

# Education Legislation Amendment Bill 2009

## Explanatory Notes

### General Outline

#### Short Title

The short title of the Bill is the Education Legislation Amendment Bill 2009.

#### Policy Objectives of the Legislation

The policy objectives of the Bill are to:

- (i) amend the *Child Care Act 2002* to enable the publication of certain information about child care services that contravene the Act;
- (ii) amend the *Education (General Provisions) Act 2006* to give the Minister power to approve an overseas school as a “recognised school”;
- (iii) amend the *Education (Queensland Studies Authority) Act 2002* to –
  - function the Queensland Studies Authority to develop, purchase, revise, approve and accredit kindergarten guidelines;
  - empower the Minister to give the Queensland Studies Authority a written direction about material containing intellectual property, including a direction about granting a licence to the State or the payment of monies;
  - enable the Queensland Studies Authority to carry out certain of its functions in relation to students at recognised schools; and
  - ensure that student accounts can be opened and maintained for eligible students at recognised schools;

- (iv) make a technical amendment to the *University of Queensland Act 1998* to extend the expiry date for two university statutes by one year, to 1 September 2010.

## **Reasons for the Bill**

### **Publication scheme for non-compliance under the *Child Care Act 2002***

The *Child Care Act 2002* (the CCA) provides for the licensing of child care services, including centre based services (e.g. long day care, limited hours care and kindergartens) and home based services (i.e. family day care). It also regulates stand alone services where child care is provided to no more than six children (four of whom are not yet school children). Stand alone services, while regulated under the CCA are not required to be licensed. The CCA includes a rigorous monitoring and enforcement regime to ensure that child care services comply with the terms of their licences and with the guiding principles of the CCA. Where a service fails to meet these requirements, a range of measures may be taken against it. These measures range from issuing compliance notices seeking that the service remedy any contravention of the Act, to amendment, urgent amendment suspension, urgent suspension, refusal to renew, or revocation of the service's licence.

Wherever possible, the Government uses a collaborative approach to achieve compliance with the CCA, without the need to issue compliance notices or take more serious enforcement action. Because of this, the majority of service providers comply with the legislation. However, there are limited exceptions where some service providers repeatedly contravene the CCA or expose children in their care to serious risks to their safety and well-being.

To ensure parents and guardians have access to information about the quality of child care services, it is proposed to publish certain information about licensed child care services (other than school age care services) and stand alone services that fail to comply with the CCA. This publicly available information will enable parents to make informed decisions about a child care service that is providing, or will potentially provide, a service to their child.

## **Provision of Queensland Senior School qualifications overseas**

The Government proposes to act in the international education market to sell Queensland's Year 11 and 12 syllabuses to overseas clients for implementation at overseas schools. The intention of the proposal is to give students at those schools, who study the Queensland syllabuses, the opportunity to then become eligible to receive Queensland senior school qualifications. However, the students will only be awarded the qualifications if they meet the same eligibility criteria as Queensland students are required to meet.

## **Providing the Queensland Studies Authority with added functions with respect to kindergarten guidelines**

On 2 July 2009, the Council of Australian Governments released the *Early Years Learning Framework* (EYLF), which provides a broad guide for educators to support and enhance children's learning from birth to five years, and support the transition to school. Queensland is currently implementing a kindergarten program for all 3½ to 4½ year old children as part of the *Toward Q2: Tomorrow's Queensland* initiative. The majority of current curriculum documents are broad and are not targeted at the kindergarten cohort. Consequently, there are no specific kindergarten guidelines in Queensland which can be used across a range of settings (for example, long day care centres and kindergartens). Therefore, it is proposed that the Queensland Studies Authority (QSA) will develop guidelines for the kindergarten program that can be applied across all settings and that align with the EYLF.

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

On 3 June 1999, the University of Queensland Senate made the *University of Queensland Statute No.5 (Awards) 1999* (the awards statute) and the *University of Queensland Statute No.6 (Fees) 1999* (the fees statute). The awards statute provides for the conferral of higher education awards of the university by the Senate, including the surrender and revocation of awards and the procedure for conferring honorary awards. The fees statute provides that the Senate may make university rules to establish a scheme of fees to be paid by students for examinations, attendance at lectures and classes and the use of university facilities. The statute also provides that students must pay fees under the scheme and that enrolment is subject to the payment of all fees payable under the scheme.

In accordance with section 54 of the *Statutory Instruments Act 1992* (SIA), these statutes expired on 1 September 2009. However, due to a clerical error, which was only identified after the expiry date, the Government's records had always indicated the statutes were due to expire a year later on 1 September 2010. Consequently, action was not taken to make new statutes, or to make a regulation under section 54(1)(b) of the SIA to exempt the statutes from expiring on 1 September 2009.

The expiry of the awards statute would leave the University Senate unable to confer any awards in accordance with the general award rules. This would adversely impact any students who are currently entitled to receive their awards. The expiry of the fees statute creates a situation in which the University is unable to impose and collect fees. These fees are normally payable under a scheme (the fee scheme), which is established by the University rules made under the statute. This would have a detrimental financial impact upon the University. In addition, the University would not be able to legally refuse to:

- (i) enrol a person until all fees payable by the person under the fee scheme are paid; or
- (ii) change the enrolment status of a student, where a proposed change in enrolment incurs an additional fee under the fee scheme and the student has not paid the additional fee.

In order to ensure that the Senate can continue to confer awards and that any fees imposed on students after 1 September 2009 can be legally collected, it is necessary to retrospectively amend the *University of Queensland Act 1998* to provide that, despite the provisions of the SIA about automatic expiry, the awards statute and the fees statute did not expire on 1 September 2009.

## **Achieving the Objectives**

### **Publication scheme for non-compliance under the *Child Care Act 2002***

The Bill achieves the policy objective by amending the CCA to enable the publication of information about contraventions that posed more than a minor risk to the wellbeing and safety of children being provided with child care. The information will be published on a Departmental web site that is publicly accessible, and recorded in the register that is kept by the chief

executive. This register can be inspected by any person who wishes to do so.

