

# EDUCATION (OVERSEAS STUDENTS) BILL 2017

## Explanatory Notes

### Short title

The short title of the Bill is the Education (Overseas Students) Bill 2017 (the Bill).

### Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- create a new regime for the regulation of providers of courses to overseas students and international student exchange programs;
- provide the Queensland Curriculum and Assessment Authority with functions to administer new senior assessment and tertiary entrance systems, commencing for students entering Year 11 in 2019; and
- make minor and technical amendments to the *Education (General Provisions) Act 2006* and the *Working with Children (Risk Management and Screening) Act 2000*.

### Regulation of providers of courses to overseas students

The regulation of overseas student education and training involves a cooperative model of shared responsibility between the Australian and Queensland governments. The framework comprises: the Commonwealth *Education Services for Overseas Students Act 2000* (the Commonwealth Act) and the *National Code of Practice for Providers of Education and Training to Overseas Students 2017* (the National Code) and the Queensland *Education (Overseas Students) Act 1996* (the EOS Act).

The Commonwealth Act requires providers of education to overseas students to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). It is an offence under the Commonwealth Act to provide courses to overseas students without CRICOS registration.

A school can only be registered on CRICOS if it is first approved by the designated state authority (DSA) to provide a course to overseas students in the State. The DSA for all Queensland state and non-state schools is the Director-General, Department of Education and Training (DET). There are currently 106 school providers in Queensland, for which the Director-General is responsible as DSA (105 non-state schools, one registration for the state sector that covers 145 state schools).

The Commonwealth Act prescribes the matters the DSA must consider when giving its approval. Once the DSA approves the provider to provide a course to overseas students in the State, the DSA recommends to the relevant Commonwealth agency (the ESOS agency) that the provider be registered on CRICOS. The DSA can recommend the Commonwealth ESOS agency impose conditions on the registration and the period of registration.

Despite the DSA's role in approving and recommending providers, the Commonwealth

ESOS agency is the final decision maker for new provider registrations and the renewal of existing registrations for the school sector.

The EOS Act does not reflect the current role of the Director-General as the DSA or current expectations about the shared responsibility for regulation of providers of education to overseas students. For example, the EOS Act does not accurately reflect the matters the Director-General as DSA must consider when deciding whether to recommend a school provider be registered on CRICOS. Also, the EOS Act does not provide the Director-General with any powers to monitor compliance with the Commonwealth Act and National Code, which is expected under the national framework.

It is therefore proposed to introduce a new regulatory regime that better reflects the role and responsibilities of the Director-General as the DSA and to ensure better alignment with the national framework and shared responsibility for compliance. It is also proposed to improve Queensland's compliance framework by introducing the capacity for the issuing of compliance notices and providing for the appointment of authorised persons. Administrative practices will also be improved by introducing internal review rights and enhancing information sharing arrangements.

### **Regulation of student exchange programs**

Student exchange programs offer Australian students the opportunity to attend high school in another country and, under similar conditions, students from other countries to undertake studies in Australia. The programs are managed on a state by state basis with reciprocity of exchange accepted in lieu of payment of school tuition fees.

The current regulatory framework is an administrative regime operated by DET based on the *National Guidelines for the Operation of International Secondary Exchange Programs in Australia* (the National Guidelines). The National Guidelines are developed by the National Coordinating Committee for International Secondary Student Exchange (the Committee), comprised of representatives from the registration authorities within each state and territory. DET is the registration authority for Queensland and has responsibility for: registering student exchange organisations and monitoring compliance with the reciprocity requirements and any other applicable state requirements.

Under arrangements with the Australian Government, student visas are issued to international students enrolling in full-time courses of study in Australian schools. The students are either full-fee paying students, enrolling in courses with CRICOS registered providers or are exchange students participating in student exchange programs approved by state and territory education authorities. Accordingly, only overseas students entering Australia on a student visa participate in the regulated exchange programs. The arrangements do not affect persons coming to Australia on a visitor visa to undertake cultural exchanges.

In 2016, 159 international students and 189 Queensland students participated in student exchange programs. There are 23 organisations registered in Queensland to provide these exchanges, comprising ten non-state schools (seven Independent, three Catholic), one state school, and 12 not-for-profit entities, such as Rotary.

The Bill will introduce a statutory regime to regulate international secondary student exchange organisations that reflects the existing administrative regime and the policy intention of the National Guidelines. Victoria and Tasmania have introduced statutory regimes to regulate international secondary student exchange organisations. Consistent with the approach adopted in Victoria, the Director-General will make guidelines under the Act to

provide guidance to student exchange organisations about the requirements for registration and obligations on registered organisations. Introducing a statutory regime will provide regulatory oversight commensurate with the level of risk associated with student exchanges, safeguard the welfare of international and Australian secondary exchange students and protect Australia's reputation as a destination for international education and training.

### **Senior assessment and tertiary entrance (SATE) systems**

On 18 October 2016, the Queensland Government committed to introduce new SATE systems for students entering Year 11 in 2019. The development of the new systems has been guided by the Ministerial Senior Secondary Assessment Taskforce (the taskforce). The taskforce includes representation from the state and non-state schooling sectors, parent groups, the secondary principals' associations, teacher unions and tertiary institutions, as well as the Queensland Curriculum and Assessment Authority (the QCAA) and Queensland Tertiary Admissions Centre (QTAC).

The new systems will include:

- a new senior assessment approach combining school-based assessment, developed and marked by classroom teachers, with external assessment set and marked by the QCAA;
- new processes to strengthen quality and comparability of school-based assessment, including endorsement of school-based assessments by the QCAA prior to their use; and
- moving from existing Overall Position (OP) tertiary entrance ranks to Australian Tertiary Admission Ranks (ATARs).

Under current arrangements in Queensland, senior subject results are generated entirely from school-based assessments developed and marked by classroom teachers. While school-based assessment is used by all states and territories, Queensland and the Australian Capital Territory are the only jurisdictions that do not also employ some form of subject-based external assessment. Under the current Queensland model, the QCAA oversees a system of external moderation of school-based assessment, where groups of trained teacher reviewers meet to assure the quality of assessment instruments and ensure that teacher judgments are comparable from school to school. Queensland students seeking an OP undertake the Queensland Core Skills Test (QCS Test), which is designed, administered and marked by the QCAA and is used to calculate OP tertiary entrance ranks for eligible Year 12 students.

Under the new senior assessment system, subject results will be based on four assessments: three school-based assessments and one external assessment. School-based assessment will be subject to new quality assurance processes by the QCAA prior to their use. The external assessment will generally comprise 25% of the overall subject result in most senior subjects, and 50% of the overall subject result in most senior mathematics and science subjects.

OP tertiary entrance ranks will be replaced with ATARs, in line with other states and territories. The responsibility for generating tertiary entrance ranks will be transferred from the QCAA to QTAC, which will administer this process on behalf of tertiary institutions. This is also consistent with the approach in other jurisdictions.

The QCAA's functions under the new SATE system will include:

- endorsing school-based assessments for senior subjects (*endorsement*);
- reviewing samples of completed and marked school-based assessments in every subject and in every school, to ensure reliability of grades awarded by teachers on

- school-based assessments (*confirmation*);
- analysing school-based assessment and external assessment results to detect anomalies (*ratification*); and
- administering external senior assessments for senior subjects.

