



Education (Accreditation of Non-State Schools) Bill 2017

Report No.36, 55th Parliament

**Education, Tourism, Innovation and Small Business
Committee**

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Education, Tourism, Innovation and Small Business Committee

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Abbreviations

Board	Non-State Schools Accreditation Board
current Act	<i>Education (Non-State Schools Accreditation) Act 2001</i>
department	Department of Education and Training
ISQ	Independent Schools Queensland
QCEC	Queensland Catholic Education Commission

Chair's foreword

This report summarises the committee's examination of the Education (Accreditation of Non-State Schools) Bill 2017. It includes the views expressed in submissions and by witnesses at the committee's public hearing, and information provided by the Department of Education and Training.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The committee has recommended that the Bill be passed, and has unanimously recommended two amendments to the Bill.

On behalf of the committee, I thank the organisations that made submissions and appeared at the committee's public hearing.

The committee wishes to acknowledge the assistance provided by the Department of Education and Training, the Technical Scrutiny Secretariat staff and the committee secretariat.

I also thank my fellow committee members for their work in examination of the Bill.

I commend this report to the House.



Scott Stewart MP
Chair

Recommendations

Recommendation 1 **1**

The committee recommends the Education (Accreditation of Non-State Schools) Bill 2017 be passed.

Recommendation 2 **7**

The committee recommends that clause 7 of the Bill be amended to ensure that a governing body of multiple schools is not prevented from using some income to support the operation of some or all of its schools.

Recommendation 3 **13**

The committee recommends that clause 119 of the Bill be amended to correct a minor drafting error

1 Introduction

1.1 Role of the committee

The Education, Tourism, Innovation and Small Business Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's portfolio areas of responsibility are:

- education, tourism, major events, and Commonwealth Games, and
- innovation, science, the digital economy, and small business.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill in its portfolio areas to consider:

- the policy to be given effect by the legislation, and
- the application of fundamental legislative principles.

1.2 Inquiry referral and committee process

The Education (Accreditation of Non-State Schools) Bill 2017 (the Bill) was introduced into the Legislative Assembly by the Minister for Education and Minister for Tourism, Major Events and the Commonwealth Games, the Hon Kate Jones MP. The Bill was referred to the committee in accordance with Standing Order 131, and the committee was required to report to the Legislative Assembly by 14 July 2017.

During its examination of the Bill, the committee:

- invited submissions from stakeholders and subscribers. A list of the four submissions accepted by the committee is at Appendix A
- received a public briefing on the Bill from the Department of Education and Training (the department) on 24 May 2017 (see Appendix B)
- received written advice from the department about safeguards on use of the powers of authorised persons, and on issues raised in submissions, and
- held a public hearing on 14 June 2017 to hear from submitters.

Copies of the material published in relation to the committee's inquiry is published on the committee's <http://www.parliament.qld.gov.au/work-of-committees/committees/ETISBC/inquiries/current-inquiries/AccreditationofNonStateSchools>

1.3 Outcome of committee consideration

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives which it is intended to achieve and consideration of the information provided by the department and submitters, the committee recommends that the Bill be passed

Recommendation 1

The committee recommends the Education (Accreditation of Non-State Schools) Bill 2017 be passed.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 Examination of the Education (Accreditation of Non-State Schools) Bill 2017

2.1 Overview and policy objectives of the Bill

The Bill results from a review of the current Act which was begun in 2014 with a view to modernising and streamlining non-state school accreditation. Both the current Act and the Bill require non-state schools to be accredited by the Board, and make it an offence to operate a non-state school without accreditation.

If passed, the Bill would replace the current Act and continue most of the current arrangements for accreditation of non-state schools, and the Non-State Schools Accreditation Board (the Board). The main changes proposed by the Bill are to:

- simplify the non-state school accreditation process by removing provisional accreditation and the issuing of accreditation certificates
- provide for decisions about eligibility for non-state school funding to be made by the Board rather than the Non-State School Eligibility for Government Funding Committee under the current Act, and for the eligibility to be automatic if an accredited state school is operating on a not-for-profit basis
- provide that the Board is responsible for monitoring of compliance with the Act, and add to the powers of authorised officers to facilitate this function
- provide for independent review of decisions by the Queensland Civil and Administrative Tribunal (QCAT).²

This report focuses on the policy and drafting changes proposed by the Bill and does not address in any detail the provisions which reflect the policy set out in the current Act.

