

Education and Training Legislation Amendment Bill 2010

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Education and Training Legislation Amendment Bill 2010*.

Policy Objectives of the Legislation

The policy objectives of the Bill are to:

- (i) amend the *Child Care Act 2002* to enable the recording, use and disclosure of unit record level data;
- (ii) amend the *Education (General Provisions) Act 2006* to give State school principals the power to exclude a student enrolled at the principal's school for a period of not more than one year or permanently; and
- (iii) amend the *Vocational Education, Training and Employment Act 2000* to achieve consistency with national arrangements.

Reasons for the Bill

Unit record level data for early childhood education and care

On 6 November 2009, the Ministerial Council for Education, Early Childhood Development and Youth Affairs endorsed a National Information Agreement on Early Childhood Education and Care to support the development of nationally consistent, quality early childhood education and care information. Queensland signed the Agreement on 19 February 2010. A copy of the signed Agreement can be obtained from the Ministerial Council for Education, Early Childhood Development and Youth Affairs website.

The National Information Agreement on Early Childhood Education and Care requires jurisdictions to develop the capability for the collection and reporting of unit record level (URL) data. Under the Agreement, “URL” refers to data on individual children, which includes their name, date of birth, address and demographic information (such as Indigenous status, language background and whether the child has a disability). The main source of URL data to meet obligations under the Agreement will be the Early Childhood Education and Care Services Census.

A new funding scheme has been approved to support kindergartens and long day care services to deliver approved kindergarten programs in Queensland. URL data is required to be recorded for the purposes of quality assuring approved kindergarten provider funding entitlements in 2011. URL data for these purposes is at the level of individual enrolments, as well as the name and qualifications of individual staff members who deliver an approved kindergarten program. The primary source of this information will be the quarterly reporting requirements attached to kindergarten funding agreements.

The legislative capacity is therefore needed to enable Queensland to collect and report URL data in order to meet its obligations under the National Information Agreement on Early Childhood Education and Care, and to ascertain correct funding entitlements for kindergarten programs.

Power of State school principals to exclude a student

On 18 December 2009, the Minister for Education and Training announced the Government’s commitment to grant State school principals the power to exclude students from their school. The Green Paper, *A Flying Start for Queensland Children*, released on 2 February 2010, reiterates the Government’s intention to give State school principals more power to exclude students, thus “supporting them to keep bad behaviour out of the classroom and enable students to get on with learning”.

Currently, under the *Education (General Provisions) Act 2006*, only a principal’s supervisor or the chief executive, Department of Education and Training, have the power to exclude a student.

The ability to make decisions about discipline within their school, including the exclusion of students, is key to confirming principals’ authority to the school community and in driving improved student behaviour, school performance and increased principal accountability.

Improving the capacity for principals to react to behavioural issues locally may provide parents more assurance about school safety standards.

In these Explanatory Notes, reference to term “parent” in relation to the principal’s exclusion powers means “parent” as defined under the *Education (General Provisions) Act 2006*, which includes guardians and carers.

Consistency with national arrangements for vocational education and training

The Australian Qualifications Framework is a quality assured national framework for qualifications in the school, vocational education and training, and higher education sectors in Australia. A qualification is identified by a designated title such as Senior Certificate of Education, Certificate III, Diploma or a Bachelor Degree and is recognised throughout Australia and overseas. The qualification signifies that the holder has completed a prescribed course of study comprised of certain subjects, units or modules in the school, vocational education and training or higher education sector.

In the vocational education and training sector, there are instances where a person might undertake and complete a number of competency units which are less than those required for a full qualification, in such cases the person is issued with a “statement of attainment”.

On 30 June 2006, the Council of Australian Governments identified that some jobs require specific sets (or clusters) of skills to meet industry standards, or regulatory and legislative requirements, and that failure to acknowledge this was inhibiting economic growth and productivity.

The concept of a skill set has since been introduced into many industry training packages. The Training Package Development Handbook, which sets out the National Quality Council’s policy and specifications for the development of training packages, states that:

- training package developers must determine the need for a skill set in training packages; and
- “skill set” is defined as a single unit of competency, or combinations of units of competency from an endorsed training package, which link to a licensing or regulatory requirement or defined industry need.

The Bill will ensure Queensland’s compliance with the National Skills Framework by expanding the definition of “statement of attainment” to

include a “skill set” as an additional category of achievement that may be certified by a registered training organisation.

The National Training Information Service is the official national register of information on training packages, qualifications, courses, units of competency and registered training organisations. The register is maintained by the Commonwealth. The register is currently being redeveloped and it is expected to be replaced by a new database which may carry a new name. Currently, the *Vocational Education, Training and Employment Act 2000* refers to the register by name. The Bill will remove the reference to the “National Training Information Service” and insert a new definition that accommodates future changes to the name of the database.