The *Education (Queensland Curriculum and Assessment Authority) Act 2014* (the QCAA Act) must be amended to provide the QCAA with adequate functions to administer the new SATE systems.

### **Amendments to the *Education (General Provisions) Act 2006***

The *Education (General Provisions) Act 2006* (the EGPA) is the primary Act that facilitates the provision of high-quality education to Queensland children and supports the broad strategic direction of education in Queensland. Minor and technical amendments are proposed to the EGPA to ensure that the Act remains current and is consistent with current operational practices and to reduce red tape.

### **Other minor and technical amendments**

The *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) contains inaccurate references to sections of the EGPA. These references have not impacted on the operation of the WWC Act. The current Bill provides an appropriate legislative vehicle to correct these references.

## **Achievement of policy objectives**

The Bill achieves the policy objectives by: replacing the existing EOS Act with new legislation to regulate the approval of providers of courses to overseas students and student exchange programs; amending the QCAA Act to support the implementation of the new SATE systems; and amending the EGPA and WWC Act to make minor and technical amendments.

### **Regulation of providers of courses to overseas students and providers of international secondary student exchange programs**

#### **Approval of schools to provide courses to overseas students**

The Bill provides that a school may apply to the Director-General (referred to as the chief executive in the Bill) for approval to provide a course to overseas students (a school provider approval), and to renew or amend the approval. The Bill prescribes the criteria against which the Director-General will assess an application for a school provider approval.

The Bill ensures better alignment with the Commonwealth framework for regulation of providers of courses to overseas students by:

- aligning the criteria to be considered when deciding whether to approve a provider with the Commonwealth Act and National Code;
- allowing the grant of provider approval for up to seven years as permitted under the Commonwealth Act;
- removing the separate registration of courses; and
- expanding the grounds for taking compliance action to align with the Commonwealth Act and national compliance regime.

The Bill also removes the current requirement under the Queensland EOS Act for Queensland school providers of courses to overseas students to be registered on a Queensland register.

### **Approval of providers of international secondary student exchange programs**

The Bill provides that a state or non-state school or a not-for-profit organisation may apply to the Director-General for approval to provide an international secondary student exchange program (a student exchange approval) and to renew or amend the approval.

The Bill defines international secondary student exchange program to mean a program without tuition fees, of not more than 12 months, that enables under reciprocal arrangements: an overseas student to attend a Queensland secondary school on a full-time basis; and a Queensland student to attend an overseas secondary school on a full-time basis. The Bill defines ‘overseas student’ for the purpose of student exchange approvals as a person who holds a student visa as a secondary exchange student. This definition ensures the scope of the legislative regime remains consistent with the current nationally agreed administrative regime. Travel under a visitor visa, where study may only be a component of a broader cultural exchange experience, is not captured by the regulatory scheme.

The criteria for approval to provide a secondary student exchange program will be prescribed in guidelines made by the Director-General. To ensure consistency with the national approach to the regulation of international secondary student exchange programs, the guidelines will be modelled on the National Guideline, with any necessary modifications to reflect the Queensland specific laws (for example around blue card requirements). The proposed guidelines will include: suitability to operate a student exchange organisation; evidence required to demonstrate an organisation’s not-for-profit status and financial viability; requirements for training and screening of staff of the organisation including blue card requirements; expectations relating to the selection and screening of host families; the organisation’s student support and protection measures; and insurance requirements.

### **Conditions on approval**

The Bill continues current practice by enabling conditions to be placed on a school provider or student exchange approval. In addition, it will be mandatory under the Bill for the holder of a school provider approval to provide, upon request, documents required to be held under a relevant law (such as the Commonwealth Act). This is consistent with the current EOS Act and will support Queensland’s role in monitoring compliance with the Commonwealth EOS Act.

### **Powers for monitoring and enforcing compliance**

The Bill provides for contemporary powers supporting investigation and enforcement of the regulation of both school provider and student exchange approvals. The Bill provides for the appointment of authorised persons with functions to investigate or monitor whether a power needs to be exercised under the Act, for example, whether compliance action should be taken, or an offence has been committed.

The Bill adopts standard provisions relating to appointment of authorised persons (i.e. the authorised persons must be appropriately qualified) and prescribes the rules for the appropriate exercise of their powers, including entry onto premises by consent or warrant only, requiring the production of documents, requiring assistance in exercising their powers and if necessary, to seize property.

The introduction of authorised persons is commensurate with:

- the level of risk associated with providing courses to overseas students and operating student exchange programs;
- the need to safeguard the welfare of international students and exchange students; and
- the need to protect the interests of, and maintain public confidence in, Queensland's international education and training sector.

The Bill ensures appropriate protection is afforded to approved school providers and student exchange organisations. When obtaining consent, or a warrant to enter premises, authorised persons will need to justify the reason for the exercise of the powers. The powers they may exercise upon entering premises will be limited to the reasons conveyed when obtaining consent, or specified in the warrant.

The Bill prescribes grounds for taking compliance action against a school provider or student exchange organisation, including to amend an approval, add a condition to an approval, or to suspend or cancel an approval. The grounds for taking compliance action include:

- for a school provider approval — failure to comply with the Commonwealth Act, the National Code, the Act or a condition of the approval; and
- for a student exchange approval — failure to comply with a condition of the approval, the Act, or the guidelines (including the reciprocity obligation).

Consistent with the current EOS Act, the Bill requires a show cause process to be undertaken before taking compliance action. The Bill also allows a compliance notice to be issued where there is a ground for taking compliance action and the Director-General is reasonably satisfied the non-compliance can be rectified.

The grounds for taking compliance action against a school provider have been expanded from those in the current EOS Act to align with the Commonwealth Act by including non-compliance with the Commonwealth Act and National Code. Non-compliance with the Commonwealth Act or National Code could include, for example, a school provider that: enrolls more than the maximum number of overseas students for which it has approval to enrol; or gives false or misleading advice to proposed students about a course and the outcomes a student may expect from a course. This reform strengthens oversight of approved school providers by providing the Director-General with the ability to meet expectations under the shared regulatory framework for monitoring compliance.

The Bill also enables the immediate suspension of a school provider or student exchange approval, without a show cause process, where there is an immediate risk to the safety, health or wellbeing of overseas or exchange students. This is consistent with the current EOS Act for school providers of courses to overseas students.

Suspending or cancelling Queensland's approval will prevent the provider from continuing to provide education to overseas students or run a student exchange program in Queensland. In relation to approved school providers, conditions placed on an approval and suspension or cancellation of an approval will be notified to the Commonwealth ESOS agency and that agency will decide whether to apply the decision to the national CRICOS registration.

### **Enhanced review rights**

The Bill provides for an internal review of decisions relating to school provider and student exchange approvals and for external review by the Queensland Civil and Administrative Tribunal (QCAT). Currently, there is no right of internal review for providers of courses to overseas students aggrieved by decisions under the current EOS Act and no external review

rights for student exchange organisations aggrieved by decisions made under the existing administrative program.