2.2 Government consultation on the Bill

The explanatory notes state that the Board, the Queensland Catholic Education Commission (QCEC) and Independent Schools Queensland (ISQ) were part of a reference group for the review of the current Act, and were consulted on a draft Bill and supported the major policy changes in the Bill.³ At the public hearing the ISQ acknowledged the work of departmental officers who consulted on the draft Bill and considered and accommodated some of ISQ's suggested changes.⁴

In their submissions and at the public hearing the QCEC and ISQ indicated overall support for the Bill, and raised some specific issues.

2.3 Non-State Schools Accreditation Board

2.3.1 Membership of the Board

Section 97(1) of the Bill continues the existing Board, which consists of seven members appointed by Governor-in-Council. Members include nominees of the Minister, the chief executive of the department, and ISQ and QCEC.

The Independent Education Union (IEU) was concerned that the Bill does not provide for a union representative as a member of the Board. It suggested that revision of the governance structure was warranted.

² Explanatory notes, Education (Accreditation of Non-State Schools) Bill 2017, pp 1-2

³ Explanatory notes, pp 1 and 12

⁴ Public hearing transcript, 14 June 2017, p 1.

The committee notes the IEU's comments, and also notes that the Bill provides for continuation of the current Board.

2.3.2 Functions and powers of the Board

Clause 100 of the Bill sets out the functions and powers of the Board. The Board's functions under the current Act are retained, and the Bill adds three new functions which are to:

- assess and decide applications about governing bodies' eligibility for government funding
- monitor and enforce compliance with the Act
- conduct investigations about contraventions of, or noncompliance with the Act.

2.4 Accreditation of non-state schools

The Bill continues accreditation of non-state schools. Most of the current arrangements for accreditation are unchanged from the current Act. The Bill simplifies the accreditation process by removing provisional accreditation and the requirement to issue certificates of accreditation.

2.4.1 Current accreditation process

Under the current Act the Board may decide to grant a school provisional accreditation for a period of up to three years. The Act provides for an initial assessment of a provisionally accredited school to decide whether the school is complying with the accreditation criteria. At the end of the provisional accreditation period, the board must again consider accreditation. If the Board is satisfied the governing body of the school is suitable, and the school is complying with the accreditation criteria, the Board may decide to accredit the school. The current Act also provides for further assessment if the Board is not satisfied the school is complying with the accreditation criteria, and allows for provisional accreditation to be extended by one year.

2.4.2 No provisional accreditation

The Bill removes provisional accreditation, and instead provides for the Board to decide on accreditation, based on the same criteria as in the current Act. The explanatory notes describe the effect of removing provisional accreditation as follows:

Currently, a school's student intake day must be no more than two years from the date of provisional accreditation and schools have a period of a year from their student-intake day to be fully compliant with accreditation criteria. The Board assesses compliance during the second half of the first year of operation. This is considered a risk as it allows a school to operate even if it is not fully compliant with all accreditation criteria, including, for example having appropriate student welfare procedures in place.⁵

Under clause 30 of the Bill, the Board must commence an initial assessment of a school between 60 days and six months after the student intake day. The Bill (clause 62) continues the Board's existing powers to give a school's governing body a compliance notice if is not complying with the accreditation criteria and the Board considers it is capable of rectification. The Board's power to issue a show cause notice, and ultimately to cancel accreditation are also continued in clauses 66 to 72.

2.4.3 No certificate of accreditation

The current Act requires the Board to issue a certificate of provisional accreditation, which a school is required to display. If the Board later decides to grant full accreditation, a certificate of accreditation must be issued, and the applicant for accreditation must return the provisional accreditation certificate within 14 days. In circumstances where the Board decides to refuse to accredit a school or does not

⁵ Explanatory notes, p.3

decide on an application for full accreditation, the applicant must return the certificate of provisional accreditation.⁶

The Bill omits these administrative requirements for accreditation certificates. Clause 126 of the Bill would continue the requirement for the Board to maintain a register of accredited schools, which is available on its website. The register must also be available for inspection at the board's office.

