



# **Education (Accreditation of Non-State Schools) Act 2017**

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Queensland

# Education (Accreditation of Non-State Schools) Act 2017

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# Education (Accreditation of Non-State Schools) Act 2017

**An Act to provide for the accreditation of non-State schools, and deciding the eligibility of non-State schools' governing bodies for government funding for the schools**

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *Education (Accreditation of Non-State Schools) Act 2017*.

#### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### Part 2 Objects

#### 3 Objects of Act

- (1) The objects of this Act are—
  - (a) to uphold the standards of education at non-State schools; and
  - (b) to maintain public confidence in the operation of non-State schools; and

- (c) to foster educational choices in the State.
- (2) The objects are to be achieved mainly by—
  - (a) establishing the Non-State Schools Accreditation Board; and
  - (b) establishing an accreditation regime for the accreditation of non-State schools; and
  - (c) establishing a process for deciding the eligibility of a non-State school's governing body for government funding for the non-State school.

## Part 3 Interpretation

### 4 Dictionary

The dictionary in schedule 1 defines particular words used in this Act.

### 5 Meaning of *school*

A *school* means a non-State school.

### 6 Meaning of *non-State school*

- (1) A *non-State school* means a school (in the ordinary meaning of the word) established to provide the following types of education—
  - (a) primary education;
  - (b) secondary education;
  - (c) special education.
- (2) However, a *non-State school* does not include the following—
  - (a) a State educational institution within the meaning of the *Education (General Provisions) Act 2006*, schedule 4;

- (b) for a child registered or provisionally registered for home education under the *Education (General Provisions) Act 2006*—the child’s usual place of residence;
  - (c) a place where a child undertaking primary, secondary or special education receives tutorial help relating to the education;
  - (d) TAFE Queensland under the *TAFE Queensland Act 2013*;
  - (e) a place used only to provide education and care or regulated education and care;
  - (f) a place used only to offer a curriculum that is, or is a variation of, the whole or part of the primary or secondary curriculum of a foreign country.
- (3) In this section—

***education and care*** means education and care provided by an approved education and care service under the Education and Care Services National Law (Queensland).

***regulated education and care*** means regulated education and care within the meaning of the *Education and Care Services Act 2013*, but does not include education and care provided in the course of providing primary education, secondary education or special education.

## **7 Meaning of *operated for profit***

For this Act, a school is ***operated for profit*** if any profits made from the school’s operation are used for any purpose other than a purpose for advancing the school’s philosophy and aims, as stated in the school’s statement of philosophy and aims.

## 8 Meaning of *prohibited arrangement*

- (1) A *prohibited arrangement* is a contract or arrangement in relation to a school—
  - (a) entered into by a school's governing body or proposed governing body and another entity not dealing with each other at arm's length; and
  - (b) that is not, or will not be, for the benefit of the school.
- (2) For subsection (1)(b), a contract or arrangement is not, or will not be, for the benefit of the school if the contract or arrangement is for property, goods or services—
  - (a) at more than reasonable market value; or
  - (b) that is not required to advance the school's philosophy and aims, as stated in the school's statement of philosophy and aims.
- (3) Subsection (2) does not limit subsection (1)(b).

## 9 Meaning of *director*

A *director*, of a school's governing body, is—

- (a) if the governing body is a company under the Corporations Act—a person appointed as a director of the governing body; or
- (b) if the governing body is a RECI Act corporation—
  - (i) a declared director of the governing body; and
  - (ii) if all declared directors of the governing body, for the time being, nominate a person as a director of the governing body—the person; or

*Note—*

The governing body must give the board a notice under section 169(4) within 28 days after a nomination.

- (c) otherwise—a person who is, or is a member of, the executive or management entity, by whatever name called, of the governing body.

## 10 **Meaning of *meets the government funding eligibility criteria***

A governing body of a school *meets the government funding eligibility criteria* if—

- (a) the governing body is not an ineligible company; and
- (b) the school operated by the governing body will not, on or after its accreditation, be operated for profit; and
- (c) the governing body is not a party to, and does not intend to enter into, a prohibited arrangement in relation to the operation of the school; and
- (d) there is no direct or indirect connection between the governing body and another entity, and there will not on or after the school's accreditation be a direct or indirect connection between the governing body and another entity, that could reasonably be expected to compromise the independence of the governing body when making financial decisions.

# Chapter 2 **Accreditation of schools**

## Part 1 **Accreditation criteria**

### 11 **Prescribing accreditation criteria**

A regulation may prescribe criteria (the *accreditation criteria*), relevant to a school's accreditation, about the following—

- (a) the school's administration and governance arrangements;
- (b) the school's financial viability;
- (c) the school's educational program;

- (d) the school's student welfare processes;
- (e) the school's resources;
- (f) the school's improvement processes.

## **Part 2                      Accreditations**

### **Division 1                Preliminary**

#### **12      Type of education**

- (1) A school may only be accredited to provide the following types of education—
  - (a) primary education;
  - (b) secondary education;
  - (c) special education.
- (2) A school may provide education in the preparatory year only if the school is accredited to provide primary education for at least years 1 to 3.
- (3) To remove any doubt, it is declared that a school that is accredited to provide primary education or secondary education is not also required to be accredited to provide special education for the education of persons with a disability.

#### **13      Mode of delivery of education**

A school may only be accredited to use the following modes of delivery of education—

- (a) classroom education;
- (b) distance education.



## 14 Special assistance

- (1) This section applies to a school that is accredited to provide primary or secondary education.
- (2) The school may be accredited to provide special assistance.
- (3) The provision of *special assistance* is the provision of a type of education mentioned in subsection (1)—
  - (a) to relevant students; and
  - (b) without tuition fees.

- (4) In this section—

*compulsory participation phase* see the *Education (General Provisions) Act 2006*, section 231.

*compulsory school age* see the *Education (General Provisions) Act 2006*, section 9.

*eligible option* see the *Education (General Provisions) Act 2006*, section 232.

*full-time*, in relation to participation in an eligible option, see the *Education (General Provisions) Act 2006*, schedule 4.

*relevant students* means students who—

- (a) would not otherwise be—
  - (i) enrolled at and attending school while of compulsory school age; or
  - (ii) participating in an eligible option full-time, or in paid employment for at least 25 hours each week, during the compulsory participation phase; and
- (b) are not provisionally registered, or registered, for home education under the *Education (General Provisions) Act 2006*, chapter 9, part 5.

*school*, for the purposes of the definition *relevant students*, includes a State school.

## **15 When school must commence operations**

A school accredited to offer a type of education under this part must commence operations on the student-intake day for the type of education.

*Note—*

For how a school's governing body may apply to change the student-intake day for the type of education, see part 3, division 1.

## **16 Duration of accreditation**

Accreditation of a school has effect until it is cancelled or surrendered under this Act.

## **17 Governing body must be a corporation**

The governing body of an accredited school must always be a corporation.

*Note—*

If the governing body of an accredited school ceases to be a corporation, that is a ground for cancellation of accreditation—see section 66.

# **Division 2 Applications for accreditation**

## **Subdivision 1 Applications**

### **18 Governing body of school may apply for accreditation**

- (1) A school's proposed governing body may apply for accreditation of the school.
- (2) To be eligible to apply, the proposed governing body must be a corporation.

## 19 Procedural requirements for application

- (1) An application for the accreditation of a school must—
  - (a) be made to the board; and
  - (b) be in the approved form; and
  - (c) be accompanied by—
    - (i) the fee prescribed by regulation; and
    - (ii) copies of the working with children cards for all the directors of the school’s governing body.
- (2) The approved form must require the inclusion of—
  - (a) the types of education proposed to be provided by the school; and
  - (b) the student-intake day for each type of education proposed to be provided by the school; and
  - (c) if, on the student-intake day for a type of education, the school will be an establishment phase school for a year of schooling for the type of education proposed to be provided by the school—the student-intake day for the year of schooling.

*Example—*

An applicant applies to have a school accredited to provide primary education from 1 January 2018. The school proposes to offer the preparatory year and years 1 to 3 from 1 January 2018, year 4 from 1 January 2019, year 5 from 1 January 2020 and year 6 from 1 January 2021. The applicant must provide the school’s student-intake day for primary education (1 January 2018), and the school’s student intake days for year 4 (1 January 2019), year 5 (1 January 2020) and year 6 (1 January 2021).

- (3) The student-intake day for a type of education must be within 4 years after the day the application is made.
- (4) Also, the approved form must require the inclusion of details of each of the following attributes for each type of education proposed to be provided by the school that the school must have if the board decides to grant the application—

- (a) the school's proposed governing body;
- (b) the location of the sites at which the school is to operate, other than sporting fields or camping grounds used by the school;
- (c) for each site at which the school is to operate—
  - (i) the mode of delivery of education to be used at the site; and
  - (ii) the years of schooling the school is to offer at the site; and
  - (iii) whether the site is a coeducational or single-sex site;
- (d) if the school is to include boarding facilities—
  - (i) the sites at which the boarding facilities are to be provided; and
  - (ii) the years of schooling for which boarding will be offered; and
  - (iii) whether the boarding facilities to be offered are to be coeducational or single-sex facilities;
- (e) if the school is to provide special assistance—the sites at which special assistance is to be provided.

*Note—*

A special assistance school may temporarily provide special assistance at other sites—see part 4.

- (5) A site must not be an attribute for subsection (4)(e) if the school is to provide education other than special assistance at the site.
- (6) In addition, the approved form must require the inclusion of an indication about whether or not the applicant seeks to be eligible for government funding for the school.

## **20 Board must notify entities of, and publish, application details**

The board must, within 28 days after receiving an application for the accreditation of a school—

- (a) give ISQ, QCEC and the chief executive a notice stating the following information—
  - (i) that the proposed governing body for the school has applied for accreditation of the school; and
  - (ii) details of the proposed attributes of accreditation for the school; and
- (b) publish the information mentioned in paragraph (a) on the board's website.

## **Subdivision 2 Deciding applications**

### **21 Deciding application**

- (1) The board must consider the application and decide, in relation to each type of education proposed to be provided by the school, whether—
  - (a) the applicant is suitable to be the school's governing body; and

*Note—*  
See section 26 for suitability of governing body.

  - (b) the school will comply with the accreditation criteria from the school's student-intake day for the type of education.
- (2) If, in relation to a type of education, the board is satisfied about the matters mentioned in subsection (1), the board must decide to accredit the school to provide the type of education with the following attributes for the school—
  - (a) the attributes of accreditation stated in the application;
  - (b) any other attribute agreed to by the applicant and board.

- (3) If, in relation to a type of education, the board is not satisfied about a matter mentioned in subsection (1), the board must decide to refuse to accredit the school for the type of education.

## **22 Further information or documents**

- (1) The board may, by notice given to the applicant, require the applicant to give the board, within a stated period of at least 30 days, further information or a document the board reasonably requires to decide the application.
- (2) The notice may require the information or document to be verified by a statutory declaration.
- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

## **23 Failure to decide application**

- (1) If the board fails to decide an application within 6 months after receiving the application—
  - (a) the failure is taken to be a decision of the board to refuse to accredit the school; and
  - (b) the board must, as soon as practicable, give the applicant an information notice about the decision.
- (2) This section is subject to section 24.

## **24 Extension of time to decide application**

- (1) This section applies if the board considers it needs more time to decide an application.
- (2) The applicant and board may, at any time before the day that is 6 months after the day on which the board received the application, agree in writing on a day (the *agreed day*) by which the decision is to be made.

- (3) If the board fails to make the decision by the agreed day—
  - (a) the failure is taken to be a decision of the board to refuse to accredit the school; and
  - (b) the board must, as soon as practicable, give the applicant an information notice about the decision.

## **25 Steps to be taken after application decided**

- (1) If the board decides to accredit the school, the board must, as soon as practicable—
  - (a) give the applicant and the Minister notice of the decision; and
  - (b) publish notice of the decision on the board’s website.
- (2) If the board decides to refuse to accredit the school, the board must as soon as practicable give the applicant an information notice about the decision.

## **Subdivision 3 Suitability of school’s governing body**

### **26 Suitability of governing body**

- (1) This section applies if the board is deciding—
  - (a) whether the proposed governing body of a school is suitable to be the school’s governing body; or
  - (b) whether the governing body of an accredited school is suitable to continue to be the school’s governing body.
- (2) In making its decision, the board may have regard to the following matters—
  - (a) the governing body’s relationship with other entities;
  - (b) whether the governing body has appropriate guiding principles and procedures for identifying, declaring and dealing with any conflict of interest a director of the

- governing body may have in relation to an aspect of the operation of the school;
- (c) the conduct of the governing body, or its directors, in relation to the operation of the school;
  - (d) if the governing body has a conviction for an offence—the nature of, and circumstances of the commission of, the offence;
  - (e) if any of the governing body’s directors has a conviction, other than a spent conviction, for an indictable offence—the nature of, and circumstances of the commission of, the offence;
  - (f) a criminal history report about the governing body or a director of the governing body obtained under section 28;
  - (g) a report of an authorised person obtained under section 29(1);
  - (h) any other matter the board considers relevant.
- (3) The governing body of a school is not suitable to be, or to continue to be, a school’s governing body unless each director of the governing body has a working with children authority.
- (4) In this section—

*conviction*, for an indictable offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

*indictable offence* includes an indictable offence dealt with summarily.

