

## **AUSTRALIA EDUCATION (ACCREDITATION OF NON-STATE SCHOOLS) AND OTHER LEGISLATION AMMENDMENT BILL 2005**

### **Short Title**

The short title of the Bill is the Education (Accreditation of Non-State Schools) and Other Legislation Amendment Bill 2005.

### **Policy Objectives of the Legislation**

The primary objectives of the Bill are to amend the Education (Accreditation of Non-State Schools) Act 2001 (the Act) to:

- strengthen the provisions regarding eligibility for Government funding; and
- clarify the matters the Non-State School Accreditation Board (the Board) may consider when assessing the suitability of an entity to be the governing body of a non-State school.

The Bill also makes miscellaneous amendments to the Education (General Provisions) Act 1989 and the Education (Queensland Studies Authority) Act 2002.

### **Reasons for the Bill**

Public money is provided to governing bodies of non-State schools, through State Government funding, to assist with the costs of teaching and general staff salaries, professional development, curriculum development and implementation, maintenance and general operations.

Provided acceptable standards of education are maintained, the Queensland Government does not discourage for-profit entities providing education in the non-State schooling sector.

However, a number of recent media reports has highlighted an intention for private enterprise to enter the non-State schooling sector in Queensland for the purpose of operating schools to generate profits for their shareholders. It is not appropriate for public money to be paid to the governing bodies of non-State being operated in this way.

The Queensland Government is concerned with the potential for for-profit entities to establish a non-State school and adopt corporate governance arrangements to intentionally distribute revenue generated from the operation of the school to the entity's members, shareholders or to related entities rather than returning all the profits to the school for the benefit of the students. For example, school revenue could be distributed in this way if a governing body deliberately paid the external for-profit entity above market prices for goods or services or paid exorbitant management fees for the provision of those goods or services. It is not appropriate for school revenue being distributed to for-profit entities through such arrangements to include a proportion of Government funding, or to be supported by the availability of Government funding to the school.

The Bill ensures that governing bodies of schools, being operated in this manner, are not eligible to receive Government funding. The Bill does not, however, seek to prevent a governing body that is a party to such arrangements from being accredited to operate a non-State school,

provided the school meets the accreditation criteria under the Act and the governing body is considered by the Board to be suitable to be a governing body of a non-State school. However, a governing body operating in such a way should not be eligible to receive Government funding. Under the Act, the Board is required to decide whether a proposed or existing governing body is suitable to be the governing body of a non-State school. The clear intention of the Act is not to limit the Board to consideration of the matters specified under the Act when assessing suitability. For the benefit of the non-State school sector and the Board, the Bill aims to provide more clarity about the range of matters that the Board may consider when assessing a governing body's suitability, without limiting the Board in its assessment.

In 2004, the Education (General Provisions) Act 1989 (the General Provisions Act) was amended to provide that a person does not need to have a Positive Notice if they wish to enrol as a mature age student in a State school, other than a State school of distance education or a State special school, if the person was previously enrolled in a State educational institution or a non-State school and the person's last day of attendance was not more than 12 months prior to the first day of attendance as a mature age student. The provision does not make it clear that the exemption to having a Positive Notice should not apply to a person who was 18 years of age or older on the day of their previous enrolment at a State educational institution or non-State school. The General Provisions Act will be amended to clarify this matter.

The Queensland Studies Authority (the QSA), established under the Education (Queensland Studies Authority) Act 2002 (the QSA Act), engages approximately 5,000 casual employees each year to carry out the functions of moderation of Years 11 and 12 school work, administration and marking of the Queensland Core Skills Test, and the setting, administration and marking of external exams. The QSA Act will be amended to ensure the QSA has the power to continue to engage and remunerate these casual employees.

### **Achieving the Objectives**

To strengthen the provisions regarding eligibility for Government funding, the Bill will amend the Act to:

- ensure that non-State schools in receipt of Government funding deal with external parties on an arm's length basis;
- ensure that non-State schools in receipt of Government funding do not have a connection with a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making its financial decisions; and
- prohibit companies with shareholders from being eligible for Government funding under the Act.

The Bill will amend the Act to clarify the matters the Board may take into account when considering the suitability of a proposed or existing governing body. In this regard, the Bill will clarify that the Board may consider a governing body's relationship with other entities; procedures for identifying, declaring and dealing with conflicts of interest; and the conduct of the governing body or its directors relevant to the operation of the school.