2.5 Eligibility for government funding

2.5.1 Current process

Under the current Act the Non-State Schools Eligibility for Government Funding Committee (the Eligibility Committee) makes recommendations to the Minister about a school's eligibility for government funding. The Board first decides whether a school will be operated on a not-for-profit basis, whether the governing body will deal with any for-profit entity on an arms-length basis and whether it will have a connection with a for-profit entity that could compromise financial decisions.

The Board then refers the application for government funding eligibility to the Eligibility Committee, which is established under section 133 of the current Act. The governing body of the school must make a public notification inviting public submissions on criteria including choice, impact on other schools, projected school age population and anticipated enrolment numbers. The Eligibility Committee considers the application against those criteria and makes a recommendation about eligibility for government funding to the Minister who decides on eligibility.⁷

2.5.2 Proposed decisions on eligibility for government funding – decision by Board

The Bill proposes a simpler process for the Board to determine eligibility for government funding. The government, through the Minister, will remain responsible for decisions about the payment of funding to eligible non-state schools.⁸

The Bill does not continue the Eligibility Committee. The terms of most of the current members of the Eligibility Committee expire in early December 2017; the term of the nominee of the Board, who is a Queensland Treasury official, is until May 2018.⁹

Clauses 78 to 85 provide for applications for and decisions about eligibility for government funding. If a governing body of a school indicates in its application for accreditation that it seeks to be eligible for government funding, the Board must decide whether the governing body *meets the government funding eligibility criteria*.

Stakeholders supported simplification of decisions about eligibility for government funding and continuation of the policy that non-state schools are not operated for profit.¹⁰

2.5.3 Eligibility criteria include that school is not operated for profit

2.5.3.1 Meaning of 'operated for profit' - Clause 7

The government funding eligibility criteria are set out in clause 10 of the Bill, which provides that a governing body of a school *meets the government funding eligibility criteria* if –

- the governing body is not an ineligible company
- the school will not, on or after its accreditation, be *operated for profit*
- the governing body of the school is not and does not intend to be a party to a *prohibited arrangement*, and

⁶ Sections 18, 23, 28 and 31, *Education (Accreditation of Non-State Schools) Act 2001*

⁷ Public briefing transcript, p 2

⁸ Explanatory notes, p 4

⁹ Non-State Schools Accreditation Board, <http://www.nssab.qld.edu.au/About/BoardMembers.php>

¹⁰ For example, Public hearing transcript, pp 1 and 4

- there is no 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.

Clause 7 defines *operated for profit* as:

A school is operated for profit if any part of the income arising from the school's operation is used for any purpose other than the operation of the school.

The explanatory notes address the difference between clause 7 of the Bill and section 7 of the current Act, which defines *not operated for profit*.

*Clause 7 defines a school is **operated for profit** if any part of the income arising from the school's operation, is used for any purpose other than the operation of the school. This definition focuses on income being used only for the purpose of the operation of the school rather than definition in section 7 of the current Act, which refers to the profits being used entirely to advance the school's philosophy and aims. The link to the operation of the school aligns with the changes to the definition of prohibited arrangement. When considering if income is being used for the operation of a school, the Board may consider the school's statement of philosophy and aims to assist to determine the scope of the school's operations.*¹¹

2.5.3.2 Stakeholder concerns

The Queensland Law Society, ISQ and QCEC raised concerns about the drafting of clause 7, in particular the interpretation of *operated for profit* and *operation of a school*, and suggested there is potential for unintended consequences.

The ISQ submission noted that clause 7 is narrower than section 7 of the current Act which refers to expenditure of a school's profits within the aims and the philosophy of the school. The submission suggested that clause 7 be amended in line with the definition of a charity in the *Charities Act 2013* (Cth), or amended to include reference to a school's statement of aims and philosophy.¹²

The submission from ISQ suggested that clause 7 as drafted

*...may have significant unintended consequences where, for example, a school operating a child care centre (which is within its charitable purpose) could be deemed to be "operated for a profit" with the operations of the child care centre not deemed to be "the operation of the school".*¹³

Other potential areas of unintended consequences suggested by ISQ were activities such as breakfast clubs and other health and welfare services; school fundraising for a non-associated charity; collection of funds as an agency for private tuition; outreach projects to support other schools; and loans to rural and remote schools from accumulated reserves of parent contributions.¹⁴

The QCEC argued that the meaning of 'operation of the school' should be clarified to include the operation of a school's governing body to the extent that it relates to the operation of the school.¹⁵ At the public hearing QCEC expanded on its concerns about the possible consequences of clause 7:

.. schools which operate within an approved system authority may attract funding which is allocated ... for all its schools. This might be for central expenses like legal costs or targeted curriculum programs.

