

Education Legislation Amendment Bill 2012

Explanatory Notes

Short title

The short title of the Bill is the Education Legislation Amendment Bill 2012.

Policy objectives and the reasons for them

E-kindy

The Bill amends the *Education (General Provisions) Act 2006* (EGPA) to enable State Schools of Distance Education to deliver e-kindy to eligible children.

The e-kindy program is a digital, teacher-directed learning program, deliverable on the internet, and focused on preparing kindergarten-age children for the Preparatory year of school. It is based on the best practice models for distance education and the *Queensland Kindergarten Learning Guideline*.

In 2008, all jurisdictions including Queensland, agreed to provide universal access to quality early childhood education and endorsed the National Partnership Agreement for Early Childhood Education (NP ECE). Under the NP ECE, Queensland is implementing specific strategies to support access to kindergarten and participation of children from rural and remote communities and those with other diverse needs.

Most Queensland families are able to access a kindergarten program for their children via a centre-based long day care or kindergarten service. However, in a geographically dispersed state like Queensland, access to a centre-based kindergarten program is not available to all children.

E-kindy has been developed to ensure children in remote and isolated locations or those with medical issues or itinerant lifestyles have equitable access to a quality kindergarten program. E-kindy will be provided free to

children who are eligible to be registered because of their remote location, medical issues or itinerant lifestyles.

E-kindy is to be delivered by State Schools of Distance Education, leveraging on the schools' infrastructure, administrative processes and expertise in delivery of distance education programs. State Schools of Distance Education have expertise and experience in providing individually tailored education programs to meet the needs of all children including children with disabilities and those from culturally and linguistically diverse backgrounds. Teaching staff have well established professional development networks and supports to facilitate the delivery of inclusive education programs for every child regardless of their personal circumstances.

Delivery by State Schools of Distance Education also supports transitions to schooling via distance education as some children accessing e-kindy will go on to access schooling through State Schools of Distance Education.

Currently, under the EGPA, State Schools of Distance Education do not have the capacity to deliver kindergarten. The school is established to delivery primary, secondary and special education. Amendments are required to enable delivery of e-kindy.

National Professional Standards for Teachers

The Melbourne Declaration on Education Goals for Young Australians was made by the Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEEDYA) in December 2008. MCEEDYA released its Four Year Plan to support the Declaration in March 2009, which includes the National Partnership Agreement on Improving Teacher Quality (the National Agreement).

One of the agreed strategies under the National Agreement was implementing national professional standards for teachers in all jurisdictions. Education Ministers endorsed the *National Professional Standards for Teachers* (National Professional Standards) developed by the Australian Institute for Teaching and School Leadership (AITSL) in December 2010.

Under the *Education (Queensland College of Teachers) Act 2005* (QCT Act), the Queensland College of Teachers (QCT) has a function to develop, maintain and amend professional standards. In accordance with this function, the QCT has developed the *Professional Standards for Queensland Teachers* (the Queensland Standards).

The QCT Act does currently not permit the QCT to adopt standards developed by other entities, including the National Professional Standards. The Act needs to be amended to facilitate the QCT adopting the National Professional Standards in lieu of the current Queensland Standards.

Professional standards articulate what teachers are expected to know and be able to do during stages of their career and are used for the QCT's functions of registering teachers for provisional and full registration and approving courses of initial teacher education. The Graduate and Proficient levels of the National Professional Standards set out the requirements for beginning teachers to gain provisional registration to enter the profession, and for teachers with the requisite experience to gain full registration.

Adoption of the National Professional Standards will reduce red tape by improving the mobility of teachers throughout the nation and requiring the same standards and consistent processes to achieve teacher registration and accreditation of courses of initial teacher education in all jurisdictions.

Mandatory reporting of sexual abuse

The *Education and Training Legislation Amendment Act 2011* amended the EGPA to expand existing reporting requirements so that staff members of state and non-state schools are required to report to the police suspected sexual abuse perpetrated by any person, not just employees, as well as a likelihood of future sexual abuse. No penalty was prescribed for failing to report a likelihood of future sexual abuse under new sections 365A and 366A to mitigate concerns that the risk of criminal sanction would increase reporting of inappropriate low level matters. It was intended that failing to report under new sections 365A and 366A would be dealt with by employing authorities, which would consider taking disciplinary action in appropriate cases.