### **Information sharing**

The Bill provides for information sharing with the Non-State Schools Accreditation Board (NSSAB). NSSAB is responsible for the accreditation and monitoring of Queensland's non-state schools. The Bill will enable the sharing of information between NSSAB and DET relevant to schools that are approved school providers or exchange organisations, such as matters relating to the suitability of the members of the governing body of the school and the school's financial viability.

In addition, the Bill will enable information to be shared with registration bodies of other jurisdictions where it would assist in the performance of the other jurisdiction's functions. This includes, for example, the relevant Commonwealth ESOS agency and State and Territory registration authorities.

### **Transitional arrangements**

On commencement of the Bill, existing providers of courses to overseas students and student exchange organisations will be transitioned into the new regulatory schemes. Any applications on foot at commencement will be considered under the new statutory scheme. DET will inform relevant providers and schools of the transition to the new regulatory regime.

### **Senior assessment and tertiary entrance systems**

The Bill amends the QCAA Act to provide the QCAA with the following additional functions:

- endorsing school-based assessments for senior subjects;
- developing, or purchasing, and revising external assessments for senior subjects; and
- developing procedures for the endorsement of school-based assessments for senior subjects; and the administration and marking of external assessments for senior subjects.

No amendment is made to the existing moderation functions because the current function is broad enough to encompass the QCAA's new confirmation and ratification responsibilities.

The Bill limits the QCAA's tertiary entrance function to providing student information to an external ranking body, i.e. QTAC, to enable it to rank students for tertiary entrance and advise students of their ranking.

### **Amendments to the *Education (General Provisions) Act 2006***

The Bill amends the EGPA to progress the following minor and technical amendments.

#### **Modernising terminology**

The Bill amends the EGPA to replace references to the term 'pre-preparatory' with 'kindergarten' to reflect modern nomenclature.

#### **Reducing red tape**

The Bill amends the EGPA to reduce red tape on school councils by providing that a school council does not need to have amendments to its constitution approved by the Director-General, if the amendments align with amendments to the model constitution.

#### **Tuition fees**

The Bill amends the EGPA to align the legislation with current practice and enable DET to

charge international full fee paying students a proportion of the tuition fees prior to commencing their enrolment.

### **Directions and orders on conduct, movement or entry into schools given to hostile persons**

The Bill will ensure a consistent approach to the review and reporting of various directions or orders given under the EGPA about conduct, movement at, or entry into State instruction institutions and non-state schools.

Under the EGPA principals of state and non-state schools may give directions to a person if they are reasonably satisfied it is necessary to protect students, staff, the premises, and maintain good order. Decisions to give a direction can be reviewed by the Director-General (state schools) or the school review body (non-state schools). The outcomes of such reviews are required to be reported on at the end of each financial year. The Bill ensures the review decisions are consistent across the sectors, and include confirming, cancelling or varying the direction decision. The Bill also ensures consistent reporting of review decisions.

### **Mature age state schools**

The Bill amends the definition of mature age state school to allow the state schools to be listed on the Department's website, rather than prescribed in the *Education (General Provisions) Regulation 2006* (EGPR).

In the state school system, a mature age student may only enrol at a mature age state school or program of distance education. The EGPA defines mature age state school as a school prescribed by regulation as a mature age state school. There are currently ten mature age state schools prescribed in the EGPR.

State schools that cater for mature age students seek approval from the Assistant Director-General, State Schools division of DET, and are considered against criteria under administrative arrangements. A school's ability to cater for mature age students can fluctuate and can depend on the demand for mature age student enrolment in the school's area. When there are no enrolments of mature age students at a school, the school may choose to no longer cater for this cohort.

The requirement to prescribe the mature age state schools in regulation means that a regulatory amendment is required when a decision is made to allow a school to be a mature age state school or to cease a school as mature age state school when it will no longer cater for mature age students. The process of amending the regulation to remove a school delays the activation of the decision and can result in mature age students seeking to enrol at a time when the school is not able to appropriately cater for mature age students. The Bill addresses this issue by providing that mature age state schools are to be listed on DET's website rather than prescribed in a regulation. The same administrative processes for the approval of mature age state schools will continue to apply.

### **Home education**

Chapter 9, part 5 of the EGPA provides for the parent of a child to apply for their child to be provisionally registered, or registered in home education.

*Ending registration* - eligibility for home education registration currently ends when a child's compulsory participation phase ends. This means eligibility could end when a child gains a senior statement, a certificate III or certificate IV or turns 17 years of age. The Bill simplifies the current eligibility period by extending the date that a child is eligible for registration for



home education until 31 December of the year they turn 17 years of age. This will provide more certainty for registered children and their parents as to when they remain eligible to be registered for home education.

Currently, where an application for (full) registration is not granted, the child's provisional registration ceases on the day the information notice about the decision is given to the parent. Similarly, where a child's existing registration for home education is cancelled, the registration ceases on the day the information notice about the decision is given to the parent. The Bill will provide for the child's registration, or provisional registration, to continue until the person's review rights in relation to the decision have been exhausted. This ensures the parents of the child registered for home education do not offend against the compulsory schooling requirements in section 176(1) of the EGPA while the review is being finalised.

*Educational program* - a parent is currently required to provide a summary of the educational program to be used, or learning philosophy to be followed, when applying for their child to be registered for home education. However, an application that provides a learning philosophy without an educational program summary is generally insufficient to provide the Director-General with enough information to make an informed decision about the quality of the education program being proposed for the child. In determining the quality of the home education to be delivered, it is important that the Director-General is able to review a summary of the proposed educational program, which sets out the number and extent of subject areas and takes into account the child's age, ability, aptitude and development. The Bill therefore removes the option of providing a learning philosophy.

### **Other minor and technical amendments**

The Bill amends inaccurate references to sections of the EGPA contained in the WCC Act.

## **Alternative ways of achieving policy objectives**

Legislative amendment is the only way to:

- align Queensland's current regulation of schools providing courses to overseas students with the Commonwealth Act and shared regulatory framework;
- introduce a legislative regime to regulate providers of student exchange programs;
- amend the QCAA Act to provide the QCAA with appropriate functions to implement the new SATE systems; and
- make minor and technical amendments to the EGPA and WWC Act.

## **Estimated cost for government implementation**

In relation to the SATE reforms, funding was allocated as part of the 2017 -18 state budget with government investing \$27.6 million (\$72.9 million over five years). This funding will provide for trials of new senior assessment processes, redevelopment of senior syllabus documents and provision of professional development to senior teachers and curriculum leaders.

The cost of regulation of education to overseas students and international student exchange organisations under the Bill will be met within DET's existing budget. There are no anticipated costs associated with the amendments to the EGPA. Any costs associated with transition to the new regulatory framework will be met within existing DET budget allocation.

There are no expected costs associated with the minor and technical amendments to the

EGPA and WWC Act.

## **Consistency with fundamental legislative principles**

Under section 4(2) of the *Legislative Standards Act 1992* (LSA), legislation must have sufficient regard to the rights and liberties of individuals. There are aspects of the Bill that may impact adversely on the rights and liberties of individuals and therefore potentially breach fundamental legislative principles (FLPs). However, for the reasons outlined below, the proposed reforms are considered justified and include appropriate safeguards to mitigate any concerns about potential breaches of FLPs.

