



# Education (Overseas Students) Bill 2018

**Report No. 1, 56<sup>th</sup> Parliament**  
**Education, Employment and Small Business Committee**  
**March 2018**

## **Education, Employment and Small Business Committee**

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### **Acknowledgements**

The committee acknowledges the work of the former Education, Tourism, Innovation and Small Business Committee and the assistance provided by the Department of Education and its Office of Industrial Relations.

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## Abbreviations

ACER	Australian Council for Educational Research
ATAR	Australian Tertiary Admission Ranks
Bill	Education (Overseas Students) Bill 2018
Committee	Education, Employment and Small Business Committee
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
Department	Department of Education
EOS Act	<i>Education (Overseas Students) Act 1996</i>
ETISBC	Education, Tourism, Innovation and Small Business Committee (55 <sup>th</sup> Parliament)
ETISBC report	Education, Tourism, Innovation and Small Business Committee, <i>Report No. 42, 55<sup>th</sup> Parliament: Education (Overseas Students) Bill 2017</i> , Queensland Parliament, September 2017
Finance and Administration Committee report	Finance and Administration Committee, <i>Report no. 37, 55<sup>th</sup> Parliament: Trading (Allowable Hours) Amendment Act 2017</i> , Queensland Parliament, April 2017
FLP	Fundamental legislative principle
ISQ	Independent Schools Queensland
LSA	<i>Legislative Standards Act 1992</i>
NRA	National Retail Association
OIR	Office of Industrial Relations
OP	Overall Position
QCAA	Queensland Curriculum and Assessment Authority
QCEC	Queensland Catholic Education Commission
QTAC	Queensland Tertiary Admissions Centre
SATE	Senior and tertiary entrance
TAH Act	<i>Trading (Allowable Hours) Act 1990</i>
2017 Bill	Education (Overseas Students) Bill 2017

## Chair's foreword

This report presents a summary of the Education, Employment and Small Business Committee's examination of the Education (Overseas Students) Bill 2018.

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

The committee was greatly aided in this undertaking by the work of our predecessor committee, the Education, Tourism, Innovation and Small Business Committee (ETISBC) of the 55<sup>th</sup> Parliament, which considered and reported on an early version of the bill. The ETISBC's public consultation process and thorough scrutiny of the provisions of the earlier bill helped ensure that this committee was well-placed to understand and develop a position on the bill in the given timeframe.

I would like to thank my fellow committee members for their contributions to this inquiry – our first as a new committee.

I also thank our committee secretariat staff, Hansard reporters, and the department for their assistance.

I commend this report to the House.



Leanne Linard MP

Chair

## Recommendations

### Recommendation 1

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The committee recommends the Education (Overseas Students) Bill 2018 be passed.

## 1 Introduction

### 1.1 Role of the committee

The Education, Employment and Small Business Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility include:

- education
- industrial relations
- employment and small business, and
- training and skills development.

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

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

### 1.2 Inquiry referral and committee process

The Education (Overseas Students) Bill 2018 (bill) was introduced into the Legislative Assembly and referred to the committee on 15 February 2018. The committee was required to report to the Legislative Assembly by 2 March 2018.

A previous version of the bill was introduced to the 55<sup>th</sup> Parliament on 8 August 2017, and referred to the former Education, Tourism, Innovation and Small Business Committee (ETISBC). The ETISBC considered the bill and reported to the Legislative Assembly on 15 September 2017, recommending its passage with three further amendments.<sup>2</sup> The bill lapsed when the Parliament was dissolved on 29 October 2017, prior to the second reading debate.

The current version of the bill replicates the content of the lapsed bill (2017 bill), but also includes further amendments which respectively address one of the recommendations of the ETISBC, and a drafting omission in recent amendments to the *Trading (Allowable Hours) Act 1990*. A minor drafting change has also been incorporated to replace a heading in related education legislation.<sup>3</sup>

Given the substantive similarities of the bills and the limited timeframe for reporting, the committee did not call for submissions on the bill, but had regard to the submitted evidence and report of the ETISBC.

The Department of Education (department) also provided the committee with a written briefing on the bill on 19 February 2018, ahead of a public briefing from departmental officers on 22 February 2018. A list of the officials who appeared to brief the committee is provided at Appendix A.

The written advice from the department and the transcript of the public briefing are available on the committee's webpage.<sup>4</sup>

<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

<sup>2</sup> Education, Tourism, Innovation and Small Business Committee (ETISBC), *Report No. 42, 55<sup>th</sup> Parliament: Education (Overseas Students) Bill 2017*, Queensland Parliament, September 2017 (ETISBC report).

<sup>3</sup> Department of Education (department), written briefing, 19 February 2018, p 2.

<sup>4</sup> The committee's webpage is accessible at: <http://www.parliament.qld.gov.au/EESBC>. \*All web references in this report are correct as at 2 March 2018.

### 1.3 Policy objectives of the bill

The stated policy objectives of the bill are to:

- create a new regime for the regulation of providers of courses to overseas students and international exchange programs
- provide the Queensland Curriculum and Assessment Authority (QCAA) with functions to administer Queensland's new senior assessment and tertiary entrance (SATE) systems, commencing for students entering Year 11 in 2019
- make minor and technical amendments to the *Education (General Provisions) Act 2006* and the *Working with Children (Risk Management and Screening) Act 2000*, and
- amend the *Trading (Allowable Hours) Act 1990* (TAH Act) to ensure that larger retailers ('non-exempt shops') in regional areas where there is no Sunday or public holiday trading (seven-day trading) can trade on Easter Saturday.<sup>5</sup>

### 1.4 Government consultation on the bill

The explanatory notes to the bill list an array of education stakeholder bodies who were consulted and support the bill, including:

*Independent Schools Queensland (ISQ), the Queensland Catholic Education Commission (QCEC), not-for-profit student exchange organisations, the Council of Australian Student Exchange Organisations registration bodies in other states and territories, the Non-State Schools Accreditation Board, the Queensland Teachers' Union of Employees and the Independent Education Union (Queensland and Northern Territory Branch).*<sup>6</sup>

The notes also state that the Home Education Association 'was consulted and raised no concerns about the home education reforms', and that the relevant Commonwealth agency was informed about the proposed reforms to the regulation of providers of courses to overseas students.<sup>7</sup>

With respect to the bill's amendments to support the introduction of the state's new SATE systems in particular, the department advised that the reforms had their origins in a major independent review conducted by the Australian Council for Educational Research (ACER), which engaged representatives from across the schooling and tertiary sectors, and reported in 2014.<sup>8</sup> The recommendations of the ACER review were further progressed through ongoing consultative processes carried out by both the Newman and Palaszczuk Governments, with a Ministerial Senior Secondary Assessment Taskforce ultimately appointed to guide the development and implementation of the new systems.<sup>9</sup>

The explanatory notes advise that the taskforce 'includes representation from schooling sectors, parent groups, secondary principals' associations, teacher unions and tertiary institutions, as well as the QCAA and QTAC'.<sup>10</sup> The department also reassured the committee that schools and practitioners continue to be closely involved in the development and operationalisation of the new arrangements.<sup>11</sup>

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<sup>5</sup> Explanatory notes, Education (Overseas Students) Bill 2018, p 1; Department, written briefing, 19 February 2018, p 1.

<sup>6</sup> Explanatory notes, p 13.

<sup>7</sup> Explanatory notes, p 13.

<sup>8</sup> Mr Michael Shephard, Director, Strategic Innovation, Department, public briefing transcript, Brisbane, p 3. See also: ETISBC, public briefing transcript, Brisbane, 10 August 2017, p 3.

<sup>9</sup> Explanatory notes, p 13.

<sup>10</sup> Explanatory notes, p 13.

<sup>11</sup> Mr Michael Shephard, Department, public briefing transcript, Brisbane, 22 February 2018, p 4.

Lastly, the trading hours amendments in the bill were incorporated in direct response to a concern raised by the National Retail Association (NRA), which identified an inadvertent drafting omission in reforms to trading hours arrangements that commenced on 31 August 2017.