¹¹ Explanatory notes, p 13

¹² Submission 1, p 4. Section 7 of the current Act provides: 'For this Act, a school is not operated for profit only if any profits made from the school's operation are used entirely to advance the school's philosophy and aims, as stated in the school's statement of philosophy and aims.'

¹³ Submission 1, p 5

¹⁴ Submission 1, p 5

¹⁵ Submission 3, p 3

and:

... government funding is also lawfully used to support approved school authorities in respect of their own operation. We do not interpret the bill as intending to change those arrangements. The role of school authorities therefore needs to be recognised when considering what the operation of a school is.¹⁶

Both the ISQ and QCEC suggested that the aims and philosophy of a school should be considered by the Board when deciding whether a school is operated for profit. They acknowledged that the explanatory notes make clear that the Board could consider the aims and philosophy when deciding whether a school was operated for profit.

2.5.3.3 Department's advice

The department advised the committee at a public briefing on the Bill that the terms of clause 7 are sufficiently broad to:

.. allow for social activities connected with the school and its education program in appropriate circumstances. For example, if a school is targeting services to more disadvantaged students, it would clearly be within the normal operation of the school to provide auxiliary health services to supply breakfast to its students. An example of where a school would be operating for profit would be where an income from the school is used for another commercial activity, such as a childcare centre. The explanatory notes clarify the expectation that the board may consider the school's statement of philosophy and aims to assist to determine the scope of the school's operation when considering if income is being used for the operation of a school. The concept of 'operation of a school' is used in New South Wales and is given a broad interpretation by that jurisdiction.¹⁷

In its advice on issues raised in submissions the department provided further clarification. It advised that the intent of the definition of *operated for profit* in clause 7 of the Bill was to provide clearer guidance to the Board about when a school is to be considered to be operating for profit.¹⁸

In relation to stakeholders' concerns about other potential unintended consequences, the department advised the committee as follows:

Early childhood education and care services: the Bill does not prevent a governing body of a non-state school also operating other businesses, such as an early childhood education and care service.

However, that service must be separate from operation of a school and must be treated as such for financial and regulatory purposes if the entity wishes to attract State government funding for the school.

Early child education and care is regulated under the Education and Care Services National Law. Early childhood education and care services attract separate Australian Government and State Government funding. The services may be operated for-profit or not-for-profit.¹⁹

Health and welfare, sporting, cultural and social activities: income used for the operation of the school is intended to be interpreted broadly to allow social activities connected to the school and its educational program. Provision of services such as breakfast clubs, sporting events are 'part of the operation of the schools and a school would not be considered to be operating for profit by providing these services.'²⁰

¹⁶ Public hearing transcript, 14 June 2017, p 4

¹⁷ Public briefing transcript, 24 May 2017, p 3, Explanatory notes, p 13

¹⁸ Correspondence, Deputy Director-General, Department of Education and Training, 22 June 2017

¹⁹ Correspondence, Department of Education and Training, 22 June 2017, p 4

²⁰ Correspondence, Department of Education and Training, 22 June 2017, p 5

Collection of funds as an agency for private tuition or for benevolent enterprises: collecting funds for these purposes would not be considered income of the school as it is merely a broker for the funds.²¹

2.5.3.4 Amendment of the Bill

In relation to the operation of more than one school, the department acknowledged the concerns raised by stakeholders. It recognised the potential for unintended consequences that could restrict some existing, legitimate arrangements of schools in relation to the operation of more than one school.

*For example, the proposed definition could restrict how governing bodies that operate more than one school distribute income, received through the operation of all of its schools, across the schools. For example, tuition fees paid by parents may be paid to the governing body and utilised by the governing body to support educational services, such as teacher wages, across all of the schools it operates. That is, the tuition fees received in relation to the operation of a particular school may not be used solely for the operation of that school.*²²

The department advised it is considering options for government consideration to amend clause 7 to address the concerns raised by stakeholders.