### **Offences**

As legislation should have sufficient regard to the rights and liberties of individuals, any new offence must be appropriate and reasonable in light of the conduct that constitutes the offence.

The Bill provides for the appointment of authorised persons to monitor compliance and provides contemporary powers for the exercise of their functions. The Bill establishes the following offences relating to the exercise of powers of authorised persons:

- clause 66 – non-compliance with a request by an authorised person for reasonable assistance during exercise of their powers of entry, without reasonable excuse (maximum penalty — 50 penalty units);
- clause 70(1) – tampering with a thing seized by an authorised person, to which access has been restricted, without a reasonable excuse or approval of an authorised person (maximum penalty— 50 penalty units);
- clause 70(2) – entering a place, for which access has been restricted by an authorised person without a reasonable excuse or the approval of an authorised person (maximum penalty — 50 penalty units);
- clause 79 – giving an authorised person false or misleading information (maximum penalty — 20 penalty units);
- clause 80 – obstructing an authorised person in the exercise of their powers, without reasonable excuse (maximum penalty — 100 penalty units); and
- clause 81 – impersonating an authorised person (maximum penalty — 100 penalty units).

The Bill adopts the standard provisions relating to appointment of authorised persons and prescribes the rules for exercising their powers, including entry onto premises, requiring the production of documents, requiring assistance in exercising their powers and, if necessary, to seize property. The offences in the Bill are routinely included in contemporary legislative provisions prescribing powers for authorised persons. The Bill ensures appropriate protection is afforded to approved school providers and student exchange organisations during the exercise of these powers. The Bill also ensures the integrity of authorised persons and that the authorised persons are appropriately qualified.

The introduction of these offences is justified and necessary to support the effective and efficient exercise of authorised person’s powers and monitoring of the approved school providers and student exchange organisations and to maintain confidence in Queensland’s international education and training sector.

The Bill also requires an authorised person to return their identity card once they cease to be an authorised person, unless they have a reasonable excuse (clause 49). Failure to comply with this requirement is an offence, attracting a maximum penalty of 10 penalty units. This is

a standard offence necessary to prevent impersonation of an authorised person.

The Bill includes the following major offences:

- clause 82 – providing, offering or inviting a person to undertake a course for overseas students, or to hold out as being able to provide a course without a school provider approval (maximum penalty — 200 penalty units); and
- clause 83 – providing, offering or inviting a person to undertake a secondary student exchange program or hold out as being able to provide an international secondary student exchange program without a student exchange approval (maximum penalty — 200 penalty units).

These offences are necessary to maintain public confidence in the provision of services to overseas and exchange students and to deter the provision of such services without appropriate approval and oversight. Clause 82 effectively continues the existing offence in section 17(1)(a)(i) of the current EOS Act, updated to reflect language under the new regime.

Under the Commonwealth Act, a provider default notice must be given when a provider defaults on the provision of services to an overseas student, that is, the course ceases to be provided to a student before the student has completed the course. Clause 92 of the Bill provides that it is an offence for a provider to fail to give a copy of this notice to the Director-General within three business days after a default has occurred (maximum penalty — 50 penalty units). It is important that the Director-General is informed about such defaults in order to take appropriate action under the Queensland legislation. A maximum penalty of 50 penalty units is appropriate to encourage compliance with the requirement.

Under clause 96 of the Bill, it is an offence to give confidential information, other than as allowed under the Act (maximum penalty — 50 penalty units). This offence aims to protect the rights and privacy of the person about whom the confidential information relates. A maximum of 50 penalty units is an appropriate and reasonable deterrent to the release of confidential and personal information obtained through the exercise of functions and powers under the Act.

The inclusion of these offences is consistent with the FLPs expressed in the LSA.

### **General power to enter places and seize evidence**

Section 4(3)3(e) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals, is dependent upon whether the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Chapter 3, part 2 of Bill allows an authorised person to enter a place for the purpose of carrying out a function under clause 42, including the investigation of offences under the Act and whether to exercise a power under the Act, such as taking compliance action. Entry can only be carried out by consent or under a warrant (clause 52). As such, the powers are consistent with the FLPs outlined in the LSA.

The Bill adopts the usual contemporary powers that may be exercised by authorised persons when entering premises including:

- general powers to search and inspect a place and take copies of records (clause 64);
- requiring reasonable help (clause 65); and
- seizing evidence (clause 67).

These powers are essential to enable the Director-General to effectively monitor and enforce compliance. The powers are appropriately confined to protect the interests of parties affected by the exercise of the power. Where an authorised person enters under consent or warrant, the exercise of their powers upon entering the premises is subject to the scope of the consent given or warrant issued.

The Bill includes appropriate safeguards around the exercise of entry powers and seizure of evidence, including that: authorised persons must be appropriately qualified; must produce and display identification; clarify the purpose of their entry; if appropriate, provide a copy of the warrant; provide a receipt for seized things; allow access to seized things (subject to appropriate limitations); and return seized things in accordance with prescribed procedures (clause 73). Authorised persons are under a statutory obligation to avoid damaging property and to cause as little inconvenience as possible (clause 76) and compensation can be claimed if property is damaged (clause 78).

### **Protection from civil liability**

Section 4(3)(h) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals, is dependent upon whether the legislation confers immunity from proceedings or prosecution without adequate justification.

Clause 102 of the Bill applies section 26C of the *Public Service Act 2008* to an authorised person who is not state employee. Section 26C applies a protection from civil liability to state employees. Authorised persons may be contracted by DET, and may therefore not attract the protection of section 26C. The potential breach of FLPs is justifiable on the basis that the provision operates to attach civil liability to the State instead of the authorised person. It is not considered appropriate for an authorised person, who is not a state employee to be personally liable as a consequence of carrying out their responsibilities under the legislation.

## **Consultation**

Independent Schools Queensland (ISQ), the Queensland Catholic Education Commission (QCEC), not-for-profit student exchange organisations, the Council of Australian Student Exchange Organisations registration bodies in other states and territories, the Non-State Schools Accreditation Board, the Queensland Teachers' Union of Employees and the Independent Education Union (Queensland and Northern Territory Branch) were consulted and support the Bill. The Home Education Association was consulted and raised no concerns about the home education reforms.

The Commonwealth ESOS Agency was informed about the reforms to the regulation of providers of courses to overseas students.

The development of the new SATE systems has been guided by the Ministerial Senior Secondary Assessment Taskforce, which includes representation from schooling sectors, parent groups, secondary principals' associations, teacher unions and tertiary institutions, as well as the QCAA and QTAC. The QCAA and QTAC were consulted and support the Bill.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and does not introduce uniform or complementary legislation. However, the Bill aligns the Queensland approach to the

regulation of providers of courses to overseas students with the Commonwealth Act and shared regulatory framework.

In addition, formalising in the legislation the current administrative arrangements for the regulation of international secondary student exchange organisations is consistent with the approach adopted in Victoria and Tasmania. While the statutory regime established by the Bill to regulate international secondary student exchange organisations is unique to Queensland, the regime is based on the National Guidelines and therefore ensures national consistency in the regulation of these providers is maintained.

## Notes on provisions

### Chapter 1 Preliminary

*Clause 1* provides that the short title of the Act is the Education (Overseas Students) Act 2017.