Achieving the Objectives

Unit record level data for early childhood education and care

The Bill achieves the policy objective by amending section 87 of the *Child Care Act 2002* to allow disclosure under new subdivision 2 in division 3 of part 9 of that Act. Section 87 stipulates record keeping and confidentiality requirements for licensees.

New subdivision 2 allows an authorised person for a relevant service (a licensed centre based service) to disclose URL data to the chief executive or to an authorised officer of a central governing body.

The chief executive would then be able to use the URL data for the following purposes:

- quality assuring of funding provided to relevant services and central governing bodies for approved kindergarten programs;
- planning for, monitoring of outcomes of, and reporting on early childhood initiatives; and
- preparing the data for disclosure to the Australian Bureau of Statistics and the Australian Institute of Health and Welfare.

In addition, for the purposes of quality assuring funding, the chief executive would be able to disclose URL data (including URL data that has been aggregated) to an authorised officer of a central governing body.

The Bill will enable the chief executive to disclose URL data to the Australian Bureau of Statistics and the Australian Institute of Health and

Welfare for the purposes of meeting Queensland's obligations under the National Information Agreement on Early Childhood Education and Care. The Bill provides that the Australian Bureau of Statistics and the Australian Institute of Health and Welfare must ensure data is collected, stored and used in a way that ensures the privacy of the person to whom it relates is protected.

A central governing body that receives URL data is also prohibited from recording or using the data or intentionally disclosing the data to anyone other than as provided under the proposed new section 170E, or recklessly disclosing the data. A maximum penalty of 100 penalty units applies in the case of breach.

Power of State school principals to exclude a student

The Bill will amend the *Education (General Provisions) Act 2006* to give State school principals the power to exclude a student enrolled at their school for a period of not more than one year or permanently. This will be achieved by inserting a new division 1A in part 3 of chapter 12 of that Act. This power is to be exercised on the same grounds and in the same manner as the current provisions for exclusion of a student by a principal's supervisor in division 2, part 3 of chapter 12.

The Bill makes it clear that new division 1A applies if the principal of the school at which the student is enrolled:

- is reasonably satisfied grounds exist to exclude the student from the school; and
- does not reasonably believe it would be inappropriate for the principal to make a decision to exclude the student from the school.

In those cases where the principal cannot act under division 1A, the principal can make a recommendation to their supervisor under the existing powers under division 2 for the supervisor to make the decision about the exclusion of the student from the school or certain State schools.

A State school principal who commences an exclusion process under division 1A will still be able to make, at any time during the process, a recommendation to his or her supervisor under division 2 for the supervisor to make the decision about exclusion of the student from certain other State schools. A principal would also be able to make a recommendation to their supervisor that a student be excluded from certain other State schools once a decision to exclude the student has been made under division 1A.

The grounds for exclusion are the same as the grounds for a principal's supervisor excluding a student under division 2.

If a principal proposes to exclude a student under division 1A, the principal must give the student a notice proposing exclusion and suspend the student from the school pending a final decision about the proposed exclusion. The principal must also take reasonable steps to meet with the student's parent to discuss the student's behaviour that led to the giving of the notice.

Once a principal suspends a student, the principal must arrange for the student's access to an educational program that allows the student to continue his or her education during the suspension.

A student or their parent will be able to make a submission to the principal against the suspension and proposed exclusion within five school days after the notice is given. A student or their parent may also request a longer period in which to make a submission.

A principal will have 20 school days after the notice is given in which to make a decision. If the principal decides to exclude the student, the principal must give the student notice to that effect. The student would then be able to make submissions to the chief executive for a review of the exclusion decision. Once a student is excluded from the school, the student's enrolment is taken to be cancelled. If a principal decides not to exclude a student, the principal must also advise the student accordingly and give notice about the decision and reasons for decision. The student is then able to resume attendance at the school.

A principal may decide to exclude a student under division 1A, and also decide to make a recommendation to his or her supervisor that the student be excluded from certain other State schools. For example, this might occur if the principal has made a decision to exclude a student under division 1A and the principal becomes aware of facts that indicate the situation warrants the student's exclusion from certain other State schools under division 2.

The proposed amendments will be supported by case management arrangements. A case manager will be required to meet with the student's parent to discuss the student's behaviour that led to the exclusion and the student's placement once the decision to exclude has been made. Case management will ensure that excluded students are enrolled in another State school, alternative education program or other appropriate option. The case management guidelines will also provide for review of the student's situation after their enrolment in their new education setting.