The provisions about publication of information will apply to all licensed centre based child care services (e.g. long day care, limited hours care and kindergartens), except for school age care services which are excluded from the scheme. The provisions will also apply to all licensed home based services (i.e. family day care). In addition, the publication of information will apply to stand alone services, which, while required to meet certain standards, are not required to be licensed under the CCA.

Information will be published when serious non-compliance sanctions are applied to a child care service – that is, when the chief executive decides to amend, urgently amend, suspend, urgently suspend, revoke, or refuse to renew a licence. These actions would be taken in response to, for example, allegations of torture or harm of a child at a child care service, a building used to house children that is structurally unsound due to termite infestation, or in the case of a refusal to renew a licence, a history of non-compliance that demonstrates a continual disregard of child care laws.

The chief executive's decision to impose a sanction in relation to serious non-compliance is a reviewable decision. Therefore, the publication of the non-compliance information will not occur until after the 28 day period allowed for seeking a review of the chief executive's decision to impose a sanction, or if an application for review has been lodged, after the chief executive's decision is upheld.

Information will also be published about contraventions where there has been repeated non-compliance of more than a minor nature. This refers to circumstances where the licensee of a child care service, or the person conducting a stand alone service, receives more than one compliance notice within a three year period, for contraventions that posed more than a minor risk to the wellbeing and safety of children. Examples of more than minor risk for licensed services may include uneven ground in outdoor play areas that presents a tripping hazard to children playing in the area, staff with insufficient qualifications, or poor hygiene practices that could present a risk of infection.

The Bill also introduces a process to provide that a person may seek an external review of the decision to give a compliance notice for a breach that posed more than a minor risk to the wellbeing and safety of a child. This is considered necessary to provide a person with natural justice, given that there is potential for the information about the compliance notice to be

published, if the person receives two compliance notices for more than minor contraventions within a three year period. It also aligns with the existing process for more serious sanctions, which provides that the decision to impose the sanction is externally reviewable.

As will be the case in relation to serious non-compliance, information about repeated non-compliance, that is more than minor in nature would not be published until either the 28 day review period passes and no application for review has been lodged, or, if an application for review has been lodged, the decision to give the compliance notice is upheld.

The type of information that will be published will depend on the type of sanction imposed (i.e. whether it was for serious or repeated non-compliance that is more than minor in nature), but will generally include the following information:

- the address of the child care centre and the name by which the centre is known, or the name and address of the home based service (i.e. family day care scheme), or, for stand alone services, the name under which the service is conducted;
- details about the enforcement action that was taken (for example, if compliance notices had been issued, or if the licence was amended, suspended or revoked, and when the enforcement action was taken);
- why enforcement action was taken (for instance, what section of the CCA had been breached);
- any action the person must take to remedy the problem.

The information will also be updated when the licensee of the child care service, or the person conducting the stand alone service, has rectified the problem. This will ensure that people reading the website have up to date information and will not be misled into thinking for example, that a child care service's licence is still suspended, even though the suspension has been lifted.

The Bill provides that the information will remain published on the website for one year in the case of repeated non-compliance where the risk was more than minor, and for three years where there has been serious non-compliance. However, the information will generally be removed if the child care service's licence is transferred to a new owner. The exception to this will be where the new licensee includes a person who was one of the previous licensees – for instance, an executive officer of a corporation which held the licence previously, is also an executive officer

of a corporation which holds the licence after it has been transferred. This is to avoid the possibility of licensees transferring their licence, but remaining as one of the licensees, just to have the non-compliance information removed from the website.

The Bill also amends the CCA to provide the State of Queensland, or a person acting on behalf of the State, with protection from actions for defamation or breach of confidence, where the information is published.

### **Provision of Queensland Senior School qualifications overseas**

The Bill achieves the policy objectives by amending the *Education (General Provisions) Act 2006* to enable the Minister to approve an overseas school as a “recognised school”, and by amending the *Education (Queensland Studies Authority) Act 2002* (QSA Act) to enable the QSA to exercise certain of its functions in relation to recognised schools. This will include opening of student accounts, carrying out moderation and assessment and issuing the relevant certificates of achievement and statements of results.

An overseas school will be required to meet the following minimum criteria, in order to be approved by the Minister as a “recognised school”:

- the school must be established and operate in a foreign country;
- the school must not operate within Australia;
- the school must be recognised (e.g. it has been accredited or registered) as a school by the entity responsible for recognising schools in the foreign country (where such a system exists); and
- there is an agreement between the school’s governing body and the State of Queensland, authorising the governing body to implement the Queensland Year 11 and 12 syllabuses for its students.

The Bill also amends the QSA Act to clarify that commercial exploitation of intellectual property generated by the QSA will be undertaken by the Minister, and not by the QSA. The Bill provides that the Minister may give the QSA a written direction about material containing intellectual property including a direction about granting of a licence to the State or the payment of monies. This amendment also enables the provision, by the State of Queensland, of Queensland syllabuses to overseas schools.

## **Providing the Queensland Studies Authority with added functions with respect to kindergarten guidelines**

The Bill achieves the policy objectives by amending the QSA Act to enable the QSA to develop, purchase, revise, approve and accredit kindergarten guidelines.

The aim of the Queensland kindergarten guidelines will be to set clear expectations for children's learning and age appropriate teaching and assessment practices, with a key focus on early literacy and numeracy skills. This is vital in order to align with the shift towards greater focus on expectations and accountabilities and provide a solid foundation for learning impacting upon future school outcomes.

Queensland-specific kindergarten guidelines will support implementation of the EYLF in the kindergarten cohort and will provide a level of curriculum consistency in terms of the focus of kindergarten programs, expectations for learning and development and processes for supporting school transitions. Additionally, the guidelines will provide opportunities to maximise continuity of learning for children between ECEC settings and school. Processes to support successful school transitions will be considered in developing kindergarten guidelines.