The Bill amends the General Provisions Act to provide that a person does not need to have a Positive Notice if they wish to enroll as a mature age student in a State school, other than a State school of distance education or a State special school, if the person was previously enrolled in a

State educational institution or a non-State school, on the day of their enrolment the person was a child, and the person's last day of attendance was not more than 12 months prior to the first day of attendance as a mature age student.

The Bill also amends the QSA Act to ensure the QSA continues to have the power to engage and remunerate casual employees engaged in moderation, assessment and testing.

### **Administrative costs**

Some applicants for accreditation and Government funding under the Act may need to provide additional documentation to assist the Board to decide on its suitability for accreditation, whether it is a party to or intends to enter into a prohibited arrangement, whether it is independent from external for profit entities when making its financial decisions and whether its school is being operated for profit. However, the financial or other impacts of complying with this administrative requirement should be negligible for the non-State schooling sector.

The Board's costs associated with ongoing implementation and maintenance of the new provisions will be monitored by the Department of Education and the Arts in consultation with the Board.

In relation to the proposed amendments to the QSA Act, funding will be made available to the Queensland Studies Authority to remunerate casual employees engaged in moderation, assessment and testing equivalent to the base pay rate for the relevant classifications in the Public Service Award – State.

### **Fundamental Legislative Principles**

Section 4(2)(a) of the Legislative Standards Act 1992 requires that legislation must have sufficient regard to the rights and liberties of individuals. Aspects of the Bill that raise fundamental legislative principles in relation to the rights and liberties of individuals are outlined below.

### **Commencement**

Upon enactment, the Bill will retrospectively apply relevant amendments to all applications that were made on or after 15 November 2004, for accreditation or Government funding or to change an existing non-State school's governing body.

The Minister made a public announcement on 15 November 2004 to notify potential applicants about the Government's intention to amend the Act and apply the amendments from the date of the announcement to applications for accreditation or Government funding or to change an existing non-State school's governing body.

This retrospective application is considered justified on the basis that:

- the amendments will strengthen the Act to address issues that have only recently become apparent with the emerging trends in corporate governance arrangements in the non-State schooling sector;

- the amendments aim to ensure Government funding does not go to schools that are being operated for the purpose of making and distributing profits to commercial entities and their shareholders;
- the amendments will ensure that revenue generated from the operations of the school, including Government funding, is not used to benefit for-profit entities and their shareholders, rather than for the benefit of the school and its students;
- the amendments will not impact on any applications made prior to 15 November 2004, while ensuring all new applications for accreditation and Government funding or to change the governing body, made after the date of the Minister's announcement, will be dealt with under the new regime; and
- the amendments will not impose any obligations on new or existing governing bodies retrospectively.

### **Assessor's Powers**

The Bill will widen the functions of assessors appointed under the Act.

Assessors will be given functions to assess and report to the Board on the suitability of a governing body and compliance with requirements under the Act regarding eligibility for Government funding.

Assessors are entitled to enter a school to conduct an inspection, take an extract of a document and require the governing body to provide information or documents to assist them in performing their functions. Assessors already have these powers in relation to ensuring compliance with accreditation criteria. The Act has established procedures for exercising these powers to ensure that the rights of governing bodies are protected. For instance, 14 days notice of the intention to enter the premises must be given and inspection can only take place during ordinary business hours.

### **Consultation**

Consultation was conducted with the following organisations:

- Queensland Catholic Education Commission;
- Association of Independent Schools of Queensland;
- Lutheran Education Queensland Office;
- Queensland Adventist Schools Office;
- Anglican Schools Office;
- Christian Schools Australia Ltd;
- The Grammar Schools of Queensland Association Inc;
- Emeritus Professor Roy Webb AO, Chairperson, Non-State Schools Accreditation Board;
- Catholic Education Archdiocese of Brisbane;
- Catholic Education, Diocese of Cairns;
- Catholic Education, Diocese of Rockhampton;
- Catholic Education, Diocese of Toowoomba;
- Catholic Education, Diocese of Townsville;

- Queensland Independent Schools Parents Council;
- Federation of Parents and Friends Associations of Catholic Schools Qld;
- Queensland Independent Education Union;
- Independent Colleges Independent Australia Ltd;
- Trustees of the Sisters of the Brigidine Congregation;
- Cannon Hill Anglican College Pty Ltd; and
- Fairholme College (Toowoomba) Pty Ltd.

All stakeholders were provided with an exposure draft of the Bill, together with a consultation paper outlining the more substantive amendments.