Consistency with national arrangements for vocational education and training

To ensure compliance with the National Skills Framework, the Bill amends the definition of “statement of attainment” in the *Vocational Education, Training and Employment Act 2000* to include a “skill set” as an additional category of achievement in vocational education and training that may be certified by a registered training organisation.

The Bill also amends the definition of “national register” to substitute the reference to the National Training Information Service with a reference to the register of vocational education and training matters, which includes training packages, qualifications, courses relating to vocational education and training, units of competency and registered organisations. The amendment will ensure that the definition of “national register” remains current despite any changes to the name of the database.

Alternative way of achieving the policy objectives

Amendment of the *Child Care Act 2000* is the only means of achieving Queensland’s obligations, under the National Information Agreement on Early Childhood Education and Care, to develop the capacity for collecting and reporting URL data, and to quality assure funding entitlements for an approved kindergarten program. Amendment of the *Education (General Provisions) Act 2006* is the only suitable way of implementing the commitment to give State school principals the power to exclude a student from the principal’s school. Amendment of the *Vocational Education, Training and Employment Act 2000* is the only means of ensuring the definitions of “national register” and “statement of attainment” remain current and achieve consistency with national standards.

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 principles issues.

Unit record level data for early childhood education and care

Right to privacy

The right to privacy, the disclosure of private or confidential information and privacy and confidentiality issues have generally been identified by the Scrutiny of Legislation Committee as relevant to considerations of whether legislation has sufficient regard to individual rights and liberties.

The right to privacy is supported by the requirement under section 27 of the *Information Privacy Act 2009* for agencies to comply with the Information Privacy Principles (IPPs). In particular, IPP 10 prohibits the use of “personal information” for a purpose other than the purpose for which the information was obtained unless certain circumstances exist, including where the use of information is authorised or required by law. Similarly, IPP 11 prohibits the disclosure of information to an entity (other than the individual who is the subject of the information) except in certain circumstances, including where authorised or required by law.

IPP 2 sets out certain requirements for the collection by an agency of personal information. The agency must take all reasonable steps to ensure that the individual is generally aware of the purpose of the collection, if the information collection is authorised or required under a law and if the information is to be disclosed to another entity. This is to be done before the personal information is collected or as soon as practicable after the information is collected.

Section 12 of the *Information Privacy Act 2009* defines “personal information” as information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

There may be a perception that the proposed amendments to allow for recording, use and disclosure of URL data about individual children and staff members may infringe on individual’s rights and liberties, particularly the right to privacy. URL data would clearly be considered to be personal information and thus subject to the requirements under IPP 10 and 11.

However, these principles are subject to any overriding legislation and in this instance it is considered that the Bill establishes adequate safeguards to ensure that the information is only recorded, used and disclosed for the purposes set out in the legislation. Further, the Bill prohibits a person who

is or has been an authorised officer of a central governing body and who receives or received URL data from recording or using the data or intentionally disclosing the data to anyone other than as prescribed, or recklessly disclosing the data. A maximum penalty of 100 penalty units applies in the case of a contravention. This is consistent with the current confidentiality requirements under section 167 of the *Child Care Act 2002*.

The Bill also makes it clear that when the chief executive is using URL data for the purposes of reporting on early childhood initiatives, URL data may be reported by the chief executive only if it has been aggregated and does not identify, directly or indirectly, any person to whom it relates.

Consistent with IPP 2, relevant services will be required under the kindergarten funding agreement to provide a privacy notice to parents when collecting URL data to ensure that parents are aware of the reasons why the data is being collected, how it will be used and the circumstances in which it would be disclosed.

A child care service provider may also be captured by the provisions of the *Privacy Act 1988* (Cwth) if it is a business with an annual turnover of more than \$3 million. A business with an annual turnover of less than \$3 million is exempt from the *Privacy Act 1988* (Cwth), unless the business:

- is related to another service that has an annual turnover of \$3 million;
- provides a health service or holds health records;
- discloses personal information for a benefit, service or advantage;
- provides someone else with a benefit, service or advantage to collect personal information; or
- is a contracted service provider for a Commonwealth contract.

Section 16 of the *Privacy Act 1988* (Cwth), also requires the Australian Bureau of Statistics and the Australian Institute of Health and Welfare (as agencies) not to do an act or engage in practice that breaches a Commonwealth Information Privacy Principle (Commonwealth IPP). Commonwealth IPPs encompass how and when an agency can collect personal information, how it should be used and disclosed, and how it should be stored and secured.

The National Information Agreement on Early Childhood Education and Care provides that following quality assurance, the Australian Bureau of Statistics is to return URL data to the supplying agency. Information provided to the Australian Bureau of Statistics under the terms of that

Agreement will be used for purposes of the *Census and Statistics Act 1905* (Cwth), and to support the Statistician's function under the *Australian Bureau of Statistics Act 1975* (Cwth).