Subsequent to the amendment it was identified that despite the policy intention, a person who fails to report the likelihood of future sexual abuse may be guilty of a misdemeanour under section 204 of the *Criminal Code*, which carries a maximum penalty of one year imprisonment. Section 204 provides that a person who fails to comply with a statutory obligation is guilty of a misdemeanour unless a mode of proceeding against the person is expressly provided.

An amendment is required to ensure section 204 does not apply to failing to report a likelihood of future sexual abuse under new sections 365A and 366A of the EGPA. If an amendment is not made, it would be possible that

the police could seek to prosecute a person for failing to report a likelihood of sexual abuse. This is contrary to Parliament's original intention and not the position presented to key education stakeholders during development of the provisions.

Anniversary letters

Chapter 12 of EGPA provides for the exclusion of students from state schools. A student may be excluded for a period of up to one year or permanently from the school at which they are enrolled, certain state schools or all state schools. A person may seek a review of an exclusion decision. Also, a student who is permanently excluded may periodically seek that the decision be revoked until they reach 24 years of age under sections 314 and 315 of the EGPA.

Section 314 of the EGPA requires a notice to be sent to persons who have been permanently excluded, advising them they may make a submission to have the exclusion decision revoked. These 'anniversary letters' must be sent after each anniversary of the person's exclusion until they reach the age of 17.

The effectiveness of the anniversary letters in reminding persons who have been permanently excluded is in question. For example, anniversary letters are required to be sent to persons who have successfully re-enrolled in alternative schools or education programs or have even left the region and are unlikely to seek a revocation of the exclusion decision.

The preferred way to inform persons about their right to seek a revocation of a permanent exclusion decision is to advise the person at the time the exclusion decision is made. It is therefore proposed to remove the requirement to send anniversary letters. Instead, the notification of the person's permanent exclusion will include advice about the person's right to periodically seek a revocation of the decision. In addition, advice about review rights, including revocation of the decision, will be included on DETE's website. This proposal will reduce red tape for regional Departmental staff and enhance support for front line educational services.

Regional case managers are appointed to work with all excluded persons to facilitate the person's successful re-engagement in education or another eligible option such as TAFE. Case managers also follow up with the person within one month of their enrolment in a new school or other education or training program, and again within six months, to ensure their continued engagement. Case managers are able to assist students and their

parents to understand their review rights and capacity to seek a revocation of the decision.

Achievement of policy objectives

E-kindy

The Bill will enable State Schools of Distance Education to deliver e-kindy to eligible children. The Bill amends the EGPA to enable the Minister to approve a distance education pre-preparatory learning program for State Schools of Distance Education. The Bill provides a process for seeking registration in e-kindy and sets the eligibility criteria for registration.

National Professional Standards for Teachers

The Bill will amend the QCT Act to enable the QCT to adopt the National Professional Standards relevant to its teacher registration and pre-service teacher education program approval functions. The amendment prescribes that the QCT must adopt the National Professional Standards or, with the approval of the Minister, develop or adopt other professional standards. The Bill provides the QCT with the function to develop or adopt other professional standards in the event the National Professional Standards are not maintained in the future. When adopted by the QCT, the National Professional Standards will replace the current Queensland Standards.

The Bill requires the QCT to consult with the Director-General of the Department of Education, Training and Employment (the Director-General) and other representative entities when either adopting the National Professional Standards or when developing, adopting or amending the other professional standards. The Bill prevents the National Professional Standards being amended by the QCT.

The QCT will continue to make the professional standards they adopt available for inspection on their website.

Mandatory reporting of sexual abuse

The Bill amends the *Education and Training Legislation Amendment Act 2011* to insert provisions providing that a person does not commit an offence under the EGPA or any other Act by failing to report a likelihood of future sexual abuse under sections 365A and 366A. The intention of the section is to ensure that a person cannot be prosecuted under section 204 of the *Criminal Code* for committing a misdemeanour under that section if the failure to report is not an offence under any Act.