Stakeholders were given the opportunity to provide written comments on the Bill and a workshop was held during the consultation period, for stakeholders to raise any issues in relation to the Bill, prior to submitting their written comments.

## **Notes on Provisions**

### **Part 1 Preliminary**

#### **Short title**

Clause 1 establishes the short title of the amendment Act as the Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005.

### **Part 2 Amendment of Education (Accreditation of Non-State Schools) Act 2001**

#### **Act amended in pt 2**

Clause 2 provides that this part amends the Education (Accreditation of Non-State Schools) Act 2001.

#### **Amendment of s 3 (Objects of Act)**

Clause 3 omits section 3(1)(d) and renumbers section 3(1)(e) as section 3(1)(d).

Section 3(1)(e), to be renumbered as section 3(1)(d), provides that it is an object of the Act to provide the basis for efficient allocation of Government funding for non-State schools. Section 3(2)(d) provides that this object will be met by establishing a formal process for deciding the eligibility of a non-State school's governing body for Government funding. Removal of the previous section 3(1)(d) clarifies that it is not the intention of the Act that Government funding will be available to non-State schools in every instance.

#### **Insertion of new s 7A**

Clause 4 inserts section 7A (Meaning of prohibited arrangement) into the Act. The Bill inserts provisions into the Act to ensure that Government funding is not provided to a governing body that enters into prohibited arrangements.

The new section 7A(1) provides that "prohibited arrangement" means a contract or arrangement entered into by persons not dealing with each other at arm's length.

The new section 7A(2) qualifies the definition of “prohibited arrangement” by providing that a contract or arrangement entered into by a school’s governing body or proposed governing body and a non-profit entity is not a prohibited arrangement only because the non-profit entity has the power to appoint, or remove, a person as a director of a governing body.

In the Catholic schooling system, unincorporated church bodies (Religious Institutes) may have the power to appoint and remove directors of governing bodies of Catholic Schools to ensure that the schools conform to the teachings and laws of the Catholic Church. The governing bodies of Catholic Schools often lease the school land from the Catholic Church, through the Religious Institutes. The proposed section 7A(2) will ensure that the ability of a non-profit entity, like a Religious Institute, to appoint and remove directors of a governing body, will not of itself be a sufficient indicator that the dealings between the governing body and the entity are not at arm’s length. Further evidence that the dealings are not at arm’s length would be necessary, for example, the governing body has paid excessive amounts for the lease.

### **Amendment of s 17 (If applicant seeks government funding for the school)**

Clause 5 amends section 17(1)(b). Section 17(1) prescribes the matters the Board must be satisfied of before forwarding an application for Government funding to the Non-State Schools Eligibility for Government Funding Committee (the Funding Committee) for consideration. The new section 17(1)(b) provides that the Board must be satisfied that:

- (i) the school will not on its establishment be operated for profit;
- (ii) the applicant [for Government funding] is not a party to, and does not intend to enter into, a prohibited arrangement in relation to the operation of the school; and
- (iii) there is no direct or indirect connection between the applicant [for Government funding] and a for-profit entity, and there will not on the school’s establishment be a direct or indirect connection between the applicant and a for-profit entity, that could reasonably be expected to compromise the independence of the applicant when making financial decisions.

The new criterion in section 17(1)(b)(ii) requires an applicant for Government funding to satisfy the Board that the applicant is not a party to, and does not intend to enter into, a prohibited arrangement in relation to the operation of the school. The term “prohibited arrangement” is defined in section 7A.

Whether or not parties are dealing with each other at arm’s length requires a holistic analysis of their dealings, including the relationship between the parties, the manner in which the parties conducted themselves in forming their arrangements, and the amount paid for the goods or services provided under the arrangements.

It is not intended that the mere existence of a relationship between the parties to an arrangement or contract would mean that, in relation to a particular transaction, the parties are not dealing with each other at arm’s length.

Schools in regional Queensland are often required to engage the services of people in their community that are in some way related to the school or the governing body. For example, it is common in small towns for a parent of a student at the school to be the sole provider of a service required by the school and also to be on the school’s governing body. The new prohibited

arrangement criteria is not intended to prevent related parties from contracting with each other in this way. Such arrangements are only of concern when, for example, as a result of the relationship between the parties, the governing body of the school pays an amount greater than fair market value for the service provided, or is prevented from seeking services from other available providers.