The department advised that the 2017 reforms were the subject of significant stakeholder consultation and input, through both an independent reference group review process 'in which stakeholders had an opportunity to make contributions and look at the bill as it was constructed at that time'; and the subsequent examination of the resulting bill by the former Finance and Administration Committee of the 55<sup>th</sup> Parliament.<sup>12</sup> However, the omission was not immediately identified by stakeholders, or recognised during the subsequent committee inquiry process or debate of that bill in Parliament.<sup>13</sup>

The explanatory notes state that the NRA – Australia's 'largest and most representative retail industry organisation'<sup>14</sup> – supports the proposed amendments as they relate to Easter Saturday trading.<sup>15</sup>

### 1.5 Should the Bill be passed?

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

After examination of the bill and its policy objectives, and consideration of the report of the ETISBC and the information provided by the department, the committee recommends that the bill be passed.

#### **Recommendation 1**

The committee recommends the Education (Overseas Students) Bill 2018 be passed.

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<sup>12</sup> Mr Mark Hopgood, Principal Industrial Policy Officer, Industrial Relations Policy and Regulation, Office of Industrial Relations (OIR), public briefing transcript, Brisbane, 22 February 2018, p 7.

<sup>13</sup> F Caldwell, 'Changes to allow trading on Easter Saturday to be rushed through', *Brisbane Times* (online), 20 February 2018, webpage, <https://www.brisbanetimes.com.au/politics/queensland/changes-to-allow-trading-on-easter-saturday-to-be-rushed-through-20180220-p4z0y8.html>.

<sup>14</sup> National Retail Association (NRA), 'Who is the NRA', webpage, <https://www.nra.net.au/>.

<sup>15</sup> Explanatory notes, p 14.

## 2 Examination of the Education (Overseas Students) Bill 2018

While the bill was considered by this committee in its entirety, its provisions and their effect have to a large extent already been summarised in the ETISBC's comprehensive report on the equivalent provisions of the 2017 bill. The committee did not wish to duplicate this good work, and has accordingly attached the ETISBC report at Appendix B for reference.

In so doing, the committee wishes to emphasise that it does not endorse the ETISBC's recommendations for amendments, having had the opportunity to further review the issues raised by the ETISBC and receive additional advice on these matters from the department.

Here, the committee outlines its consideration of these issues and of the additional amendments incorporated in the 2018 bill.

### 2.1 Additional amendments

#### 2.1.1 Additional amendments to Clause 66

As detailed in the ETISBC report, the bill would establish a new statutory regime to regulate the approval of providers of courses to overseas students and student exchange programs, including providing accompanying compliance monitoring and enforcement powers to be used by 'authorised persons' to ensure the integrity of the regime. Among these compliance powers is a 'help requirement' set out in clauses 65 and 66 of the bill.

Clause 65 provides that when exercising powers of entry for purposes of investigation and enforcement, an authorised person may ask a person for help, including to provide a document or provide information. Failure to comply with such a request without a reasonable excuse is an offence under clause 66 of the bill, which attracts a maximum penalty of 50 penalty units (\$6,307).<sup>16</sup>

It is a reasonable excuse to not comply with the request if complying would incriminate the person or expose them to a penalty. However, clause 66(3) abrogates the protection against self-incrimination if the document or information is required to be kept under a relevant law, for the purposes of the regulatory regime.

The department advised that the types of documents required to be kept and held by school providers and student exchange organisations under the regime include:

*... policies and procedures for ensuring the safety and wellbeing of participating students, blue card details of relevant staff members, details of host families and financial records.*<sup>17</sup>

The ETISBC expressed a concern about this abrogation of the right to protection against self-incrimination in the 2017 bill, reporting:

*The principle against self-incrimination is based on the common law principle that an individual accused of an offence should not be obliged to incriminate himself or herself. The explanatory notes did not address the potential FLP [fundamental legislative principle] raised by clause 66.*<sup>18</sup>

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<sup>16</sup> Education (Overseas Students) Bill 2018 (Bill), clause 66(1). The current penalty unit value in Queensland is \$126.15, as set by the Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2017, commencing from 1 July 2017. The monetary value of the penalty is calculated by multiplying the value of a penalty unit by the number of penalty units, and rounding the resulting value down to the nearest multiple of \$1. See: *Penalties and Sentences Act 1992*, ss5(2)-5(2A).

<sup>17</sup> Mrs Lesley Robinson, Acting Deputy Director-General, Policy Performance and Planning, Department, public briefing transcript, Brisbane, 22 February 2018, p 3.

<sup>18</sup> ETISBC report, p 13.

The ETISBC accordingly recommended (Recommendation 4) that the 2017 bill be amended to limit the further use of information or documents required to be provided under the provision to use in ‘proceedings relating to the false or misleading nature of the document’.<sup>19</sup>

The department, whilst acknowledging that there is ‘some merit in limiting the use of the prescribed document’, described the limitation proposed by the committee as being ‘too restrictive’ and as one that would ‘reduce the effectiveness of the regulatory regime’:<sup>20</sup>

*The new regulatory regime has a number of offences in it. The important one is an offence for operating without having an approval. There are also compliance procedures that we can take if the providers are not complying with conditions. If we are not able to take action against providers using the information that we have obtained through the use of the authorised persons, there will be no repercussion for a provider who is not complying with the scheme. We need to make sure that if we are giving ourselves the powers to go in and monitor compliance with the scheme, we can follow up and take action if it is required.*<sup>21</sup>

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*Amending the bill in the way proposed by the committee would reduce the regulator’s capacity to effectively monitor and ensure compliance with the scheme, reducing the protections available to participating students and impacting on Queensland’s reputation as a destination for international education.*<sup>22</sup>

The Government has responded to the concerns of the ETISBC by including new subclauses 66(4) and 66(5) in the current bill, which limit the use of a document or information obtained when the protection against self-incrimination is abrogated to proceedings:

- about the false or misleading nature of the information and document, or
- for the purposes of the prosecuting of offences under the regulatory regime.<sup>23</sup>

The committee considers that the new amendments appropriately address the concerns of the ETISBC, while also ensuring the capacity of the regulator to effectively monitor compliance with the scheme.

In a practical sense, as was explained by the department:

*... where [a provider says] that all of their employees have blue cards, we might ask them to produce evidence of that. If we want them to show us that they have evidence that all of their employees have blue cards they cannot say, ‘I will not show you because I might incriminate myself...*

*That is where we have abrogated that protection... Then we can only use the information that they have provided to us for offences under the Act.*<sup>24</sup>

### **2.1.2 Amendments to the *Trading (Allowable Hours) Act 1990***

On 31 August 2017, amendments to the TAH Act commenced which served to simplify and standardise opening hours across areas of Queensland. In the course of transferring unchanged provisions from the now rescinded trading hours order into the amended legislation, a provision permitting

<sup>19</sup> ETISBC report, p 13.

<sup>20</sup> Department, written briefing, 19 February 2018, p 2.

<sup>21</sup> Ms Kate Molomby, Principal Advisor, Legislative Services Unit, Department, public briefing transcript, Brisbane, 22 February 2018, p 4.

<sup>22</sup> Department, written briefing, 19 February 2018, p 2.

<sup>23</sup> Department, written briefing, 19 February 2018, p 2.

<sup>24</sup> Ms Kate Molomby, Department, public briefing transcript, Brisbane, 22 February 2018, pp 7-8.

'non-exempt shops'<sup>25</sup> to continue to trade on the Easter Saturday public holiday in regional areas without Sunday or public holiday trading ('seven day trading'), was inadvertently omitted.