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

The Bill achieves the policy objective by amending the *University of Queensland Act 1998* to provide that the awards statute and the fees statute do not expire until 1 September 2010 or until they are earlier repealed. This will provide the University Senate with sufficient time in which to develop new statutes about awards and fees, should it wish to do so.

## **Administrative costs**

Implementation of the Bill is not expected to result in any additional administrative costs to the Government.

## **Fundamental Legislative Principles**

The following aspects of the Bill raise fundamental legislative principle issues.

The publication of information about operators of child care services may have a detrimental effect on the operator's rights and liberties, given the



potential for this to negatively impact their business reputation. However, it is considered that publication of the information is justified given parents' legitimate interest and expectation in being provided with information relating to enforcement actions taken against a child care service that is providing, or will potentially provide, a service to their child. The parents' right to secure the wellbeing and safety of their child at that service is considered to be greater than the right of operators of child care services to protect their business reputation.

The Bill also includes a safeguard to protect the State, or a person acting on behalf of the State, from actions for defamation or breach of confidence, because of publishing the information. If this safeguard was not in place, the Government could face serious limitations with respect to the information that it could publish. The safeguard is considered to be necessary and justified, as it is considered that parents' and guardians' right to know information about the child care service that is providing, or will potentially provide, a service to their child outweighs any constraint that is provided by the Bill with respect to the ability to bring an action for defamation or breach of confidence against the Government.

The amendment to the *University of Queensland Act 1998* breaches fundamental legislative principles because it retrospectively revives the fees statute, thus retrospectively obliging students to pay any fees imposed under the fees statute between the time it originally expired (1 September 2009) and the commencement of the provision reviving it. However, the retrospective application of the amendment is necessary to address a legislative void which would otherwise be created between the time of expiry of the fees statute, and the making of any new fees statute by the University Senate. Such a legislative void would have unintended negative financial consequences for the University. More importantly, it would unfairly advantage some students by making the University legally unable to refuse to:

- (i) enrol a person until all fees payable by the person under the fee scheme are paid; or
- (ii) change the enrolment status of a student, where a proposed change in enrolment incurs an additional fee under the fee scheme and the student has not paid the additional fee.

## **Consultation**

The Department of the Premier and Cabinet, the Department of Justice and Attorney-General, and Queensland Treasury were consulted with respect to the proposed amendments outlined in the Bill.

## **Publication scheme for non-compliance under the *Child Care Act 2002***

Early childhood education and care industry, union and parent groups, and training bodies were invited to consultation forums to discuss the non-compliance publication scheme. The invited groups covered the licensed centre based, home based and school age care sectors. These groups were also invited to provide feedback through surveys that were also accessible on the Office for Early Childhood Education and Care's website.

## **Provision of Queensland Senior School qualifications overseas**

The Queensland Studies Authority, Independent Schools Queensland and the Queensland Catholic Education Commission were consulted about the proposed amendments to enable the Minister to approve an overseas school as a "recognised school", and to enable the Queensland Studies Authority to exercise certain of its functions in relation to recognised schools.

## **Providing the Queensland Studies Authority with added functions with respect to kindergarten guidelines**

Early childhood education and care industry, union and parent groups, and training bodies were also invited to consultation forums to discuss the kindergarten guidelines proposal. These groups were also invited to provide feedback through surveys that were accessible on the Office for Early Childhood Education and Care's website. The Queensland Studies Authority, the Queensland College of Teachers, the Queensland Teachers Union, state and non-state schooling sector peak bodies and parent groups were also invited to provide feedback.

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

The University of Queensland was consulted in relation to the proposed amendment to the *University of Queensland Act 1998*.

## Notes on Provisions

### Part 1 Preliminary

#### Short title

Clause 1 establishes the short title of the Act as the *Education Legislation Amendment Act 2009*.

#### Commencement

Clause 2 provides that part 2 of the Act commences on 1 February 2010.

### Part 2 Amendment of Child Care Act 2002

#### Act amended

Clause 3 provides that part 2 amends the *Child Care Act 2002*.

#### Amendment of s 49 (Licensee to give notice of revocation or suspension of licence)

In circumstances where the chief executive has revoked or suspended a child care service's licence, section 49 requires the licensee to give notice of the suspension or revocation to parents and guardians of children who are regularly provided with child care by the child care service. If it is a home based service, the licensee must give notice of the suspension or revocation to each carer in the service.

Clause 4 inserts a new subsection (4) into section 49 to require that the notice given by a licensee must also include the reasons given in the chief executive's notice for revoking or suspending the licence. The clause also renumbers relevant sections.

## **Insertion of new pt 2, div 9A**

Clause 5 inserts a new part 2, division 9A into the Act, as follows.

### **Division 9A Publication of information about decision to amend, suspend, revoke or refuse to renew licence**

- Section 50B (Non-application to school age care service)

Section 50B provides that division 9A does not apply to a school age care service.

- Section 50C (Publication of information)

Section 50C provides that the chief executive must publish the information mentioned in section 50D on a publicly accessible website of the department, if the chief executive takes one of the following actions in relation to the licence of a child care service:

- (a) under section 21, refuses to renew the licence;
- (b) under section 42, other than under section 42(5), amends the licence;
- (c) under section 43, urgently amends the licence;
- (d) under section 45, other than section 45(7), suspends or revokes the licence;
- (e) under section 46, urgently suspends the licence.

However, as explained by subsection 50C(3), this is subject to section 50E. If the decision to give the notice is set aside on review, then it would not be appropriate for information about that notice to be published.

- Section 50D (Information that must be published)

Section 50D sets out the information that the chief executive must publish on a publicly accessible website of the department. This information includes:

- (a) if the licence is for a centre based service -
  - (i) the address of the child care centre; and
  - (ii) the name by which the centre is known;
- (b) if the licence is for a home based service –
  - (i) the address of the home based service; and

- (ii) the name by which the service is known;
- (c) the action taken by the chief executive;
- (d) the chief executive's reason for taking the action.