The new criterion in section 17(1)(b)(iii) requires an applicant for Government funding to satisfy the Board that there is no direct or indirect connection between it and a for-profit entity, and there will not on the school's establishment be a direct or indirect connection between it and a for-profit entity, that could reasonably be expected to compromise the independence of the applicant when making financial decisions.

This criterion aims to prevent Government funding going to the governing body of a non-State school that may potentially be influenced by commercial entities in relation to its financial decisions. This is because such lack of independence could result in the inappropriate use of public money, to the detriment of the school. However, under the new criterion, an applicant is able to provide evidence to the Board that a connection between it and a for-profit entity could not reasonably be expected to compromise the independence of its financial decisions. The Board may take such evidence into account when considering this criterion.

“For-profit entity” is defined in the dictionary to the Act in schedule 3 to mean an entity that is carried on for profit or gain to its individual members.

It is intended that for the purposes of section 17(1)(b)(iii), “connection” will have the ordinary dictionary meaning. The definition of “connection” in the Macquarie Concise Dictionary includes references to an association or relationship.

If the Board decides that a proposed governing body intends to operate a school for-profit, or is a party to, or intends to enter into a prohibited arrangement, or whose independence is compromised in relation to its financial decisions because of a connection with a for-profit entity, the proposed governing body will not be considered for eligibility for Government funding.

### **Insertion of new ss 17A and 17B**

Clause 6 inserts section 17A (Further information or documents) into the Act to enable the Board to seek a range of documents or information from an applicant for Government funding to assist the Board to make its assessment about whether or not a school will, on its establishment, be operated for profit, whether a proposed governing body is a party to, or intends to enter into, a prohibited arrangement and whether a proposed governing body is independent in its financial decisions.

Section 17A(1) provides that before deciding whether it is satisfied of a matter mentioned in section 17(1)(b), the Board may by notice require the applicant to give the Board, within a reasonable time of at least 30 days, further information or a document reasonably required to make its decision. Under section 17A(2), the notice may require the information or document to be verified by a statutory declaration. If the applicant does not provide the required document or

information within the time stated in the notice, section 17A(3) provides the applicant is taken to no longer be seeking Government funding.

The Board may rely on this section if, for example, it is brought to its attention that the applicant may have entered into a prohibited arrangement with another entity. This information could come to the attention of the Board through the application itself, or through external means such as media reports. If this occurs, the Board could require the applicant to provide the Board with further information or documents so that it can be satisfied whether or not the applicant is a party to a prohibited arrangement.

Section 173 of the Act protects the confidentiality of information provided by the applicant to the Board under the proposed section 17A.

Clause 6 also inserts section 17B (Board not satisfied about particular matter) into the Act to require the Board to issue an information notice to the applicant, if the Board is not satisfied of a matter mentioned in section 17(1)(b). If the Board is not satisfied of a matter mentioned in section 17(1)(b), the application for Government funding will not be forwarded to the Funding Committee for consideration and the applicant will not receive Government funding. If an applicant is issued an information notice under section 17B, it will have the opportunity to seek a review of the decision by the Minister in accordance with the existing review process established under the Act.

#### **Amendment of s 39 (Suitability of governing body)**

Clause 7 amends section 39 to clarify a range of matters the Board may take into account when assessing the suitability of a proposed or existing governing body of a non-State school. The clause inserts a new section 39(2) into the Act, which provides that the Board may have regard to the following matters when considering suitability:

- (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 relating to an aspect of the operation of a school; and
- (c) the conduct of the governing body, or its directors, relevant to the operation of the school.

This clause also renumbers the existing sections 39(2) to (4) and changes the references in section 39(5) (as renumbered) to accommodate the inclusion of the new provision.

The new section 39(2) aims to provide guidance to both the Board and the non-State schooling sector that the Board can, if considered necessary, take into account these types of matters when assessing a governing body's suitability. It is not intended that the Board be limited to consideration of the matters specified under the new section 39(2). This is demonstrated by section 39(5) (as renumbered), which provides that subsections (3) and (4) (as renumbered) do not limit the matters to which the Board may have regard in making a decision about suitability.

#### **Amendment of s 41 (Criminal history reports for investigation)**



Clause 8 amends section 41(1) to omit an incorrect reference to “section 39” and replace it with a reference to “section 40”.

### **Insertion of new s 41A**

Clause 9 inserts section 41A (Report by assessor) into the Act. Section 41A(1) provides that the Board may obtain a written report from an assessor before deciding whether the governing body of a provisionally accredited or accredited non-State school is suitable to continue to be the school’s governing body.