As a consequence, larger retailers such as supermarkets, hardware stores and department stores in such regional areas must be closed across all four consecutive Easter public holidays – Good Friday, Easter Saturday, Easter Sunday and Easter Monday. The explanatory notes state that the areas affected by the omission include:

*Mount Isa, Goondiwindi, Chinchilla, Kingaroy, Roma, Childers, Bowen, Ayr, Charters Towers, Proserpine, Mission Beach, Cloncurry, Weipa, Nanango, Oakey, Home Hill, Pittsworth, Blackwater, Charleville and Longreach.*<sup>26</sup>

On being alerted to the omission by the NRA, the government committed to urgently rectifying the oversight before Easter 2018, 'to provide early notice and assurances to businesses and consumers in the affected areas that existing Easter Saturday trading arrangements remain in place'.<sup>27</sup>

The bill corrects the omission by inserting a provision in the TAH Act which specifies that non-exempt shops in areas without Sunday or public holiday trading may open on Saturdays 'including Easter Saturday'.<sup>28</sup> The amendment will commence on 30 March 2018.<sup>29</sup>

The committee notes that some submitters to the taskforce review and subsequent Finance and Administration Committee inquiry into the 2017 trading hours reform bill expressed a preference for larger retailers in regional areas not to open over public holidays, citing disadvantages to small businesses and independent supermarkets associated with competition from the larger retailers and significant staff costs; and advocating a timely break from wider retail trade.<sup>30</sup>

The NRA, conversely, has stated that the effect of the drafting omission would be problematic for consumers and workers, citing:

- the inconvenience for shoppers in regional areas
- costs for supermarkets associated with discarding large amounts of fresh produce before the long weekend as they would be unable to trade until Tuesday, and
- the disadvantage for workers who would otherwise have volunteered to work on the day to take advantage of penalty rates.<sup>31</sup>

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<sup>25</sup> Non-exempt shops are shops other than those defined as 'exempt' under the TAH Act, and include large retailers including supermarkets, department stores and hardware shops, as well as shops selling motor vehicles or caravans. See: Business Queensland, *Shop trading hours in Queensland*, Queensland Government, webpage, last reviewed 15 November 2017, <https://www.business.qld.gov.au/running-business/marketing-sales/trading-hours/hours/queensland>. See also: Finance and Administration Committee, *Report no. 37, 55<sup>th</sup> Parliament: Trading (Allowable Hours) Amendment Act 2017*, Queensland Parliament, April 2017 (Finance and Administration Committee report), p 4.

<sup>26</sup> Explanatory notes, p 9.

<sup>27</sup> Hon Grace Grace MP, Minister for Education and Minister for Industrial Relations, 'Education (Overseas Students) Bill 2018', Explanatory Speech, *Hansard*, 15 February 2018, p 82.

<sup>28</sup> Bill, clause 149.

<sup>29</sup> Bill, clause 2(2).

<sup>30</sup> Finance and Administration Committee report, p 4.

<sup>31</sup> F Caldwell, 'Changes to allow trading on Easter Saturday to be rushed through', *Brisbane Times* (online), 20 February 2018, webpage, <https://www.brisbanetimes.com.au/politics/queensland/changes-to-allow-trading-on-easter-saturday-to-be-rushed-through-20180220-p4z0y8.html>; 'Three words could throw shoppers into 'chaos'', *South Burnett Times* (online), webpage, 19 January 2018, <https://www.southburnettimes.com.au/news/three-words-could-throw-shoppers-into-chaos/3314226/>.

Additionally, the NRA has argued:

*People tend to think of this as a big business issue but if I think about, say, Dalby, there are about 40-odd stores in the shopping centre there that actually rely on the large anchor shops to bring in traffic...*

*If they can't trade, the small businesses don't bother opening. You find 50 to 60 per cent of small businesses think it's worthwhile trading because there's people in the centre.<sup>32</sup>*

Ultimately, as the amendments are effectively seeking to address an oversight and preserve existing arrangements which have been the subject of considerable review, the committee affirms its support for the amendments and their important restoration of Easter Saturday trading rights in time for the upcoming Easter trading period.

## **2.2 Other recommendations of the Education, Tourism, Innovation and Small Business Committee**

### **2.2.1 Recommendation 2 – Clause 23**

Within the scope of its regime for the approval of school providers of courses to overseas students and international exchange programs, the bill provides that approvals may be subject to conditions that are considered by the chief executive to be appropriate. Clause 23 of the bill allows the chief executive to amend an approval at any time without an application from an approval holder, including to impose a condition on, or vary or remove a condition of, an approval.<sup>33</sup>

The ETISBC raised concerns that clause 23 may allow the chief executive to impose conditions on an approval that may be significant in nature, and that the approval holder would not have the opportunity to respond before the conditions are imposed. Accordingly, it recommended (Recommendation 2):

*... that clause 23 of the Education (Overseas Students) Bill 2017 be amended to limit the type of amendments to an approval that may be made by the chief executive without prior notification to an approval holder.<sup>34</sup>*

The ETISBC gave the following examples of the type of limited amendments it considered may be reasonably made:

(a) *a formal or clerical reason; or*

(b) *another reason if the chief executive reasonably believes the amendment will not adversely affect the interests of the person to whom the approval applies.<sup>35</sup>*

The committee notes that the explanatory notes to the 2017 bill provided the ETISBC with very limited information regarding the broader context and effect of clause 23 within the scope of the bill. This committee has benefitted from the inclusion of additional clarifying information regarding the operation of the clause.

The explanatory notes to the current bill explain that:

*... the application of this clause is limited by virtue of the context and construction of the bill as a whole and the clause is not intended to be used as a means of unilaterally taking compliance action against the holder.<sup>36</sup>*

Amendments resulting from actions or omissions that are grounds for compliance must be progressed according to very specific processes outlined in other sections of the bill – specifically, in chapter 2,

<sup>32</sup> 'Three words could throw shoppers into 'chaos'', *South Burnett Times* (online), webpage, 19 January 2018, <https://www.southburnettimes.com.au/news/three-words-could-throw-shoppers-into-chaos/3314226/>.

<sup>33</sup> Department, written briefing, 19 February 2018, p 3.

<sup>34</sup> ETISBC report, p 7.

<sup>35</sup> ETISBC report, p 7.

<sup>36</sup> Explanatory notes, p 16.

parts 5 and 6.<sup>37</sup> Clause 23, on the other hand ‘allows for amendments to be made without prior notification of approval’ to facilitate the effective operation of the shared regulatory framework.<sup>38</sup> As was further explained during the committee’s public briefing on the bill:

**Ms Molomby:** *Because of the interaction between the Commonwealth CRICOS registration and the Queensland approval, we might want to be reflecting changes that have been made at a Commonwealth level on the Queensland approval as well. Also there might be approvals that have been put on at a state level—for example, we may have limited the number of students that a provider can take for a period of time and then a site visit has indicated that the provider is very capable of taking on additional students. We can just take that condition off without the provider having to apply to us to say, ‘You came out and inspected. You saw the place was okay. Can you now remove that restriction?’ We will just be able to do that unilaterally. If we wanted to do that without that clause, we would have to go down a show cause process, which means we would have to write to them and ask them to respond as to why we should not be taking that action. It is a lot more—*

**CHAIR:** *It is largely administrative in nature?*

**Ms Molomby:** *Yes.*<sup>39</sup>

The committee was satisfied with the department’s explanation, recognising the importance of the provisions as drafted as necessary to support the operation of the co-regulatory system. Viewing the clause within the context of the bill as a whole, the committee agrees that the limitations on the application of clause 23 as proposed by the ETISBC are unnecessary and could also negatively affect the interaction between Commonwealth and State regulators, and in turn also be detrimental to holders of a school provider or student exchange approval.

In relation to a concern expressed by the ETISBC that clause 23 could raise an FLP issue by potentially imposing obligations on an approval holder retrospectively, the committee also notes the additional advice of the department that:

*The amendment to an approval made under section 23 can only take effect prospectively. Clause 24(5) states that the decision to amend an approval under clause 23 takes effect 10 days after the holder is given the information notice about the decision, or if the information notice states a later date, the later day. Therefore, there is no potential for the amendment of an approval to impose obligations retrospectively.*

*In addition, the Bill includes appropriate review mechanisms in relation to decisions made by the chief executive under clause 23. In particular, clause 24 of the Bill provides that if the chief executive amends an approval under clause 23, the chief executive must give the holder an information notice about the decision. This gives the holder review rights to the Queensland Civil and Administrative Tribunal.*<sup>40</sup>

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<sup>37</sup> Explanatory notes, p 16; Ms Kate Molomby, Department, public briefing transcript, Brisbane, 22 February 2018, p 6.

