

# **Education (General Provisions) Bill 2006**

## **Explanatory notes for Amendments to be moved during consideration in detail by The Honourable Rod Welford MP**

### **Title of the Bill**

Education (General Provisions) Bill 2006

### **Objectives of the Amendments**

The objectives of the amendments are to:

- remedy a number of inadvertent and typographical errors; and
- to insert into the Bill a transitional regulation making power to allow for the transition from preschool to the preparatory year in the non-State schooling sector; and
- replace the provisions in clauses 76-80 of the Bill with the current provision of the *Education (General Provisions) Act 1989* in relation to religious instruction in State schools; and
- ensure parental access to student account information except where it is inappropriate.

### **Consistency with Fundamental Legislative Principles**

The amendments are consistent with fundamental legislative principles with the exception of the provision of an insertion of a transitional regulation making power.

Given the complexity of the Bill, amendment 29 confers the power to make transitional regulations to allow for the transition from the operation of the *Education (Accreditation of Non-State Schools) Act 2001* prior to its amendment by the Bill on 1 January 2007 to the arrangements post 1 January 2007. The power allows for transitional regulations to operate retrospectively, with the limitation that the regulations cannot commence prior to the commencement of that section, which will be 1 January 2007. However, the scope of the power is limited by the provision that any

transitional regulations made under the section, as well as the section itself, will expire 1 year after the commencement of the section.

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

## **Consultation**

The Office of the Queensland Parliamentary Counsel and the Department of the Premier and Cabinet have been consulted in preparing the amendments.

## **Notes on Provisions**

Amendment 1 amends clause 49(b)(ii) to omit ‘at least’ and insert ‘less than’. This amendment corrects an unintended error in the definition of *remote area*.

Amendment 2 omits a number of redundant words from clause 52.

Amendment 3 amends clause 55(1) to provide that the section applies to a State school that is approved by the chief executive to offer a specialised educational program prescribed under a regulation.

Amendment 4 amends clause 55(2) and (3) to address an inconsistency of language usage. The term “charge” is replaced with the term “fee”.

Amendment 5 amends clause 55 to insert a new clause 55(4A). The new clause 55(4A) provides that the chief executive must ensure a list of State schools approved under clause 55(1) is available for public inspection without charge during normal business hours at the department’s head office and on the department’s web site on the Internet.

Amendment 6 omits the existing chapter 5 and inserts a new chapter 5. The new chapter 5 is section 26 of the existing *Education (General Provisions) Act 1989* and sets out how religious instruction may occur in State schools.

Amendment 7 omits the words “impracticable or” from clause 186(5) so that the provision aligns with the terminology used elsewhere in the Bill.

Amendment 8 amends clause 190(1) to omit the reference to a child “who is of compulsory school age”. This amendment clarifies that a parent of a child may make an application for an exemption from the compulsory schooling obligation prior to their child being of compulsory school age.

Amendments 9 and 10 amend clause 243 in relation to the penalties for breach of the compulsory participation requirements from 5 and 10 penalty units to 6 and 12 penalty units, respectively.

Amendment 11 amends clause 259 in relation to the information to be provided to the Queensland Studies Authority when a person opens a student account for a student about to enter the compulsory participation phase. The amendment inserts terminology similar to that used elsewhere in the Bill in relation to circumstances where it would be inappropriate in the circumstances for details of the student’s parents to be provided when opening the account. An example is provided where a student is living independently of his or her parents. The amendment ensures that where it is inappropriate for a student’s parents details to be provided, those details aren’t provided to open the account. This then prevents the parent from gaining access to the account.

Amendment 12 amends clause 263 in relation to the information to be provided when a person opens a student account for a student when they have not previously had an account opened under clause 259. The amendment provides the same basis for decision-making as clause 259 in relation to where it is inappropriate for parental details to be provided when opening the account.

Amendment 13 amends clause 391 in relation to the requirement for a school principal to notify a student’s parents about a request for a transfer note. The amendment ensures that this provision aligns with numerous other provisions in the Bill in that it provides decision-makers with discretion in relation to providing information or a notice to a student’s parents where it would be inappropriate in the circumstances to do so. An example is provided where a student is living independently of his or her parents. If, in this case, the principal decides that it would be inappropriate to notify the student’s parents, the principal must notify the student themselves.

Amendment 14 amends the heading of clause 413 to take account of the amendment made under amendment 15.

Amendment 15 inserts a generic provision into clause 413 in relation to proceedings for offences against the Act. The provision allows a statement that a document or information was false or misleading without having to specify which of “false or misleading” the document or information was.

Amendment 16 amends clause 430(1)(a)(iii) to insert a new 430(1)(a)(iii). This amendment arises as a consequence of the amendment to chapter 5.