Section 41A(2) provides that to prepare the report, the assessor may exercise the powers prescribed under chapter 5 (Administration), part 3 (Authorised Persons).

### **Amendment of s 52 (Decision of board)**

Clause 10 omits section 52(2) and replaces it with a new subsection. The Act provides a process whereby the governing body of a school may apply to the Board for approval to change an attribute of accreditation, which includes changing a school’s governing body. This might occur where a governing body is changing its corporate structure to a new entity, or where it is proposed that an entirely new governing body will take over the management of a school. The new section 52(2) provides that if a governing body applies to change an attribute of accreditation in order to change the school’s governing body, the Board may only grant the applications if satisfied that:

- (a) the proposed governing body would be suitable to be the school’s governing body; and
- (b) if the school’s current governing body is eligible for Government funding for the school and the intention is for the proposed governing body to also be eligible for Government funding for the school:
  - (i) once the change is effected, the school will continue to be a school not operated for profit;
  - (ii) the proposed 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
  - (iii) there is no direct or indirect connection between the proposed governing body and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions.

The new section 91A, inserted in the Act by clause 14, prohibits Government funding going to the governing body of a non-State school, if it is an ineligible company, as defined in the dictionary. Section 91A will prevent a new governing body that is taking over governance of an existing school through an application to change an attribute of accreditation, from being eligible for Government funding, if the new governing body is an ineligible company.

### **Insertion of new s 52A**

Clause 11 inserts section 52A (Deemed eligibility for Government funding) into the Act. Section 52A will clarify the existing administrative process followed by the Board to continue the provision of Government funding to a new governing body appointed upon an application to change an attribute of accreditation to change the governing body of the school.

Section 52A provides that if the Board decides to grant a change of a school's governing body, once the change is effected, the new governing body of the school is taken to be eligible for Government funding if the school's previous governing body was eligible for Government funding for the school and the proposed governing body also wishes to be eligible for Government funding for the school.

The new section 52A(1) provides that this section applies if:

- (a) the school's governing body is eligible for Government funding for the school;
- (b) the application is about a change in the school's governing body;
- (c) the intention is for the proposed governing body to also be eligible for Government funding for the school; and
- (d) the Board decides to grant the application.

Section 52A(2) provides that once the change is effected, the new governing body of the school is taken to be eligible for Government funding for the school.

### **Amendment of s 72 (Restrictions on application for Government funding for school)**

Clause 12 inserts section 72(3) to provide that a school's governing body may not apply for Government funding for the school if the governing body is an ineligible company.

The Bill will insert section 91A into the Act to prohibit a governing body that is an ineligible company, from being eligible for Government funding.

The new section 72(3) makes it clear that proposed or existing governing bodies are not entitled to apply for Government funding if they are an ineligible company.

Clause 23 inserts a definition of "ineligible company" into the Act's dictionary in schedule 3.

### **Replacement of s 73 (Application for Government funding for accredited school)**

Clause 13 omits section 73 and replaces it with Division 1 (Application for accredited school), comprising sections 73 and 73A to 73C.

The new section 73 (Application for Government funding for accredited school) prescribes the process for the governing body of an accredited school to apply for Government funding. Section 73(1) provides that the governing body of an accredited school may apply for Government funding for the school.

Section 73(2) provides that the application must be in the approved form, be made to the Board and be accompanied by the fee, if any, prescribed under a regulation.

Section 73(3) provides that subsection (4) applies if the Board is satisfied that:

- (a) the school is not being operated for profit; and
- (b) the applicant is not a party to, and does not intend to enter into, a prohibited arrangement in relation to the operation of the school; and

(c) there is no direct or indirect connection between the applicant and a for-profit entity that could reasonably be expected to compromise the independence of the applicant when making financial decisions.

Section 73(4) provides that, if satisfied of the matters referred to in subsection (3), the Board must as soon as practicable:

(a) give the Funding Committee a copy of the application and accompanying documents; and  
(b) give the Minister a notice stating that the application has been received by the Board and the day the application was received.

Clause 13 inserts section 73A (Further information or documents) to enable the Board to seek a range of documents or information from an applicant for Government funding for an accredited school, to assist the Board to decide on a matter set out in section 73(3).

Section 73A(1) provides that before deciding whether it is satisfied of a matter set out in section 73(3), the Board may by notice require the applicant to give the Board, within at least 30 days, further information or a document reasonably required to make its decision. Under section 73A(2), the notice may require the information or document to be verified by a statutory declaration. If the applicant does not provide the required document or information within the time stated in the notice, section 73A(3) provides the applicant is taken to have withdrawn the application for Government funding. An example of when the Board may seek further information or documents is outlined under the discussion on section 17A.