*Clause 2* provides that the Act commences on a day to be fixed by proclamation.

*Clause 3* states the main purposes of the Act.

*Clause 4* provides that the Act binds all persons, including the State and as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

*Clause 5* provides that the dictionary in schedule 1 defines particular words in the Act.

### Chapter 2 Approvals

#### Part 1 Obtaining approvals

##### Division 1 Obtaining school provider approvals

*Clause 6* prescribes who may apply for approval to provide a course or courses to overseas students (a **school provider approval**).

*Clause 7* requires an application for a school provider approval to be in the approved form and accompanied by the fee prescribed by regulation.

*Clause 8* provides the timeframes within which the chief executive must decide the application and the matters that the chief executive must be satisfied of before giving the approval.

*Clause 9* prescribes that the chief executive may impose conditions on a school provider approval.

*Clause 10* provides that it is a mandatory condition of a student provider approval that the holder comply with a request by the chief executive to give to the chief executive information kept by the holder under a relevant law.

*Clause 11* provides that a school provider approval can be granted for a term of up to seven years.

*Clause 12* provides the steps to be taken by the chief executive after the application has been decided. If the chief executive decides to give a school provider approval, the chief executive must give the applicant notice of the decision. If the chief executive decides to refuse to give a school provider approval, the chief executive must give the applicant an information notice about the decision.

*Clause 13* provides that if the chief executive fails to decide the application within the time period applying under section 8(1), the failure is taken to be a decision to refuse to give the approval. Under this provision the applicant is entitled to be given an information notice, which will allow the applicant to apply for a review of the decision.

## **Division 2 Obtaining student exchange approvals**

*Clause 14* prescribes who may apply for approval to provide an international secondary exchange program (a **student exchange approval**).

*Clause 15* requires an application for a student exchange approval to be in the approved form and accompanied by the fee prescribed by regulation.

*Clause 16* provides the timeframes within which the chief executive must decide the application and the matters that the chief executive must be satisfied of before giving the approval.

*Clause 17* provides that a student exchange approval may be subject to conditions.

*Clause 18* provides that it is a mandatory condition of a student exchange approval that the holder comply with a request by the chief executive to give the chief executive information kept by the holder under a relevant law.

*Clause 19* provides that a student exchange approval can be granted for a term of up to six years.

*Clause 20* provides the steps to be taken by the chief executive after the application has been decided. If the chief executive decides to give a student exchange approval, the chief executive must give the applicant notice of the decision. If the chief executive decides to refuse to give a student exchange approval, the chief executive must give the applicant an information notice about the decision.

*Clause 21* provides that if the chief executive fails to decide the application within the time period applying under section 16(1) then the failure is taken to be a decision to refuse to give the approval. Under this provision the applicant is entitled to be given an information notice, which will allow the applicant to apply for a review of the decision.

## **Part 2 Amendment**

*Clause 22* provides that the holder of a school provider approval or a student exchange approval (the holder) may apply for an amendment of the approval and outlines the procedural requirements for the application. In accordance with this clause, the chief executive may decide to: amend the approval; with the applicant's consent, amend the approval in another way; or refuse the approval. The amendment of the approval can include imposing, varying or removing a condition.

*Clause 23* provides that the chief executive may decide to amend an approval at any time without an application from the holder, including imposing, varying, or removing a condition of the approval. This provision supports minor and administrative amendments to approvals. Amendments resulting from actions or omissions that are grounds for compliance will be progressed in accordance with the compliance processes in chapter 2, parts 5 and 6.

*Clause 24* provides the steps to be taken by the chief executive after the application under section 22 has been decided. If the chief executive decides to amend an approval, the chief executive must give the holder notice of the decision. If the chief executive decides to refuse to amend an approval or amends an approval without an application from the holder, the chief executive must give the holder an information notice about the decision.

*Clause 25* provides that if the chief executive fails to decide the application for amendment within the time period applying under section 22(5), the failure is taken to be a decision to refuse to give the approval. Under this provision the applicant is entitled to be given an

information notice, which will allow the applicant to apply for a review of the decision.

### **Part 3 Renewal**

*Clause 26* enables a holder of a school provider or student exchange approval to apply for renewal of the approval and sets out the requirements for making the application.

*Clause 27* provides the timeframes within which the chief executive must decide the application and the matters that the chief executive must be satisfied of before renewing an approval.

*Clause 28* provides the steps to be taken by the chief executive after the application for renewal has been decided. If the chief executive decides to renew an approval, the chief executive must give the applicant notice of the decision. If the chief executive decides to refuse an approval, the chief executive must give the applicant an information notice about the decision.

### **Part 4 Inquiries about applications**

*Clause 29* provides that this part applies to applications for a school provider or student exchange approval and applications to amend or renew a school provider approval or student exchange approval.

*Clause 30* provides the chief executive may, by written notice to the applicant, require an applicant to give the chief executive, within a reasonable period of at least 14 days, further information or a document that the chief executive reasonably requires to decide the application. *Clause 30(2)* provides that failure to comply with a request for further information or a document is taken as a withdrawal of the application.

### **Part 5 Compliance notices**

*Clause 31* provides that the chief executive may give a holder of a school provider or student exchange approval a compliance notice requiring the holder to refrain from doing an act or to rectify the matter. The clause prescribes the grounds upon which a compliance notice may be given.

*Clause 32* prescribes the matters that must be included in the compliance notice.

### **Part 6 Sanctions for non-compliance**

#### **Division 1 Conditions, suspensions and cancellation**

*Clause 33* states the grounds for taking action in relation to a school provider approval or student exchange approval. *Clause 33(2)* prescribes the compliance actions that may be taken by the chief executive, including to impose a condition, vary or remove a condition; or to suspend or cancel an approval.

*Clause 34* provides that if the chief executive is considering taking compliance action under section 33, the chief executive must first issue a show cause notice stating the matters listed in the section. A holder may, within 30 days after the notice is given, give the chief executive a written response to the proposed action.

*Clause 35* states that after considering any written response from the holder, the chief executive may decide whether to take the action. If the chief executive decides not to take the action, the chief executive must give the holder notice of the decision.



*Clause 36* enables a school provider or student exchange approval to be immediately suspended without notice if the chief executive is satisfied there is an immediate risk to the safety, health or wellbeing of overseas student or a Queensland student. The terms overseas student and Queensland student are defined in the schedule 1 dictionary. The period of suspension under this section may not be for a period of more than six months. This is to give the chief executive sufficient time to determine whether more permanent compliance action needs to be taken, such as cancelling the approval.

*Clause 37* requires the chief executive to give the holder of an approval an information notice about a decision to take compliance action against a holder and provides when the decision takes effect.

### **Division 2 Effect of suspension**

*Clause 38* states the effect of suspension of a school provider approval.

*Clause 39* states the effect of suspension of a school exchange approval.

## **Part 7 Surrender**

*Clause 40* enables the holder of a school provider or student exchange approval to surrender an approval by written notice.

# **Chapter 3 Investigation and enforcement**

## **Part 1 General provisions about authorised persons**

### **Division 1 Appointment**

*Clause 41* states that the chapter includes provisions for the appointment of authorised persons and their powers.