The new reporting requirement introduced in sections 365A and 366A will commence on a date set by proclamation. It is proposed to commence the requirement to report a likelihood of future sexual abuse at the beginning of the 2013 school year in order for the proposed clarifying amendments in this Bill to be made and facilitate training of school staff in relation to the expanded requirement.

Anniversary letters

The Bill amends the EGPA to remove the requirement to send anniversary letters. Persons who have been permanently excluded will continue to have the right to seek a revocation of their exclusion each year until they turn 24 years of age.

The Bill will amend the EGPA to require that when a student is notified about the decision to permanently exclude them, they are advised about their right to periodically seek a revocation of the decision. The Bill includes transitional arrangements to ensure that any person who is entitled to an anniversary letter within 12 months of commencement is advised that the requirement for the letter is being omitted, but that the person may seek a revocation of the decision under chapter 12, part 3, division 6 of the EGPA.

Alternative ways of achieving policy objectives

There are no alternatives that would achieve the policy objectives other than the proposed Bill.

Estimated cost for government implementation

Implementation of the Bill is not expected to result in any additional costs to the Queensland Government. The cost of implementing e-kindy will be met from the Australian Government funding under the NP ECE.

Consistency with fundamental legislative principles

Under the *Legislative Standards Act 1992*, legislation must have sufficient regard to the rights and interests of individuals. If rights and liberties, or obligations are dependent on administrative power prescribed in legislation, the power must be sufficiently defined and subject to appropriate review. Clause 14 (introducing new section 419G into the EGPA) provides for a party aggrieved by a decision not to register a child in an e-kindy program to seek a review of the decision by the

Director-General. Judicial review is also available to persons aggrieved by decisions about registration in e-kindy. This is considered an appropriate level of review given the criteria upon which the decision to enrol is made allows only minimal discretion to be exercised (regarding itinerant lifestyle). The provisions are aimed at supporting marginalised stakeholders to attend a kindergarten program.

Consultation

The Isolated Children's Parents' Association, representing children residing in remote locations, and the School of Distance Education Alliance, representing parents of school children enrolled in distance education programs, have been consulted on the proposal for delivery of an e-kindy program by State Schools of Distance Education.

The QCT has been consulted on the amendments to the QCT Act.

The Queensland Catholic Education Commission and Independent Schools Queensland have been consulted about the amendments to the mandatory reporting provisions.

Notes on provisions

Part 1 Preliminary

Clause 1 provides for the short title of the Act, the *Education Legislation Amendment Act 2012*.

Part 2 Amendment of Education and Training Legislation Amendment Act 2011

Clause 2 provides that part 2 amends the *Education and Training Legislation Amendment Act 2011*.

Clause 3(1) amends section 9 of the *Education and Training Legislation Amendment Act 2011* to ensure the requirement to report the likelihood of future sexual abuse under section 365A of the EGPA applies to children registered in e-kindy.

Clause 3(2) amends section 9 of the *Education and Training Legislation Amendment Act 2011* to insert new subsection 365A(10) into the EGPA to avoid the application of section 204 of the *Criminal Code* to a staff member of a state school who fails to report a likelihood of future sexual abuse under section 365A.

Clause 4 amends section 11 of the *Education and Training Legislation Amendment Act 2011* to insert new subsection 366A(9) into the EGPA to clarify that section 204 of the *Criminal Code* does not apply to a staff member of a non-state school who fails to report a likelihood of future sexual abuse under section 366A.

The new subsections 365A(10) and 366A(9) provide that a person does not commit an offence under the EGPA, or another Act, only because the person fails to report a likelihood of sexual abuse under section 365A or 366A. This provision aims to clarify that the failure to report a likelihood of future sexual abuse under section 365A or 366A is not a misdemeanour under section 204 of the *Criminal Code*. As was the original intention, a failure to report may be dealt with by means other than criminal sanction, such as disciplinary action by the employing authority, in appropriate circumstances.