*In particular, amendments would aim to ensure that governing bodies of multiple schools are not restricted from utilising the income received from the operation of its schools as it sees fit to support the operation of all of its schools.*²³

Committee comment

The committee commends the department for its response to the concerns raised by stakeholders during the committee's inquiry on the Bill.

The committee unanimously recommends that clause 7 of the Bill be amended to ensure that a governing body of multiple schools is not prevented from using some income for the operation of some or all of its schools.

Recommendation 2

The committee recommends that clause 7 of the Education (Accreditation of Non-State Schools) Bill 2017 be amended to ensure that a governing body of multiple schools is not prevented from using some income to support the operation of some or all of its schools.

2.5.4 Eligibility for government funding criteria include no 'prohibited arrangements'

Section 17 of the current Act provides that to be eligible for government funding, an applicant for government funding must not be a party to, or intend to enter into a *prohibited arrangement*. The Bill provides a similar eligibility criterion, however it defines *prohibited arrangement* differently.

In clause 10 of the Bill, one element of the *government funding eligibility criteria* is:

(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

Clause 8 of the Bill defines *prohibited arrangement*:

*(1) A **prohibited arrangement** is a contract or arrangement –*

(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

²¹ Correspondence, Department of Education and Training, 22 June 2017, p 5

²² Correspondence, Department of Education and Training, 22 June 2017

²³ Correspondence, Department of Education and Training, 22 June 2017, p 8

(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 are not required for the operation of the school.

(3) Subsection 2 does not limit subsection (1)(b).

This definition of *prohibited arrangement* in the current Act is narrower in referring only to ‘for-profit’ entities, rather than to all entities. Also, the current Act does not specify that a *prohibited arrangement* is one that is not *for the benefit of the school*.

In its submission ISQ raised questions about the scope of the definition of *prohibited arrangement*.²⁴ The department confirmed that the definition of *prohibited arrangement* is not restricted to arrangements with for-profit entities, on the basis that all dealings of a governing body should be at arm’s length regardless of the type of third party entity with which it is dealing. The department emphasised that to be a *prohibited arrangement* a contract or arrangement would need to meet both limbs of the definition, that is:

- the arrangement is not at arm’s length, and
- the arrangement is not for the benefit of the school.

The department advised that arrangements with other not-for-profit entities such as parent associations and religious organisations that provide a benefit for the school would not be captured by the proposed definition of *prohibited arrangement*.²⁵

2.6 Review of Board decisions

Under the current Act a person may apply to the Minister for a review of a decision of the Board. Clause 166 of the Bill provides that a governing body of a school that is given or is entitled to an information notice, may apply to QCAT for a review of the decision. The explanatory notes state that review by QCAT will provide a level of independence from government.²⁶

ISQ’s submission suggested that consideration be given to appeals to the Minister, followed by appeals to QCAT, and expressed concern that appeals could impose a significant cost.²⁷

The department advised the committee that adding the Minister as a reviewer prior to review by QCAT would add a further step for an entity aggrieved by a Board decision and would increase expenses. In addition, if the Minister was the first avenue of review, a review by QCAT would be a review of the Minister’s decision, requiring the Minister to be involved in QCAT proceedings.²⁸

Committee comment

The committee notes ISQ’s comments about review of decisions, and supports the independent review of Board decisions by QCAT.

2.7 Powers of authorised persons

To enable the Board to exercise its monitoring, enforcement and investigation functions, clause 129 of the Bill expands the functions of authorised officers. In addition, clause 139 adds a new power to enter places other than school premises, such as the office of a governing body that is not on school premises. The new power will support the Board’s expanded functions to investigate offences,

²⁴ Submission 1, p 6

²⁵ Correspondence, Department of Education and Training, 22 June 2017, pp 6 - 7

²⁶ Explanatory notes, p 7.

²⁷ Submission 1, p 7.