## 27 Investigation

To help in deciding whether an entity is, or continues to be, suitable to be a school’s governing body, the board may investigate the following—

- (a) a school’s proposed governing body that is the applicant for the accreditation of the school;



- (b) the governing body of an accredited school;
- (c) the proposed governing body of an accredited school.

## **28 Criminal history reports for investigation**

- (1) In investigating the governing body or proposed governing body of a school under section 27, the board may ask the commissioner of the police service for—
  - (a) a written report about the criminal history of the governing body or a director of the governing body; and
  - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (2) The commissioner of the police service must comply with the request.
- (3) The duty imposed on the commissioner of the police service to comply with the request applies only to information in the commissioner's possession or to which the commissioner has access.
- (4) The board must ensure the report and any other document or information given to the board by the commissioner of the police service is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

## **29 Report by authorised person**

- (1) Before making a decision mentioned in section 26(1), the board may obtain a written report from an authorised person about whether a governing body or proposed governing body of a school is suitable to be the governing body of the school.
- (2) To prepare the report, the authorised person may exercise the authorised person's powers under chapter 4, part 2.

## **Division 3                      Assessment of schools**

### **30            Initial assessment of school**

- (1) The board must, on or after the assessment day for each type of education an accredited school is accredited to provide, start an assessment of the school to decide whether—
  - (a) the school is complying with the school's accreditation criteria; and
  - (b) the governing body of the school is suitable to continue to be the governing body of the school.
- (2) In this section—

*assessment day*, for a type of education an accredited school is accredited to provide, means—

  - (a) the day, of which the board has given notice to the school's governing body, that is—
    - (i) at least 60 days after the student-intake day for the type of education; and
    - (ii) within 6 months after the student-intake day for the type of education; or
  - (b) another day agreed to by the board and the school's governing body.

### **31            Additional assessment of establishment phase school**

- (1) This section applies to a school that—
  - (a) was an establishment phase school for a year of schooling; and
  - (b) has started to provide education for the year of schooling on the student-intake day for the year of schooling.

(2) The board must, on or after the assessment day, start an assessment of the school to decide whether the school is complying with the school's accreditation criteria.

(3) In this section—

*assessment day* means—

(a) the day, of which the board has given notice to the school's governing body, that is—

(i) at least 60 days after the student-intake day for the year of schooling; and

(ii) within 6 months after the latest student-intake day for the years of schooling for the sector of schooling within which the school has started to operate; or

(b) another day agreed to by the board and the school's governing body.

*sector of schooling* means any of the following groups of years of schooling—

(a) preparatory year to year 3;

(b) years 4 to 6;

(c) years 7 to 10;

(d) years 11 and 12.

### **32 Assessment when school starts to operate at new site**

(1) This section applies to a school that has started to operate at a site (a *new site*) at which the school has not previously operated.

(2) The board must, on or after the assessment day, start an assessment of the school, in relation to the provision of education at the new site, to decide whether the school is complying with the accreditation criteria.

(3) In this section—

*assessment day* means—

- (a) the day, of which the board has given notice to the governing body, that is—
  - (i) at least 60 days after the day the school starts to operate at the new site; and
  - (ii) within 6 months after the day the school starts to operate at the new site; or
- (b) another day agreed to by the board and the school's governing body.

### **33 Report by authorised person**

- (1) To assess a school under this division, the board must obtain a written report from an authorised person about whether the school is complying with the accreditation criteria.
- (2) If the report is for an assessment under section 30, the report may also be about whether the governing body is suitable to continue to be the school's governing body.
- (3) To prepare the report, the authorised person may exercise the authorised person's powers under chapter 4, part 2.

## **Part 3 Changes to accreditation**

### **Division 1 Changes to student-intake days**

#### **34 Definition for division**

In this division—

*relevant student-intake day*, for a school, means the student-intake day for a type of education or a year of schooling provided at the school.

### **35 Application to change relevant student-intake day**

- (1) The board may, on application by the governing body of an accredited school, change a relevant student-intake day for the school.
- (2) Subsection (1) applies even if the relevant student-intake day has already been changed under this section.
- (3) Despite section 19(3), the governing body may apply to change the student-intake day for a type of education for the school to a day that is more than 4 years after the day the application for accreditation of the school was made to the board.
- (4) The application must—
  - (a) be made to the board; and
  - (b) be in the approved form; and
  - (c) be accompanied by the fee prescribed by regulation; and
  - (d) be made at least 45 days before the relevant student-intake day (the *45 day period*).
- (5) However, the board may consider an application to change a relevant student-intake day made within the 45 day period if the board is satisfied unforeseen circumstances arose within the period that prevented the school from providing a type of education or a year of schooling by the relevant student-intake day.

### **36 Deciding application**

- (1) The board must consider the application and decide—
  - (a) to change the relevant student-intake day to the day sought in the application; or
  - (b) not to change the relevant student-intake day.
- (2) The board may only decide to change the relevant student-intake day if the board is satisfied that, because of

unforeseen circumstances, the school will not comply with the accreditation criteria by the relevant student-intake day.

- (3) If the board decides to change the relevant student-intake day, the board must as soon as practicable give the school's governing body notice of the decision.
- (4) If the board decides not to change the relevant student-intake day, the board must as soon as practicable give the school's governing body an information notice about the decision.
- (5) A decision not to change the relevant student-intake day does not take effect until—
  - (a) the last day to apply for a review of the decision; or
  - (b) if an application is made for a review of the decision—the day the application is decided or otherwise disposed of.

### **37 Further information or documents**

- (1) The board may, by notice given to the applicant, require the applicant to give the board, within a stated reasonable period of at least 30 days, further information or a document the board reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.
- (3) In giving the notice, the board must have regard to the time remaining for the board to decide the application.

### **38 Failure to decide application**

- (1) This section applies if the board fails to decide the application by the relevant student-intake day to which the application relates.
- (2) The failure is taken to be a decision of the board to refuse the application.

- (3) The board must, as soon as practicable, give the applicant an information notice about the decision.

## **Division 2                    Changes to attributes of accreditation**

### **Subdivision 1            Applications to change attributes of accreditation**

#### **39            Application to change attribute of accreditation**

- (1) An accredited school's governing body may apply to the board to change an attribute of accreditation of the school.
- (2) The application must—
  - (a) be made to the board; and
  - (b) be in the approved form; and
  - (c) be accompanied by the fee prescribed by regulation.
- (3) If the change will result in the school being allowed to provide education for a new year of schooling, the application must include the student-intake day for the year of schooling.
- (4) If the application is about a change in the school's governing body, the application must be accompanied by copies of the working with children cards for all the directors of the proposed governing body.
- (5) The board must, within 28 days after receiving the application, give ISQ, QCEC and the chief executive a notice—
  - (a) stating the board has received the application; and
  - (b) summarising the proposed change to the school's attribute of accreditation.

## 40 Deciding application

- (1) The board must consider the application and decide to grant, or to refuse to grant, the application.
- (2) If the application is about a change in the school's governing body, the board may decide to grant the application only if the board is satisfied—
  - (a) the proposed new governing body is a corporation; and
  - (b) the proposed new governing body is suitable to be the school's governing body; and

*Note—*

See section 26 for suitability of governing body.

- (c) if the school's governing body is eligible for government funding for the school and the proposed new governing body intends to be eligible for government funding for the school—the proposed new governing body will meet the government funding eligibility criteria when the change has effect.
- (3) For deciding whether the proposed new governing body is suitable to be the governing body of the school, part 2, division 2, subdivision 3 applies as if the application were an application for accreditation.
- (4) If the application is about a change in an attribute of accreditation other than a change in the school's governing body, the board may decide to grant the application only if the board is satisfied the school will comply with the accreditation criteria when the change has effect.
- (5) If the board decides to grant the application, the board must as soon as practicable give the applicant a notice (a ***change notice***) stating—
  - (a) the decision; and
  - (b) the day (the ***change day***) before which the change must have effect.



- (6) If the board decides to refuse to grant the application, the board must as soon as practicable give the applicant an information notice about the decision.

#### **41 Further information or documents**

- (1) The board may, by notice given to the applicant, require the applicant to give the board, within a stated reasonable period of at least 30 days, further information or a document the board reasonably requires to decide the application.
- (2) The notice may require the information or document to be verified by a statutory declaration.
- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.
- (4) In giving the notice, the board must have regard to the time remaining for the board to decide the application.

#### **42 Failure to decide application**

- (1) If the board fails to decide the application within 6 months after receiving the application—
  - (a) the failure is taken to be a decision of the board to refuse to grant the application; and
  - (b) the board must, as soon as practicable, give the applicant an information notice about the decision.
- (2) This section is subject to section 43.

#### **43 Extension of time to decide application**

- (1) This section applies if the board considers it needs more time to decide the application.
- (2) The applicant and board may, at any time before the day that is 6 months after the day on which the board received the

application, agree in writing on a day (the *agreed day*) by which the decision is to be made.

- (3) If the board fails to make the decision by the agreed day—
  - (a) the failure is taken to be a decision of the board to refuse to grant the application; and
  - (b) the board must, as soon as practicable, give the applicant an information notice about the decision.

#### **44 Failure to effect change of attribute of accreditation before change day**

- (1) This section applies if—
  - (a) an accredited school’s governing body receives a change notice about an attribute of accreditation applying to the school; and
  - (b) the change is not given effect before the change day stated in the notice.
- (2) The change notice is of no effect and the board is not authorised to make the change to the attribute of accreditation for the school to which the notice relates.

#### **45 Proposed governing body taken to have applied to be eligible for government funding**

- (1) This section applies if—
  - (a) the school’s governing body is eligible for government funding for the school; and
  - (b) the application is about a change in the school’s governing body; and
  - (c) the proposed new governing body intends to be eligible for government funding for the school.
- (2) The proposed new governing body of the school is taken to have made an application to be eligible for government funding for the school under section 78 on the day the board

received the application about the change in the school's governing body.

- (3) If the proposed new governing body is taken to have made an application to be eligible government funding under subsection (2), the board must decide the application under chapter 3, part 2.

## **Subdivision 2      Notice of attribute of accreditation no longer applying**

### **46      Notice of attribute of accreditation no longer applying**

- (1) A school's governing body may, by notice given to the board, advise the board that an attribute of accreditation of the school no longer applies to the school.
- (2) The attribute of accreditation stops applying to the school on the day stated in the notice.
- (3) The board must, as soon as practicable after the attribute of accreditation stops applying to the school—
  - (a) amend the register to remove the attribute from the attributes of accreditation applying to the school; and
  - (b) give the governing body of the school notice that the attribute of accreditation no longer applies to the school.

## **Part 4                      Special assistance schools—use of temporary sites**

### **47      Purpose of part**

- (1) The purpose of this part is to enable a special assistance school to provide, on a temporary basis, special assistance at a temporary site.

- (2) However, special assistance may be provided at a temporary site only in accordance with the attributes of accreditation mentioned in section 19(4)(c) for the school's accredited special assistance sites.

## 48 Definitions for part

In this part—

***accredited special assistance site***, for a special assistance school, means a site mentioned in section 19(4)(e) at which the school provides special assistance.

***public place*** means a place, or part of a place—

- (a) the public is entitled to use, whether or not on payment of money; or
- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter, other than—
  - (i) a school; or
  - (ii) a State educational institution within the meaning of the *Education (General Provisions) Act 2006*, schedule 4.

***site*** does not include—

- (a) a vehicle; or
- (b) a public place; or
- (c) a place where a person resides.

***temporary site***, in relation to a special assistance school, means a site other than an accredited special assistance site for the school.

***temporary site criteria*** see section 49(1).

***vehicle*** means—

- (a) a motor vehicle, train or aircraft; or
- (b) a ship, boat or any other kind of vessel; or

- (c) anything else used or to be used to carry people or goods from place to place.

#### **49 Compliance with temporary site criteria**

- (1) A special assistance school that provides special assistance at a temporary site must comply with the criteria prescribed by regulation for temporary sites (the *temporary site criteria*).

*Note—*

Noncompliance with the temporary site criteria is a ground for cancellation of accreditation—see section 66.

- (2) Without limiting subsection (1), a regulation may limit the period for which a special assistance school may provide special assistance at a temporary site.

#### **50 Notification of intention to use, or stop using, temporary site**

- (1) Before the governing body of a special assistance school starts providing special assistance at a temporary site for the first time, the governing body must give the board—
  - (a) notice, in the approved form, of the governing body's intention to start providing special assistance at the temporary site; and
  - (b) evidence the school is entitled to occupy the site; and
  - (c) a declaration by the governing body that—
    - (i) the school needs to provide special assistance at the site for stated reasons; and
    - (ii) the school will comply with the temporary site criteria while special assistance is provided at the site.
- (2) If the governing body stops providing special assistance at a temporary site, the governing body must give the board notice, in the approved form, that the body has stopped providing special assistance at the temporary site.