Part 3 Amendment of Education (General Provisions) Act 2006

Clause 5 provides that part 3 amends the EGPA.

Clause 6 amends section 50(1)(b) of the EGPA so that section 50 also applies to a child registered in an e-kindy program. The section ensures that e-kindy will be provided by the State School of Distance Education free of charge.

Section 50 provides that state education must be free, except in the circumstances prescribed in sections 51, 52 and 55. These sections will not apply to a child registered in e-kindy because new section 419H (introduced in clause 14). Section 419H clarifies that a child registered in a distance education pre-preparatory learning program is not a student of, or enrolled in, a state school, nor is the child considered enrolled in a program of distance education.

Clause 7 amends section 288F of the EGPA to require that if a student is excluded permanently from a state school by the principal, the notice of a student's exclusion must state that the student may make a periodic written submission to the Director-General under chapter 12, part 3, division 6 of the EGPA. Division 6 enables a person under the age of 24 years to seek a revocation of their permanent exclusion.

Clause 8 amends section 293 of the EGPA to require that if a student is excluded permanently from a state school or certain state schools by the principal's supervisor, the notice of a student's exclusion must state that the student may make a periodic written submission to the Director-General under chapter 12, part 3, division 6 of the EGPA.

Clause 9 amends section 302 of the EGPA to require that if a student is excluded permanently from a state school, certain state schools or all state schools by the Director-General, the notice of a student's exclusion must state that the student may make a periodic written submission to the Director-General under chapter 12, part 3, division 6 of the EGPA.

Clause 10 omits section 314 from the EGPA. Section 314 currently provides for the sending of anniversary letters.

Clause 11 amends section 315 of the EGPA so that the section applies to all students under the age of 24 years who have been permanently excluded by a decision of the principal, principal's supervisor or the Director-General.

Clause 12 amends section 365 of the EGPA to ensure the requirement to report allegations of sexual abuse under that section applies to children registered in e-kindy.

Clause 13 amends section 368 of the EGPA to give statutory power to provide allowances or subsidies to families to offset the cost of participation in e-kindy, for example, subsidies to support families to meet the costs of information and communication technology infrastructure required to participate in an online education program.

Clause 14 inserts the new part 1A (Distance education pre-preparatory learning program) into chapter 19 of the EGPA. This provides for the provision of e-kindy by State Schools of Distance Education.

Section 419E Distance education pre-preparatory learning program

New section 419E provides for the Minister to approve a distance education pre-preparatory learning program to be delivered by State Schools of Distance Education. The program will be called e-kindy.

Section 419F Registration in programs

New section 419F provides the process for applying for registration in e-kindy for a pre-preparatory age child. 'Pre-preparatory age child' is defined in subsection 419F(7) to mean a child that will be at least 4 years and 6 months on 31 December in the year proposed for the child's participation in the program.

New subsection 419F(2) requires applications to be made to the principal of the school using an approved form.

New subsection 419F(3) prescribes the eligibility criteria for registration in e-kindy. The subsection provides that the principal may register a child in e-kindy if satisfied the child:

- is an Australian citizen or a child of an Australian citizen or permanent resident; and
- lives in their principal place of residence, at least 16 kilometres by the most direct route by road to a centre-based service catering to pre-preparatory aged children;
- has a medical certificate indicating the child is unable to attend a centre-based service for more than 10 consecutive weeks due to the child's state of health; or
- has an itinerant lifestyle.

New subsection 419F(4) prescribes what is considered an 'itinerant lifestyle'. Under the Bill, a child has an itinerant lifestyle, if due to the nature of their parent's occupation, during the year the child is proposed to register for e-kindy:

- the child's principal place of residence is likely to change at least twice; or
- the child will spend at least 10 weeks away from their principal place of residence, consisting of periods of two weeks or more at a time.

The section provides examples of what is considered an occupation with an itinerant lifestyle, including carnival worker, contract harvester or shearer.

New subsection 419F(5) requires the principal to give a notice of their decision about whether to grant or refuse an application for registration in e-kindy. New subsection 419F(6) requires the notice to include reasons for a decision to refuse an application.