²⁸ Correspondence, Department of Education and Training, 22 June 2017, p 7.

including operating a school without accreditation and holding out an unaccredited school as being accredited.²⁹

The current Act provides for the appointment of two categories of authorised persons – assessors and auditors – and sets out their powers of entry to school premises.³⁰ The Bill (clause 130) provides that the Board may appoint someone as an authorised person if it is satisfied they are appropriately qualified and are a suitable person to perform one or more of the functions. While the Bill does not specifically provide for assessors and auditors, the explanatory notes state that the Board will need to ensure appropriate qualifications for the task, for example that ‘trained auditors will be appointed to undertake an audit of school survey data.’³¹

The Bill also enables authorised persons to apply to a magistrate for a warrant (clauses 144 to 149) and provides for an authorised person’s powers after entry to search, require information and seize evidence, and for safeguards for things that are seized (clauses 150 to 165).

The committee sought information from the department about the safeguards that would apply to the exercise of the proposed additional powers of authorised persons. The department advised of the legislative requirement that a person be suitable and qualified for appointment as an authorised person. It advised that currently authorised persons only exercise powers under the current Act when directed to do so by the Board.

In relation to the proposed new powers to seize evidence, the department advised that the safeguards in the Bill include: that something may be seized only if the authorised person reasonably believes the thing is relevant to preparation of a report under the Act or an investigation being carried out, or is evidence of an offence (clause 157); that the authorised person must provide a receipt, enable access to the owner, and return the thing (unless it is forfeited) (clauses 161 to 163).³²

The QCEC proposed that a review of the expanded powers be undertaken within two years of enactment. It suggested a review could evaluate how the powers have been used, whether the Board has sufficient resources to undertake its expanded functions, and assess whether any adjustments are required.³³ The department supported the QCEC proposal ‘and will commence a review of the investigation and compliance powers within two years of commencement of the new legislation.’³⁴

2.8 Directors of school governing body

The Bill continues the Board’s responsibility to decide whether a school’s governing body is suitable. Both the current Act and the Bill (clause 26) provide that a governing body is not suitable to be, or continue to be a school’s governing body unless each director has either a current positive notice (‘Blue Card’) or current exemption notice under the *Working with Children (Risk Management and Screening) Act 2000*.

Clause 169 of the Bill provides a new requirement for a governing body of an accredited school to give the Board, within 28 days after a person becomes a director, notice of the person’s name, date of appointment and a copy of the person’s positive notice or positive exemption notice. Under clause 169 a governing body must also notify the board of the date a person ceases to be a director, and other specified matters.

Currently the Board writes annually to school governing bodies seeking an update on directors. ISQ submitted that it was not convinced the requirement in the Bill to provide updates would result in

²⁹ Explanatory notes,

³⁰ *Education (Accreditation of Non-State Schools) Act 2001*, sections 140 - 156

³¹ Explanatory notes, p 6

³² Correspondence, Director-General, Department of Education and Training, 2 June 2017

³³ Submission 3, p 5

³⁴ Correspondence, Department of Education and Training, 22 June 2017, p 8.

better outcomes.³⁵ The department advised the committee that currently the Board does not have timely knowledge of the status of the directors, which limits its ability to effectively monitor the suitability of school governing bodies. Notification of changes to directors by school governing bodies will support the object of the Bill to maintain public confidence in the operation of non-State schools. The board also advised that governing bodies will be able to update directors' details on the Board's website, reducing any administrative burden.³⁶

2.9 Transitional arrangements

The Bill contains transitional provisions (clauses 181 to 198) to continue board appointments and existing accreditations of non-state schools and eligibility for government funding.

The Bill also provides for the various circumstances that may apply to a school that was provisionally accredited immediately before the new legislation commences, will be taken to be accredited for the same schooling sector.

The Bill provides that applications for accreditation which have been made but not decided are to be dealt with under the new legislation, and for the way that reviews of decisions, compliance notices, show cause notices and information notices would be dealt with after commencement.

2.10 Amendment of other Acts

The Bill contains amendments to other Acts which refer to the current Act, to replace the name of the current Act with the name of the proposed 2017 Act. Other amendments proposed by the Bill include:

Education (General Provisions) Act 2006

Amendments are proposed to:

- provide if a non-state school governing body does not comply with existing requirements under section 370 of that Act to give the Minister financial data, noncompliance is a ground for suspending payment of a funding allowance (clause 220)
- require a non-state school's acquittal details for expenditure have been approved by an accountant
- replace sections 375 to 381 of the General Provisions Act (about stopping payments and the show cause process) with new provisions which enable the Minister to suspend a payment, and notify the governing body and the Board. When the required information is provided, proposed section 376 requires the suspended allowance to be paid to the governing body
- add a new section 425A (clause 225) to enable the Minister, chief executive of the department or the Board to enter into an information sharing arrangements to share financial information about a school; clause 221 proposes to amend section 373 of the Act to make this information subject to confidentiality arrangements.