- (3) The board must give the governing body a notice acknowledging receipt of the things mentioned in subsection (1)(a) to (c) or (2).

## **51 Use of temporary site is not a change in attribute etc.**

- (1) This section applies if a special assistance school—
  - (a) provides special assistance at a temporary site; and
  - (b) complies with this part, including the temporary site criteria, in relation to providing special assistance at the site.
- (2) The provision of the special assistance at the temporary site by the school does not, of itself—
  - (a) require the governing body to apply for accreditation of the school in relation to the temporary site; or
  - (b) constitute a change in an attribute of accreditation of the school.

## **52 Assessment of special assistance school using temporary site**

- (1) This section applies to a special assistance school that is providing special assistance at a temporary site.
- (2) The board may assess the special assistance school to decide whether it is complying with the temporary site criteria.

## **53 Report by authorised person**

- (1) To assess the special assistance school under section 52, the board must obtain a written report from an authorised person about whether the school is complying with the temporary site criteria.
- (2) To prepare the report, the authorised person may exercise the authorised person's powers under chapter 4, part 2.

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## Part 5                      Amalgamations and divisions of accredited schools

### Division 1                Application of part

#### 54        Part does not apply for particular schools

This part does not apply in relation to a school if the governing body of the school—

- (a) has been given a compliance notice under section 62(3) or 87(2) in relation to the school and the compliance notice has not been finally dealt with; or
- (b) has been given a show cause notice under section 67(2) or 90(2) in relation to the school and the notice has not been finally dealt with; or
- (c) has been given an information notice about a decision made by the board in relation to the school and—
  - (i) the governing body of the school has applied for a review of the decision and the review has not been finally dealt with; or
  - (ii) the period within which the governing body may apply for a review of the decision has not ended.

### Division 2                Amalgamation of accredited schools

#### 55        Application of division

This division applies if—

- (a) the governing bodies of 2 or more accredited schools (each an *amalgamating school*) propose to amalgamate the schools into 1 school (the *amalgamated school*); and

- (b) the governing body of 1 of the amalgamating schools will be the governing body of the amalgamated school; and
- (c) the sites from which the amalgamated school will operate are sites from which the amalgamating schools operate.

## **56 Notice of intention to amalgamate schools**

- (1) The governing bodies of the amalgamating schools may give the board notice (an *amalgamation notice*), in the approved form, of the intention to amalgamate the schools.
- (2) The approved form must require the inclusion of the following—
  - (a) the proposed name for the amalgamated school;
  - (b) the proposed day on which the amalgamating schools are to be amalgamated;
  - (c) the proposed type of education the amalgamated school will provide;
  - (d) the proposed attributes of accreditation of the amalgamated school.

## **57 Decision about amalgamation of school**

- (1) If the board is satisfied the proposed attributes of accreditation for each site at which the amalgamated school is to operate are the same as the attributes of accreditation for the site under the accreditation for the amalgamating school operating at the site—
  - (a) the governing bodies of the amalgamating schools are taken to have surrendered the accreditations of the schools under section 73(1); and
  - (b) the proposed governing body of the amalgamated school is taken to have made an application for accreditation of the amalgamated school under section 18; and



- (c) the board is taken to have decided to accredit the amalgamated school under section 21.
- (2) If subsection (1)(c) applies, the board must—
- (a) remove the amalgamating schools from the register and record the date of the removal; and
  - (b) record the following details about the amalgamated school on the register—
    - (i) the name of the school;
    - (ii) the type of education the school provides;
    - (iii) the attributes of accreditation of the school; and
  - (c) record the date the details for the school were entered on the register; and
  - (d) give the governing body of each amalgamating school notice of—
    - (i) the decision to accredit the amalgamated school; and
    - (ii) the surrender of the accreditation of the amalgamating schools; and
    - (iii) the removal of the amalgamating schools from the register.
- (3) If the board decides it is not satisfied the proposed attributes of accreditation for each site at which the amalgamated school will operate are the same as the attributes of accreditation for the site under the accreditation for the amalgamating school operating at the site, the board must give the governing body of each amalgamating school an information notice about the decision.
- (4) Subsection (3) does not prevent a governing body from—
- (a) applying to accredit an amalgamated school under part 2, division 2; or
  - (b) surrendering the accreditation of an amalgamating school under part 6, division 3.

## **Division 3                      Division of accredited schools**

### **58        Application of division**

This division applies if—

- (a) the governing body of an accredited school (a *dividing school*) proposes to divide the school into 2 or more accredited schools (each a *separated school*); and
- (b) the governing body of the dividing school will be the governing body of each of the separated schools.

### **59        Notice of intention to divide accredited school**

- (1) The governing body may give the board notice (a *division notice*), in the approved form, of the intention to divide the school.
- (2) The approved form must require the inclusion of the following—
  - (a) the proposed governing body for each separated school;
  - (b) the proposed name for each separated school;
  - (c) the proposed date on which the dividing school is to be divided;
  - (d) the proposed type of education each separated school will provide;
  - (e) the proposed attributes of accreditation of each separated school.

### **60        Decision about division of accredited school**

- (1) If the board is satisfied the proposed attributes of accreditation for each site at which a separated school is to operate are the same as the attributes of accreditation for the site under the accreditation for the dividing school—
  - (a) the governing body is taken to have—

- (i) surrendered the accreditation of the dividing school under section 73(1); and
    - (ii) made an application for accreditation of each separated school under section 18; and
  - (b) the board is taken to have decided to accredit each separated school under section 21.
- (2) If subsection (1)(b) applies, the board must—
- (a) remove the details for the dividing school from the register and record the date of the removal; and
  - (b) record the following details, stated in the division notice, for each separated school on the register—
    - (i) the name of the school;
    - (ii) the type of education the school provides;
    - (iii) the attributes of accreditation of the school; and
  - (c) record the date the details for the school were entered on the register; and
  - (d) give the governing body of the dividing school notice of—
    - (i) the decision to accredit each separated school; and
    - (ii) the surrender of the accreditation of the dividing school; and
    - (iii) the removal of the dividing school from the register.
- (3) If the board decides it is not satisfied the proposed attributes of accreditation for each separated school are the same as the attributes of accreditation for the dividing school, the board must give the governing body of the dividing school an information notice about the decision.
- (4) Subsection (3) does not prevent a governing body from—
- (a) applying to accredit a separated school under part 2, division 2; or

- (b) surrendering the accreditation of a dividing school under part 6, division 3.

## **Division 4                    Deemed eligibility for government funding**

### **61            Deemed eligibility for government funding**

- (1) This section applies to the governing body of—
  - (a) an amalgamated school the board is taken to have decided to accredit under section 57(1)(c) if the governing bodies of the amalgamating schools were, immediately before the amalgamation, eligible for government funding; or
  - (b) a separated school the board is taken to have decided to accredit under section 60(1)(b) if the governing body of the dividing school was, immediately before the division, eligible for government funding.
- (2) The governing body is taken to be eligible for government funding for the school.

## **Part 6                            Amendment, cancellation and surrender of accreditations**

### **Division 1                    Giving compliance notices**

#### **62            Compliance notice**

- (1) This section applies if—
  - (a) the board reasonably believes—
    - (i) an accredited school—

- (A) is not complying with an accreditation criterion; or
  - (B) has not complied with an accreditation criterion in circumstances that make it likely the noncompliance will continue or be repeated; and
  - (ii) a matter relating to the noncompliance is reasonably capable of being rectified; and
  - (iii) it is appropriate to give the school's governing body an opportunity to rectify the matter; and
  - (b) the board has not given a show cause notice about the matter to the governing body.
- (2) This section also applies if—
- (a) the board reasonably believes—
    - (i) the governing body of an accredited school is not, or is no longer, suitable to be the school's governing body; and
- Note—*
- See section 26 for suitability of governing body.
- (ii) a matter relating to the governing body's suitability is reasonably capable of being rectified; and
  - (iii) it is appropriate to give the school's governing body an opportunity to rectify the matter; and
  - (b) the board has not given a show cause notice about the matter to the governing body.
- (3) The board may give the governing body a notice (a ***compliance notice***) requiring the governing body to rectify the matter.
- (4) The compliance notice must state all of the following—
- (a) for a compliance notice about a matter mentioned in subsection (1)(a)(i)—
    - (i) that the board believes the school—

- (A) is not complying with an accreditation criterion; or
- (B) has not complied with an accreditation criterion in circumstances that make it likely the noncompliance will continue or be repeated; and
- (ii) the accreditation criterion the board believes is not being, or has not been, complied with; and
- (iii) briefly, how the board believes the accreditation criterion is not being, or has not been, complied with;
- (b) for a compliance notice about a matter relating to a governing body's suitability—
  - (i) that the board believes the governing body of the accredited school is not, or is no longer, suitable to be the school's governing body; and
  - (ii) briefly, the reasons for the board's belief;
- (c) the matter relating to the noncompliance or suitability the board believes is reasonably capable of being rectified;
- (d) the reasonable steps the governing body must take to rectify the matter;
- (e) that the governing body must take the steps within a stated reasonable period.
- (5) The governing body must comply with the compliance notice, unless the governing body has a reasonable excuse.

### **63 Report by authorised person**

- (1) The board may obtain a written report from an authorised person to help the board decide—
  - (a) whether to give a school's governing body a compliance notice under this division; or

- (b) whether a school's governing body has complied with a compliance notice given to the governing body under this division.
- (2) To prepare the report, the authorised person may exercise the authorised person's powers under chapter 4, part 2.

## **Division 2                      Amendment and cancellation of accreditations**

### **64            Definition for division**

In this division—

*relevant attribute of accreditation*, for a school, means—

- (a) a student-intake day for a year of schooling for the school; or
- (b) an attribute of accreditation of the school that relates to the following—
  - (i) the location of the sites at which the school operates;
  - (ii) the provision of boarding facilities at a site at which the school operates;
  - (iii) the years of schooling provided by the school at a site at which the school operates;
  - (iv) the mode of delivery of education used by the school at a site at which the school operates.

### **65            Grounds for amendment**

Each of the following is a ground for amending a school's accreditation by removing or amending a relevant attribute of accreditation for the school—

- (a) for an attribute relating to a type of education provided by the school—after the student-intake day for the type

of education, the school is not complying, or has not complied, with the accreditation criteria relating to the attribute;

- (b) there has been a change, without the board's approval under part 3, in the relevant attribute of accreditation;
- (c) for a school that is an establishment phase school for a year of schooling—the school does not start to provide education for the year of schooling by the day that is 6 months after the student-intake day for the year of schooling.

## **66 Grounds for cancellation**

- (1) Each of the following is a ground for cancelling a school's accreditation for a type of education—
  - (a) the school was accredited because of a materially false or misleading representation or declaration;
  - (b) the school's governing body is not a corporation;
  - (c) the school's governing body is not, or is no longer, suitable to be the school's governing body;

*Note—*

See section 26 for suitability of governing body.

- (d) after the student-intake day for the type of education, the school is not complying, or has not complied, with the accreditation criteria relating to the type of education;
- (e) there has been a change, without the board's approval under part 3, in an attribute of accreditation for the school;
- (f) the school's governing body has not complied with section 170(2);
- (g) the board is not satisfied the information or documents given by the school's governing body to the board under section 170 are adequate in helping the board to decide



- whether the school is complying with the accreditation criteria;
- (h) the school has not provided the type of education for at least 6 consecutive months;
  - (i) if the school is a special assistance school—
    - (i) the school’s governing body has not complied with section 50(1) or (2); or
    - (ii) the declaration given by the school’s governing body under 50(1)(c) included a materially false or misleading representation; or
    - (iii) the school is not complying, or has not complied, with the temporary site criteria;
  - (j) the school’s governing body did not allow an authorised person to enter the school’s premises under section 137.
- (2) Also, it is a ground for cancelling a school’s accreditation to provide primary education if the school provides education in the preparatory year without providing primary education for years 1 to 3.

## **67 Show cause notice**

- (1) This section applies if—
- (a) the board reasonably believes a ground exists to—
    - (i) amend a school’s accreditation by removing or amending a relevant attribute of accreditation; or
    - (ii) cancel a school’s accreditation for a type of education; and
  - (b) the board—
    - (i) has not given, and does not propose to give, the school’s governing body a compliance notice to rectify a matter to which the ground relates; or

- (ii) has given the school's governing body a compliance notice to rectify a matter to which the ground relates and the governing body—
  - (A) has not complied with the compliance notice within the period stated in the notice; and
  - (B) does not have a reasonable excuse for not complying.
- (2) The board must give the governing body a notice (a *show cause notice*) stating the following—
  - (a) the action (the *proposed action*) the board proposes taking under this division;
  - (b) the grounds for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the grounds;
  - (d) an invitation to the governing body to make a written representation to the board within a stated period of at least 30 days after the show cause notice is given to show why the proposed action should not be taken.
- (3) The governing body may make a written representation about the show cause notice to the board in the period mentioned in subsection (2)(d) (an *accepted representation*).