*Clause 42* prescribes the functions of authorised persons.

*Clause 43* provides for the appointment of an authorised person by the chief executive.

*Clause 44* provides that an authorised person holds office on any conditions stated in the instrument of appointment, a signed notice given to the authorised person or a regulation.

*Clause 45* provides when the office of an authorised person ends.

*Clause 46* provides for the way an authorised person may resign.

### **Division 2 Identity cards**

*Clause 47* requires the chief executive to give an identity card to each authorised person and states what the identity card must contain.

*Clause 48* provides that when exercising a power in relation to a person in the person's presence the authorised person must produce or display their identity card. Subsection (2) provides that if it is not practicable to comply with the requirement, the authorised person must produce their identify card for inspection by the person at the first reasonable opportunity.

*Clause 49* requires an authorised person to return the person's identity card to the chief executive within 21 days after the person ceases to be an authorised person, unless the person has a reasonable excuse. The maximum penalty for breach of the provision is 10 penalty

units.

### **Division 3 Miscellaneous provisions**

*Clause 50* states that a reference in the chapter to an authorised person's power with no reference to a specific power is a reference to all or any of the powers under the chapter, or a warrant, to the extent the powers are relevant.

*Clause 51* states that a reference to a document in the chapter includes a reference to an image or writing produced, or reasonably capable of being produced, from an electronic document.

## **Part 2 Entry of places by authorised persons**

### **Division 1 Power to enter**

*Clause 52* provides that an authorised person may enter a place by consent or warrant, and states that the entry is subject to any conditions of the consent or terms of the warrant.

### **Division 2 Entry by consent**

*Clause 53* provides that the division applies if an authorised person intends to seek consent from an occupier of a place for the authorised person or another authorised person to enter the place.

*Clause 54* enables an authorised person to enter a place for the purpose of asking the occupier for consent to enter the place.

*Clause 55* prescribes the information an authorised person must provide to an occupier before seeking consent to enter the place.

*Clause 56* enables an authorised person to ask the occupier (if consent is given) to sign an acknowledgement of consent, and lists the matters the acknowledgement must state. Subsection (4) provides that, if signed acknowledgement for the entry is not produced in evidence during a proceeding, the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **Division 3 Entry under warrant**

#### **Subdivision 1 Obtaining warrant**

*Clause 57* enables an authorised person to apply to a magistrate for a warrant to enter a place and provides certain procedural matters relating to the application.

*Clause 58* provides when the magistrate may issue the warrant for the entry of a place and what the warrant must state.

*Clause 59* provides the circumstances under which an application for a warrant may be made by electronic application (for example, by phone, fax or email).

*Clause 60* prescribes the additional procedures that apply if a magistrate issues a warrant sought via an electronic application.

*Clause 61* provides that a warrant is not invalidated by a defect in the warrant or the way in which it was applied for unless the defect affects the substance of the warrant in a material particular.

#### **Subdivision 2 Entry procedure**

*Clause 62* applies if an authorised person is intending to enter a place under a warrant and

prescribes what an authorised person must do before entering.

## **Part 3 Other authorised persons' powers and related matters**

### **Division 1 General powers of authorised persons after entering places**

*Clause 63* provides that the powers in the division may be exercised if an authorised person enters a place with consent or under a warrant, subject to any conditions of the consent or terms of the warrant.

*Clause 64* prescribes the general powers for the authorised person. The general powers include, for example, the power to search any part of the place, inspect, examine or film the place and take an extract from, or copy, a document at the place.

*Clause 65* provides the authorised person with power to require an occupier of the place to give the authorised person reasonable help to exercise a general power (a help requirement). It is an offence to fail to comply with a help requirement, without a reasonable excuse. Therefore, subsection (2) requires the authorised person to give an offence warning when making the help requirement.

*Clause 66* provides that a person must comply with a requirement to provide help, unless the person has a reasonable excuse. The maximum penalty for not complying with the help requirement is 50 penalty units.

### **Division 2 Seizure by authorised persons and forfeiture**

#### **Subdivision 1 Power to seize**

*Clause 67* provides that if an authorised person enters a place with consent or under a warrant, the authorised person may seize a thing at the place if the authorised person reasonably believes the thing is evidence of an offence against the Act, or a failure to comply with a matter under clause 31(1)(a), and the seizure is consistent with the purpose of the entry.

*Clause 68* enables an authorised person to seize a thing and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.

#### **Subdivision 2 Powers to support seizure**

*Clause 69* provides that after seizing a thing, an authorised person may leave the thing at the place and take reasonable action to restrict access to it, or move the thing from the place.

*Clause 70* provides that it is an offence for a person to tamper with a seized thing or something restricting access to the seized thing without the authorised person's approval or a reasonable excuse. The maximum penalty for breach of this provision is 50 penalty units. Subsection (2) provides that if access to a place is restricted, it is an offence for a person to enter the place or tamper with anything used to restrict access to the place without the authorised person's approval or a reasonable excuse. The maximum penalty for breach of this provision is 50 penalty units.

#### **Subdivision 3 Safeguards for seized things**

*Clause 71* imposes a requirement on the authorised person to give an owner or person in control of thing before it was seized, a receipt and information notice for the seized thing. This requirement does not apply if:

- the authorised person reasonably believed there is no-one apparently in possession of the thing or it has been abandoned; or

- because of the condition, nature and value of the thing it would be unreasonable to require the authorised person to comply with this clause.

*Clause 72* prescribes when an authorised person must allow an owner to inspect a seized thing, and if the seized thing is a document – take a copy of it.

*Clause 73* provides for the return of a seized thing if it is not forfeited.

#### **Subdivision 4 Forfeiture**

*Clause 74* prescribes the circumstances when the chief executive may decide that a seized thing is forfeited to the State.

*Clause 75* prescribes how the chief executive may deal with a thing forfeited to the State.

### **Part 4 Miscellaneous provisions relating to authorised persons**

#### **Division 1 Damage**

*Clause 76* imposes a duty on an authorised person, when exercising a power, to take all reasonable steps to cause as little inconvenience and damage as possible.

*Clause 77* provides that if an authorised person damages something when exercising a power the person must give the owner notice of the damage.

#### **Division 2 Compensation**

*Clause 78* provides that a person may claim compensation from the State if the person incurs loss because of the exercise of a power by an authorised person. The provision outlines what the court must have regard to when considering whether to order compensation.

#### **Division 3 Other offences relating to authorised persons**

*Clause 79* makes it an offence for a person to give an authorised person information that the person knows is false or misleading in a material particular. The maximum penalty prescribed for the offence is 20 penalty units.

*Clause 80* makes it an offence to obstruct an authorised person or someone helping an authorised person exercising power under the Act, unless the person has a reasonable excuse. The maximum penalty prescribed for the offence is 100 penalty units.

*Clause 81* makes it an offence to impersonate an authorised person. The maximum penalty prescribed for the offence is 100 penalty units.

### **Chapter 4 Offences**

*Clause 82* makes it an offence to provide, offer or invite a person to undertake a course to overseas students, or to hold out as being able to provide a course without a school provider approval. The maximum penalty prescribed for the offence is 200 penalty units. This offence is modelled on the similar offence under the Commonwealth Act.