Working with Children (Risk Management and Screening) Act 2000

The Bill proposes amendments to enable the Board to request information from the chief executive (employment screening) about the directors of school governing bodies and authorised persons (clause 268).

³⁵ Submission 1, p 7

³⁶ Correspondence, Department of Education and Training, 22 June 2017, pp 6-7

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals – criminal history checks

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

Clauses 26 to 28, 112, 113, 172 and 176 raise potential issues of fundamental legislative principle about the rights and liberties of individuals. These provisions have implications for the personal privacy of a person whose confidential criminal history could be sought and considered by the Board or the Minister.

3.1.1.1 Summary of clauses

Clauses 26 to 28 apply when the Board considers the suitability of a proposed school governing body, or the suitability of the governing body of an accredited school to continue as its governing body. The Board may ask the Police Commissioner for a criminal history report. The matters to which the Board may have regard when deciding on suitability include any convictions for an offence by the governing body or a director, and the criminal history of the governing body and a director.

Clause 112 allows the Minister to ask the Police Commissioner for a person’s criminal history to enable the Minister to decide if a person is disqualified from becoming or continuing as a member of the Board. This request can only be made with the person’s written consent, however a failure to give that consent under clause 112 automatically disqualifies a person from becoming a Board member by the operation of clause 108(2).

Clause 113 provides that where there is a change in a Board member’s criminal history, including acquiring a criminal history where previously there was none, the member must (absent reasonable excuse) give immediate notice of the change to the Minister. Failure of a member to notify attracts a maximum penalty of 100 penalty units.

Clause 172 applies to a person with a criminal history who becomes a director of the governing body of an accredited school. Within a week of their appointment they must give the Board a notice detailing any indictable offence in their criminal history.

3.1.1.2 Safeguards

The Bill contains safeguards to protect the privacy of persons about whom criminal history information is obtained.

Under clauses 28 and 172 the information and other documents given under these provisions are required to be destroyed as soon as practicable after they are no longer needed for their requested purpose. In addition, it is an offence to disclose protected information about a person’s criminal history other than in the circumstances authorised by clause 176.

3.1.1.3 Committee comment

Criminal history checks for members of boards are commonplace, as are checks for people whose employment or participation is likely to bring them into contact with children. The committee

considers it is appropriate that potential members of school governing bodies and the Board continue to be subject to criminal history checks.

3.1.2 Rights and liberties of individuals - power to enter premises

3.1.2.1 Summary of provisions

Clauses 137, 139, 151, 157, 158 and 159 raise potential issues of fundamental legislative principle. Legislation should confer power to enter premises, and search for or seize documents or other property, only with the consent of an occupier or with a warrant issued by a judge or magistrate. Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority.

Clause 137 permits an authorised person to enter a school's premises during ordinary office hours providing they first comply with the notice of entry requirements under clause 138. Clause 139 covers entry to places other than school premises - with consent, under a warrant, or where it is a place open to the public.

Once entry is achieved under either clause 137 or 139, clause 151 outlines the powers an authorised person may exercise for a relevant purpose (subject to any contrary conditions of the consent or terms of the warrant). These include the power to search any part of the place, inspect examine or film any part of the place or anything at the place and take an extract from or copy a document.

Clause 157 covers the seizing of evidence at a place entered without consent or warrant. It permits the seizure of a thing at an entered place where the authorised person believes the thing is relevant to their investigation or a report being prepared under the Act or where they believe it to be evidence of an offence against the Act.

Clause 158 operates similarly but applies to places that may only be entered with consent or under a warrant. When the property is entered with the occupier's consent, the items that may be seized are limited to those that are (reasonably believed to be) evidence of an offence against the Act and where the seizure is consistent with the purpose of entry as explained to the occupier when obtaining consent. Entry under a warrant permits the seizure of evidence for which the warrant was issued.