## **68 Considering representations about show cause notice**

Before taking the proposed action stated in the show cause notice, the board must consider all accepted representations for the notice.

## **69 Ending show cause process without further action**

If, after considering the accepted representations for the show cause notice, the board no longer believes a ground exists to amend or cancel the accreditation, the board—

- (a) must not take further action about the show cause notice; and
- (b) must, as soon as practicable, give notice to the school's governing body that no further action is to be taken about the show cause notice.

## **70 Amendment**

- (1) This section applies if, after considering the accepted representations for a show cause notice about the proposed amendment of a school's accreditation, the board—
  - (a) still believes a ground exists to amend the school's accreditation by removing or amending a relevant attribute of accreditation; and
  - (b) believes amendment of the school's accreditation by removing or amending the relevant attribute of accreditation is warranted.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The board may decide to amend the school's accreditation by removing or amending the relevant attribute of accreditation.
- (4) The board must, as soon as practicable, give an information notice about the decision to the school's governing body.
- (5) The decision does not take effect until—
  - (a) the last day to apply for a review of the decision; or
  - (b) if an application is made for a review of the decision—the day the application is decided or otherwise disposed of.

## **71 Cancellation**

- (1) This section applies if, after considering the accepted representations for a show cause notice about the proposed

cancellation of a school's accreditation for a type of education, the board—

- (a) still believes a ground exists to cancel the accreditation; and
  - (b) believes cancellation of the accreditation is warranted.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The board may decide to cancel the accreditation.
- (4) The board must, as soon as practicable, give an information notice about the decision to the school's governing body.
- (5) The decision does not take effect until—
- (a) the last day to apply for a review of the decision; or
  - (b) if an application is made for a review of the decision—the day the application is decided or otherwise disposed of.

## **72 Report by authorised person**

- (1) The board may obtain a written report from an authorised person to help the board decide—
- (a) whether to give a show cause notice under this division; or
  - (b) whether to end the show cause process under section 69; or
  - (c) whether to amend or cancel a school's accreditation under section 70 or 71.
- (2) To prepare the report, the authorised person may exercise the authorised person's powers under chapter 4, part 2.

## **Division 3                      Surrender of accreditations**

### **73            Surrender**

- (1) A school's governing body may, by notice given to the board, surrender an accreditation of the school.
- (2) The surrender takes effect on the day stated in the notice.
- (3) Subsection (4) applies if—
  - (a) a governing body surrenders an accreditation for a school; and
  - (b) immediately before the surrender, the governing body was eligible for government funding for the school for which the accreditation is surrendered; and
  - (c) after the surrender, the school is not accredited to provide any type of education.
- (4) The governing body is not eligible for government funding for the school from the day the surrender takes effect.

## **Part 7                              Offences**

### **74            Operating a school without accreditation**

A person must not operate a school unless the school is an accredited school.

Maximum penalty—100 penalty units.

### **75            Operating an accredited school before its student-intake day**

The governing body of an accredited school must not provide a type of education at the school before the student-intake day for the type of education.

Maximum penalty—100 penalty units.

**76 Claim about accreditation of school**

A person must not hold out a school as being an accredited school if it is not an accredited school.

Maximum penalty—100 penalty units.

## **Chapter 3 Eligibility for government funding**

### **Part 1 Preliminary**

**77 Eligibility for government funding**

A governing body of a school is *eligible for government funding* for the school if the board is satisfied the governing body meets the government funding eligibility criteria.

### **Part 2 Applications for eligibility for government funding**

**78 Governing body of school may apply for eligibility for government funding**

- (1) The governing body of an accredited school may apply to be eligible for government funding for the school.
- (2) The application must—
  - (a) be made to the board; and
  - (b) be in the approved form; and
  - (c) be accompanied by the fee prescribed by regulation.

**79 Deemed applications for eligibility for government funding**

- (1) This section applies if—
  - (a) the governing body of a school applies for accreditation of the school; and
  - (b) the governing body indicates in the application that the governing body seeks to be eligible for government funding for the school.
- (2) The governing body is taken to have made an application to be eligible for government funding for the school under section 78 on the day the board received the application for accreditation of the school.
- (3) The application to be eligible for government funding for the school is taken to have been withdrawn if the board—
  - (a) decides to refuse to accredit the school under section 21(3); or
  - (b) is taken to have refused to accredit the school under section 23(1)(a).

**80 Decision about governing body's eligibility for government funding**

- (1) The board must consider the application and decide whether or not the board is satisfied the governing body meets the government funding eligibility criteria.
- (2) If the board is satisfied the governing body meets the government funding eligibility criteria, the board must decide the governing body is eligible for government funding for the school.
- (3) If the board is not satisfied the governing body meets the government funding eligibility criteria, the board must decide the governing body is not eligible for government funding for the school.

## **81 Further information or documents**

- (1) Before deciding the application, the board may, by notice given to the applicant, require the applicant to give the board, within a reasonable period of at least 30 days stated in the notice, further information or a document the board reasonably requires to make the decision.
- (2) The notice may require the information or document to be verified by a statutory declaration.
- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

## **82 Failure to decide application**

- (1) If the board fails to decide the application within 6 months after receiving the application—
  - (a) the failure is taken to be a decision of the board that the governing body is not eligible for government funding for the school; and
  - (b) the board must, as soon as practicable, give the applicant an information notice about the decision.
- (2) This section is subject to section 83.

## **83 Extension of time to decide application**

- (1) This section applies if the board considers it needs more time to decide the application.
- (2) The applicant and board may, at any time before the day that is 6 months after the day on which the board received the application, agree in writing on a day (the *agreed day*) by which the decision is to be made.
- (3) If the board fails to make the decision by the agreed day—



- (a) the failure is taken to be a decision of the board that the governing body is not eligible for government funding for the school; and
- (b) the board must, as soon as practicable, give the applicant an information notice about the decision.

#### **84 Steps to be taken after decision**

- (1) If the board decides the governing body is eligible for government funding for the school, the board must, as soon as practicable give the applicant and the Minister notice of the decision.
- (2) If the board decides the governing body is not eligible for government funding for the school, the board must, as soon as practicable, give the applicant an information notice about the decision.

#### **85 Report by authorised person**

- (1) Before deciding the application, the board may obtain a written report from an authorised person about a matter mentioned in section 10.
- (2) To prepare the report, the authorised person may exercise the authorised person's powers under chapter 4, part 2.

## **Part 3 Withdrawal of eligibility for government funding**

### **Division 1 Application of part**

#### **86 Application of part**

This part applies to a school the governing body of which is eligible for government funding for the school.

## Division 2 Giving compliance notices

### 87 Compliance notice

- (1) This section applies if—
  - (a) the board reasonably believes—
    - (i) the governing body of an accredited school does not meet the government funding eligibility criteria (the *noncompliance*); and
    - (ii) a matter relating to the noncompliance is reasonably capable of being rectified; and
    - (iii) it is appropriate to give the school's governing body an opportunity to rectify the matter; and
  - (b) the board has not given a show cause notice about the matter to the governing body.
- (2) The board may give the governing body a notice (a *compliance notice*) requiring the governing body to rectify the matter.
- (3) The compliance notice must state—
  - (a) that the board believes the governing body does not meet the government funding eligibility criteria; and
  - (b) briefly, the reasons for the board's belief; and
  - (c) the matter relating to the noncompliance the board believes is reasonably capable of being rectified; and
  - (d) the reasonable steps the governing body must take to rectify the matter; and
  - (e) that the governing body must take the steps within a stated reasonable period.
- (4) The governing body must comply with the compliance notice, unless the governing body has a reasonable excuse.

## **88 Report by authorised person**

- (1) The board may obtain a written report from an authorised person to help the board decide—
  - (a) whether to give a school’s governing body a compliance notice; or
  - (b) whether a school’s governing body has complied with a compliance notice given to the governing body.
- (2) To prepare the report, the authorised person may exercise the authorised person’s powers under chapter 4, part 2.

## **Division 3 Withdrawal of eligibility for government funding after show cause process**

### **89 Grounds for withdrawal of eligibility for government funding**

- (1) Each of the following is a ground for withdrawal of a governing body’s eligibility for government funding for a school—
  - (a) the governing body is an ineligible company;
  - (b) the school is being operated for profit;
  - (c) the governing body is a party to a prohibited arrangement;
  - (d) there is a direct or indirect connection between the school’s governing body and another entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions;
  - (e) a matter mentioned in paragraphs (a) to (d) existed during a particular period when the school’s governing body received government funding for the school;

- (f) the school's governing body has not complied with section 171(3);
  - (g) the school's governing body did not allow an authorised person to enter the school's premises under section 137.
- (2) For subsection (1)(c), (d) or (e), if the ground exists because of a prohibited arrangement or connection mentioned in section 10(c) or (d), it is immaterial when the prohibited arrangement or connection came into existence.

## 90 Show cause notice

- (1) This section applies if—
- (a) the board believes a ground exists for the withdrawal of the governing body's eligibility for government funding for the school; and
  - (b) the board—
    - (i) has not given, and does not propose to give, the school's governing body a compliance notice to rectify a matter to which the ground relates; or
    - (ii) has given the governing body a compliance notice to rectify a matter to which the ground relates and the governing body—
      - (A) has not complied with the compliance notice within the period stated in the notice; and
      - (B) does not have a reasonable excuse for not complying.
- (2) The board must give the governing body a notice (a ***show cause notice***) stating the following—
- (a) the decision (the ***proposed decision***) the board proposes to make under this division;
  - (b) the grounds for the proposed decision;
  - (c) an outline of the facts and circumstances forming the basis for the grounds;

- (d) an invitation to the governing body to make a written representation to the board within a stated period of at least 30 days after the show cause notice is given to show why the proposed decision should not be made.
- (3) The governing body may make a written representation about the show cause notice to the board in the period mentioned in subsection (2)(d) (an *accepted representation*).
- (4) The board must give the Minister a copy of a show cause notice given under subsection (2).

## **91 Representations about show cause notice**

Before making the proposed decision stated in the show cause notice, the board must consider all accepted representations for the notice.

## **92 Ending show cause process without further action**

If, after considering the accepted representations for the show cause notice, the board no longer believes a ground exists for withdrawing the governing body's eligibility for government funding for the school, the board—

- (a) must not take further action about the show cause notice; and
- (b) must, as soon as practicable, give notice to the Minister and the governing body that no further action is to be taken about the show cause notice.

## **93 Decision by board**

- (1) This section applies if—
  - (a) after considering the accepted representations for the show cause notice, the board still believes the ground exists for withdrawing the governing body's eligibility for government funding for the school; or

- (b) there are no accepted representations for the show cause notice.
- (2) The board must decide whether the governing body's eligibility for government funding for the school should be withdrawn—
  - (a) if the show cause notice is based on a ground mentioned in section 89(1)(e)—for the period the board believes the ground existed; or
  - (b) otherwise—from the day the board believes the ground arose.
- (3) If the board decides to withdraw the governing body's eligibility for government funding for the school, the board must as soon as practicable—
  - (a) give the governing body an information notice about the decision; and
  - (b) give the Minister notice of the decision.
- (4) For subsection (3)(a), the information notice must state—
  - (a) if the withdrawal of the eligibility for government funding is for a particular period—the period; or
  - (b) otherwise—the day from which the withdrawal of the eligibility for government funding has effect.

#### **94 Report by authorised person**

- (1) The board may obtain a written report from an authorised person to help the board decide—
  - (a) whether to issue a show cause notice; or
  - (b) whether to end the show cause process under section 92; or
  - (c) whether to withdraw a governing body's eligibility for government funding for a school under section 93.
- (2) To prepare the report, the authorised person may exercise the authorised person's powers under chapter 4, part 2.

## **95 Effect of withdrawal of eligibility for government funding**

- (1) The withdrawal of a governing body's eligibility for government funding for a school has effect—
  - (a) if the withdrawal is based on a ground mentioned in section 89(1)(e)—for the period the board believes the ground existed; or
  - (b) otherwise—from the day the board believes the ground arose.
- (2) For subsection (1)(a), it is immaterial—
  - (a) when the period occurred; or
  - (b) that the governing body was again eligible for government funding for the school after the period.

## **Division 4 Automatic withdrawal of eligibility for government funding**

### **96 Effect of cancellation of accreditation**

- (1) Subsection (2) applies if—
  - (a) a school's accreditation for a type of education is cancelled; and
  - (b) immediately before the cancellation, the governing body was eligible for government funding for the school for which the accreditation is cancelled; and
  - (c) after the cancellation, the school is not accredited to provide any type of education.
- (2) The school's governing body's eligibility for government funding for the school is taken to be withdrawn when the cancellation has effect under this Act.

## Chapter 4      General administration

### Part 1              Non-State Schools Accreditation Board

#### Division 1          Establishment

#### 97      Non-State Schools Accreditation Board

- (1) The Non-State Schools Accreditation Board is continued in existence.
- (2) The board—
  - (a) is a body corporate; and
  - (b) may sue and be sued in its corporate name.
- (3) In this section—

*Non-State Schools Accreditation Board* means the Non-State Schools Accreditation Board established under the repealed *Education (Accreditation of Non-State Schools) Act 2001*, section 105.