<sup>38</sup> Ms Kate Molomby, Department, public briefing transcript, Brisbane, 22 February 2018, p 6.

<sup>39</sup> Ms Kate Molomby, Department, public briefing transcript, Brisbane, 22 February 2018, p 6.

<sup>40</sup> Department, written briefing, 19 February 2018, p 3.

### 2.2.2 Recommendation 3 – Clause 97

Clause 96 of the bill provides that the chief executive, public service employees in the department, or authorised persons performing functions under the proposed Act must not use or disclose confidential information about a person, unless it is for an authorised purpose.

Clause 97 outlines the circumstances in which the use or disclosure of information may be authorised, including permitting its release ‘with the consent of a parent of the child’.<sup>41</sup>

The ETISBC noted in its report on the 2017 bill that the word ‘parent’ was not defined in the bill. Under the rules of statutory interpretation, where a word is not defined, the ordinary and natural meaning of the word will apply.<sup>42</sup>

The ETISBC expressed a concern that the ‘ordinary meaning’ of parent may not adequately address the family circumstances of overseas students and Queensland students who participate in an international student exchange. The committee recommended (recommendation 3) that the 2017 bill be amended:

*... to define ‘parent’ in a way that includes appointed guardians and people who are regarded as a parent under Aboriginal tradition or Islander custom, and who would be the appropriate person to give consent to the release of confidential information about a child under clause 97.*<sup>43</sup>

While appreciative of the ETISBC’s concern, the committee notes that the word ‘parent’ is only used in clause 97(c) of the bill, and further, takes a differing view of the inclusiveness of the natural and ordinary meaning of ‘parent’, aided by the advice of the department in this regard:

*The word ‘parent’ is only used in clause 97(c) and is not defined... The definition of ‘parent’ in the Macquarie Dictionary (6th Edition) includes a ‘protector or guardian’ and would include a parent under the Aboriginal tradition or Islander custom.*

*The Bill relates to overseas students studying in Queensland and Queensland students travelling overseas for study. If a definition of parent was to be included in the Bill there is a risk that the definition may inadvertently narrow the ordinary and natural meaning of ‘parent’ and therefore not capture the familial relationships of overseas students. Maintaining the ordinary meaning of the word allows the legislation this flexibility.*<sup>44</sup>

The committee appreciates the inclusion of additional clarifying information in the explanatory notes to the current bill with respect to the meaning of ‘parent’ under clause 97, in response to the ETISBC’s report.<sup>45</sup>

<sup>41</sup> Bill, clause 97(c).

<sup>42</sup> *Acts Interpretation Act 1954*, s 14B.

<sup>43</sup> ETISBC report, p 9.

<sup>44</sup> Department, written briefing, 19 February 2018, p 4.

<sup>45</sup> Explanatory notes, p 23.

### **3 Compliance with the *Legislative Standards Act 1992***

#### **3.1 Fundamental legislative principles**

Section 4 of the *Legislative Standards Act 1992* (LSA) 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 is satisfied that the potential FLP breaches within the bill were canvassed by the ETISBC with respect to the substantively similar 2017 bill. The committee has not identified any further potential issues.

The committee considers that the FLP issues identified by the ETISBC with respect to clause 66 and its abrogation of the right to protection against self-incrimination have been appropriately addressed by the additional amendments in the 2018 bill, which balance such rights of providers against the need for appropriate safeguards to ensure the efficacy of the regulatory regime, and in turn, the wellbeing of participating students.

The committee also notes that the ETISBC’s concerns about the potential retrospective application of clause 23 are unfounded, given the accompanying clause 24(5) provision that stipulates that the decision to amend an approval taken under clause 23 only takes effect 10 days after the holder is given the information notice about the decision, or if the information notice states a later date, the later day.

#### **3.2 Explanatory notes**

The LSA 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 of the LSA and a reasonable level of background information and commentary to facilitate understanding of the bill’s aims and origins.

The committee also appreciates that the explanatory notes to the bill included additional information to those tabled with the 2017 bill, which addresses the FLP issues raised by the ETISBC in relation to clauses 23 and 66.<sup>46</sup>

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<sup>46</sup> ETISBC report, p 14.



## Appendix A – Officials at public departmental briefing

### Department of Education

- Mrs Lesley Robinson, Acting Deputy Director-General, Policy Performance and Planning
- Ms Vanessa Fensom, Manager, International Quality (Schools) Unit
- Mr Michael Shephard, Director, Strategic Innovation
- Ms Kate Molomby, Principal Advisor, Legislative Services Unit
- Mr Mark Hopgood, Principal Industrial Policy Officer, Industrial Relations Policy and Regulation, Office of Industrial Relations

# Education (Overseas Students) Bill 2017

**Report No. 42, 55th Parliament**

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

**September 2017**

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

<b>Chair</b>	Mr Scott Stewart MP, Member for Townsville
<b>Deputy Chair</b>	Miss Verity Barton MP, Member for Broadwater
<b>Members</b>	Mr Mark Boothman MP, Member for Albert
	Mr Bruce Saunders MP, Member for Maryborough
	Mr Ted Sorensen MP, Member for Hervey Bay
	Mr Richard (Rick) Williams MP, Member for Pumicestone

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Appendix B

## Abbreviations

ATAR	Australian Tertiary Admission Ranks (ATAR)
Commonwealth Act	<i>Education Services for Overseas Students Act 2000</i> (Cwlth)
CRICOS	<i>Commonwealth Register of Institutions and Courses for Overseas Students</i>
department	Department of Education and Training
DSA	Designated State Authority
General Provisions Act	<i>Education (General Provisions) Act 2006</i>
ELICOS standards	The national standards for English Language Intensive Courses for Overseas Students providers and courses
EOS Act	<i>Education (Overseas Students) Act 1996</i>
ISQ	Independent Schools Queensland
LSA	<i>Legislative Standards Act 1992</i>
National Code	<i>National Code of Practice for Providers of Education and Training to Overseas Students 2017</i>
National Guidelines	<i>National Guidelines for the Operation of International Secondary Exchange Programs in Australia</i>
NSSAB	Non-State Schools Accreditation Board
OP	Overall Position (tertiary entrance ranks)
OQPC	Office of the Queensland Parliamentary Counsel
PSA	<i>Public Service Act 2008</i>
QCAA	Queensland Curriculum and Assessment Authority
QCAA Act	<i>Education (Queensland Curriculum and Assessment Authority) Act 2014</i>
QTAC	Queensland Tertiary Admissions Centre
SATE	Senior assessment and tertiary entrance (systems)

## Chair's foreword

This report presents a summary of the Education, Tourism, Innovation and Small Business Committee's examination of the Education (Overseas Students) Bill 2017.

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.

On behalf of the committee, I thank the organisations that made written submissions on the Bill. I also thank the committee's secretariat, and the Department of Education and Training.

I commend this Report to the House.



Scott Stewart MP  
**Chair**

Appendix B

## Recommendations

**Recommendation 1** **1**

The committee recommends the Education (Overseas Students) Bill 2017 be passed.

**Recommendation 2** **7**

The committee recommends that clause 23 of the Education (Overseas Students) Bill 2017 be amended to limit the type of amendments to an approval that may be made by the chief executive without prior notification to an approval holder.

**Recommendation 3** **9**

The committee recommends that the Education (Overseas Students) Bill 2017 be amended to define 'parent' in a way that includes appointed guardians and people who are regarded as a parent under Aboriginal tradition or Islander custom, and who would be the appropriate person to give consent to the release of confidential information about a child under clause 97.

**Recommendation 4** **13**

The committee recommends that the Education (Overseas Students) Bill 2017 be amended to limit the future use in proceedings of a document that is required to be kept and is produced by a person under clause 66, unless the proceeding relates to the false or misleading nature of the document.