Section 19 of the *Census and Statistics Act 1905* (Cwth) provides that a person commits an offence if the person is or has been the Statistician or an officer and the person either directly or indirectly divulges or communicates to another person (other than the person from whom the information was obtained) any information given under that Act. The penalty is 120 penalty units or imprisonment for two years, or both.

In addition, section 29 of the *Australian Institute of Health and Welfare Act 1987* (Cwth) provides a penalty of \$2000 or imprisonment for 12 months or both for breach of the confidentiality provision. The confidentiality provision prohibits a person either directly or indirectly from making a record of the information or divulging or communicating that information to any person, producing that document to any person, or being required to divulge or communicate any of that information to a court.

Proposed offence under section 170E(3)

Proposed section 170E(3) provides a maximum penalty of 100 penalty units where a person who is or has been an authorised officer of a central governing body, who receives or received URL data, records or uses the data, or intentionally discloses the data to anyone other than as permitted under the section, or recklessly discloses the data to anyone.

The proposed penalty for breach of confidentiality may give rise to the question of whether the penalty level has sufficient regard to the rights and liberties of persons potentially subject to the penalty. A penalty is required to be proportionate to the offence. Legislation should therefore provide higher penalties for an offence of greater seriousness than for a lesser offence. Penalties in legislation should be consistent with each other.

Section 170E(3) is consistent with existing section 167 of the *Child Care Act 2002*, which imposes a duty of confidentiality for the chief executive, a public service employee in the department and an authorised officer. The maximum penalty under section 167(2) is 100 penalty units or two years imprisonment. It is considered that the level of the penalty in this instance of 100 penalty units is proportionate to the offence and can be justified on the basis that it ensures URL data is not recorded, used or disclosed other than as authorised under the legislation.

Power of State school principals to exclude a student

The *Legislative Standards Act 1992* requires legislation to have sufficient regard to rights and liberties of individuals, in particular that:

- where rights and liberties or obligations are dependent on administrative power, the power must be subject to appropriate review; and
- legislation be consistent with principles of natural justice.

A decision by a State school principal to exclude a student from the principal's school for a period of one year or permanently may have a detrimental effect on the student's access to education. It could therefore be argued that this may have a detrimental effect on the rights and liberties of individuals.

The principles of natural justice require that something should not be done to a person that will deprive a person of some right or interest or legitimate expectation of a benefit without the person being given the opportunity to present the person's case to the decision maker.

The Bill ensures that procedural fairness is afforded to students during the decision making process, in line with the current review process for a decision by a principal's supervisor. Under proposed section 288E, a student who has been given a notice proposing exclusion will have the opportunity to make submissions to the principal against the proposed exclusion and suspension.

The Bill provides that the principal is to consider any submission made by the student (or another person who may make a submission in relation to the notice) before making an exclusion decision. After considering any submission, the principal may decide not to exclude the student from the school.

The Bill also allows students who have been excluded by a State school principal to apply to the chief executive, or his or her delegate, for review of the principal's decision. This is consistent with the right of appeal from a decision by a principal's supervisor to exclude a student.

The Bill makes it clear that a principal may exclude a student if the principal:

- is reasonably satisfied grounds exist to exclude the student from the school; and

- does not reasonably believe it would be inappropriate for the principal to make a decision to exclude the student from the school.

There is no external review of the decision of the chief executive to the Queensland Civil and Administrative Tribunal (QCAT), unless a decision is made to exclude the student from all State schools. Again, this is consistent with the existing appeal rights for exclusion decisions made by principals' supervisors. This could be considered to be a breach of fundamental legislative principles. However, it is considered that any potential breach is justified for the following reasons.

The external review provision is intentionally limited to the most significant decisions made under the *Education (General Provisions) Act 2006*, such as a decision to exclude a student from all State schools. These decisions have the potential to severely limit the ability of a person to access State education.

A decision by a principal to exclude a student from one school only would have less impact on a student's ability to attend and access State school education. The student would continue to have access to an education program, such as another State school in the area, distance education and attendance at youth education and training centres.

The Department of Education and Training has practices and procedures to assist students to re-engage in State education. A case manager is appointed in the region to work with other agencies as required to oversee and monitor the student's continuing education program. The Department of Education and Training is also progressing a number of other initiatives to improve behaviour management in schools.

The Department of Education and Training will develop policies and procedures to strengthen decision making processes by State school principals when considering exclusion of a student:

- Guidelines are being developed to assist in the decision making process. These will provide clarification of the legislative provisions about when the decision to exclude a student must be made by a principal's supervisor.
- State school principals will be provided with training to enhance their administrative decision making skills. This will ensure transparency and consistency in the decision making process.