#### 98      Board represents the State

- (1) The board represents the State.
- (2) Without limiting subsection (1), the board has the status, privileges and immunities of the State.

#### 99      Application of other Acts

- (1) The board is a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.



- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B explains how that Act affects the board's powers.

## **Division 2                      Functions and powers**

### **100      Functions of board**

The board has the following functions—

- (a) to assess applications for accreditation of non-State schools;
- (b) to accredit non-State schools;
- (c) to assess and decide applications about governing bodies' eligibility for government funding;
- (d) to keep a register of accredited schools;
- (e) to monitor whether accredited schools continue to comply with the accreditation criteria;
- (f) to monitor whether the governing bodies of accredited schools are suitable to continue to be a school's governing body;
- (g) to monitor whether the governing bodies of non-State schools that are eligible for government funding for the schools continue to meet the government funding eligibility criteria;
- (h) to monitor and enforce compliance with this Act;
- (i) to conduct investigations about contraventions of, or noncompliance with, this Act;
- (j) to examine, and advise the Minister about, the operation of the accreditation and eligibility for government funding schemes under this Act, including, for example, the examining of and reporting on a matter referred to the board by the Minister;
- (k) another function given to the board under this Act or another Act.

## 101 Powers of board

The board has all the powers of an individual, and may, for example—

- (a) enter into contracts or agreements; and
- (b) acquire, hold, deal with, and dispose of, property; and
- (c) appoint agents and attorneys; and
- (d) engage consultants and researchers; and
- (e) do anything else necessary or convenient to be done in performing its functions.

## Division 3 Membership

### 102 Membership of board

- (1) The board consists of 7 persons (each a *member*), as follows—
  - (a) 1 member nominated by the Minister;
  - (b) 3 members (the *Minister's consultation nominees*) nominated by the Minister after consulting with ISQ and QCEC;
  - (c) 1 member nominated by the chief executive;
  - (d) 1 member nominated by ISQ;
  - (e) 1 member nominated by QCEC.
- (2) Each member must be appointed by the Governor in Council.
- (3) A Minister's consultation nominee—
  - (a) must not be a person who is—
    - (i) an employee of the department; or
    - (ii) working full-time in an accredited school; or
    - (iii) a director of an accredited school's governing body; or

- (iv) a member of an entity representing the interests of governing bodies of accredited schools; and
- (b) must be appropriately qualified to be a member of the board.

### **103 Nominee of ISQ or QCEC**

- (1) This section applies to the nomination of a person by an entity under section 102(1)(d) or (e).
- (2) The Minister must give the entity a notice stating a reasonable period within which it may nominate the person.
- (3) If the entity does not nominate a person within the period stated in the notice, the Minister may nominate a person and the nomination is taken to have been made by the entity.

### **104 Term of appointment**

A member holds office for the term, not longer than 4 years, stated in the member's instrument of appointment.

### **105 Conditions of appointment**

- (1) A member is entitled to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A member holds office on the terms and conditions, not provided for by this Act, decided by the Governor in Council.
- (3) A member is appointed under this Act and not the *Public Service Act 2008*.

### **106 Chairperson**

- (1) The person nominated by the Minister under section 102(1)(a) is the chairperson of the board.
- (2) The chairperson holds office for the term of the person's appointment as a member.

- (3) The office of chairperson becomes vacant if the chairperson stops being a member.

### **107 Deputy chairperson**

- (1) The board must appoint a member as the deputy chairperson of the board.
- (2) The deputy chairperson holds office for the term decided by the board.
- (3) However, the term mentioned in subsection (2) can not be longer than the term of the person's appointment as a member.
- (4) The office of deputy chairperson becomes vacant if the deputy chairperson—
  - (a) resigns from office by giving the board a notice of resignation; or
  - (b) stops being a member.
- (5) However, a person may continue being a member after resigning the office of deputy chairperson.
- (6) The deputy chairperson is to act as chairperson—
  - (a) during a vacancy in the office of chairperson; and
  - (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.

### **108 Disqualification as member**

- (1) A person is disqualified from becoming, or continuing as, a member if the person—
  - (a) is a member of the Legislative Assembly; or
  - (b) is a councillor of a local government; or
  - (c) has a conviction, other than a spent conviction, for an indictable offence; or

- (d) is an insolvent under administration; or
  - (e) is disqualified from managing corporations because of the Corporations Act, part 2D.6.
- (2) A person is also disqualified from becoming a member if the person does not consent to the Minister asking for a report about the person's criminal history under section 112.
- (3) The Minister may act under subsection (4) if the Minister considers it would be reasonable to do so, having regard to—
- (a) the circumstances of an offence of which a person has been convicted; or
  - (b) the circumstances under which a person became an insolvent under administration.
- (4) The Minister may—
- (a) if the person was a member when the person was convicted or became an insolvent under administration, and the term of the person's appointment as a member has not ended, give the chairperson and the person notice (the *approval notice*) that—
    - (i) the person is restored as a member; and
    - (ii) the person may be later reappointed, despite the conviction or being an insolvent under administration; or
  - (b) otherwise—give written approval for the person to become a member despite the conviction or being an insolvent under administration.
- (5) The person is restored as a member on the day the chairperson receives the approval notice.
- (6) The restored member's term of appointment as a member ends when it would have ended if the member had not been convicted of the offence or become an insolvent under administration.
- (7) In this section—

*conviction*, for an indictable offence, does not include being found guilty of an offence, on a plea of guilty or otherwise, without a conviction being recorded for the offence.

*insolvent under administration* see the Corporations Act, section 9.

## **109 Vacancy in office**

- (1) A member's office becomes vacant if the member—
  - (a) can not continue as a member under section 108; or
  - (b) resigns office under section 110; or
  - (c) is absent, without the board's permission, from 3 consecutive board meetings of which notice has been given.
- (2) Also, a member who is a Minister's consultation nominee is taken to have vacated office if the member becomes a person mentioned in section 102(3)(a).

## **110 Resignation**

- (1) A member may resign by signed notice given to the Minister.
- (2) The resignation takes effect on—
  - (a) the day the notice is given; or
  - (b) if a later day is stated in the notice—the later day.

## **111 Leave of absence**

- (1) The Minister may—
  - (a) approve a leave of absence for a member; and
  - (b) appoint another person to act in the office of the member during the leave of absence.

- (2) Subsection (1) does not limit the Governor in Council's powers under the *Acts Interpretation Act 1954*, section 25(1)(b)(v).
- (3) If the Minister approves a leave of absence for the deputy chairperson, the board may appoint another member to be the deputy chairperson during the leave of absence.

## **Division 4                      Criminal history**

### **112      Criminal history report**

- (1) To decide if a person is disqualified from becoming or continuing as a member, the Minister may ask the commissioner of the police service for—
  - (a) a written report about the criminal history of the person; and
  - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (2) However, the Minister may make the request only if the person has given the Minister written consent for the request.
- (3) The commissioner of the police service must comply with the request.
- (4) The duty imposed on the commissioner of the police service to comply with the request applies only to information in the commissioner's possession or to which the commissioner has access.
- (5) The Minister must ensure the report and any other document or information given to the board by the commissioner of the police is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

### **113 Changes in criminal history must be disclosed**

- (1) If there is a change in the criminal history of a member, the member must immediately give notice of the change to the Minister, unless the member has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) The notice must include the following information—
  - (a) the existence of the conviction;
  - (b) when the offence was committed;
  - (c) details adequate to identify the offence;
  - (d) the sentence imposed on the member.
- (3) If a member does not have a criminal history, there is taken to be a change in the member's criminal history if the member acquires one.
- (4) In this section—

*criminal history*, of a member, means the member's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, to the extent the criminal history relates to indictable offences, other than spent convictions.

## **Division 5 Business and meetings**

### **114 Conduct of business**

Subject to this division, the board may conduct its business and hold meetings in the way the board decides.

### **115 Time and place of meetings**

- (1) Board meetings must be held at the times and places the chairperson decides.



- (2) However, the chairperson must call a meeting if asked, in writing, by the Minister or at least the number of members required to form a quorum for the meeting.
- (3) The board must meet as often as necessary for it to perform its functions.
- (4) Without limiting subsection (3), the board must meet at least 4 times a year.

## **116 Quorum**

A quorum for a board meeting is a majority of the members at the time the meeting is held.

## **117 Conduct of meetings**

- (1) A question at a board meeting must be decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided.
- (3) A member who abstains from voting, other than a member who abstains because of a conflict of interest, is taken to have voted for the negative.
- (4) If the votes of the members present at the meeting are equal, the chairperson has a casting vote.
- (5) The board may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.
- (6) A member who takes part in a meeting of the board under subsection (5) is taken to have been present at the meeting.
- (7) A resolution is validly made by the board, even if it is not passed at a board meeting, if—
  - (a) notice of the resolution is given under procedures approved by the board; and

- (b) a majority of members agree in writing to the resolution.

### **118 Attendance by proxy**

- (1) A member may attend a board meeting by proxy.
- (2) A member is not entitled to preside at a meeting merely because the member is the proxy holder for another member who, if present, would be entitled to preside.

### **119 Disclosure of interest**

- (1) This section applies to a member if—
  - (a) the member has a direct or indirect financial or personal interest in a matter being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper performance of the member's duties for considering the matter.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a board meeting.
- (3) The disclosure must be recorded in the board's minutes.
- (4) Unless the board otherwise decides, the member must not—
  - (a) be present when the board considers the matter; or
  - (b) take part in a decision of the board about the matter.
- (5) The member must not be present when the board is considering its decision under subsection (4).
- (6) Another member who also has a direct or indirect financial or personal interest in the matter must not—
  - (a) be present when the board is considering its decision under subsection (4); or
  - (b) take part in making the decision.
- (7) Subsection (8) applies if—

- (a) because of this section, a member is not present at a board meeting for considering a matter, or for considering a decision under subsection (4); and
  - (b) there would be a quorum if the member were present.
- (8) The members present are a quorum of the board for considering the matter, or for considering a decision under subsection (4), at the meeting.

## **Division 6                      Administrative support of board**

### **120      Administrative support**

The chief executive must ensure the board has the administrative support services reasonably required for the board to perform its functions effectively and efficiently.

## **Division 7                      Interaction between Minister and board**

### **121      Minister may refer matter to board**

- (1) If the Minister considers there is a matter about the accreditation of schools or the eligibility of governing bodies of schools for government funding the board should examine, the Minister may, by notice, refer the matter to the board for its examination.
- (2) The Minister may, in the notice, ask the board to give the Minister a written report about the matter after completing the examination.
- (3) If the notice includes a request by the Minister for a report, the board must, as soon as practicable after completing the examination, give the Minister a written report about the matter.

- (4) The report may include a recommendation about making a change in relation to the accreditation of schools or the eligibility for government funding under this Act.

## **122 Minister may ask board to reassess governing body's eligibility for government funding**

- (1) If the Minister is satisfied a school's governing body's eligibility for government funding for the school should be reassessed, the Minister may, by notice, ask the board to reassess the eligibility.
- (2) If the Minister gives the board a notice under subsection (1), the board must reassess whether the board is satisfied the governing body meets the government funding eligibility criteria.
- (3) For carrying out the reassessment, sections 81(1) and (2) and 85 apply as if a reference in sections 81(1) and 85(1) to the application were a reference to whether the board is satisfied the governing body meets the government funding eligibility criteria.
- (4) The Minister may, in the notice, ask the board to give the Minister a written report about the matter after completing the reassessment.
- (5) If the notice includes a request by the Minister for a report, the board must, as soon as practicable after completing the reassessment, give the Minister a written report about the reassessment.

## **123 Minister's power to give directions in the public interest**

- (1) The Minister may give the board a written direction about a matter relevant to the performance of the board's functions under this Act if the Minister is satisfied it is necessary to give the direction in the public interest.
- (2) Without limiting subsection (1), the direction may be that the board must comply with—

- (a) a policy, standard or other instrument applying to a public sector unit; or
  - (b) another document, including, for example, another policy, standard or instrument.
- (3) The board must comply with the direction.
- (4) The direction can not be about—
- (a) the accreditation of a particular school; or
  - (b) changing the attributes of accreditation of a particular school; or
  - (c) cancelling the accreditation of a particular school; or
  - (d) a decision of the board about the amalgamation or division of a school under chapter 2, part 5; or
  - (e) a decision of the board about the eligibility of a particular school’s governing body for government funding.
- (5) In the board’s annual report for a financial year, under the *Financial Accountability Act 2009*, the board must include copies of all directions given to it under this section during the financial year.

## **124 Minister may require information or documents**

- (1) The Minister may, by notice, ask the board to do the following within a stated reasonable period and in a stated reasonable way—
- (a) give the Minister relevant information in the board’s knowledge about a stated matter;
  - (b) give the Minister, or make available for inspection by the Minister, a relevant document or copy of a relevant document about a stated matter in the board’s possession or control.
- (2) The board must comply with the request.

