that a licensee must not use any of the following terms in describing child care provided under the licence:

- (a) preparatory year;
- (b) prep year;
- (c) prep.

The maximum penalty for a first offence is 50 penalty units. The maximum penalty for a second or subsequent offence is 100 penalty units.

Section 433A(2) provides that in this section:

licence see the *Child Care Act 2002*, schedule 2.

licensee means the holder of a licence under the *Child Care Act 2002*.

Item 17 omits section 490.

Item 18 inserts a new section after section 513. The new section 513A provides that for 1 year after section 433A commences, the section does not apply to a person who, on the commencement of the section, was the holder of a licence under the *Child Care Act 2002*.

Item 19 omits the definitions of *preschool education*, *primary school* and *State preschool centre* from schedule 4.

Item 20 inserts a definition for *preparatory year* into schedule 4. The definition provides that *preparatory year* means the year of schooling immediately before year 1.

Item 21 amends the definition of *primary education* in schedule 4 to include the preparatory year.

Education (Queensland College of Teachers) Act 2005

Item 1 omits section 74(b) and renumbers the current section 74(c) as section 74(b).

Education (Queensland Studies Authority) Act 2002

Item 1 amends the title of the Act to omit the ‘preschool’ and replace with ‘preparatory’.

Item 2 amends section 3(2)(b)(i) and (ii) to omit ‘preschool’ and insert ‘preparatory’.

Item 3 amends sections 8(a) to 8(d) to omit ‘preschool’ and insert ‘preparatory’.

Item 4 amends section 9 to omit ‘preschool’ and insert ‘preparatory’.

Item 5 amends the heading for Part 2, division 5 to omit ‘preschool’ and insert ‘preparatory’.

Item 6 amends section 20 to omit ‘preschool’ and insert ‘preparatory’.

Item 7 amends sections 23(2), 23(5)(a), 23(5)(b) and 23(5)(c) to omit ‘preschool’ and insert ‘preparatory’.

Item 8 amends section 55(2)(a) and 55(2)(b) to omit ‘preschool’ and insert ‘preparatory’.

Item 9 amends section 79(2)(a) to omit ‘preschool’ and insert ‘preparatory year’.

Item 10 amends the heading for section 87 and inserts ‘Syllabuses’ as the heading.

Item 11 omits section 87(1).

Item 12 renumbers section 87(2) to (6) as section 87(1) to (5).

Item 13 omits the definitions for *accredited preschool guideline*, *approved preschool guideline*, *preschool education* and *preschool guideline* in schedule 2.

Item 14 inserts new definitions for the terms, *accredited preparatory guideline*, *approved preparatory guideline*, *preparatory guideline* and *preparatory year* into schedule 2.

Item 15 amends the definition of *primary education* in schedule 2 to include the preparatory year.

Item 16 amends the definition of *sectors of education* in schedule 2 to omit ‘preschool education’.

Public Health Act 2005

Item 1 amends the definition of *school* in section 158 to omit ‘State preschool centre’.

Schedule 3 Amendments commencing on 1 January 2008

Education (General Provisions) Act 2006

Item 1 amends section 9(1) to insert after 6 years, ‘and 6 months’. This amendment will increase the compulsory school age from 6 years to 6 years and 6 months.

Item 2 amends section 59(2) to insert ‘and 6 months’ after 7 years. This amendment arises as a consequence of the increase in the compulsory school age.

Item 3 amends section 60 to insert ‘and 6 months’ after 7 years. This amendment arises as a consequence of the increase in the compulsory school age.

Item 4 amends section 61(1)(d)(ii) to omit the subsection and insert a new subsection ‘(ii) at least 7 years and 6 months.’. This amendment arises as a consequence of the increase in the compulsory school age.

Schedule 4 Dictionary

Schedule 4 defines certain terms used in the Bill.