- The principal would be required to notify the region when he or she sends the notice proposing exclusion to trigger the appointment by the region of a case manager for the student.
- The case manager would be required to meet with the parent to discuss the student's behaviour that led to the exclusion and facilitate the student's placement in another school or education program once the decision to exclude has been made.

Finally, there is a need to provide an expedient resolution of exclusion decisions for the student, student's parents and the school. Allowing an appeal to QCAT of an internal review by the chief executive of a principal's decision to exclude may result in a decision regarding the student's exclusion not being finalised for some time. This would not offer a practicable solution for the student, parents and the relevant school in facilitating the re-engagement of the student in another school or educational environment.

Consultation

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

Unit record level data for early childhood education and care

Consultation has been undertaken with the Early Childhood Development Forum at its meeting on 3 March 2010, and the Kindergarten Implementation Reference Group at the 17 March and 7 April 2010 meetings. A consultation paper was also prepared and distributed to stakeholders on 9 April 2010, with consultation closing on 23 April 2010.

Power of State school principals to exclude a student

Consultation has occurred with education stakeholders, including the Queensland Teachers' Union, Queensland Association of State School Principals, Queensland Secondary Principals' Association, P10–12 School Administrators' Association, Association of Special Education Administrators, Queensland Council of Parents and Citizens Association and the Statewide Behaviour Committee.

Uniform or complementary with legislation of the Commonwealth or another State

The Bill is not uniform or complementary with the legislation of the Commonwealth or another State.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 establishes the short title of the Act as the *Education and Training Legislation Amendment Act 2010*.

Part 2 Amendment of Child Care Act 2002

Act amended

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

Amendment of s 87 (Confidentiality of records)

Clause 3 makes a consequential amendment to section 87(3) to insert a reference to a disclosure allowed under part 9, division 3, subdivision 2. The amendment makes it clear that the confidentiality of records requirements under section 87(1) and (2) do not apply if the access or disclosure of information relate to a child under part 9, division 3, subdivision 2.

Clause 3 also renumbers paragraphs 87(3)(da) and (e) as a consequence of inserting paragraph (3)(da).

Insertion of new pt 9, div 3, sdiv 1 hdg

Clause 4 inserts the new heading Subdivision 1 Requirements for persons involved in administering this Act in division 3 of part 9.

Insertion of new pt 9, div 3, sdiv 2

Clause 5 inserts a new subdivision 2 in division 3 of part 9 as follows.

- Section 170A (Definitions for sdiv 2)

Section 170A defines “approved kindergarten program”, “authorised officer”, “central governing body”, “disability”, “relevant service” and “URL data” for the purposes of subdivision 2.

- Section 170B (Disclosure of URL data to chief executive and central governing bodies by relevant services)

Section 170B allows a relevant service and a central governing body to disclose URL data to the chief executive.

Subsection (1) allows the relevant service to disclose URL data either to the chief executive, or an authorised officer of a central governing body if the service receives funding from the body for an approved kindergarten program, and has been directed in writing by the central governing body to disclose URL data to it for the purposes of this section.

Subsection (2) provides that an authorised officer of the central governing body may disclose URL data received under this section to the chief executive.

Subsection (3) defines an authorised person for a relevant service as the licensee of the service, a staff member of the service or an employee of the licensee of the relevant service who administers URL data in the course of performing the employee’s duties.

- Section 170C (Use and disclosure of URL data by chief executive)

Section 170C(1) allows the chief executive to use URL data for the following purposes:

- (a) quality assuring of funding provided to relevant services and central governing bodies for approved kindergarten programs;
- (b) planning for, monitoring of outcomes of, and reporting on, early childhood initiatives; and
- (c) preparing the data for disclosure under section 170D.

Subsection (2) also allows the chief executive to disclose URL data (including URL data that has been aggregated) to an authorised officer of a central governing body for the purposes of qualify assuring funding.

Subsection (3) makes it clear that URL data may be reported only if it has been aggregated and does not identify, directly or indirectly, any person to whom it relates.

- Section 170D (Disclosure of URL data to Australian Bureau of Statistics and Australian Institute of Health and Welfare)

Subsection (1) allows the chief executive to disclose URL data to a prescribed entity (defined as the Australian Bureau of Statistics or the Australian Institute of Health and Welfare) for the purposes of meeting Queensland's obligations under the early childhood data agreement.

Subsection (2) stipulates that a prescribed entity that receives URL data under this section must ensure the data is collected, stored and used in a way that ensures the privacy of the persons to whom it relates is protected.