- (3) If a document is given to the Minister, the Minister may keep the document to copy it and must return the document to the board as soon as practicable after copying it.
- (4) The Minister may disclose the information, or give the document or copy of the document, to an entity the Minister considers appropriate to help the Minister assess a matter relevant to the way the board is carrying out its functions.
- (5) In this section—  
*relevant*, in relation to information or a document, means relating to the board's powers or functions under this Act.

## **125 Notice to Minister about action taken in relation to a grammar school**

- (1) This section applies if the board gives any of the following notices under this Act to the governing body of a grammar school—
  - (a) a compliance notice;
  - (b) a show cause notice;
  - (c) a notice under section 69(b);
  - (d) an information notice about a decision to cancel the school's accreditation.
- (2) The board must also give a copy of the notice to the Minister.

## **Division 8 Register of accredited schools**

### **126 Register to be kept**

- (1) The board must keep a register about accredited schools.
- (2) The register may be kept in the way the board considers appropriate, including, for example, in an electronic form.
- (3) The register must contain the following information for each accredited school—

- (a) the school's name;
- (b) the day of its accreditation;
- (c) the student-intake day for each type of education the school may provide under the school's accreditation;
- (d) if the school is an establishment phase school for a year of schooling—the student-intake day for the year of schooling;
- (e) the attributes of accreditation of the school;
- (f) details of the type of education that may be provided at the school;
- (g) whether the governing body for the school is eligible for government funding;
- (h) other information prescribed by regulation.

## **127 Inspection of register**

The board must—

- (a) keep the register open for inspection, on payment of the fee prescribed by regulation, at the board's office by members of the public during ordinary office hours; and
- (b) give a person a copy of the register, or a part of it, on payment of the fee prescribed by regulation.

## **Division 9 Information sharing arrangements**

### **128 Board may enter into information sharing arrangement**

- (1) This section applies only to the extent—
  - (a) another provision of this Act allows the board to give information to the chief executive (employment screening); or

- (b) a provision of the *Working with Children (Risk Management and Screening) Act 2000* allows the chief executive (employment screening) to give information to the board.
- (2) The board and the chief executive (employment screening) may enter into a written arrangement by which the information is given or received.
- (3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information.
- (4) However, if the information is to be electronically transferred and, under this Act or the *Working with Children (Risk Management and Screening) Act 2000*, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.
- (5) In this section—
- chief executive (employment screening)* means the chief executive of the department in which the *Working with Children (Risk Management and Screening) Act 2000* is administered.

## Part 2                      **Authorised persons**

### Division 1                **Functions and appointment**

#### **129      Functions of authorised persons**

- (1) An authorised person has the functions of finding out the following—
- (a) whether an accredited school is complying with the accreditation criteria;



- (b) whether the governing body, or proposed governing body, of a school is, or continues to be, suitable to be the school's governing body;

*Note—*

See section 26 for suitability of governing body.

- (c) whether a special assistance school providing special assistance at a temporary site is complying with the temporary site criteria;
- (d) in relation to a school the governing body of which is eligible for government funding for the school—
- (i) whether the school is being operated for profit; or
  - (ii) whether the governing body of the school is a party to a prohibited arrangement in relation to the operation of the school; or
  - (iii) whether there is a direct or indirect connection between the governing body of the school and another entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions;
- (e) in relation to the governing body of an accredited school that is applying to be eligible for government funding for the school—
- (i) whether the school is being operated for profit; or
  - (ii) whether the governing body is a party to, or intends to enter into, a prohibited arrangement in relation to the operation of the school;
  - (iii) whether there is a direct or indirect connection between the governing body of the school and another entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions.

- (2) An authorised person's functions also include—

- (a) verifying school survey data relating to an accredited school; and
- (b) investigating offences under this Act; and
- (c) another function given to the authorised person under this Act or another Act.

### **130 Appointment and qualifications**

- (1) The board may, by instrument in writing, appoint a person as an authorised person if the board is satisfied the person is—
  - (a) appropriately qualified to be an authorised person; and
  - (b) a suitable person to perform 1 or more of the functions of an authorised person.
- (2) A person is not a suitable person to perform the functions of an authorised person if the person does not have a working with children authority.
- (3) Subsection (2) does not limit the matters to which the board may have regard in considering the suitability of a person to perform the functions of an authorised person.

### **131 Appointment conditions**

- (1) An authorised person holds office on the conditions stated in the authorised person's instrument of appointment.
- (2) The instrument of appointment may limit the authorised person's functions or powers.

### **132 When office ends**

- (1) The office of a person as an authorised person ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;

- (c) the authorised person's resignation under section 133 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised person ends.
- (3) In this section—  
*condition of office* means a condition under which the authorised person holds office.

### **133 Resignation**

- (1) An authorised person may resign by signed notice given to the board.
- (2) The resignation takes effect on—
  - (a) the day the notice is given; or
  - (b) if a later day is stated in the notice—the later day.

## **Division 2 Identity cards**

### **134 Issue of identity card**

- (1) The board must issue an identity card to each authorised person.
- (2) The identity card must—
  - (a) contain a recent photograph of the authorised person; and
  - (b) contain a copy of the authorised person's signature; and
  - (c) identify the person as an authorised person under this Act; and
  - (d) state an expiry date for the card.

### **135 Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an authorised person must—
  - (a) produce the authorised person's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to a person only because the authorised person has entered a place under section 139(1)(b) or 141.

### **136 Return of identity card**

If the office of a person as an authorised person ends, the person must return the person's identity card to the chairperson within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

## **Division 3 Entry of places by authorised persons**

### **Subdivision 1 Power to enter accredited school's premises**

#### **137 Power to enter accredited school's premises**

An authorised person may enter an accredited school's premises, during ordinary office hours, after complying with section 138.

### **138 Notice of entry**

- (1) If an authorised person wishes to enter an accredited school's premises, the authorised person must give the school's governing body a notice advising the governing body of—
  - (a) the purpose of the entry; and
  - (b) the day on which the entry is proposed.
- (2) If the authorised person is performing a function mentioned in section 129(2)(a) or (b), there must be at least 1 day between the day the notice is given to the governing body and the day on which entry is proposed.
- (3) If the authorised person is performing a function other than a function mentioned in section 129(2)(a) and (b), the day on which entry is proposed must not be less than 7 days after the day the notice is given to the governing body.
- (4) In deciding the period of notice to be given before entering the school's premises, the authorised person must have regard to the circumstances of the proposed entry.

## **Subdivision 2 Power to enter places other than accredited school's premises**

### **139 Power to enter places other than accredited school's premises**

- (1) An authorised person may enter a place, other than an accredited school's premises, for carrying out a function if—
  - (a) an occupier of the place consents under subdivision 3 to the entry and section 142 has been complied with for the occupier; or
  - (b) it is a public place and the entry is made when the place is open to the public; or

- (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 149 has been complied with for the occupier.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

### **Subdivision 3      Entry by consent**

#### **140      Obtaining consent of occupier**

This subdivision applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 139(1)(a).

#### **141      Incidental entry to ask for access**

For the purpose of asking an occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

#### **142      Matters authorised person must tell occupier**

Before asking for the consent, the authorised person must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

### **143 Consent acknowledgement**

- (1) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the authorised person or another authorised person consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (4) If—
  - (a) an issue arises in a proceeding before a court or the board about whether the occupier of the place consented to the entry; and
  - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **Subdivision 4      Entry under warrant**

### **144      Application for warrant**

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The authorised person must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by a statutory declaration.

### **145      Issue of warrant**

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence about a matter being investigated by the authorised person.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised person or any authorised person may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry; and



- (ii) exercise the authorised person's powers under this division; and
- (c) particulars of the matter being investigated that the magistrate considers appropriate; and
- (d) the evidence that may be seized under the warrant; and
- (e) the hours of the day or night when the place may be entered; and
- (f) the magistrate's name; and
- (g) the day and time of the warrant's issue; and
- (h) the day, within 14 days after the warrant's issue, the warrant ends.

#### **146 Electronic application**

- (1) An application under section 144 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) The application—
  - (a) may not be made before the authorised person prepares the written application under section 144(2); but
  - (b) may be made before the written application is sworn.

#### **147 Additional procedure if electronic application**

- (1) For an application made under section 146, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 146; and

- (b) the way the application was made under section 146 was appropriate.
- (2) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised person the information mentioned in section 145(2); and
    - (ii) the authorised person must complete a form of warrant including by writing on it the information mentioned in section 145(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 144(2) and (3); and
  - (b) if the authorised person completed a form of warrant under subsection (2)(b)—the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(7) This section does not limit section 144.

(8) In this section—

*relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

#### **148 Defect in relation to a warrant**

(1) A warrant is not invalidated by a defect in—

(a) the warrant; or

(b) compliance with sections 144 to 146;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

*warrant* includes a duplicate warrant mentioned in section 147(3).

#### **149 Entry procedure**

(1) This section applies if an authorised person is intending to enter a place under a warrant issued under this subdivision.

(2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing the

- authorised person's identity card or another document evidencing the authorised person's appointment;
- (b) give the person a copy of the warrant;
  - (c) tell the person the authorised person is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 147(3).

## Division 4            General powers after entry

### 150    Application of division

- (1) This division applies to an authorised person who enters a place under section 137 or 139.
- (2) However, if the authorised person enters under section 139(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

### 151    General powers

- (1) The authorised person may do any of the following (each a *general power*) for a relevant purpose—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;

- (c) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (d) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (e) take to, into or onto the place any person, equipment and materials the authorised person reasonably requires for exercising a power under this part.
- (2) Also, if the authorised person is performing a function mentioned in section 129(2)(a), the authorised person may physically verify—
- (a) for a school offering classroom education—that certain students enrolled for classroom education at the school are attending the school; or
  - (b) for a school offering distance education—that certain students enrolled for distance education at the school are undertaking the education.
- (3) The authorised person may take a necessary step to allow the exercise of a general power.
- (4) If the authorised person takes a document from the place to copy it, the authorised person must copy the document and return it to the place as soon as practicable.
- (5) If the authorised person takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised person must produce the document and return the article or device to the place as soon as practicable.
- (6) In this section—
- examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
- film* includes photograph, videotape and record an image in another way.

*inspect*, a thing, includes open the thing and examine its contents.

*relevant purpose* means—

- (a) for an investigation for the preparation of a report under this Act—relevant to the matter being investigated; or
- (b) for another investigation—monitoring compliance with this Act.

## **152 Power to require reasonable help**

- (1) The authorised person may make a requirement (a *help requirement*) of a school's governing body, an occupier of the place or a person at the place, to give the authorised person reasonable help to exercise a general power, including, for example, to produce a document or to give information relevant to the matter being investigated.
- (2) When making the help requirement, the authorised person must warn the person to whom the requirement is made that, without a reasonable excuse, it is an offence for the person not to comply with the requirement.

## **153 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

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## Division 5                      Power to require information

### 154      Power to require information

- (1) This section applies if—
  - (a) an authorised person is performing a function under this Act; and
  - (b) a person may be able to give information to help the authorised person perform the function.
- (2) The authorised person may, by notice given to the person, require the person to—
  - (a) give the authorised person stated information reasonably required for performing the function at a stated reasonable time; or
  - (b) create, and give the authorised person, a document containing information reasonably required for performing the function at a stated reasonable time.
- (3) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.
- (4) In this section—

***government entity*** means a government entity under the *Public Service Act 2008*, section 24.

***information*** includes a document or a copy of a document.

***person*** does not include a government entity, other than a board of trustees for a grammar school.

### 155      Offence to contravene information requirement

- (1) A person of whom a requirement is made under section 154(2)(a) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with the requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

## **156 Custody of document given to authorised person**

- (1) If a document or other thing is given to an authorised person under this division, the authorised person may—
- (a) keep the document or thing for a reasonable period for performing the function for which the document or thing is given; and
  - (b) if it is a document, take extracts from it and make copies of it.
- (2) While the authorised person has possession of the document or other thing, the authorised person must allow it to be inspected at any reasonable time by a person who would have the right to inspect it if it were not in the authorised person's possession.

## **Division 6 Seizure by authorised persons and forfeiture**

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

#### **157 Seizing evidence at a place that may be entered without consent or warrant**

An authorised person who enters a place under this Act without the consent of an occupier of a place and without a warrant may seize a thing at the place if the authorised person reasonably believes the thing is—

- (a) relevant to—
  - (i) a report being prepared by the authorised person under this Act; or



- (ii) an investigation being carried out by the authorised person; or
- (b) evidence of an offence against this Act.

**158 Seizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
  - (a) an authorised person is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised person enters the place after obtaining the consent or under a warrant.
- (2) If the authorised person enters the place with the occupier’s consent, the authorised person may seize a thing at the place only if—
  - (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier’s consent.
- (3) If the authorised person enters the place under a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person may also seize anything else at the place if—
  - (a) the authorised person reasonably believes the thing is—
    - (i) relevant to a report being prepared by the authorised person under this Act; or
    - (ii) relevant to an investigation being carried out by the authorised person; or
    - (iii) evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—

- (i) hidden, lost or destroyed; or
- (ii) used to continue, or repeat, an offence.