Appendix B

# Appendix B

## 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.<sup>1</sup>

The committee's primary areas of responsibility include:

- 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 and item of subordinate legislation 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 (Overseas Students) Bill 2017 (Bill) was introduced into the Legislative Assembly on 8 August 2017 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 the Standing Order 131, and the committee was required to report to the Legislative Assembly by 28 September 2017.

During its examination of the Bill, the committee:

- invited submissions from stakeholders and subscribers, and
- received a public briefing on the Bill from the Department of Education and Training (the department) on 10 August 2017 (see Appendix B).

A list of the three submissions accepted by the committee is at Appendix A. After consideration of submissions the committee decided not to hold a public hearing on the Bill.

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

### 1.3 Should the Bill be passed?

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 from submitters, the committee recommends that the Bill be passed.

#### **Recommendation 1**

The committee recommends the Education (Overseas Students) Bill 2017 be passed.

<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

## 2 Examination of the Education (Overseas Students) Bill 2017

### 2.1 Policy objectives of the Bill

The explanatory notes state that the policy objectives of the Bill are to:

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

### 2.2 Government consultation on the Bill

Stakeholders that government consulted on the Bill were Independent Schools Queensland (ISQ), the Queensland Catholic Education Commission, the Queensland Tertiary Admissions Centre (QTAC), the Queensland Teachers' Union of Employees and the Independent Education Union. Government also consulted not-for-profit student exchange organisations, the Council of Australian Student Exchange Organisations and registration bodies in other states and territories. Statutory bodies, the Queensland Curriculum and Assessment Authority (QCAA) and the Non-State Schools Accreditation Board, were also consulted. The explanatory notes state that all stakeholders supported the Bill.<sup>2</sup>

The Home Education Association was consulted about the proposed reforms to home education and raised no concerns. The relevant Commonwealth agency was informed about the proposed regulatory reforms for providers of courses to overseas students.<sup>3</sup>

### 2.3 School providers of courses to overseas students

#### 2.3.1 Overview of the current regulatory framework

The regulation of education and training to overseas students is a shared responsibility between the Australian and Queensland governments. The national framework for the regulation of providers of courses to overseas students includes the Commonwealth *Education Services for Overseas Students Act 2000* (the Commonwealth Act) and the *National Code of Practice for Providers of Education and Training to Overseas Students 2017* (the National Code).<sup>4</sup> State and territory legislation supports the national framework by regulating the approval of education and training providers.<sup>5</sup> Queensland regulates approval of providers of courses under the *Education (Overseas Students) Act 1996* (EOS Act).

The Commonwealth Act sets out the legislative requirements and standards for education and training institutions that provide courses to overseas students who are in Australia on a student visa.<sup>6</sup> The Commonwealth Act requires that course providers are registered on the *Commonwealth Register of Institutions and Courses for Overseas Students* (CRICOS). The explanatory notes state that schools registered on CRICOS must first be approved by the designated state authority (DSA).<sup>7</sup> The DSA for

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<sup>2</sup> Explanatory notes, p 12.

<sup>3</sup> Explanatory notes, p 12.

<sup>4</sup> A revised National Code is expected to be made in late 2017.

<sup>5</sup> The National Code, p 6. See Australian Government, Department of Education and Training, <https://internationaleducation.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/National-Code/Pages/default.aspx>

<sup>6</sup> Australian Government, Department of Education and Training, ESOS legislative framework, <https://internationaleducation.gov.au/regulatory-information/pages/regulatoryinformation.aspx>

<sup>7</sup> Explanatory notes, p 1.

Queensland's state and non-state schools is the director-general of the Department of Education and Training. According to the explanatory notes the DSA is responsible for 106 school providers in Queensland, which includes 105 non-state schools, and one registration for the state school sector covering 145 state schools.<sup>8</sup>

The National Code, established under the Commonwealth Act, is a set of nationally consistent standards for the conduct of providers registered on CRICOS.<sup>9</sup> The National Code outlines the roles and responsibilities of the Australian, and state and territory governments and the CRICOS registration process. It includes providers' requirements and obligations and 15 standards that providers must meet in their interactions with international students. The National Code is a legislative instrument which means that it is legally enforceable. Providers who do not comply with the National Code can risk sanctions being imposed on their registration under the Commonwealth Act.<sup>10</sup>

The explanatory notes state that Queensland's current EOS Act does not meet the expectations of the national framework and does not reflect the role and responsibilities of the director-general as the DSA.<sup>11</sup>

The Bill proposes to repeal the current EOS Act and replace it with legislation that better aligns with the Commonwealth legislation and the National Code, and is intended to improve Queensland's compliance framework. Under provisions in the current EOS Act, school providers of courses to overseas students must be registered on a Queensland register. The Bill proposes to remove Queensland registration, including the separate registration of courses, as the Commonwealth Act already requires that providers be registered on CRICOS.<sup>12</sup> During her introductory speech, the Minister referred to the current 'duplicative regulatory processes' that required Queensland to maintain a separate state-based register.<sup>13</sup>

### 2.3.2 School provider approvals

The Bill proposes to better align the criteria the director-general considers when making a decision about an approval with the criteria in the Commonwealth Act and National Code.<sup>14</sup>

Clause 6 sets out who may apply for approval to provide a course to overseas students. The Bill provides that a school may apply to the director-general of the department (the 'chief executive' in the Bill) for a 'school provider approval'. The Bill proposes that state school applications for a school provider approval may be made on behalf of the school by a person authorised by the director-general. For non-state schools clause 7 provides that the application must be made on behalf of the school by the school's governing body or a person authorised by the school's governing body. Applications for approval must be accompanied by the fee that is prescribed by regulation.

Clause 8 requires the decision about an application to be made within six months, or within a longer period that is agreed between the director-general and the applicant. Before approval is given, the director-general must be satisfied that the applicant is complying, or will comply, with the new Act, the Commonwealth Act, and the relevant provisions of the National Code and the ELICOS standards. In addition, if the applicant is not a school entitled to receive Commonwealth funds, the director-general must be satisfied that the applicant is fit and proper to provide a course or courses at a location or locations to overseas students.

<sup>8</sup> Explanatory Notes, p 1.

<sup>9</sup> The National Code, p 5.

<sup>10</sup> The National Code, p 6.

<sup>11</sup> Explanatory notes, p 2.

<sup>12</sup> Explanatory notes, p 4-5.

<sup>13</sup> Hon Kate Jones MP, Minister for Education and Minister for Tourism and Major Events and the Commonwealth Games, Record of Proceedings, 8 August 2017, p 1971.

<sup>14</sup> Explanatory notes, p 4.

Clause 11 provides that a school provider approval can be granted for a term of up to seven years. The explanatory notes state that this is consistent with the Commonwealth Act.<sup>15</sup>

### **2.3.3 Existing registered providers, applications and suspensions**

Providers who are registered to provide courses to overseas students under the current EOS Act will continue under the new Act as the holder of a school provider approval, under the same conditions and for the same period, except for the conditions under section 8 of the current EOS Act.<sup>16</sup> The conditions under section 8 of the current EOS Act relate to providing information and records to the department, and allowing access to inspect premises. The Bill provides separately for those matters.

Clause 107 provides that applications that were made immediately before repeal of the current EOS Act and commencement of the proposed new Act but not finalised are to be dealt with under the new Act. Clauses 109 to 112 provide for suspensions under the current EOS Act to be continued under the new Act, proposed suspensions under the current EOS Act to be dealt under the new Act, and for applications for review to be dealt with by QCAT.