However, subsection 50D(2) makes it clear that if the address of a home based service is also the home address of a carer in the service, then the chief executive must not publish the address of the home based service. This is to ensure that an individual carer's privacy is not compromised, where the carer resides at the same address as the home based service (in other words, it is their private residence).

Subsection 50D(3) sets out further information that must be published, depending on what action was taken. This information is:

- (a) for a refusal under section 21 to renew the licence - the day on which the licence expired;
  - (b) for an amendment of the licence under section 42, other than under section 42(5) - the details of the amendment and the day on which the amendment had effect;
  - (c) for an urgent amendment of the licence under section 43 - the details of the amendment, the day on which the amendment had effect and the day on which it ceases to have effect;
  - (d) for a suspension of the licence under section 45, other than section 45(7) - the day on which the suspension had effect and the day on which it ends;
  - (e) for an urgent suspension of the licence under section 46 - the day on which the suspension had effect and the day on which it ends;
  - (f) for a revocation of the licence under section 45 - the day on which the revocation had effect.
- Section 50E (When information may be published)

Section 50E clarifies that the chief executive must not publish the information until the end of the period within which the licensee may apply for a review of the chief executive's decision to take the action mentioned in section 50C(1).

If the licensee applies for a review of the chief executive's decision –

- (a) the chief executive must not publish the information until the licensee's application for a review is finally dealt with or otherwise ends; and
- (b) if the application for review is finally dealt with, the chief executive may publish the information only to the extent the information is consistent with the decision on review.

For the purposes of this section, subsection 50E(3) defines the term '*licensee*' to include a person whose licence has been suspended or revoked.

- Section 50F (When published information must be amended)

Section 50F applies if information about a suspension, or urgent suspension, of a licence was published under section 50C(2), and the suspension has been lifted. Subsection 50F(2) requires the chief executive to amend the published information so that it includes that the suspension has been lifted, and the day the suspension was lifted. This ensures that any person reading the publicly accessible website will have up to date information and understand that suspension of the child care service's licence is no longer in force.

- Section 50G (Period of publication of information)

Section 50G states that the published information is to remain on the department's website until the day that is 3 years after the day it is published.

However, subsection 50G(2) provides that the information must be removed from the website if the licence is transferred to another person before the conclusion of this 3 year period. The information must be removed as soon as practicable after the transfer takes effect. Despite this, as provided by subsection 50G(3), the information must not be removed in the following circumstances:

- (a) if -
  - (i) before the transfer, the licence was held by a corporation; and
  - (ii) after the transfer, a person who is or was an executive officer of the corporation is -
    - (A) the person, or one of the persons, to whom the licence was transferred; or

- (B) an executive officer of a corporation to whom the licence was transferred;
- (b) if -
  - (i) before the transfer, the licence was held by an individual; and
  - (ii) after the transfer, the individual is -
    - (A) one of the persons to whom the licence was transferred; or
    - (B) an executive officer of a corporation to whom the licence was transferred;
- (c) if -
  - (i) before the transfer, the licence was held by a group of persons; and
  - (ii) after the transfer, one of the persons is -
    - (A) the person, or one of the persons, to whom the licence was transferred; or
    - (B) an executive officer of a corporation to whom the licence was transferred.

### **Insertion of new ss 143A–143E**

Clause 6 inserts a new part 7, division 2, after section 143, as follows.

- Section 143A (Publication of information about compliance notices)

Section 143A applies if:

- (a) an authorised officer gives a compliance notice under section 142 to a person who is -
  - (i) the licensee of a child care service; or
  - (ii) a person conducting a stand alone service; and
- (b) within 3 years after the day the notice is given to the person, an authorised officer gives another compliance notice to the person; and
- (c) in each case, the authorised officer is reasonably satisfied that, because of the non-compliance to which the notice relates, there

is more than a minor risk to the wellbeing and safety of children being provided with child care.

Examples of minor risk are –

inadequate play equipment

minor build-up of dirt and grime

minor irregularities in record-keeping, for example, out of date records of name, address or telephone numbers of some staff members

Examples of more than a minor risk are –

uneven ground in outdoor play areas that may pose a significant tripping hazard

significant breaches in group sizes or staffing levels

inadequate or compacted soft fall in play areas

Subsection 143A(2) provides that the chief executive must publish the information mentioned in section 143B about the compliance notices, on a publicly accessible website of the department.

However, as explained by subsection 143A(3), this is subject to section 143C. If the decision to give the notice is set aside on review, then it would not be appropriate for information about that notice to be published, or for it to be included for the purpose of subsection 143A(a)(b) – i.e. calculating whether two notices have been given to the person within 3 years.

Subsection 143A(4) provides that for this section, the term ‘*child care service*’ does not include a school age care service.

- Section 143B (Information that must be published)

Section 143B sets out the information that the chief executive must publish on a publicly accessible website of the department. This information includes:

- (a) for a compliance notice given to the licensee of a centre based service -
  - (i) the address of the child care centre; and
  - (ii) the name by which the centre is known;
- (b) for a compliance notice given to the licensee of a home based service –



- (i) the address of the home based service; and
- (ii) the name by which the service is known;
- (c) for a compliance notice given to a person conducting a stand alone service – the name under which the service is conducted;
- (d) details of the authorised officer’s reasons for giving the compliance notice;
- (e) the steps the authorised officer reasonably believes are necessary to remedy the contravention, or to avoid further contravention of the provision;
- (f) the day by which the compliance notice states that the person given the notice must remedy the contravention.

However, subsection 143B(2) makes it clear that if the address of a home based service is also the home address of a carer in the service, then the chief executive must not publish the address of the home based service. This is to ensure that an individual carer’s privacy is not compromised, where the carer resides at the same address as the home based service.