New subsection 419F(7) provides relevant definitions for the section. This includes the definition of ‘centre-based service’. It means an education and care service, other than a family day care service, under section 5(1) *Education and Care Services National Law* as applied in Queensland.

Section 419G Review of decision to refuse to grant an application

New section 419G provides a right of review of a decision to refuse to grant registration in e-kindy to the Director-General.

Section 419H Status of children registered in programs

New section 419H clarifies that a child registered in e-kindy is not a student of a state school, nor is the child considered enrolled at the school or enrolled in a program of distance education at the school. This is necessary because kindergarten is not part of school. Children enrolled in e-kindy are not to be considered students of the school for the purpose of enrolment numbers and funding.

Clause 15 amends section 426 of the EGPA to ensure the confidentiality arrangements under the Act apply to personal information obtained by relevant persons in relation to a person who has applied to register or is registered in e-kindy.

Clause 16 amends section 428 of the EGPA to enable the Director-General to collect demographic information about a person registered in e-kindy for the purpose of managing education funding or grants arrangements, such as information and communication technology subsidies.

Clause 17 inserts new part 5 (Transitional Provisions for Education Legislation Amendment Act 2012) into chapter 20 of the EGPA.

New section 512 requires a ‘final notice’ to be given to a person who immediately before commencement was entitled to receive a notice under section 314 of the EGPA. New subsection 512(2) requires the final notice to state that the person is no longer entitled to further notices under section 314 and that the person may periodically make a submission to revoke a

permanent exclusion decision under chapter 12, part 3, division 6 of the EGPA (i.e. section 315).

New subsection (3) provides that if a person has received a notice under section 314(2) before commencement and the time within which the person may make a submission had not expired before commencement, the person may make a submission within the submission period and the submission is taken to have been made under section 315.

New subsections 512(4) provides transitional arrangements for submissions made under section 314 for which the Director-General is yet to make a decision before commencement. The submission is taken to be made under section 315 and must be dealt with after commencement under section 315.

Clause 18 inserts the definition of ‘distance education pre-preparatory learning program’ into schedule 4 of the EGPA.

Part 4 Amendment of Education (Queensland College of Teachers) Act 2005

Clause 19 provides that part 4 amends the QCT Act.

Clause 20 amends section 230(i) of the QCT Act. Section 230(i) prescribes the QCT’s function of developing professional teacher standards and applying the standards for entry to, and continuing membership of, the teaching profession. Clause 20 amends the section to provide the QCT can also adopt professional standards and apply the adopted standards for these purposes.

Clause 21 omits section 235 and inserts a new provision regarding the professional standards. Section 235 prescribes the QCT’s functions in relation to professional standards, defined in schedule 3 of the Act.

New subsection 235(1) provides that the QCT must adopt the National Professional Standards, or with the approval of the Minister, adopt or develop professional standards other than the National Professional Standards.

New subsection 235(2) prescribes that the QCT may amend standards, other than the National Professional Standards, that the QCT adopts or develops.

New subsection 235(3) requires the QCT to consult with the Director-General and the representative bodies (defined in schedule 3) when adopting the National Professional Standards or developing, adopting or amending the professional standards other than the National Professional Standards. The QCT may also consult with another person or entity.

New subsections 235(4) and (5) prescribe the purpose of professional standards and what may be outlined in the professional standards. These provisions are consistent with the existing provisions of the QCT Act.

New subsection 235(6) ensures that the QCT Act prevails over professional standards to the extent of any inconsistency. This section applies to the National Professional Standards, or other standards if developed or adopted by the QCT.

New subsection 235(7) requires the QCT to make the professional standards available for inspection on its internet site and in hard copy.

New subsection 235(8) defines the term ‘National Professional Standards’.

Clause 22 inserts new part 14 (Transitional Provisions for Education Legislation Amendment Act 2012) into the QCT Act. The transitional provision in new section 353 ensures professional standards developed by the QCT prior to commencement remain in force until the QCT adopts the National Professional Standards, or adopts or develops other professional standards with the approval of the Minister.

Clause 23 inserts a new definition of ‘professional standards’.