Section 73B (Report by assessor) will enable the Board to obtain a report from an assessor before deciding on a matter referred to in section 73(3).

Section 73B(2) provides that to prepare the report, the assessor may exercise the assessor's powers under chapter 5 (Administration), part 3 (Authorised persons).

Section 73C (Board not satisfied about particular matter) requires the Board to issue an information notice to the applicant for Government funding, in relation to an accredited school, if the Board decides it is not satisfied of a matter mentioned in section 73(3). An applicant will then have the opportunity to seek a review of the decision from the Minister in accordance with the existing review process established under the Act.

Clause 13 also inserts the heading Division 2 (Applications for schools not yet in operation) before section 74.

### **Insertion of ch 3, pt 5A**

Clause 14 inserts part 5A (Restriction on type of corporation) into chapter 3. The new part 5A contains section 91A (Restriction on type of corporation that may be eligible for Government funding for a school).

Section 91A provides that the governing body of a Government-funded school must not be an ineligible company. Clause 23 inserts a definition of "ineligible company" into the dictionary to the Act in schedule 3.

The effect of the new section 91A is that if a governing body is a company registered under the Commonwealth Corporations Act 2001, the governing body will only be eligible for Government funding if it is a company limited by guarantee. However, this provision will not prohibit the other types of entities currently accredited under the Act from being accredited in the future, or continuing to be accredited. These entities include incorporated associations, property trusts and other entities incorporated under various church Acts.

### **Amendment of s 93 (Grounds for withdrawal)**

Clause 15 amends section 93. Section 93 establishes the grounds for withdrawal of Government funding. Clause 15(1) will amend section 93 to provide for three additional grounds for withdrawal of eligibility for Government funding (sections 93(d) to (f)). The additional grounds for withdrawal of government funding included in section 93 are:

- (d) the school's governing body is a party to a prohibited arrangement in relation to the operation of the school;
- (e) there is a direct or indirect connection between the school's governing body and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions; or
- (f) the school's governing body is an ineligible company.

Clause 15(2) provides that for the grounds for withdrawal of Government funding in section 93(1)(d) or (e), it is immaterial when the prohibited arrangement or connection came into existence.

### **Insertion of new s 98A**

Clause 16 inserts section 98A (Report by assessor). Section 98A provides that the Board may obtain a written report from an assessor before issuing a show cause notice on the ground for withdrawal of Government funding mentioned in sections 93(a), (d) or (e), that is:

- the school is being operated for profit;
- the school's governing body is a party to a prohibited arrangement in relation to the operation of the school; or
- there is a direct or indirect connection between the school's governing body and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions.

Section 98A(2) provides that to prepare the report on the matters referred to in sections 93(a), (d) or (e), an assessor may exercise the powers provided for in chapter 5 (Administration), part 3 (Authorised persons).

### **Amendment of s 106 (Functions of board)**

Clause 17 amends section 106. Clause 17(1) renumbers sections 106(e) and (f) to sections 106(i) and (j) to accommodate the insertion of four new functions of the Board.

Clause 17(2) inserts sections 106(e) and (h) to provide that the Board has functions to monitor whether:

- (e) the governing body of a provisionally accredited, or accredited, school is suitable to continue to be the school's governing body;
- (f) a Government-funded school is not being operated for profit;
- (g) a governing body of a Government-funded school is not a party to a prohibited arrangement in relation to the operation of the school; and
- (h) monitor whether there is no direct or indirect connection between the governing body of a Government-funded school and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions.

It was always intended that the Board have functions to monitor a governing body's suitability and whether a school is being operated for profit. This is demonstrated by the fact that it is a ground for cancellation of accreditation if a governing body is no longer suitable to be the governing body of a non-State school and that it is a ground for withdrawal of Government funding if a school is being operated for profit. Clause 17(2) puts this intention beyond doubt. The clause also ensures that the Board has an ongoing monitoring role in relation to the new criteria regarding prohibited arrangements and independence of financial decisions.