Subsection 143B(3) explains that the details of the authorised officer’s reasons for giving the compliance notice must include the following –

- (a) the provision of the Act the authorised officer believes the person is contravening or has contravened;
- (b) the way in which the provision is being, or has been, contravened;
- (c) the day or days on which the authorised officer became aware of the contravention.

- Section 143C (When information may be published)

Section 143C clarifies that the chief executive must not publish the information until the end of the period within which the person given the compliance notice may apply for a review of the authorised officer’s decision to give the notice.

If the person applies for a review of the authorised officer’s decision to give the compliance notice –

- (a) the chief executive must not publish the information until the application is finally dealt with or otherwise ends; and

(b) if the application for review is finally dealt with, the chief executive may publish the information only to the extent the information is consistent with the decision on review.

- Section 143D (When published information must be amended)

Section 143D applies if information about a compliance notice given to a person under section 142 was published under section 143A(2), and the person has taken the steps required to remedy the contravention, or to avoid further contravention, of the provision. Subsection 143D(2) requires the chief executive to amend the published information so that it includes that the person has taken the steps, and the day the authorised officer became aware the contravention had been remedied. This ensures that any person reading the publicly accessible website will have up to date information and understand that the person has complied with the compliance notice by remedying the contravention as required.

- Section 143E (Period of publication of information)

Section 143E states that the published information is to remain on the department's website until the day that is 1 year after the day it is published.

However, subsection 143E(2) provides that if the information relates to a licence and the licence is transferred to another person before the conclusion of this 1 year period, the information must be removed as soon as practicable after the transfer takes effect. Despite this, as provided by subsection 143E(3), the information must not be removed in the following circumstances:

(a) if -

(i) before the transfer, the licence was held by a corporation;  
and

(ii) after the transfer, a person who is or was an executive officer of the corporation is -

(A) the person, or one of the persons, to whom the licence was transferred; or

(B) an executive officer of a corporation to whom the licence was transferred;

(b) if -

- (i) before the transfer, the licence was held by an individual; and
- (ii) after the transfer, the individual is -
  - (A) one of the persons to whom the licence was transferred; or
  - (B) an executive officer of a corporation to whom the licence was transferred;
- (c) if –
  - (i) before the transfer, the licence was held by a group of persons; and
  - (ii) after the transfer, one of the persons is -
    - (A) the person, or one of the persons, to whom the licence was transferred; or
    - (B) an executive officer of a corporation to whom the licence was transferred.

### **Amendment of s 163 (Reviewable decisions)**

Under section 163 of the Act a person may apply to have any of the specified decisions externally reviewed. Clause 7 amends section 163(2) of the Act to provide that a decision by an authorised officer to give a compliance notice under section 142 is also a reviewable decision, if the notice is a notice mentioned in section 143A (i.e. the notice was given because the officer is reasonably satisfied there is more than a minor risk to the wellbeing and safety of children being provided with child care).

### **Amendment of s 164 (Chief executive must give notice after making reviewable decision)**

Clause 8 amends section 164 of the Act to provide that it also applies if an authorised officer has decided to give a person a compliance notice mentioned in section 143A.

The amendment places an obligation on the authorised officer to also give the person a notice stating the information set out in section 164 of the Act – that is, the reasons for the decision; that the person may apply to have the decision externally reviewed; and how the person may apply for the review.

### **Amendment of s 171 (Register)**

Clause 9 amends section 171 of the Act to require that if information in relation to a licence has been published under section 50C or 143A, the published information must also shown in the register of licences that is kept by the chief executive. However, the information must be removed from the register as soon as practicable after it is removed from the department's website – that is, once the information is no longer published on the website.

### **Insertion of new s 171A**

Clause 10 inserts a new section 171A (Protection against actions for defamation or breach of confidence) into the Act to provide that if information is published on a publicly accessible website of the department in the genuine belief that publication is required under section 50C or 143A, then no action for defamation or breach of confidence lies against the State or a person acting on behalf of the State because of the publication.

### **Amendment of sch 2 (Dictionary)**

Clause 11 amends the Act's dictionary to insert a definition of the term '*authorised officer*' with reference to a person appointed as an authorised officer under section 111.

## **Part 3                      Amendment of Education (General Provisions) Act 2006**

### **Act amended**

Clause 12 provides that part 3 amends the *Education (General Provisions) Act 2006*.

### **Insertion of new ch 2A**

Clause 13 inserts a new chapter 2A (Recognised schools) into the Act after section 47, as follows.

## Chapter 2A Recognised schools

### Part 1 Preliminary

- Section 47A (Definitions for ch 2A)

Section 47A defines the terms '*minimum eligibility criteria*' and '*recognised school*' for the purposes of chapter 2A.

### Part 2 Approval as a recognised school

- Section 47B (Power to approve school as a recognised school)

Section 47B provides that the Minister may approve a school as a recognised school.

- Section 47C (Application for approval as a recognised school)

Section 47C states that the governing body of a school may apply to the Minister, in the approved form, for approval as a recognised school.

- Section 47D (Further information to support application)

Section 47D provides that the Minister may give the applicant (i.e. the school's governing body) a notice, requiring further information to be provided within a reasonable time of at least 14 days stated in the notice. The Minister may request this further information if it is reasonably required to decide the application.

Subsection 47D(2) provides that if the applicant does not comply with the notice – that is, the further information is not provided to the Minister within the stated time – the applicant is taken to have withdrawn their application for approval as a recognised school.

- Section 47E (Decision on application)

Section 47E requires the Minister to consider the application and either grant it, or refuse to grant it. The Minister may only grant the application if satisfied that the school meets the minimum eligibility criteria, as follows –

- (a) the school does not operate in Australia;
- (b) the school is established and operates in a foreign country;
- (c) if there is an entity in the foreign country responsible for recognising schools, the school is recognised by that entity;

- (d) there is an agreement between the governing body of the school and the State under which the governing body is authorised to implement approved syllabuses for years 11 and 12 to its students.