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

### **159 Power to secure seized thing**

- (1) Having seized a thing under subdivision 1, an authorised person may—
  - (a) leave the thing at the place where it was seized and take reasonable action to restrict access to it; or
  - (b) move the thing from the place where it was seized.
- (2) For subsection (1)(a), the authorised person may, for example, seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted.

### **160 Offence to interfere**

- (1) If access to a seized thing is restricted under section 159, a person must not tamper with the thing or with anything used to restrict access to the thing without—
  - (a) an authorised person's approval; or
  - (b) a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If access to a place is restricted under section 159, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—
  - (a) an authorised person's approval; or
  - (b) a reasonable excuse.

Maximum penalty—50 penalty units.

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

### **161      Receipt for seized thing**

- (1) This section applies if an authorised person seizes anything under this division unless—
  - (a) the authorised person reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or
  - (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised person to comply with this section.
- (2) The authorised person must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized a receipt for the thing that generally describes the thing and its condition.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt may be given by leaving it in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt may relate to more than 1 seized thing.

### **162      Access to seized things**

- (1) Until a seized thing is forfeited or returned, an authorised person must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

### **163 Return of seized thing**

- (1) This section applies if a seized thing is not forfeited.
- (2) The authorised person must return it to its owner—
  - (a) generally—at the end of 6 months after the seizure; or
  - (b) if proceedings involving the thing are started within 6 months, at the end of the proceedings and any appeal from the proceedings.
- (3) Despite subsection (1), if the thing was seized as evidence, the authorised person must return the thing seized to an owner as soon as practicable after the authorised person is satisfied its continued retention as evidence is no longer necessary.

## **Subdivision 4 Forfeiture**

### **164 Forfeiture of seized things**

- (1) The board may decide a seized thing is forfeited to the board if the authorised person who seized the thing—
  - (a) after making reasonable inquiries, can not find its owner; or
  - (b) after making reasonable efforts, can not return it to its owner.
- (2) However, the authorised person is not required to—
  - (a) make inquiries if it would be unreasonable to make inquiries to find the owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to the thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and

- (b) if inquiries or efforts are to be made—what inquiries or efforts, including the period over which they are made, are reasonable.

### **165 Dealing with forfeited things**

- (1) On the forfeiture of a thing to the board, the thing becomes the board's property and may be dealt with by the board as the board considers appropriate.
- (2) Without limiting subsection (1), the board may destroy or otherwise dispose of the thing.

## **Part 3 Reviews and proceedings**

### **166 Who may apply for review**

A governing body of a school that is given, or is entitled to be given, an information notice about a decision may apply to QCAT for a review of the decision.

### **167 Summary proceedings for offences**

- (1) Proceedings for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

## Chapter 5      Miscellaneous

### 168      School survey data

- (1) The governing body of an accredited school must give the board details about the school prescribed by regulation (*school survey data*).
- (2) The school survey data must—
  - (a) relate to the day prescribed by regulation (the *relevant day*); and
  - (b) be in the approved form.
- (3) The school survey data must be given within 7 days after the relevant day.

### 169      Notification of change in circumstances

- (1) The governing body of an accredited school must, within 7 days after the happening of each of the following events, give the board notice of the event—
  - (a) the closure of the school;
  - (b) the school stops offering a year of schooling for which it is accredited;
  - (c) the governing body is affected by control action under the Corporations Act;
  - (d) if the governing body is eligible for government funding for the school—the school starts to be operated for profit;
  - (e) any other change in the governing body's, or school's, circumstances prescribed by regulation.

Maximum penalty—20 penalty units.

- (2) For subsection (1)(c), the governing body is affected by control action under the Corporations Act if the governing body—

- (a) has executed a deed of company arrangement under the law; or
  - (b) is the subject of a winding-up (whether voluntarily or under a court order) under that Act; or
  - (c) is the subject of an appointment of an administrator, liquidator, receiver or receiver and manager under that Act.
- (3) The governing body must, within 28 days after a person becomes a director, other than a declared director, of the governing body give the board a notice—
- (a) stating—
    - (i) the name of the person; and
    - (ii) the date the person was appointed as a director; and
  - (b) accompanied by a copy of a working with children card for the person.

Maximum penalty—20 penalty units.

- (4) If the governing body is a RECI Act corporation, the governing body must, within 28 days after a person is validly nominated as a director of the governing body under section 9(b)(ii), give the board a notice, signed by each declared director for the time being of the governing body—
- (a) stating—
    - (i) the name of the nominated person; and
    - (ii) the date of the nomination; and
  - (b) accompanied by a copy of a working with children card for the person.

Maximum penalty—20 penalty units.

- (5) The governing body must, within 28 days after a person ceases to be a director, give the board a notice stating—
- (a) the name of the person; and
  - (b) the date the person ceased to be a director.

Maximum penalty—20 penalty units.

### **170 Periodic demonstration of compliance**

- (1) The board may, once every 5 years during a school's accreditation, give the school's governing body a notice asking the governing body to give the board information or a document that may help the board in deciding whether—
  - (a) the governing body is, or continues to be, suitable to be the school's governing body; or
  - (b) the school is complying with the accreditation criteria.
- (2) The governing body must comply with the request within 6 months after receiving the notice.

### **171 Periodic demonstration of eligibility for government funding**

- (1) This section applies to the governing body of an accredited school that is eligible for government funding for the school.
- (2) The board may, once every 5 years during the school's accreditation, give the governing body a notice asking the governing body to give the board information or a document that may help the board reassess whether the board is satisfied the governing body meets the government funding eligibility criteria.
- (3) The governing body must comply with the request within 6 months after receiving the notice.
- (4) This section does not limit section 122.

### **172 Disclosure of details of indictable offence**

- (1) Subsection (2) applies to a person who—
  - (a) becomes a director of the governing body of an accredited school; and
  - (b) has a criminal history.



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- (2) The person must, within 7 days after becoming a director of the governing body, give the board a notice stating—
- (a) the name, address and date of birth of the person; and
  - (b) details of any indictable offence included in the criminal history.

Maximum penalty—20 penalty units.

- (3) Subsection (6) applies if a director of the governing body of an accredited school is convicted of an indictable offence.
- (4) Subsection (6) also applies if—
- (a) an application is made to the board for the accreditation of a school and the application has not been decided; and
  - (b) a director of the school's governing body is convicted of an indictable offence.
- (5) In addition, subsection (6) applies if—
- (a) an application is made to the board under section 39 for a change in an accredited school's governing body and the application has not been decided; and
  - (b) a director of the proposed governing body of the school is convicted of an indictable offence.
- (6) The director must, within 7 days after the conviction, give the board a notice stating details of the indictable offence.

Maximum penalty—20 penalty units.

- (7) The board must ensure the notice and any other document or information given to the board under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

- (8) In this section—

***convicted***, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

*indictable offence* includes an indictable offence dealt with summarily.

### **173 Protection from civil liability**

- (1) The *Public Service Act 2008*, section 26C applies to a protected person who is not a State employee as if the person were a State employee for chapter 1, part 3, division 3 of that Act.
- (2) If the *Public Service Act 2008*, section 26C prevents civil liability attaching to a protected person, section 26C(2)(b) of that Act does not apply in relation to the person.
- (3) In this section—  
*protected person* means any of the following persons—
  - (a) a member of the board;
  - (b) an authorised person;
  - (c) a member of a committee established by the board.

### **174 Publication of information identifying school operating without accreditation**

- (1) If the board, honestly and on reasonable grounds, believes a school is being operated without accreditation, the board may publish information that identifies, or is likely to lead to the identification of, the school.
- (2) The board and the board members are not liable, civilly, criminally or under an administrative process, for publishing the information.
- (3) Without limiting subsection (2)—
  - (a) in a proceeding for defamation, the board and each member has a defence of absolute privilege for publishing the information; and
  - (b) if the board or a member would otherwise be required to maintain confidentiality about the published information under an Act, oath, rule of law or practice—the board or

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member does not contravene the requirement by publishing the information.

### **175 False or misleading information or documents**

- (1) A person must not give information to the board the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

- (2) A person must not give the board a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—20 penalty units.

- (3) Subsection (2) does not apply to a person if the person, when giving the document—

- (a) tells the board, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **176 Confidentiality of information**

- (1) This section applies to the following persons—

- (a) a person who is, or was, the Minister;
- (b) a person who is, or was, a member;
- (c) a person who is, or was, a member of a committee established by the board or the previous board;
- (d) a person who is, or was, an authorised person;
- (e) another person who is, or was, involved in the administration of this Act, including, for example, as a public service employee.

- (2) The person must not disclose protected information if—

- (a) the disclosure would be likely to adversely affect the commercial interests of the person to whom the information relates; or
  - (b) the information is about a child and identifies, or is likely to identify, the child; or
  - (c) the information is about someone else's criminal history.
- Maximum penalty—50 penalty units.
- (3) Subsection (2) does not apply if—
- (a) the information is disclosed—
    - (i) in the performance of functions under this Act; or
    - (ii) with the written consent of—
      - (A) if the person to whom the information relates is not a child—the person; or
      - (B) if the person to whom the information relates is a child—a parent or guardian of the child; or
    - (iii) to the person to whom the information relates; or
  - (b) the information is otherwise publicly available; or
  - (c) the information is given in both the following circumstances—
    - (i) the chief executive gives the information to the Commonwealth or another State, or an entity of the Commonwealth or another State, under an agreement with the Commonwealth, other State or entity;
    - (ii) the chief executive is satisfied the giving of the information is in the public interest; or
  - (d) the information is disclosed to the chief executive to allow the chief executive to act under paragraph (c); or
  - (e) the information is disclosed to a law enforcement agency and the person is reasonably satisfied the disclosure is necessary for the prevention, detection,

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- investigation, prosecution or punishment of a criminal offence or a breach of a law imposing a penalty or sanction; or
- (f) the information is disclosed to a court for the purposes of the prosecution of a person for an offence in any jurisdiction; or
  - (g) the disclosure of the information is authorised or permitted under an Act or required by law.
- (4) The Commonwealth, another State or an entity that receives information under subsection (3)(c)—
- (a) must not give the information to anyone else; and
  - (b) must ensure the information is used only for the purpose for which it was given.
- (5) In this section—

*information* includes a document.

*law enforcement agency* see the *Information Privacy Act 2009*, schedule 5, definition *law enforcement agency*, paragraph (a).

*protected information* means information disclosed to, or obtained by, a person to whom this section applies in the course of performing, or because of, the person's functions under this Act.

## **177 Impersonating authorised person**

A person must not impersonate an authorised person.

Maximum penalty—100 penalty units.

## **178 Approval of forms**

The board may approve forms for use under this Act.

## 179 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about fees, including the refunding of fees, for this Act.

# Chapter 6 Repeal and transitional provisions

## Part 1 Repeal

### 180 Repeal

The Education (Accreditation of Non-State Schools) Act 2001, Act No. 60 is repealed.

## Part 2 Transitional provisions

### 181 Definitions for part

In this part—

*funding decision* means a decision of the Minister under repealed section 88.

*new board* means the board as continued in existence under section 97(1).

*repealed*, in relation to a section, means the section of the repealed Act.

*repealed Act* means the *Education (Accreditation of Non-State Schools) Act 2001* as in force before the commencement.

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**182 Continuation of things done by or in relation to previous board**

- (1) A thing done by or in relation to the previous board before the commencement is taken to be a thing done by or in relation to the new board.
- (2) Without limiting subsection (1)—
  - (a) an appointment of a member of the previous board is taken to be an appointment to the new board; and
  - (b) any part of a term served by a person as a member of the previous board before the commencement is included in the term for which the person is taken to have been appointed as a member of the new board.

*Example for subparagraph (b)—*

A person was appointed as a member of the previous board for a term of 3 years. At the commencement, the person had served 2 years as a member of the previous board. The person is taken to have been appointed to the new board for a term of 3 years, and is taken to have already served 2 years of that term.

- (c) a guideline made by the previous board is taken to have been made by the new board.

**183 Applications for accreditation made but not decided**

- (1) This section applies to an application for accreditation for a school—
  - (a) made by the governing body of the school under the repealed Act; and
  - (b) about which, at the commencement, the previous board had not made a decision under repealed section 18 or 19.
- (2) The application—
  - (a) is taken to have been made under section 18(1); and
  - (b) must be decided under this Act.
- (3) If an application does not include details of an attribute of accreditation of the school mentioned in section 19(4) (the

*additional information*), the governing body of the school must give the board the additional information.

- (4) If the governing body does not give the additional information to the board within 3 months after the commencement, the governing body is taken to have withdrawn the application.