*Clause 83* makes it an offence to provide, offer or invite a person to undertake an international secondary student exchange program or hold out as being able to provide an international secondary student exchange program without a student exchange approval. The maximum penalty prescribed for the offence is 200 penalty units.

## Chapter 5 Review

### Part 1 Internal review

*Clause 84* provides that a person who is given or is entitled to be given an information notice about a decision may apply to the chief executive for a review (an internal review) of the decision.

*Clause 85* prescribes the requirements for an application for an internal review.

*Clause 86* provides the procedural requirements for the internal review.

### Part 2 External review

*Clause 87* states that the part applies if the applicant is dissatisfied with the chief executive's review decision.

*Clause 88* provides that an applicant may apply to QCAT for a review of the review decision.

*Clause 89* provides that if the chief executive has made a review decision to immediately suspend an approval, QCAT may not stay the operation of the review decision or grant an injunction in the proceeding for the review. This is to ensure there is no immediate risk to the safety, health or wellbeing of overseas students.

## Chapter 6 General

### Part 1 School provider approvals – relationship with Commonwealth Act

*Clause 90* states that if a holder of a school provider approval has the holder's registration for a course at a location cancelled under the Commonwealth Act, the holder's school provider approval is taken to be cancelled under this Act.

*Clause 91* provides that, if a school provider approval is due to expire and the holder of the approval continues their registration under section 10M(2) of the Commonwealth Act, the approval continues until the day the provider's registration under the Commonwealth Act ends. The provision recognises that the Commonwealth Act anticipates a situation where a registered provider may not seek to renew their registration and their registration will end before the provider has finished providing the course at the location to the current enrolled students. Under the Commonwealth Act, the registration may continue until the end of the year in which the provider's registration would have expired or the provider has finished providing the course to the students who were enrolled in and had commenced the course.

*Clause 92* requires a registered provider to give the chief executive a copy of a notice the provider is required to give the Commonwealth ESOS agency under the Commonwealth Act about the provider's default in relation to one or more overseas students or intending overseas students and a course at a location. Failure to give the notice is an offence with a maximum penalty of 50 penalty units.

### Part 2 Student exchange approvals - guidelines and register

*Clause 93* provides that the chief executive must make guidelines about the operation of international secondary student exchange programs. The guidelines must be kept on DET's

website.

*Clause 94* provides that the chief executive must establish and keep up-to-date a register of holders of student exchange approvals. Subsection (2) lists the information that must be contained in the register for each holder of a student exchange approval. The register must be published on DET's website.

### **Part 3 Confidentiality**

*Clause 95* defines particular words for the part.

*Clause 96* provides that the chief executive, a DET public service employee and an authorised person, must not use or disclose confidential information to anyone else, other than under this part. A failure to comply with the confidentiality requirements is an offence with a maximum penalty of 50 penalty units.

*Clause 97* provides when a person may use or disclose confidential information.

*Clause 98* provides when the chief executive may disclose the information to an entity responsible for the administration or enforcement of a law of another State or the Commonwealth about the approval of providers of courses to overseas students or student exchange programs.

*Clause 99* provides when the chief executive may disclose confidential information to the Non-State Schools Accreditation Board. If the chief executive discloses information to the Non-State Schools Accreditation Board the information is protected information under the *Education (Accreditation of Non-State Schools) Act 2017*.

*Clause 100* allows the Non-State Schools Accreditation Board to disclose to the chief executive information that is protected information under the *Education (Accreditation of Non-State Schools) Act 2017* if the board is satisfied the disclosure would assist in the performance of the chief executive's functions under this Act.

### **Part 4 Miscellaneous**

*Clause 101* provides that the chief executive may delegate the chief executive's functions or powers under the Act to an appropriately qualified public service employee. The *Acts Interpretation Act 1954* defines 'appropriately qualified' for the purposes of a function or power to mean having the qualifications, experience or standing appropriate to perform the function or exercise the power.

*Clause 102* applies section 26C of the *Public Service Act 2008* (PSA) to an authorised person who is not a State employee. Section 26C of the PSA provides that a state employee does not incur civil liability when engaging in conduct in an official capacity. Therefore an authorised person under the Act is protected against civil liability when engaging in their official duties as authorised officers.

*Clause 103* provides that the chief executive may approve forms for use under the Act.

*Clause 104* provides that the Governor in Council may make regulations under the Act.

## Chapter 7 Repeal and transitional provisions

### Part 1 Repeal

*Clause 105* repeals the *Education (Overseas Students) Act 1996* (the repealed Act).

### Part 2 Transitional provisions

*Clause 106* provides the definitions for the part.

*Clause 107* provides that any applications made under the repealed Act for registration as a provider, to change a registration or renew a registration is taken to be an application for approval, amendment of an approval or renewal of an approval under the Act.

*Clause 108* provides that if a person was a registered provider under the repealed Act immediately before commencement of this Act, the person is taken to be the holder of a school provider approval. The provision provides that the school provider approval is taken to be on the same conditions, and for the same term as the registration under the repealed Act. However, subsection (4) ensures that the statutory conditions mentioned in the repealed Act do not apply to the school provider approval.

*Clause 109* provides that if a person's registration was suspended under the repealed Act and the suspension was still in effect immediately before commencement of this Act, the suspension is taken to be a suspension under this Act.

*Clause 110* provides that if immediately before the commencement of this Act, the chief executive gave a person a notice stating that the chief executive believed a ground existed to suspend or cancel the person's registration, the chief executive must make a decision about the proposed suspension or cancellation under the repealed Act. If the chief executive decides under the repealed Act to suspend a person's registration, the suspension is taken to be a suspension of the person's school provider approval under section 35 of this Act. If the chief executive decides under the repealed Act to cancel a person's registration, the cancellation is taken to be a cancellation under section 35 of this Act.

*Clause 111* provides that if immediately before the commencement of this Act a person applied to QCAT for a review of a decision, QCAT must decide the application under the repealed Act.

*Clause 112* provides that if immediately before the commencement of this Act a person gave notice of surrender of their registration and that surrender has not taken effect upon commencement, the person is taken to have surrendered the person's school provider approval under this Act.

## Chapter 8 Amendment of Acts

### Part 1 Amendment of this Act

*Clause 113* states that this part amends this Act.

*Clause 114* amends the long title of this Act.

### Part 2 Amendment of Education (General Provisions) Act 2006

*Clause 115* states that this part amends the *Education (General Provisions) Act 2006* (EGPA).

*Clause 116* amends section 51 of the EGPA to refer to a person who is receiving or intends to receive education at a state school. This amendment supports the existing departmental process of requiring payment of tuition fees before an overseas student receives education at a state school.

*Clause 117* amends section 95 of the EGPA to provide that an amendment to a school council constitution has no effect unless it is consistent with the model constitution, or has been approved by the chief executive. Currently all amendments to a school council constitution must be approved by the chief executive, even if the school council is merely adopting amendments made by the chief executive to the model constitution for school councils. This amendment reduces red tape for DET and school councils. The clause also replaces reference to model constitutions (plural) with model constitution (singular) to clarify that there is only one model constitution. The model constitution may be amended from time to time.