Subsection 47E(3) enables the Minister to make any enquiries the Minister considers appropriate, in order to decide the application.

Subsection 47E(4) requires that if the Minister decides to grant the application, the Minister must as soon as practicable, give the applicant notice of the decision.

Subsection 47E(5) requires that if the Minister decides to refuse to grant the application, the Minister must as soon as practicable, give the applicant notice of the decision and the reasons for the decision.

### **Part 3 Cancellation of approval**

- Section 47F (Grounds for cancellation)

Section 47F sets out the grounds for cancelling a school's approval as a recognised school as follows –

- (a) the Minister's decision to grant the approval was based on false or misleading information;
- (b) the Minister is satisfied the school is not meeting the minimum eligibility criteria.

- Section 47G (Show cause notice)

Section 47G provides that if the Minister reasonably believes a ground exists for cancelling a school's approval as a recognised school, the Minister must give the school's governing body a show cause notice. The show cause notice must state the following –

- (a) that the Minister proposes to cancel the approval (the *proposed action*);
- (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 governing body to show within a stated period (the *show cause period*) why the proposed action should not be taken.

Subsection 47G(3) specifies that the show cause period must be a period ending at least 30 days after the show cause notice is given to the governing body.

- Section 47H (Representations about show cause notice)

Section 47H enables the school's governing body to make written representations about the show cause notice to the Minister in the show cause period, and the Minister must consider all the written representations.

- Section 47I (Ending show cause process without further action)

Section 47I provides that if, after considering the accepted representations (if any) for the show cause notice, the Minister no longer believes the ground exists to cancel the approval, the Minister must not take further action about the show cause notice; and must, as soon as practicable, give notice to the governing body that no further action will be taken about the show cause notice.

- Section 47J (Cancellation of approval)

Section 47J applies if, after considering the accepted representations for the show cause notice, the Minister still believes the ground exists to cancel the approval, and believes that cancellation is warranted.

The Minister may decide to cancel the approval and must, as soon as practicable, give notice to the governing body of the decision and the reasons for the decision. A decision to cancel an approval takes effect on the day the notice is given to the governing body, or on the later day stated in the notice.

#### **Part 4 Miscellaneous**

- Section 47K (Application of Act to recognised schools)

Section 47K provides that the Act, other than this chapter and sections 426, 431 and 433 and the dictionary, does not apply to a recognised school.

#### **Amendment of s 426 (Confidentiality)**

Clause 14 amends section 426 of the Act to provide that it also applies to a person –

- (a) who is or has been the chief executive or a public service employee in the department; and

- (b) who, in that capacity, has gained or has access to personal information about a student, prospective student or former student of a recognised school.

### **Amendment of sch 4 (Dictionary)**

Clause 15 amends the Act's dictionary to insert definitions of the terms '*approved syllabus*', '*minimum eligibility criteria*' and '*recognised school*'. The clause also makes minor consequential amendments to the definitions of '*accepted representations*', '*show cause notice*' and '*show cause period*'.

## **Part 4                      Amendment of Education (Queensland Studies Authority) Act 2002**

### **Division 1                Preliminary**

#### **Act amended**

Clause 16 provides that part 4 amends the *Education (Queensland Studies Authority) Act 2002*.

#### **Amendment of long title**

Clause 17 amends the long title of the Act to include a reference to kindergarten guidelines.

#### **Amendment of s 3 (Objects of Act)**

Clause 18 amends section 3(2)(b)(i) and (ii) of the Act to include a reference to kindergarten guidelines.



### **Insertion of new s 7A**

Clause 19 inserts a new section 7A (Application of div 2 to recognised schools) into the Act, to provide that part 2, division 2 (Functions) applies to recognised schools, to the extent stated.

### **Replacement of ss 8 and 9**

Clause 20 replaces sections 8 and 9 of the Act in their entirety. The result of this is that for section 8, the authority has the following additional functions:

- to develop and revise kindergarten guidelines;
- to purchase and revise kindergarten guidelines developed by entities other than the authority;
- to approve kindergarten guidelines, developed, purchased or revised by the authority, for implementation in child care services;
- to develop and revise documents to support the implementation in child care services of approved kindergarten guidelines;
- to develop resources and services for the professional development of carers in child care services in support of the implementation in child care services of approved kindergarten guidelines.

The replacement of section 8(2) provides that in performing its function to revise kindergarten guidelines under subsection (1)(b), the authority must also exercise its powers subject to the terms on which the guidelines were purchased.

The replacement of section 8(3) ensures that, for section 8, the definition of the term '*purchase*', in relation to a kindergarten guideline, includes entering into an agreement allowing the authority to approve the guideline for implementation in child care services.

The replacement of section 9 provides that the authority has the function to accredit kindergarten guidelines, developed by entities other than the authority, for implementation in child care services.

### **Amendment of s 11 (Assessment functions)**

Clause 21 amends section 11 to provide that the authority has the function mentioned in subsection (1) in relation to recognised schools – that is, to

decide on procedures, and to carry out arrangements, for the assessment of persons in school subjects that are certification studies.

### **Amendment of s 12 (Moderation function)**

Clause 22 amends section 12 to provide that the authority has the function mentioned in subsection (1) in relation to recognised schools – that is, to decide on procedures, and to make arrangements, for moderation.

### **Amendment of s 13 (Certification functions)**

Clause 23 amends section 13 to provide that the authority has the function mentioned in subsection (1)(a) in relation to recognised schools. Therefore, the authority is the function to issue the following documents in relation to recognised schools -

- (i) the QCE and other certificates of achievement of the types provided for under a regulation; and
- (ii) statements of results of the types provided for under a regulation.

### **Amendment of s 14A (Student account functions)**

Clause 24 amends section 14A(a)(ii) to insert a reference to part 2A, division 2, subdivision 1A, which is a new subdivision inserted by this Bill (see clause 27).