Subsection (3) defines "early childhood data agreement" and "prescribed entity". The early childhood data agreement is defined as the agreement between the Commonwealth and the States called the 'National information agreement on early childhood education and care', signed on behalf of Queensland by the chief executive on 19 February 2010.

- Section 170E (Recording, use and disclosure of URL data by authorised officer of central governing body)

Section 170E(1) allows an authorised officer of a central governing body to use URL data received under this subdivision for the following purposes:

- (a) quality assuring and distributing funding received from the department for approved kindergarten programs;
- (b) planning, developing and implementing services for children, parents and guardians;
- (c) planning, developing and implementing professional development programs for staff members of relevant services;
- (d) implementing curriculum development initiatives; and
- (e) reporting on central governing body's performance.

Subsection (2) stipulates that a central governing body may only report on URL data if the data has been aggregated and does not identify, directly or indirectly, any person to whom it relates.

Subsection (3) creates a new offence by providing that a person who is or has been an authorised officer of a central governing body and who receives or received URL data under this subdivision must not record or use the data, or intentionally disclose the data to anyone, other than in accordance with section 170E(1), or recklessly disclose the data to anyone. The maximum penalty is 100 penalty units.

Amendment of sch 2 (Dictionary)

Clause 6 makes a consequential amendment to insert references in the Dictionary to the definitions of approved kindergarten program, authorised officer, central governing body, disability, relevant service and URL data.

Part 3 Amendment of Education (General Provisions) Act 2006

Act amended

Clause 7 provides that this part amends the *Education (General Provisions) Act 2006*.

Amendment of s 53 (When fee for distance education is not payable)

Clause 8 makes a consequential amendment to section 53 to provide that a student who is excluded by a State school principal under new division 1A is not required to pay a fee for distance education, consistent with a student excluded by the principal's supervisor or the chief executive.

Amendment of s 200 (Child's exclusion or suspension)

Clause 9 makes a consequential amendment to section 200 to provide that section 176(1)(b) does not apply while a child is suspended and the child's access to education has not been arranged under new section 288D. Section 176(1)(b) creates an obligation on parents of a child who is of compulsory school age to ensure the child attends school on every school day for which the child is enrolled.

Amendment of s 237 (Suspension or exclusion)

Clause 10(1) and (2) make consequential amendments to section 237(2) to include a reference to new division 1A and new section 288D respectively. The amendments make it clear that a person's participation in an eligible option is not taken to continue if the person has been suspended by a principal under division 1A and placed in an educational program under section 288D. This is consistent with a person who has been suspended by a principal's supervisor and placed in an educational program under section 291.

Insertion of new ch 12, pt 3, div 1A

Clause 11 inserts a new division 1A in part 3 of chapter 12 as follows.

- Section 288A (Principal's power to exclude student)

Section 288A provides that a principal of a State school at which a student is enrolled may exclude the student if the principal is satisfied grounds exist under section 288B.

The section note makes it clear that, at any time before or after the student is excluded from the school, the principal may also make a recommendation to the principal's supervisor that the student be excluded from certain other State schools under division 2.

- Section 288B (Grounds for exclusion of student by principal)

Section 288B specifies the grounds for which a principal may exclude a student from the school under new division 1A, namely:

- (a) disobedience by the student;
- (b) misconduct of the student;
- (c) other conduct of the student that is prejudicial to the good order and management of the school;

if the disobedience, misconduct or other conduct is so serious that suspension of the student from the school is inadequate to deal with the behaviour.

Subsection (2) allows a principal to exclude a student because of the student's contravention of a behaviour improvement condition, for the student's challenging behaviour.

- Section 288C (Notice proposing exclusion and suspension pending final decision about exclusion)

Section 288C stipulates when a principal can exclude a student under division 1A.

Section 288C(1) provides that the section applies if the principal:

- (a) is reasonably satisfied that grounds exist to exclude the student from the school; and
- (b) does not reasonably believe it would be inappropriate for the principal to make a decision to exclude the student from the school.

The section example provides that it would be inappropriate for the principal to make a decision to exclude the student from the school if the principal would be prevented from doing so by the principles of natural justice relating to bias.

The section note provides that if the principal cannot act under division 1A because of subsection (1)(b), the principal can make a recommendation to the principal's supervisor under division 2 that the student be excluded from the school.

Subsection (2) requires the principal to give the student a notice about the proposed exclusion and to suspend the student pending a final decision about the proposed exclusion.

Under subsection (3), the notice proposing exclusion must state:

- (a) that the principal proposes to exclude the student for a stated period of not more than one year or permanently;
- (b) the student is suspended from the school pending a final decision;
- (c) the reasons for the proposed exclusion;
- (d) that the student may make submissions to the principal about the proposed exclusion and suspension within 5 school days after the notice is given or the longer period allowed;
- (e) the title, name and address of the principal; and
- (f) the way in which the submission may be made.