#### **Replacement of s 141 (Function of assessor)**

Clause 18 omits and replaces section 141 to broaden the assessors' functions. The Act provides for the appointment of assessors, which have the function of investigating and reporting to the Board on compliance with accreditation criteria. The new section 141 provides that assessors have the functions of finding out whether:

- (a) a provisionally accredited, or accredited, school is complying with the accreditation criteria;
- (b) Government-funded school is not being operated for profit;
- (c) an accredited school, the governing body of which is applying for Government funding for the school, is not being operated for profit;
- (d) the governing body of a Government-funded school is a party to a prohibited arrangement in relation to the operation of the school;
- (e) there is a direct or indirect connection between the governing body of a Government-funded school and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions;
- (f) the governing body of an accredited school that is applying for Government funding for the school is a party to, or intends to enter into, a prohibited arrangement in relation to the operation of the school;
- (g) there is a direct or indirect connection between the governing body of an accredited school that is applying for Government funding for the school and a for-profit entity that could reasonably be expected to compromise the independence of the governing body when making financial decisions; and
- (h) the governing body of a provisionally accredited, or accredited, school is suitable to continue to be the school's governing body.

#### **Amendment of s 150 (Purpose of div 4)**

Clause 19 amends section 150. Section 150 provides that the assessor's powers are necessary for the preparation of reports required under specific sections of the Act. This clause clarifies that an assessor's report can be made under sections 33, 38, 38C, 41A, 62, 73B, 98A or 192.

## **Replacement of ch 8, hdg (Transitional Provisions for Education (Miscellaneous Amendments) Act 2002)**

Clause 20 omits the heading to chapter 8 and replaces it with the heading “Other transitional provisions”. The Bill splits chapter 8 into two parts.

Clause 20 inserts the heading to part 1, “Transitional provisions for Education (Miscellaneous Amendments) Act 2002”.

## **Amendment of s 218 (Definitions for ch 8)**

Clause 21 amends section 218 to confine the application of the definitions in that section to chapter 8, part 1.

## **Insertion of new ch 8, pt 2**

Clause 22 inserts part 2 (Transitional provisions for Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005) into chapter 8, comprising sections 222 to 224.

Section 222 (Definition for ch 8, pt 2) provides that in chapter 8, part 2, “commencement” means commencement of section 222, which will be the date of assent of the Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005.

Section 223 (Certain applications not to be dealt with under pre-amended Act) provides that certain applications are to be dealt with under the Act as amended by the Bill, not the pre-amended Act.

Section 223(1) provides that section 223 applies to the following types of applications under the Act:

- (a) an application for Government funding for a school made on or after 15 November 2004 but before the commencement;
- (b) an application for the accreditation of a school made on or after 15 November 2004 but before the commencement; or
- (c) an application under section 49, or section 49, as applied by section 59, about a change in a school’s governing body made on or after 15 November 2004 but before the commencement.

Section 223(2) provides that the applications referred to in section 223(1) must be dealt with under this Act, as amended by the Bill, and not under the pre-amended Act.

Section 223(3) provides that any right or expectation of a person to have an application considered or dealt with under the pre-amended Act is extinguished.

Section 223(4) provides that for the purpose of this section, “pre-amended Act” means this Act as in force immediately before the commencement.

Section 224 (Ineligible company) exempts certain governing bodies from the operation of the new prohibition to the provision of Government funding to ineligible companies.

Section 224(1) provides that 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.

Section 224(2) provides that while a governing body of a type referred to in section 224(1) is the ineligible company, sections 91A and 93(f) do not apply to the governing body.

The new section 224 ensures that those governing bodies that prior to the commencement of the Bill were ineligible companies, and that continue to be ineligible companies, will remain eligible for Government funding despite the Bill. This exemption will not apply if the existing governing body applies to the Board for a change of governing body and the proposed governing body is another ineligible company. In that instance, the new governing body would not be eligible for Government funding.

### **Amendment of sch 3 (Dictionary)**

Clause 23 amends Schedule 3 to remove the current definition of commencement and insert new definitions.

The term “**commencement**” is defined to have the following meanings:

- (a) for chapter 7—see section 178; or
- (b) for chapter 8, part 1—see section 218; or
- (c) for chapter 8, part 2—see section 222.

The term “**company**” is defined to have the same meaning as under section 9 of the Commonwealth Corporations Act.

The term “**company limited by guarantee**” is defined to have the same meaning as under section 9 of the Commonwealth Corporations Act.

The term “**for-profit entity**” is defined to mean an entity that is carried on for profit or gain to its individual members.

The term “**ineligible company**” is defined to mean a company that is not a company limited by guarantee.

The term “**post-amended Act**” for chapter 8, part 1 is defined to have the meaning provided under section 218.