Clause 24 also amends section 14A to provide that the authority has the functions mentioned in subsection (1) in relation to recognised schools – that is:

- (a) to keep student accounts under part 2A for—
  - (i) young persons in the student account phase; and
  - (ii) other persons for whom student accounts are opened under part 2A, division 2, subdivision 1A or 2;
- (b) to deal with information recorded in the accounts in the way permitted or required under that part.

### **Amendment of pt 2, div 4, hdg**

Clause 25 amends the heading of part 2, division 4 by omitting the word 'preparatory'. The division will now be broadened so that it also applies to tests and notifications of kindergarten guidelines. Therefore, the reference to the broader term 'guidelines' in the division's heading is more accurate.

### **Replacement of s 20 (Notification of approved or accredited syllabus or preparatory guideline)**

Clause 26 replaces section 20 in its entirety in order to incorporate references to 'kindergarten guideline'. Therefore, the section will also apply if the authority approves a kindergarten guideline developed, purchased or revised by it under the Act, or accredits a kindergarten guideline under the Act.

Subject to section 21, the authority must give notice about the approved or accredited kindergarten guideline to -

- the Minister; and
- each licensee of a child care service other than a school age care service.

### **Insertion of new pt 2A, div 2, sdiv 1A**

Clause 27 inserts a new part 2A, division 2, subdivision 1A after section 21G as follows.

#### **Subdivision 1A Accounts for students of recognised schools**

- Section 21GA (Who may have an account opened under sdiv 1A)

Section 21GA provides that a student account may be opened for a person who is enrolled to undertake certification studies at a recognised school.

- Section 21GB (Who may open an account)

Section 21GB provides that a student account, for a person enrolled to undertake certification studies at a recognised school, may be opened by the school or by the chief executive.

- Section 21GC (How an account is opened)

Section 21GC explains that a student account is opened for a person by giving notice to the authority of the following:

- (a) the person's name and any previous names of the person;
- (b) the person's sex;
- (c) the person's date of birth;
- (d) the person's address;
- (e) the person's phone number if the person consents to the phone number being given to the authority;
- (f) details of the certification studies in which the person is enrolled when the notice is given to the authority;
- (g) other information prescribed under a regulation.

### **Insertion of new pt 2A, div 3, sdiv 1A**

Clause 28 inserts a new part 2A, division 3, subdivision 1A after section 21O as follows.

#### **Subdivision 1A Obligation of recognised school to give information**

- Section 21OA (Obligation to notify enrolment)

Section 21OA applies if –

- (a) a person enrolls in certification studies at a recognised school; and
- (b) a student account is open for the person; and
- (c) the recognised school has the account number for the person's student account.

The recognised school is required to give notice to the authority of the following information –

- (a) the person's name;
- (b) the account number for the person's student account;
- (c) the person's address;
- (d) the person's date of birth;
- (e) the certification studies in which the person is enrolled;
- (f) the date of the person's enrolment in the studies.

- Section 21OB (Obligation to notify results)

Section 21OB obliges a recognised school to give the authority result information about a person who is or was enrolled in certification studies at the school if –

- (a) a student account is open for the person; and
- (b) the recognised school has the account number for the person's student account.

The recognised school must give the information to the authority at the times, and in the way, prescribed under a regulation.

Subsection 21OB(3) defines the terms '*qualifications*' and '*result information*' for purposes of section 21OB.

The term '*qualifications*', for certification studies, is defined to include qualifications conferred by an entity other than the recognised school.

The term '*result information*', about a person, is defined to mean each of the following –

- (a) the results of the assessment of the person, for certification studies, carried out by the recognised school;
  - (b) when the results were achieved;
  - (c) any qualifications, for certification studies, that have been conferred on the person;
  - (d) when the qualifications were conferred.
- Section 21OC (Obligation to notify other matters)

Section 21OC applies to a recognised school at which a person is or was enrolled in certification studies if (a) a student account is open for the person; and (b) the recognised school has the account number for the person's student account.

The recognised school is obliged to give notice to the authority of the following matters –

- (a) if the recognised school is aware that prescribed information has changed or is incorrect - the new or correct information;
- (b) if the recognised school is aware that information about the person's enrolment or results in certification studies, previously notified by the recognised school to the authority has changed, is incorrect or is incorrectly recorded in the person's student account - the new or correct information;

- (c) if the person stops being enrolled with the recognised school - the date the person stopped being enrolled with the school.

As provided for by subsection 21OC(3), if the person dies and the recognised school is aware of the death, the recognised school must give notice of the death to the authority.

Subsection 21OC(4) states that notices required to be given under this section must be given at the times prescribed under a regulation.

Subsection 21OC(5) defines the term '*prescribed information*' for the section to mean any of the following recorded in the person's student account –

- (a) the person's name;
  - (b) the person's sex;
  - (c) the person's date of birth;
  - (d) the person's address;
  - (e) the person's phone number.
- Section 21OD (Authority to record information in account)

Section 21OD applies if the authority receives information –

- (a) under division 2 about a person for whom a student account is opened; or
- (b) under division 3, subdivision 1A about a person for whom a student account is open.

The authority must ensure information is recorded in the student account in accordance with the information received.

### **Amendment of s 21S (Use by authority and disclosure to providers for verification)**

Clause 29 amends the heading of section 21S by inserting the phrase '**or recognised schools**', after 'providers', as this section will now also apply with respect to recognised schools.

The clause also makes consequential amendments to section 21S to incorporate references to recognised schools. Subsection 21S(2) is replaced so that, for a student account for a person enrolled in certification studies at a recognised school - the authority may disclose prescribed

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information to the recognised school, to the extent necessary for the authority to ensure the accuracy of the information.

Subsections 21S(3) and (4) are amended to insert the phrase ‘or recognised school’ after the term ‘provider’. This ensures that, in relation to students of recognised schools, the authority may only disclose information about their enrolment or results, in certification studies, to the recognised school. In addition, if the authority discloses prescribed information under subsection 21S(2), the recognised school must, as soon as practicable, give notice to the authority stating –

- (a) whether the disclosed information is correct; and
- (b) if the disclosed information is incorrect - the correct information.