Subsection (4) specifies that if the student is a child, the principal must also take reasonable steps to meet with the student's parent to discuss the student's behaviour that led to the giving of the notice. This is to take place as soon as practicable after giving the notice proposing exclusion.

However, subsection (5) provides that the principal is not required to meet with the student's parent to discuss the student's behaviour, if the principal is satisfied that it would be inappropriate in the circumstances to do so. For example, if the student is living independently of his or her parents.

Subsection (6) stipulates that if the principal is not required to meet with the student's parent, 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 and the student may be accompanied by an adult during the meeting.

- Section 288D (Continuing education during suspension)

Section 288D provides that if the principal suspends the student from the school under section 288C, the principal must arrange for the student's access to an educational program that allows the student to continue his or her education during the suspension.

- Section 288E (Submissions against proposed exclusion and suspension)

Section 288E allows a student to make submissions against the proposed exclusion and suspension in the way stated in the notice.

Subsection (2) stipulates that the submission must:

- (a) be made to the principal no later than five school days after the notice proposing exclusion is given to the student; and
- (b) state fully the grounds for the submission and the facts relied on.

Subsection (4) allows the principal to grant the student a longer period of time in which to make submissions if, within five school days after the notice is given, the student (or another person who may make a submission) asks for a longer period under subsection (3). The section note in subsection (3) provides that if a student is a child, the student's parent may make a submission in relation to the notice in accordance with section 331.

- Section 288F (Exclusion of student by principal)

Section 288F applies if the five school days after the student was given the notice (or the extended period) have expired, the principal has considered any submissions made, and the principal is reasonably satisfied that grounds exist to exclude a student from the school.

Subsection (2) provides that the principal may (no later than 20 school days after the day the notice was given to the student) exclude the student from the school for a period of not more than one year or permanently.

Subsection (3) stipulates that, if the principal decides to exclude the student from the school, the principal must give the student a notice stating each of the following:

- (a) the student is excluded from the school for a stated period of not more than one year or permanently;
- (b) the reasons for the exclusion;
- (c) that the student may make a submission to the chief executive asking the chief executive to review the decision under division 5;
- (d) the title, name and address of the chief executive; and
- (e) the way in which the submission may be made.

Subsection (4) provides that a principal may not exclude a student for a period longer than the period of the proposed exclusion stated in the notice.

- Section 288G (Decision not to exclude student)

Section 288G(1) specifies that if the principal decides not to exclude the student, the principal must:

- (a) tell the student (as soon as practicable) about the decision and that the suspension has ended; and
- (b) within seven days after telling the student about the decision, give the student notice about the decision and the reasons for decision.

Subsection (2) provides that if the principal decides not to exclude the student from the school on the ground mentioned in section 288B(2), the student's resumed attendance remains subject to the relevant behaviour improvement condition for the student's challenging behaviour.

- Section 288H (Effect of exclusion on enrolment)

Section 288H provides that if a student is excluded under this division, the enrolment is taken to be cancelled.

Amendment of s 290 (Suspension pending dealing with recommendation for exclusion)

Clause 12 makes a consequential amendment to section 290 to ensure that a principal who is in the process of making, or has made, a decision to exclude a student under division 1A is not precluded from also making a recommendation to their supervisor for the student to be excluded from certain other State schools under division 2.

Clause 12(1) amends the section heading to emphasise that the section deals with a recommendation for exclusion and a suspension pending the final decision about the recommendation.

Clause 12(2) amends section 290(1) to provide that section 290 applies if grounds exist to exclude a student from certain State schools, or from the school at which the student is enrolled if division 1A does not apply because of section 288C(1)(b).

Clause 12(3) amends section 290(2)(b) to provide that a student may be suspended pending the supervisor's final decision if the student is enrolled at the school. That is, if the student has not already been suspended or excluded under division 1A or division 2.

Clause 12(4) inserts a new subsection (2A) to provide that (without limiting section 290) the principal may make a recommendation that a previously excluded student be excluded from certain other State schools for a stated period of not more than one year or permanently. The amendment ensures that division 2 can apply in a situation where a student has been excluded under division 1A or division 2 from the school at which the student was enrolled and it becomes apparent that the student should also be excluded from certain other State schools.

Clause 12(5) amends the information to be included in the notice proposing exclusion under section 290(3)(b) to make it clear that the notice will only advise on whether the student is suspended from the school pending the supervisor's decision about the recommendation if the student has not already been suspended or excluded under division 1A or division 2.

Clause 12(6) amends section 290(3)(c) to provide that the student may make a submission to the principal's supervisor against the suspension if applicable, that is, if the student is not already suspended or excluded under division 1A or division 2.