Amendment 17 amends clause 430(4) to omit the definition of ***approved entity***. This amendment arises as a consequence of the amendment to chapter 5.

Amendments 18 to 20 amend clause 435 which relates to the Minister’s ability to delegate the Minister’s powers. The amendments omit references to “powers” and insert references to “functions”. The amendments also insert a definition of “functions” to include “powers”. The purpose of the amendments is to ensure that both powers and functions are able to be delegated.

Amendment 21 to 23 amend clause 436 which relates to the Chief Executive’s ability to delegate the Chief Executive’s powers. The amendments omit references to “powers” and insert references to “functions”. The amendments also insert a definition of “functions” to include “powers”. The purpose of the amendments is to ensure that both powers and functions are able to be delegated.

Amendment 24 amends clause 438 to insert a new subsection that provides a head of power for the making of a regulation in relation to the age entry requirements for enrolment in State and non-State schools. The regulation will prescribe the requirements in respect of enrolment in the preparatory year and year 1.

Amendment 25 amends clause 450 to insert an additional transitional provision in relation to State preschool centres. The transitional provision ensures that these centres in existence prior to the repeal of the Act continue to exist under the new Act.

Amendment 26 omits clause 453 and inserts a new clause 453. This amendment arises as a consequence of the amendment to chapter 5. The amendment ensures that an accredited representative of a religious denomination or society who, immediately before the commencement of the new Act, is entitled to give religious instruction to students of a State school, is taken to be approved to give religious instruction to students of a State school. In addition, where a parent has given a notice under the current Act and this notice is in effect immediately before the

commencement of the new Act, it is taken to meet the notice requirements of the new Act.

Amendment 27 inserts a new transitional provision in relation to student accounts opened under the repealed *Youth Participation in Education and Training Act 2003*. Accounts opened prior to the repeal of the Act continue to exist under the new Act.

Amendment 28 amends schedule 2, which contains amendments commencing on 1 January 2007. The amendment addresses a typographical error in item 11 of the amendments to the *Education (Accreditation of Non-State Schools) Act 2001*.

Amendment 29 amends schedule 2, which contains amendments commencing on 1 January 2007 by inserting a new section 239 into the *Education (Accreditation of Non-State Schools) Act 2001*, to provide a power to enable a transitional regulation to be made in regard to the transition between the Act pre-1 January 2007 and post-1 January 2007. Amendments commencing on that day provide for the transition from preschool to the preparatory year. While a number of transitional provisions are specifically included in the amendments to facilitate the transition, the transitional regulation making power will enable a transitional regulation to be made in relation to any unforeseen matters arising out of those amendments.

Amendment 30 amends schedule 2, which contains amendments commencing on 1 January 2007. This amendment arises as a consequence of the amendments to chapter 5.

Amendment 31 amends schedule 2, which contains amendments commencing on 1 January 2007. The amendment addresses an incorrect reference to the section of the *Education (General Provisions) Act 2006* that is to be omitted. The correct reference is to section 491.

Amendments 32 to 34 amend schedule 2, which contains amendments commencing on 1 January 2007. The amendment addresses incorrect references to the sections of the *Education (Queensland College of Teachers) Act 2005* that are to be amended. The correct reference is to section 74(1)(b) and 74(1)(c).

Amendment 35 amends schedule 3 which contains amendments commencing on 1 January 2008. The amendment alters clause 180(1)(a) to omit the requirement for each parent of a child of compulsory school age to ensure their child is enrolled in 'a year of schooling, other than the preparatory year' at a State or non-State school. This means that a parent of a child of compulsory school age will meet their compulsory schooling

obligations if they ensure their child is enrolled at a State or non-State school and attends the school, on every school day for the educational program in which the child is enrolled.

Amendment 35 also alters clause 182(1)(a)(i) to reflect the changes to clause 180(1)(a).

Amendment 36 amends schedule 4 to omit the definition of ***approved entity*** and insert a new definition. This amendment arises as a consequence of amendments to chapter 5.

Amendment 37 amends schedule 4 to omit the definition of ***belief***. This amendment arises as a consequence of amendments to chapter 5.

Amendment 38 amends the definition of ***information notice*** in schedule 4 to alter the period within which a review application may be made. This amendment aligns the definition with the relevant clause which specifies a period of 30 school days. This longer period is provided to enable parents and students greater opportunity to seek a review of decisions.

Amendment 39 amends schedule 4 to insert a definition of ***misconduct***. ***Misconduct*** of a student of a State school, is defined to include misconduct which happens while the student is attending or representing the school or travelling to or from the school. This definition will apply to provisions relating to detention, suspension and exclusion.

Amendment 40 amends schedule 4 to omit the definition of ***State school*** and insert a new definition. This amendment arises as a consequence of amendments to chapter 5.