## **2.4 Student exchange programs**

### **2.4.1 Overview - current arrangements**

Student exchange programs provide Australian students with the opportunity to attend secondary schools overseas and, under reciprocal obligations, provide overseas students with the opportunity to attend an Australian school. Student exchange programs are managed separately by each Australian jurisdiction.<sup>17</sup>

The department advised the committee that Queensland currently provides oversight of student exchange organisations under an administrative regime.<sup>18</sup> The current administrative regime is based on the *National Guidelines for the Operation of International Secondary Exchange Programs in Australia* (National Guidelines). The department is responsible for registering student exchange organisations and monitoring compliance.<sup>19</sup>

Currently 23 organisations are registered to provide student exchange programs in Queensland - seven independent schools, three Catholic schools, one state school, and 12 not-for-profit entities, including Rotary. In 2016, 159 overseas students attended secondary school in Queensland and 189 Queensland secondary students attended overseas schools.<sup>20</sup>

### **2.4.2 International student exchange programs**

The statutory regime for student exchange approvals proposed by the Bill will reflect the current administrative regime and the policy intent of the National Guidelines. The explanatory notes state that formalising current administrative arrangements in the legislation is consistent with the approach adopted in Victoria and Tasmania.<sup>21</sup>

The explanatory notes state:

*Introducing a statutory regime will provide regulatory oversight commensurate with the level of risk associated with student exchange students and protect Australia's reputation as a destination for international education and training.*<sup>22</sup>

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<sup>15</sup> Explanatory notes, p 4.

<sup>16</sup> Clause 108.

<sup>17</sup> Explanatory notes, p 2.

<sup>18</sup> Public hearing, Brisbane, 10 August 2017, p 2.

<sup>19</sup> Explanatory notes, p 2.

<sup>20</sup> Explanatory notes, p 2.

<sup>21</sup> Explanatory notes, p 13.

<sup>22</sup> Explanatory notes, p 3.

Schedule 1 of the Bill defines 'international secondary student exchange program' as a program without tuition fees, of not more than 12 months, that enables under reciprocal arrangements:

- an overseas student to attend a Queensland secondary school on a full-time basis, and
- a Queensland student to attend an overseas secondary school on a full-time basis.

For the purpose of student exchange approvals, an overseas student is defined as a person who holds a student visa as a secondary exchange student.<sup>23</sup>

### 2.4.3 Guidelines for international student exchange programs

Clause 93 requires the director-general to make guidelines about the operation of international secondary student exchange programs. The guidelines may be amended or replaced by later guidelines and a copy of the guidelines must be published on the department's website.

The explanatory notes state that the guidelines will be modelled on the National Guidelines and will reflect Queensland specific laws.<sup>24</sup> The proposed guidelines must include but are not limited to: the eligibility of organisations to operate the programs; the way in which financial viability, organisational structure, and not-for-profit status of organisations seeking to operate the programs is to be assessed; the reciprocity obligation of organisations operating the programs; the way in which organisations are to comply with the *Working with Children (Risk Management and Screening) Act 2000*; and the way in which support and protection is to be provided to overseas students, Queensland students and host families participating in the programs.<sup>25</sup>

### 2.4.4 Student exchange approvals

The Bill proposes that schools and not-for-profit organisations apply for a 'student exchange approval' to provide an international secondary student exchange program.<sup>26</sup> Clause 19 of the Bill provides that a student exchange approval can be granted for a term of up to six years.

Like school provider approvals, the Bill proposes that state school applications for a student exchange approval may be made on behalf of the school by a person authorised by the director-general. For non-state schools the Bill proposes that the application must be made on behalf of the school by the school's governing body or a person authorised by the school's governing body.<sup>27</sup> Applications for approval must be accompanied by the fee that is prescribed by regulation.<sup>28</sup>

Clause 16 provides that decisions to give or refuse to give an approval must be made within six months or, within a longer period agreed to by the director-general and the applicant. Before approval is given, the director-general must be satisfied that the applicant is complying or will comply with the proposed Act and the guidelines made under clause 93 of the Bill, and that the applicant is fit and proper to provide an international secondary student exchange program.

Clause 94 requires that an up-to-date register of organisations approved to provide international student exchange programs must be published on the department's website. The information that must be included on the register includes the name of the holder of the student exchange approval and details of the head office.

<sup>23</sup> Schedule 1, Dictionary

<sup>24</sup> Explanatory notes, p 5.

<sup>25</sup> See clause 93 1a to 1g.

<sup>26</sup> Clause 14.

<sup>27</sup> Clause 14.

<sup>28</sup> Clause 15.

In its submission to the committee ISQ supported passage of the Bill and noted that the current arrangements for international student exchanges were working well. The ISQ questioned the necessity for a new state regulatory regime in respect of international exchange students.<sup>29</sup>

## **2.5 Conditions on approvals**

School provider approvals and student exchange approvals may be subject to conditions that are considered appropriate by the director-general.

The Bill provides that it is a mandatory condition of both a school provider approval and a student exchange approval that the holder comply with a request by the director-general for information (including documents) kept by the holder under a relevant law (as defined in the Schedule 1 Dictionary).<sup>30</sup> The explanatory notes state that ‘this is consistent with the current EOS Act and will support Queensland’s role in monitoring compliance with the Commonwealth EOS Act.’<sup>31</sup>

Conditions on school provider approvals may include: limits on the number of overseas students enrolled; that new students from a particular country may not be accepted; that the approval holder not deal with a specified agent; or that the holder not provide a stated course.<sup>32</sup>

The conditions on a student exchange approval may include that the approval holder complies with the reciprocity obligation or a reciprocity management plan.<sup>33</sup>

## **2.6 Amendment and renewal of approvals**

### **2.6.1 Application for amendment or renewal of an approval**

Clause 22 provides for a person with a school provider approval or a student exchange approval to apply for the approval to be amended. Decisions on an application must be made within 30 days or an agreed longer period. An application to renew an existing approval under clause 26 must be made at least three months before the approval ends. An approval may be renewed if the applicant continues to meet the eligibility criteria.<sup>34</sup>

### **2.6.2 Amendment of conditions on approval by director-general**

Clause 23 enables the director-general ‘to amend an approval at any time without an application from the holder’. An existing approval could have a new condition imposed, or an existing condition amended or removed.

The explanatory notes indicate that clause 23 is intended for ‘minor and administrative amendments to approvals’.<sup>35</sup> However, the committee notes that clause 23 does not clearly specify the type of amendments that may be made without prior notification to the holder of the approval. As it is drafted, clause 23 may enable amendment of conditions on an approval that are more significant than ‘minor and administrative’. The committee notes that the Bill also provides for changes to an approval on more significant matters if an approval holder does not comply with legislated requirements, and after the approval holder has an opportunity to respond (see section 2.9 below).

The committee considers that clause 23 should be amended to specify the scope of amendments the director-general may make to an approval without prior notification to an approval holder. The committee notes that other Queensland legislation which enables minor changes to an approval

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<sup>29</sup> Submission 1, p 2.

<sup>30</sup> Clauses 10 and 18.

<sup>31</sup> Explanatory notes p 5.

<sup>32</sup> Clause 9.

<sup>33</sup> Clause 17.

<sup>34</sup> Clause 27(3).

<sup>35</sup> Explanatory notes, p 15.

specifies the type of amendments that may be made. For example, an approval may be amended, if the amendment is only for:

(a) a formal or clerical reason; or

(b) another reason if the chief executive reasonably believes the amendment will not adversely affect the interests of the person to whom the approval applies.<sup>36</sup>

### **Recommendation 2**

The committee recommends that clause 23 of the Education (Overseas Students) Bill 2017 be amended to limit the type of amendments to an approval that may be made by the chief executive without prior notification to an approval holder.

## **2.7 Notification of decisions about approvals**

Once a decision is made to give an approval, or to renew or amend an approval, the Bill provides that the applicant must be notified of the decision.<sup>37</sup>

If the director-general refuses an approval, or refuses to amend or renew an approval, or imposes a condition on the approval, the Bill provides that the applicant is entitled to be given an information notice about the decision.<sup>38</sup> Likewise, if the director-general fails to decide to give an approval, or fails to decide an application to amend an approval, within the required timeframe, the applicant is entitled to an information notice.<sup>39</sup>

## **2.8 Review of decisions**

The Bill provides for an internal review of decisions about school provider approvals and student exchange approvals. The explanatory notes state there is currently no internal review process for those aggrieved by decisions under the EOS Act.<sup>40</sup> As stated above, the Bill proposes that applicants who are refused an approval, renewal or amendment of an approval, are entitled to an information notice about the decision. An 'information notice' is defined in the Schedule 1 of the Bill. A notice contains the decision and the reasons for the decision, and states that the applicant may apply for an internal review of the decision within 30 days after the information notice is received.