## **184 Applications for government funding made but not decided**

- (1) This section applies to an application for government funding for a school made, or taken to have been made, by the governing body of the school under the repealed Act if, at the commencement, the Minister had not decided the application under repealed section 88.
- (2) The application—
  - (a) is taken to be an application by the governing body to be eligible for government funding for the school under section 78(1); and
  - (b) must be decided under this Act.
- (3) The board must publish a notice about the application in a newspaper circulating throughout the school's catchment area stating—
  - (a) the application is to be decided under chapter 3, part 2; and
  - (b) that, under those provisions, the board is not required to consider any submissions made about the application under the repealed Act.
- (4) In this section—

*catchment area* means

- (a) for a school that is in operation—the geographical area in which at least 80% of the school's students reside; or
- (b) for a school that is not in operation—the geographical area in which at least 80% of the school's prospective students are likely to reside.



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## 185 Continuation of accreditations under repealed Act

- (1) This section applies to a school that, immediately before the commencement, was an accredited school under the repealed Act.
- (2) The school is taken to be an accredited school under this Act.
- (3) The attributes of accreditation of the school are taken to be the same as the attributes of accreditation of the school under the school's previous accreditation.
- (4) However, if the school was accredited to provide a sector of schooling under the school's previous accreditation—
  - (a) the school is taken to be accredited under this Act to provide each year of schooling within the sector of schooling; and
  - (b) the student-intake day for each year of schooling is taken to be the first day of education of students at the school for the year of schooling under the school's previous accreditation.
- (5) The board must, as soon as practicable—
  - (a) give the school a notice stating the details for the school required to be included in the register under section 126(3); and
  - (b) update the register to include the details for the school mentioned in section 126(3).
- (6) Section 30 does not apply to a school taken to be an accredited school under this section.
- (7) In this section—

***previous accreditation***, of a school, means the accreditation of the school under the repealed Act.

***sector of schooling*** means a sector of schooling a school was accredited to provide under the repealed Act.

**186 Governing bodies taken to be eligible for government funding**

- (1) This section applies to a governing body of a school that, immediately before the commencement, was eligible for government funding for the school under the repealed Act.
- (2) The governing body of the school is taken to be eligible for government funding for the school under this Act.

**187 Effect of provisional accreditations under repealed Act**

- (1) This section applies to a school that, immediately before the commencement, was a provisionally accredited school under the repealed Act.
- (2) The school is taken to be an accredited school under this Act.
- (3) The attributes of accreditation for the school are taken to be the same as the attributes of accreditation for the school under the school's previous provisional accreditation.
- (4) However, if the school was provisionally accredited to provide a sector of schooling under the school's previous provisional accreditation—
  - (a) the school is taken to be accredited under this Act to provide each year of schooling within the sector of schooling; and
  - (b) the student-intake day for each year of schooling is taken to be the first day of education of students at the school for the year of schooling under the school's previous provisional accreditation.
- (5) The board must, as soon as practicable—
  - (a) give the school a notice stating the details for the school required to be included in the register under section 126(3); and
  - (b) update the register to include the details for the school mentioned in section 126(3).
- (6) In this section—

*previous provisional accreditation*, of a school, means the provisional accreditation of the school under the repealed Act.

*sector of schooling* means any of the following groups of years of schooling—

- (a) preparatory year to year 3;
- (b) years 4 to 6;
- (c) years 7 to 10;
- (d) years 11 and 12.

**188 Assessment of provisionally accredited schools if initial assessment not started under repealed Act**

- (1) This section applies to a school if—
  - (a) immediately before the commencement, the school was a provisionally accredited school under the repealed Act; and
  - (b) at the commencement—
    - (i) the earliest of the school’s student intake days has passed; and
    - (ii) the board has not started an initial assessment under repealed section 32.
- (2) For applying section 30, a reference in section 30(2) to the student-intake day for the type of education is taken to be a reference to the commencement.

- (3) In this section—

*student-intake day* means a student-intake day for a type of education that applied for the school under the school’s provisional accreditation under the repealed Act.

**189 Assessment of provisionally accredited schools if further assessment not started under repealed Act**

- (1) This section applies to a school if—

- (a) immediately before the commencement—
    - (i) the school was a provisionally accredited school under the repealed Act; and
    - (ii) the school was operating under a provisional accreditation extended under repealed section 34(2); and
  - (b) at the commencement, the board has not started a further assessment of the school under repealed section 34.
- (2) For applying section 30, a reference in section 30(2) to the student-intake day for the type of education is taken to be a reference to the commencement.

#### **190 Assessment of provisionally accredited schools if initial or further assessment started under repealed Act**

- (1) This section applies to a school if—
- (a) immediately before the commencement, the school was a provisionally accredited school under the repealed Act; and
  - (b) at the commencement, the board—
    - (i) has started an assessment under repealed section 32 or 34; and
    - (ii) has not decided the school's application for accreditation under repealed section 27.
- (2) The assessment—
- (a) is taken to have been started under section 30; and
  - (b) must be continued under this Act.

#### **191 Compliance notices not complied with at commencement**

- (1) This section applies to a compliance notice given to the governing body of a school by the previous board under repealed section 61(2) if—

- (a) the compliance notice was given to the governing body before the commencement; and
  - (b) at the commencement, the governing body has not complied with the compliance notice.
- (2) The compliance notice is taken to have been given to the governing body by the board under section 62(3).

**192 Show cause processes about accreditation not finally dealt with**

- (1) This section applies if—
- (a) the previous board had given a show cause notice mentioned in repealed section 58A(2) or 64(2) to the governing body of a school; and
  - (b) immediately before the commencement, the board had not finally dealt with the matters relating to the show cause notice (the *show cause process*).
- (2) The show cause notice is taken to have been given to the governing body by the board under section 67(2).
- (3) The show cause process must continue under this Act.

**193 Show cause process about eligibility for government funding not finally dealt with**

- (1) This section applies if—
- (a) the previous board had given a show cause notice mentioned in repealed section 94(2) to the governing body of a school; and
  - (b) immediately before the commencement, the board had not finally dealt with the matters relating to the show cause notice (the *show cause process*).
- (2) The show cause notice is taken to have been given to the governing body by the board under section 90(2).
- (3) The show cause process must continue under this Act.

#### **194 Reviews of funding decisions not finally dealt with**

- (1) This section applies if—
  - (a) a person had applied for the review of a funding decision under repealed section 101 (the *review*); and
  - (b) immediately before the commencement, the Minister had not finally dealt with the review.
- (2) The Minister is taken to have decided to substitute the funding decision with a decision that the governing body is eligible for government funding.

#### **195 Reviews of other decisions not finally dealt with**

- (1) This section applies if—
  - (a) a person had applied for the review of a decision, other than a funding decision, under repealed section 101 (the *review*); and
  - (b) immediately before the commencement, the Minister had not finally dealt with the review.
- (2) The repealed Act, chapter 4, continues to apply for dealing with the review as if the chapter had not been repealed.

#### **196 Effect of information notices given under repealed Act**

- (1) This section applies if, at the commencement—
  - (a) a person has been given an information notice about a decision, other than a funding decision, under the repealed Act; and
  - (b) the period within which the person may apply for a review of the decision under the notice has not ended; and
  - (c) the person has not applied to have the decision reviewed.

- (2) The repealed Act, chapter 4, continues to apply as if the chapter had not been repealed.

### **197 Ineligible company**

- (1) This section applies if—
- (a) a school's governing body was, immediately before the commencement, eligible for government funding for the school; and
  - (b) the governing body was, immediately before the commencement, an ineligible company.
- (2) While the governing body is an ineligible company and, except for section 10(a), it continues to meet the government funding eligibility criteria, sections 10(a) and 89(1)(a) do not apply to the governing body in relation to the school.

## Schedule 1 Dictionary

### section 4

***accepted representation***—

- (a) for chapter 2, part 6, division 2—see section 67(3); or
- (b) for chapter 3, part 3, division 3—see section 90(3).

***accreditation***, of a school, means the accreditation of the school under section 21.

***accreditation criteria*** see section 11.

***accredited school*** means a school accredited by the board under section 21.

***accredited special assistance site***, for chapter 2, part 4, see section 48.

***amalgamated school***, for chapter 2, part 5, division 2, see section 55.

***amalgamating school***, for chapter 2, part 5, division 2, see section 55.

***approved form*** means a form approved by the board under section 178.

***attribute of accreditation***, of a school, means an attribute mentioned in section 19(4) for each type of education provided by the school.

***authorised person*** means a person who is appointed as an authorised person under section 130(1).

***board*** means the Non-State Schools Accreditation Board continued in existence under section 97(1).

***chairperson*** means the chairperson of the board under section 106(1).

***change***, in a school's governing body, means a change that results in the school having a different governing body.



**change day**, for chapter 2, part 3, division 2, subdivision 1, see section 40(5)(b).

**change notice**, for chapter 2, part 3, division 2, subdivision 1, see section 40(5).

**classroom education** means education in which the teacher providing the education and the students receiving the education are in each other's presence.

**company** see the Corporations Act, section 9.

**company limited by guarantee** see the Corporations Act, section 9.

**compliance notice**—

- (a) for chapter 2, part 6, divisions 1 and 2—see section 62(3); or
- (b) for chapter 3, part 3, divisions 2 and 3—see section 87(2).

**criminal history**, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

**declared director**, of a school's governing body that is a RECI Act corporation, means—

- (a) a person named in the letters patent for the governing body; or
- (b) a successor of a person mentioned in paragraph (a).

**deputy chairperson** means the deputy chairperson of the board appointed under section 107(1).

**director**, of a school's governing body, see section 9.

**distance education** see the *Education (General Provisions) Act 2006*, schedule 4.

**dividing school**, for chapter 2, part 5, division 3, see section 58.

**electronic document** means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

**eligible for government funding** see section 77.

**establishment phase school**, for a year of schooling, means an accredited school that—

- (a) may, under its accreditation, provide education for a year of schooling at a site; and
- (b) is yet to start to provide education for the year of schooling at the site.

**ineligible company** means a company that is not a company limited by guarantee.

**general power** see section 151(1).

**government funding**, for a school, means funding given by the State for any aspect of the operation of the school.

**grammar school** means a grammar school under the *Grammar Schools Act 2016*.

**help requirement** see section 152(1).

**information notice**, about a decision made by the board, means a notice complying with the *Queensland Civil and Administrative Tribunal Act 2009*, section 157(2).

**ISQ** means the Independent Schools Queensland Ltd ACN 614 893 140.

**letters patent**, for a school's governing body that is a RECI Act corporation, means the letters patent issued under the repealed *Religious Educational and Charitable Institutions Act 1861* establishing the governing body as a body corporate under that Act.

*Note—*

Letters patent under the repealed *Religious Educational and Charitable Institutions Act 1861* are continued in force under the *Associations Incorporation Act 1981*, section 144.

**meets the government funding eligibility criteria**, in relation to the governing body of a school, see section 10.

**member** means a member of the board appointed under section 102(2).

**Minister's consultation nominee** see section 102(1)(b).

*negative exemption notice ...*

*negative notice ...*

**non-State school** see section 6.

**notice** means a written notice.

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

**operated for profit**, in relation to a school, see section 7.

*positive exemption notice ...*

*positive notice ...*

**premises**, of a special assistance school, includes a temporary site at which the school provides special assistance under chapter 2, part 4.

**preparatory year** see the *Education (General Provisions) Act 2006*, schedule 4.

**previous board** means the Non-State Schools Accreditation Board established under repealed section 105 and in existence immediately before the commencement.

**primary education** see the *Education (General Provisions) Act 2006*, schedule 4.

**prohibited arrangement** see section 8.

**proposed decision** see section 90(2)(a).

**public place**, for chapter 2, part 4, see section 48.

**QCEC** means the Queensland Catholic Education Commission.

**RECI Act corporation** means a corporation that is incorporated under the repealed *Religious Educational and Charitable Institutions Act 1861*.

**register** means the register about accredited schools kept by the board under section 126.

**relevant attribute of accreditation**, for chapter 2, part 6, division 2, see section 64.

**relevant student-intake day**, for a school, for chapter 2, part 3, division 1, see section 34.

**school** see section 5.

**school survey data**, for a school, see section 168(1).

**secondary education** see the *Education (General Provisions) Act 2006*, schedule 4.

**separated school**, for chapter 2, part 5, division 3, see section 58.

**show cause notice**—

- (a) for chapter 2, part 6, divisions 1 and 2—see section 67(2); or
- (b) for chapter 3, part 4, divisions 2 and 3—see section 90(2).

**site**, for chapter 2, part 4, see section 48.

**special assistance** see section 14(3).

**special assistance school** means a school that is accredited to provide special assistance.

**special education** see the *Education (General Provisions) Act 2006*, schedule 4.

**spent conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and

- (b) that is not revived as prescribed by section 11 of that Act.

**State school** see the *Education (General Provisions) Act 2006*, schedule 4.

**student-intake day**—

- (a) for a type of education—means the first day of education of students at the school for the type of education under the school’s accreditation; or
- (b) for a year of schooling—means the first day of education of students at the school for the year of schooling under the school’s accreditation.

**temporary site**, for chapter 2, part 4, see section 48.

**temporary site criteria** see section 49(1).

**vehicle**, for chapter 2, part 4, see section 48.

**working with children authority** means a working with children authority under the *Working with Children (Risk Management and Screening) Act 2000* that is not suspended under that Act.