The term “**pre-amended Act**” for chapter 8, part 1 is defined to have the meaning provided under section 218.

The dictionary provides that “**prohibited arrangement**” is defined in section 7A.

### **Part 3 Amendment of Education (General Provisions) Act 1989**

### **Act amended in pt 3**

Clause 24 provides that this part amends the Education (General Provisions) Act 1989.

### **Amendment of s 26AC (Obligation of mature age State educational institution's principal)**

Clause 25 amends section 26AC(2)(a) to insert the phrase “and on the day of enrolment was a child” after the word “**institution**”.

This clause clarifies that a person does not need a Positive Notice if they wish to enrol as a mature age student in a mature age State educational institution, if:

- the person has previously been enrolled in a State educational institution or non-state school, on the day of their enrolment the person was a child; and
- the person's last day of attendance was not more than 12 months prior to the first day of attendance as a mature age student.

### **Part 4 Amendment of Education (Queensland Studies Authority) Act 2002**

#### **Act amended in pt 4**

Clause 26 provides that this part amends the Education (Queensland Studies Authority) Act 2002 (the QSA Act).

#### **Amendment of s 69 (Office staff)**

Clause 27 inserts a new subsection (2) into section 69 to provide that this section applies subject to section 69A, which is concerned with the employment of casual staff for specific purposes.

Section 69(2) is necessary as staff appointed under section 69 are employed under the Public Service Act 1996. However, casual staff appointed under section 69A are employed under the QSA Act.

#### **Insertion of new s 69A**

Clause 28 inserts new section 69A before part 6.

Section 69A(1) provides power for the Queensland Studies Authority (the QSA) to employ staff on a casual basis to help it to perform its functions specified in sections 10, 11 or 12 of the QSA Act. This power to employ persons on a casual basis can only be used in relation to persons that are engaged to undertake the functions of testing, assessment or moderation.

Section 69A(2) stipulates that where the QSA employs casual staff for the purpose of assisting it to undertake the functions of testing, assessment or moderation as mentioned in section 69A(1), the staff must be employed under the QSA Act, and not under the Public Service Act 1996. This is to clarify the difference between casual staff, and other staff of the office of the QSA who, in accordance with section 69, must be employed under the Public Service Act 1996. The effect of being employed casually and under the QSA Act, rather than under the Public Service Act 1996, means that a person employed under this section is not entitled to receive extra remuneration such as penalty payments or payments for leave.



Section 69A(3) provides that the casual staff are entitled to be paid remuneration and allowances decided by the Governor in Council.

Section 69A(4) specifies that the casual staff are not subject to any industrial instrument or any determination or rule of an industrial tribunal. This is to put beyond doubt that the casual staff will be employed, and their remuneration determined, under the QSA Act rather than under an industrial agreement or award.

Given that the persons engaged under section 69A are not subject to any industrial instrument or any determination or rule of an industrial tribunal, section 69A(5) states that they are subject to the direction and control of the director of the QSA. For instance, the director will be responsible for the duties of these employees, their location of employment, any training required, and any other matters associated with their employment. In many cases, persons employed to carry out testing, assessment or moderation are also employed as State school teachers under the Public Service Act 1996. Given this, section 69A(6) specifies that employment under section 69A does not preclude employment under the Public Service Act 1996. This is to avoid doubt about whether a person can be simultaneously employed as a State school teacher under the Public Service Act 1996, and also as a casual employee under the QSA Act to help the QSA to carry out its functions of testing, assessment or moderation.

Section 69A(7) defines the term “**industrial instrument**” by reference to its definition in schedule 5 of the Industrial Relations Act 1999.

#### **Amendment of pt 7, hdg (Repeal and Transitional provisions)**

Clause 29 amends the heading of part 7 to include a reference to “validating”. This expanded heading reference is necessary given that a validation provision is inserted in part 7 by clause 30.

#### **Insertion of new pt 7, div 3**

Clause 30 inserts a new division 3 (Validation provision for Education (Accreditation of Non-State Schools) and Other Legislation Amendment Act 2005) in part 7 of the QSA Act. The new division 3 comprises new section 90 (Validation of employment of certain casual staff).

Section 90(1) provides that the provision applies to a person who was employed by the QSA on a casual basis before the commencement of this section, to help it to perform its functions of testing, assessment or moderation, as specified in section 10, 11 or 12 of the QSA Act.

Section 90(2) provides that the QSA’s employment of these persons is taken to be, and always to have been, valid and effective.