## **2.9 Compliance and sanctions for non-compliance**

Clause 31 provides that if the director-general believes an approval holder is not complying with the conditions of the approval, or with the Queensland or Commonwealth Acts or relevant standards, and the non-compliance is capable of being rectified, a compliance notice may be given to the approval holder. The notice may require the holder to refrain from taking an action, or to rectify non-compliance. Matters that must be included in a compliance notice are set out in clause 32. They include details of how the holder is failing or has failed to comply, the steps the approval holder must take to rectify the matter, and a time frame for rectification.

In specified circumstances where an approval holder does not comply with relevant legislation, standards and conditions, the Bill provides for suspension or cancellation of an approval, or the imposition of conditions. The grounds for taking compliance action include: if the approval holder has failed to comply with a compliance notice; the approval was obtained because of incorrect or misleading information; the holder has failed to comply with a condition of the approval; the holder is

<sup>36</sup> *Public Health (Medicinal Cannabis) Act 2016*, section 45

<sup>37</sup> Clauses 12, 20, 24 and 28.

<sup>38</sup> Clauses 12, 20, 24 and 28.

<sup>39</sup> Clauses 13, 21 and 24.

<sup>40</sup> Explanatory notes, p 6.

convicted of an offence against the proposed Act or the Commonwealth Act; or if the holder has been charged with an indictable offence, or any other circumstance that indicates that the holder may not be a fit and proper person to hold the approval.<sup>41</sup>

The explanatory notes state:

*The grounds for taking compliance action against a school provider have been expanded from those in the current EOS Act to align with the Commonwealth Act by including non-compliance with the Commonwealth Act and National Code... This reform strengthens oversight of approved school providers by providing the Director-General with the ability to meet expectations under the shared regulatory framework for monitoring compliance.*<sup>42</sup>

Clause 33(2) sets out the compliance actions that may be taken, which are: imposing conditions on the approval; varying or removing a condition of the approval; suspending the approval for up to six months, or cancelling the approval. Those actions may be taken only after the approval holder is given a 'show cause notice' under clause 34.

Clause 36 provides for the immediate suspension of a school provider approval or student exchange approval without a show cause notice if the director-general believes that there is an immediate risk to the safety, health or wellbeing of overseas students or Queensland students. The explanatory notes state this is consistent with the current EOS Act for school provider approvals.<sup>43</sup> Under clause 37 the holder of an approval must be given an information notice about a decision to take compliance action or a decision for immediate suspension without a show cause notice.

The explanatory notes state that the suspension or cancellation of an approval will prevent the holder of the approval from providing education to international students or from operating a student exchange program in Queensland.<sup>44</sup>

## **2.10 School provider approvals and the Commonwealth Act**

Consistent with the intention to better align the regulation of school provider approvals with the Commonwealth Act, the Bill provides for automatic cancellation of a school provider approval if registration is cancelled under the Commonwealth Act.<sup>45</sup>

If a provider's Commonwealth registration is due to expire and the provider has not finished providing their course to currently enrolled students then the Queensland approval will continue for as long as the registration continues under the Commonwealth Act.<sup>46</sup> If a registered provider defaults on the provision of services to overseas students or intending overseas students, and is required by the Commonwealth Act to provide notice about the default, the Bill provides that a copy of the notice be given to the director-general.<sup>47</sup> The explanatory notes state that 'it is important that the Director-General is informed about such defaults in order to take appropriate action under the Queensland legislation'.<sup>48</sup>

## **2.11 Confidentiality**

Clause 96 of the Bill provides that the director-general, public service employees and authorised persons performing functions under the proposed Act must not use or disclose confidential information about a person, unless it is for authorised purposes. Clause 97 provides when confidential

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<sup>41</sup> Clause 33(1)

<sup>42</sup> Explanatory notes, p 6.

<sup>43</sup> Explanatory notes p 6.

<sup>44</sup> Explanatory notes, p 6.

<sup>45</sup> Clause 90.

<sup>46</sup> Clause 91.

<sup>47</sup> Clause 92.

<sup>48</sup> Explanatory notes, p 11.

information may be used or disclosed. For example, confidential information may be disclosed for a purpose directly relating to a child's protection or wellbeing, or for a lawful purpose before a court or tribunal. If confidential information relates to an adult, it may be released with their consent.

Clause 97(c) provides that confidential information that relates to a child may be released with the consent of a parent of the child. The committee notes that 'parent' is not defined in the Bill. It therefore takes its ordinary meaning, which the committee considers may not adequately address the family circumstances of overseas students and Queensland students who participate in an international student exchange. The committee also notes that 'parent' is defined broadly in other legislation to include a guardian appointed under legislation or by a court order, and a person who is regarded as a parent under Aboriginal tradition or under Torres Strait Islander custom.<sup>49</sup> The committee therefore recommends that the Bill be amended to define 'parent' in a way which will enable those who are in an accepted parental role to give consent to the release of confidential information under clause 97.

### **Recommendation 3**

The committee recommends that the Education (Overseas Students) Bill 2017 be amended to define 'parent' in a way that includes appointed guardians and people who are regarded as a parent under Aboriginal tradition or Islander custom, and who would be the appropriate person to give consent to the release of confidential information about a child under clause 97.

Clause 98 also provides for the disclosure of confidential information to an entity which administers or enforces a corresponding law in another jurisdiction. In addition, information may be disclosed to the Non-State Schools Accreditation Board (NSSAB) if the disclosure assists the performance of the boards' functions.<sup>50</sup> Likewise, clause 100 proposes that the NSSAB may disclose to the director-general information that is protected information under the *Education (Accreditation of Non-State Schools) Act 2017* if the disclosure assists in the performance of functions under the proposed Act.<sup>51</sup>

## **2.12 Miscellaneous provisions**

The Bill contains a number of miscellaneous provisions, including the power for the director-general to delegate their functions or powers to an appropriately qualified public service employee (clause 101).

Clause 102 provides that the protection from civil liability that applies to state employees while performing their role as an authorised person under the *Public Service Act 2008* also applies to an authorised person who is not a state employee.

## **2.13 Offences, investigation and enforcement**

### **2.13.1 Offences**

Consistent with the requirements in the Bill to obtain an approval to provide a course or courses to overseas students, and to provide an international student exchange program, the Bill creates offences if a person does so without an approval.

Clause 82 makes it an offence to provide or promote a course to overseas students, including inviting applications or making offers, without a school provider approval. Exceptions to the offence are included in clause 82 so that preparatory activity such as investigating the demand for a course or negotiating about course development would not be an offence. The current Act contains a similar

<sup>49</sup> For example, *Child Protection Act 1999*, *Education (General Provisions) Act 2006*

<sup>50</sup> Clause 99.

<sup>51</sup> Clause 100.

offence, and the explanatory notes state that clause 82 is modelled on a similar offence in the Commonwealth Act.<sup>52</sup>

Clause 83 provides that it would be an offence to provide or promote an international secondary student exchange program without a student exchange approval, and provides for similar exceptions to the offence as those in clause 82.

### **2.13.2 Investigation and enforcement powers**

So that possible non-compliance with the legislation can be investigated, Chapter 3 of the Bill (clauses 41 to 81) provides for investigation and enforcement. The explanatory notes state that the powers are essential to enable effective monitoring and enforcement.<sup>53</sup>

Clauses 41 to 49 provide for the appointment of authorised persons and issuing of identity cards. Powers of entry are set out in clauses 52 to 62. Entry to premises may be with consent, or by a warrant. The Bill requires an authorised person to provide information before entering a place. The inspection powers in the current Act are limited to inspection of a place at which a registered provider intends to deliver a course to overseas students. Clause 64 enables an authorised person to search or inspect things at a place, take extracts or copies of documents, and take the steps necessary to exercise their powers. An authorised person may require reasonable help from a person at a place that is entered under clause 65, and clause 66 makes it an offence for a person not to provide reasonable help unless they have a reasonable excuse. The offence in clause 66 is discussed further in chapter 3 of this report.