Clause 158(4) also allows the seizure of anything else at the place that is reasonably believed to be relevant to a current investigation or report of the authorised person or that is evidence of an offence against the Act. There is an added requirement that the seizure of the thing must be necessary to prevent the thing being hidden, lost or destroyed, or being used to continue or repeat an offence.

Clause 159 provides that the seized thing may be left at the place where it was seized, with access to it restricted, or that it may be moved from that place.

3.1.2.2 Committee comment

The committee notes that entry to a school or other place is limited to particular circumstances, including:

- clause 137 is subject to a requirement for the authorised person to give prior notice of the intention to enter and that entry is to school premises during ordinary office hours
- clause 139 allows entry to places (that are not school premises) only with the consent of the occupier, under a warrant, or if the place is a public place and entry occurs when the place is open to the public
- clause 151 contains broad search powers, which are not uncommon in Queensland legislation. The search powers apply only on entry to school premises during office hours or entry to other places with consent, under a warrant, or when the place is open to the public. Such entry is subject to any conditions placed on the consent to enter by the occupier or by conditions in the terms of the warrant

- clause 158 seizure powers apply to places that may only be entered with consent or under a warrant. When entry is with consent items may be seized only if the authorised person reasonably believes the items are evidence of an offence against the Act. Any seizure must be consistent with the purpose of entry explained to the occupier when consent was obtained. Entry under a warrant limits the items able to be seized to those for which the warrant was issued.

The committee is satisfied that the powers of entry and seizure of evidence strike an appropriate balance and have sufficient regard to the rights and liberties of individuals. The committee also notes the department's advice that it will commence a review of the additional powers in the Bill within two years of commencement.

3.1.3 Rights and liberties of individuals – protection against self-incrimination

3.1.3.1 *Summary of provisions*

An authorised person may make a requirement for a governing body or a person at a place entered to provide reasonable help or to give information. Clauses 153 and 155 make it an offence for a person of whom a 'help requirement' or an 'information requirement' has been made to fail to comply, unless the person has a reasonable excuse.

3.1.3.2 *Committee comment*

The committee considers that the Bill has sufficient regard to fundamental legislative principles in providing appropriate protection against self-incrimination.

3.1.4 Unambiguous legislation drafted in a clear and precise way

Clause 119 of the Bill (Disclosure of interest) contains a minor drafting error; it appears to be missing the word 'under' before 'subsection (4)'.

The committee unanimously recommends the Bill be amended by inserting a word to correct the drafting error.

Recommendation 3

The committee recommends that clause 119 of the Education (Accreditation of Non-State Schools) Bill 2017 be amended to correct a minor drafting error.

Clause 7 of the Bill is discussed in section 2.5.3 of this report. While clause 7 is not inherently ambiguous, the department has acknowledged the potential for unintended consequences. It has advised it is considering options to advise Government about a possible amendment, and the committee has recommended amendment of clause 7 (see Recommendation 2).

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

A minor typographical error was detected in the notes – in the reference to clause 173, the notes state:

*Protected person is defined in subsection (4) to mean a member of the Board, an authorised person or a member of a committee established by the Board.*³⁷

There is no subsection (4) in clause 173, 'protected person' is defined in subsection (3).

³⁷ Explanatory notes, p 31

Appendix A – List of submissions

Sub #	Submitter
001	Independent Schools Queensland
002	Independent Education Union (Queensland and Northern Territory Branch)
003	Queensland Catholic Education Commission
004	Queensland Law Society

Appendix B – Witnesses at the public briefing and public hearing

Public Briefing – 24 May 2017

Department of Education and Training

- Ms Tricia Matthias, Principal Adviser, Legislation Services Unit,
- Dr Pat Parsons, Director, Registration Services (International, Non-State and Home Education)
- Ms Lesley Robinson, Acting Deputy Director-General, Policy, Performance and Planning

Public Hearing – 14 June 2017

Independent Schools Queensland

- Mr David Robertson, Executive Director
- Ms Judy Young, Assistant Director (School Services)

Queensland Catholic Education Commission

- Dr Lee-Anne Perry AM, Executive Director
- Mr Chris Woolley, Director, Governance, Strategy and Corporate Services