Clause 12(7) defines "previously excluded student" for the purposes of section 290 as a student who is excluded from the school under division 1A

or divisions 2, and was enrolled at the school immediately before the exclusion.

Amendment of s 292 (Submissions against suspension and recommendation for exclusion)

Clause 13(1) and (2) makes a consequential amendment to section 292 to amend the section heading and to make it clear that a student may make a submission against the recommendation for exclusion and, if applicable, the suspension (that is, if the student is not already suspended or excluded under division 1A or division 2).

Clause 13(3) inserts a note in section 292 (as in section 288E) to make it clear that if a student is a child, the student's parent may make a submission in relation to the notice in accordance with section 331.

Amendment of s 293 (Exclusion of student by principal's supervisor)

Clause 14 makes a consequential amendment to section 293 to refer to the recommendation for exclusion, and if applicable, the suspension.

Amendment of s 294 (Decision not to exclude student)

Clause 15 makes a consequential amendment to section 294 to make it clear that a student can attend school if the principal's supervisor decides not to exclude the student.

Amendment of s 311 (Application of div 5)

Clause 16 makes a consequential amendment to section 311 to include a reference to new section 288F. The amendment extends the application of division 5 to a student excluded by a principal under division 1A. Division 5 allows the chief executive to review certain exclusion decisions.

Amendment of s 312 (Submission against exclusion decision)

Clause 17 makes a consequential amendment to section 312(2)(a) to include a reference to new section 288F. This amendment will enable a person who is excluded from a school by a principal under division 1A to make submissions to the chief executive against the exclusion decision.

Amendment of s 313 (Dealing with submissions against exclusions)

Clause 18 makes a consequential amendment to section 313(2) to include a reference to new section 288F. The amendment enables the chief executive to deal with submissions made by an excluded person against a principal's decision to exclude under division 1A.

Amendment of s 314 (Periodic review of decisions to exclude permanently on ground mentioned in s 289 or 298—person under 17 years)

Clause 19 makes consequential amendments to section 314 to extend its application to a person under 17 years excluded permanently from a State school by a principal on a ground mentioned under new section 288B. The amendment enables the chief executive to send notices (as soon as practicable after each anniversary of the exclusion) to the excluded person at the person's last known address.

Amendment of s 315 (Periodic review of decision to exclude permanently on ground mentioned in s 289 or 298—person aged from 17 to 24 years)

Clause 20 makes consequential amendments to section 315 to extend its application to a person aged from 17 to 24 years excluded permanently from a State school by a principal on a ground mentioned in new section 288B. The amendment will therefore enable the chief executive to send notices (as soon as practicable after each anniversary of the exclusion) to the excluded person at the person's last known address.

Amendment of s 324 (Imposition of behaviour improvement condition by principal)

Clause 21 makes a consequential amendment to section 324(1) to provide that subsection (2) applies if a State school principal is reasonably satisfied a student enrolled at the school has engaged in behaviour (challenging behaviour) that is the basis for a ground for exclusion of the student from the school mentioned in section 288B. Subsection (2) allows a principal to decide that the student's continued attendance at the school is subject to the student complying with a behaviour improvement condition for the challenging behaviour.

Amendment of s 331 (Submissions, representation or application about suspensions etc.)

Clause 22 makes a consequential amendment to section 331 to provide that the section applies to a proposed exclusion and suspension under division 1A, or a recommendation for exclusion, and if applicable a suspension, under division 2. The amendment is needed as a student may already be suspended from the school at which the student is enrolled under division 1A when a recommendation is made under division 2. The amendment ensures that a parent of a student who is a child can also make the submission in relation to the exclusion and suspension.

Amendment of sch 4 (Dictionary)

Clause 23(1) inserts a new definition “notice proposing exclusion”, which refers to section 288C(2)(a).

Clause 23(2) makes consequential amendments to the definition of “external program” to include a reference to new section 288D.

Part 4 Amendment of Vocational Education, Training and Employment Act 2000

Act amended

Clause 24 provides that this part amends the *Vocational Education, Training and Employment Act 2000*.

Amendment of s 19 (Definitions for ch 2)

Clause 25 inserts “skill set” as a new definition in section 19. Skill set is defined as a unit of competency, or a combination of units of competency, that links to a licensing or regulatory requirement or a particular industry need.

Amendment of s 20 (National register and national effect of registration)

Clause 26(1) omits the reference to the National Training Information Service and substitutes it with a reference to “register of vocational education and training matters”.

Clause 26(2) provides that “vocational education and training matters” includes training packages, qualifications, courses relating to vocational education and training, units of competency and registered training organisations.

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