### **Amendment of s 21T (Disclosure to providers, or their agents, for other purposes)**

Clause 30 amends the heading of section 21T by inserting the phrase ‘**or recognised schools**’, after ‘their agents, or’, as this section will now also apply with respect to recognised schools.

The clause also makes consequential amendments to section 21T to incorporate references to recognised schools. Therefore, section 21T prescribes the information recorded in the student account kept for a person to which the authority must give a recognised school access; and the purpose of the access. A new subsection 21T(5) is inserted to prescribe that, for a recognised school for the person –

- (a) the accessible information is all of the information; and
- (b) the purpose of the access is to help the recognised school –
  - (i) comply with section 21OC; and
  - (ii) manage the educational program provided to the person.

A definition of the term ‘*recognised school*’, for a person, is inserted in subsection 21T(6) to mean the recognised school at which the person is enrolled in certification studies.

### **Amendment of s 21V (Disclosure to person for whom account is kept and the person’s parents)**

Clause 31 amends section 21V(2) to provide that subsection (3) also applies where a person is enrolled in certification studies at a recognised

school; and the name and address of a parent of the person are recorded in their student account. This amendment ensures that the authority must give the parent access to information recorded in the student account, to help the parent support the person's progress towards obtaining a certificate of achievement or statement of results.

### **Amendment of s 21Z (Closing student account)**

Clause 32 amends section 21Z to provide that it also applies if a recognised school notifies the authority under section 21OC(3) about the death of a person. This amendment ensures that the authority must close the person's student account.

### **Amendment of s 21ZB (Confidentiality)**

Clause 33 amends section 21ZB to provide that it also applies to a member of the governing body of a recognised school or an employee of a recognised school. This amendment prohibits the governing body or the employee from making a record of the information or disclosing it to anyone else, other than in the circumstances prescribed in section 21ZB(2) of the Act.

For the purposes of section 21ZB, the definition of '*employee*' is also amended so that it defines who is an employee of a recognised school.

### **Amendment of s 23 (Minister's power to give directions in the public interest)**

Clause 34 amends section 23 to include references to 'kindergarten guideline' where appropriate. Therefore, the Minister is empowered to give directions to the authority to develop or purchase a kindergarten guideline of a stated type, for its approval under the Act.

Subsection 23(5) is amended to clarify that the direction can not be about –

- the content of a kindergarten guideline; or
- the approval of a kindergarten guideline developed, purchased or revised by the authority; or
- the accreditation, under the Act, of a kindergarten guideline.



## Insertion of new s 23A

Clause 35 inserts a new section 23A after section 23 as follows.

- Section 23A (Minister's power to give directions about intellectual property)

Section 23A provides that the Minister may give the authority a written direction about material containing intellectual property held by the authority.

Subsection 23A(2) provides that without limiting subsection (1), the direction may be about any of the following –

- (a) the granting of a licence to the State;
- (b) the conditions on which a licence is to be granted to the State including a condition that no fee is payable by the State for the licence;
- (c) that a licence not be granted to an entity other than the State;
- (d) the receipt or payment of monies.

Subsection 23A(3) states that a direction under subsection (1) may also –

- (a) require the authority to give the Minister notice if the authority intends entering into an agreement with another entity in relation to the material; and
- (b) state the type of agreement about which the Minister is to be given notice; and
- (c) require the notice to be given to the Minister a stated period of time before the authority intends entering the agreement.

Subsection 23A(4) requires the authority to comply with the direction.

Subsection 23A(5) specifies that in the authority's annual report for a financial year, the authority must include copies of all directions given to it under section 23A in the financial year.

Subsection 23A(6) defines the terms '*licence*' and '*material containing intellectual property*' for the purposes of section 23A.

The term '*licence*' is defined to mean a licence to deal with material containing intellectual property held by the authority.

The term '*material containing intellectual property*' is defined to include material in existence before the commencement of section 23A.

### **Amendment of s 55 (Delegation by authority)**

Clause 36 amends section 55(2)(a) and (b) to insert a reference to 'kindergarten guideline'. This amendment ensures that the authority must not delegate its powers under the Act to approve or accredit a kindergarten guideline.

### **Amendment of s 79 (Regulation-making power)**

Clause 37 amends section 79(2)(a) to provide that a regulation may be made about the accreditation by the authority of kindergarten guidelines for implementation in child care services.

### **Amendment of sch 2 (Dictionary)**

Clause 38 amends schedule 2 to include definitions of the new terms '*accredited kindergarten guideline*', '*approved kindergarten guideline*', '*carer*', '*child care service*', '*kindergarten guideline*', '*recognised school*' and '*school age care service*'.

The clause also makes consequential amendments to the definitions of '*moderation*', '*school*' and '*teacher*'.

The term '*moderation*' is amended to include a reference to recognised schools, so that it means the process under which assessment data is moderated to ensure comparability, across the State and at recognised schools, of the assessing teachers' judgments in deciding results.

The term '*school*' is amended to clarify that it does not include a recognised school.

The term '*teacher*' is amended to clarify that, in relation to a recognised school, it means a person who provides educational instruction in, or assessment of, certification studies at the school.

## **Part 5**                      **Amendment of University of Queensland Act 1998**

### **Act amended**

Clause 39 provides that part 5 amends the *University of Queensland Act 1998*.

### **Insertion of new pt 8, div 3**

Clause 40 inserts a new division 3 into part 8 of the Act, as follows –

- Section 72 (Expiry of statutes)

Section 72 provides that, despite the *Statutory Instruments Act 1992*, section 54, the *University of Queensland Statute No.5 (Awards) 1999* and the *University of Queensland Statute No.6 (Fees) 1999* are taken not to have expired on 1 September 2009 and instead they expire on 1 September 2010 unless earlier repealed.