*Clause 118* amends section 96 of the EGPA to replace references to model constitutions (plural) with model constitution (singular) to clarify that there is only one model constitution.

*Clause 119* makes a minor and technical amendment to section 199 of the EGPA to clarify section 176(1) of the EGPA (compulsory schooling obligations) does not apply to a parent who has applied for provisional registration of a child for home education but has yet to receive notification of the provisional registration.

*Clause 120* makes a minor and technical amendment to section 200 of the EGPA to clarify that the provision applies to exclude the operation of section 176(1) during the period reasonably required for the person to apply to provisionally register or register a child for home education.

*Clause 121* replaces the current section 206 of the EGPA with a new section that prescribes when a child is eligible for registration or provisional registration for home education.

*Clause 122* amends section 208 of the EGPA to require applications for registration for home education to be accompanied by a summary of the educational program to be used. An application relying only on a learning philosophy will no longer be accepted.

*Clause 123* amends section 212 of the EGPA to provide that a child who is provisionally registered while the application for (full) registration is being decided, remains provisionally registered if the chief executive does not approve their application for registration. They continue to be provisionally registered until their review rights have been exhausted.

*Clause 124* amends section 215 to provide that if the chief executive is taken to have decided to refuse to grant an application under the section, the applicant is entitled to be given an information notice. This amendment ensures consistency with other sections of the EGPA with regard to the giving of an information notice when the chief executive makes a decision on the refusal or granting of registration for home education.

*Clause 125* amends section 225 of the EGPA to provide that if a child's registration is cancelled by the chief executive, the child remains registered until their review rights are exhausted.

*Clause 126* amends section 226 of the EGPA as a consequence of the amendments to section 225 of the EGPA. The effect of the amendment is that if registration of a child for home education has been cancelled, the registration certificates need only be returned once the review rights have been exhausted and the cancellation is upheld.

*Clause 127* inserts a new section 229A into the EGPA to provide that the registration or



provisional registration ends on 31 December in the year a child turns 17 years of age.

*Clause 128* amends section 338 of the EGPA to ensure the outcomes of the review of directions given by a principal about the conduct or movement of a person at a state instructional institution given under section 337 are consistent with other sections of the EGPA about reviews of such directions. The amendments ensure that irrespective of the type of direction or order given, on review, the review body can either confirm, vary, or cancel the direction or order.

*Clause 129* amends section 347 of the EGPA to ensure the outcomes of the review of directions given by a principal about the conduct or movement of a person at a non-state school given under section 346 are consistent with other sections of the Act in relation to reviews of such directions. The amendments ensure that irrespective of the type of direction or order given, on review, the review body can either confirm, vary, or cancel the direction or order.

*Clause 130* amends section 349B of the EGPA to ensure the outcomes of the review of directions given by a principal about the entry of a person at a non-state school given under section 349 and 349A are consistent with other sections of the Act in relation to reviews of such directions. The amendments ensure that irrespective of the type of direction or order given, on review, the review body can either confirm, vary, or cancel the direction or order.

*Clause 131* amends section 358 to provide that the chief executive must report on the number of directions under section 338 that have been varied, in addition to the number cancelled, as part of DET's annual report.

*Clause 132* amends section 359 to provide that the non-state school's governing body must, as part of a report given within two months of the end of a financial year, report on the number of directions under sections 347 and 349B that have been varied, in addition to the number cancelled.

*Clause 133* inserts new chapter 20, part 10 into the EGPA to provide for transitional matters. Under new part 10, new section 543 will provide that if the chief executive has given a parent a show cause notice under the pre-amended Act about cancelling the registration of the child for home education and immediately before commencement an information notice about a decision to cancel had not been given to the parent, the pre-amended Act continues to apply in relation to the proposed cancellation

*Clause 134* amends the schedule 4 dictionary.

### **Part 3 Amendment of the Education (Queensland Curriculum and Assessment Authority) Act 2014**

*Clause 135* states that the part amends the *Education (Queensland Curriculum and Assessment Authority) Act 2014* (QCAA Act).

*Clause 136* makes a technical amendment to section 13 of the QCAA Act to clarify that the functions of the Queensland Curriculum and Assessment Authority (the QCAA) relating to testing apply to the testing of students.

*Clause 137* inserts new section 13A to provide the QCAA with the functions for the assessment of students for senior subjects. The provision gives the QCAA the power to:

- endorse school-based assessments for senior subjects;

- develop and revise external assessments for senior subjects;
- purchase and revise external assessments for senior subjects developed by another entity; and
- develop procedures for the endorsement of school-based assessment for senior subjects and the administration and marking of external assessments for senior subjects.

These new functions will allow the QCAA to implement the new senior assessment reforms including external senior assessments.

*Clause 138* replaces existing section 17 of the QCAA Act with a new function to allow the QCAA to give information to an appropriately qualified entity to rank students for tertiary entrance and advise the students of their tertiary entrance ranking. This provision will allow the QCAA to give information to the Queensland Tertiary Admissions Centre, which will have the responsibility of ranking students for tertiary entrance under the new tertiary entrance system. The provision is drafted in such a way to allow for a change in the entity over time.

*Clause 139* amends section 50 of the QCAA Act to provide that student accounts are kept for the purpose of supporting the QCAA in performing its certification and tertiary entrance functions.

*Clause 140* amends section 60 of the QCAA Act to clarify that the QCAA must record information in a student account as required for the purpose for keeping accounts prescribed in section 50. This would include, for example, the QCAA recording student results in external assessments for senior subjects in their student account.

*Clause 141* amends section 61 of the QCAA Act to provide that the QCAA may use student account information for the purpose of performing its certification and tertiary entrance functions.

*Clause 142* inserts a new section 87A into the QCAA Act. New section 87A provides the QCAA with the power to request a principal of a school to provide a copy of documents relating to assessment. This will allow the QCAA to select representative samples of completed student assessment material as part of the moderation process. This is intended to capture exam scripts and assignment material and teacher marking notes made in forming a judgement on the assessments.

*Clause 143* amends the regulation-making power in section 92 of the QCAA Act to provide a new power to make regulations about the assessment of students for senior subjects and make other consequential amendments to the regulation-making powers.

*Clause 144* inserts a new heading for part 7, division 2 of the QCAA Act.

*Clause 145* omits the heading for part 7, division 2, subdivision 4.

*Clause 146* inserts a new part 7, division 3 which provides for the transitional matters for this Act. New section 113 continues the QCAA's existing tertiary entrance function to the extent that it relates to students enrolled for Year 12 of schooling in 2019. This provision recognises that the new senior assessment and tertiary entrance systems will come into effect for students in Year 11 in 2019 but will not apply to students in Year 12 in 2019.

*Clause 147* amends definitions in the dictionary for the QCAA Act.

## **Part 4 Minor and consequential amendments**

*Clause 148* provides that schedule 2 amends the Acts mentioned in it (i.e. the EGPA and the *Working with Children (Risk Management and Screening) Act 2000*).

### **Schedule 1 Dictionary**

Schedule 1 defines the terms used in this Act.

### **Schedule 2 Acts amended**

Schedule 2 makes minor and consequential amendments to the EGPA and the *Working with Children (Risk Management and Screening) Act 2000*.

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