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

### **2.14.1 Background**

In 2016 the Queensland Government committed to introduce a new senior assessment and tertiary entrance (SATE) system for students entering Year 11 in 2019.<sup>54</sup> The new system for senior assessment and tertiary entrance will bring Queensland in line with the approach in other jurisdictions.

Development of the SATE system was guided by a Ministerial Senior Secondary Assessment Taskforce. The taskforce included representatives of state and non-state schooling sectors, parent groups, principal associations, teacher unions, tertiary institutions, QCAA and QTAC.<sup>55</sup> Independent Schools Queensland and the Australian Catholic University informed the committee that they support the new senior assessment and tertiary entrance systems that will come into effect in 2019.<sup>56</sup>

### **2.14.2 Senior assessment**

In Queensland senior subject results are currently generated from school-based assessments developed and marked by classroom teachers. The new SATE system will include a combination of school-based assessment and external assessment set and marked by the QCAA.<sup>57</sup>

The proposed amendments to the QCAA Act add functions for the QCAA to administer the new SATE system. Clause 137 inserts a new section 13A with the following functions relating to the assessment of students for senior subjects including in recognised overseas schools:

- endorsing school-based assessment
- purchasing or developing, and revising external assessments
- developing procedures for endorsement of school-based assessments
- administration and marking of external assessment.

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<sup>52</sup> Explanatory notes, p 20.

<sup>53</sup> Explanatory notes, p 12.

<sup>54</sup> Clause 146.

<sup>55</sup> Explanatory notes, p. 3.

<sup>56</sup> Submission 1 and 2.

<sup>57</sup> Explanatory notes, p. 3.

The Independent Education Union of Australia (IEUA) raised concerns about clause 137, which would insert a new Section 13A(1)c of the *Education (Queensland and Assessment Authority) Act 2014* (the QCAA Act). The IEUA was concerned that the purchase of external assessment for senior subjects could embed a for-profit company's commercial interests in the curriculum, and lead to a decline in quality and equity of education, as has been observed overseas. The IEUA was also concerned that policy development, professional development and standardised testing could be outsourced. The committee sought comment from the department on this issue. The department advised that new section 13A(1)(c):

*..will allow, if necessary, the QCAA to purchase and revise assessments for use as external assessments. This is similar to the existing syllabus functions. Under sections 9 and 10 of the QCAA Act, the QCAA has functions to develop, purchase and revise syllabuses.*<sup>58</sup>

The department also advised that the purchase of syllabus is not intended to be common practice, and the QCAA has not purchased a syllabus under its current functions. In addition the department advised that any purchase of an external assessment would not absolve the QCAA from responsibility for the integrity and standard of the assessment, nor would it result in outsourcing of the QCAA functions or responsibilities.<sup>59</sup>

### **2.14.3 Tertiary entrance**

The new tertiary entrance system will move from the existing Overall Position (OP) tertiary entrance ranks to Australian Tertiary Admission Ranks (ATARs). The Queensland Tertiary Admissions Centre (QTAC) will be responsible for calculating students' ATARs. The explanatory notes state that the responsibility for generating tertiary entrance ranks will be transferred from the QCAA to QTAC, which will administer this process on behalf of tertiary institutions.<sup>60</sup>

Clause 138 proposes to insert a new section 17 into the QCAA Act to facilitate the transfer of student ranking for tertiary entrance from the QCAA to the QTAC. Clause 138 allows the QCAA to give information about students to an appropriately qualified entity to enable the entity to rank the students as a basis for tertiary entrance; and advise the students of their tertiary entrance ranking. Clause 142 inserts a requirement for principals to give information to QCAA about assessment to enable QCAA to arrange moderation of assessment.

## **2.15 Education (General Provisions) Act 2006**

The Bill proposes minor and technical amendments to the *Education (General Provisions) Act 2006* (General Provisions Act). Key amendments are summarised below.

### **2.15.1 School council constitutions**

Clause 117 proposes to amend section 95 of the General Provisions Act to remove the requirement for the department to approve amendments to school council constitutions that are consistent with the model constitution. Other amendments about school councils are technical changes from 'constitutions' to the singular.

### **2.15.2 Home education**

Clause 122 proposes to amend section 208 of the General Provisions Act so that an application for registration for home education must be accompanied by a summary of the educational program to be used. The current alternative of supplying a learning philosophy is omitted by the amendment.

<sup>58</sup> Correspondence, Department of Education and Training, 5 September 2017

<sup>59</sup> Correspondence, Department of Education and Training, 5 September 2017

<sup>60</sup> Explanatory notes, p.3.

### 3 Compliance with the *Legislative Standards Act 1992*

#### 3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) 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 information to the attention of the Legislative Assembly, and recommends an amendment to the Bill to address one issue of fundamental legislative principle.

#### 3.2 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation have sufficient regard to the rights and liberties of individuals.

The following clauses raise potential issues of fundamental legislative principle about the rights and liberties of individuals – clauses 23, 36, 64, 67, 74, 75 and 102.

##### 3.2.1 Natural justice

Clause 36(1) allows for immediate suspension of an approval without a show cause notice if there is an immediate risk to the safety, health or wellbeing of overseas students or Queensland students.

Legislation should be consistent with the principles of natural justice developed from the common law, which includes the principle that something should not be done to a person that will deprive them of some right, interest or legitimate expectation of a benefit, without the person being given adequate opportunity to present their case to the decision-maker.

##### Committee comment

The committee considers that, on balance, clause 36(1) has sufficient regard to the rights of individuals given that the suspension without a show cause notice may only occur when there is an immediate risk to the safety, health or wellbeing of students.

##### 3.2.2 Power to enter premises

Clause 64 allows an authorised person to enter a place with consent or under a warrant, and to search and inspect a place and to take copies of records. Clause 67 provides that an authorised person may seize evidence, but only where the seizure is consistent with the purpose of entry.

Under section 4(3)(e) of the LSA, legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

##### Committee comment

The committee considers clauses 64 and 67 have sufficient regard to the rights and liberties of individuals, by requiring that entry to premises is only by consent, or with a warrant.

##### 3.2.3 Protection against self-incrimination

Legislation should provide appropriate protection against self-incrimination, in accordance with section 4(3)(f) of the LSA.

Clauses 10 and 18 make it a condition of a school provider approval or a student exchange approval that the holder must comply with a request to give the chief executive information, including documents, required to be kept under the proposed Act, the Commonwealth Act and relevant standards and guidelines.

Clause 65 provides that the authorised person may make a 'help requirement' of the occupier of the place to require them, for example, to produce a document or to give information. Failure to comply, without a reasonable excuse, is an offence under clause 66 which attracts a maximum penalty of 50 penalty units (\$6,095). It is a reasonable excuse for a person not to comply with a help requirement if complying might incriminate the person or expose them to a penalty. However, under clause 66(3) the protection against self-incrimination does not apply if a document or information is required to be held or kept under a relevant law.

Clause 66 raises potential FLP issues in relation to an individual's rights and liberties regarding appropriate protection against self-incrimination. The principle of protection against self-incrimination is based on the common law principle that an individual accused of an offence should not be obliged to incriminate himself or herself. The explanatory notes did not address the potential FLP issue raised by clause 66.

The committee notes that other legislation with provisions similar to clause 66(3) limits the future use of a document produced by a person, so that they would not be exposed to a penalty, unless the proceeding was about the false or misleading nature of the document or information.<sup>61</sup>

The committee recommends that the Bill be amended to add a provision to limit the future use of a document produced under clause 66 in a proceeding against an individual.

#### **Recommendation 4**

The committee recommends that the Education (Overseas Students) Bill 2017 be amended to limit the future use in proceedings of a document that is required to be kept and is produced by a person under clause 66, unless the proceeding relates to the false or misleading nature of the document.

#### **3.2.4 Rights and liberties – retrospective application**

Clause 23 allows the director-general to amend an approval at any time without an application from the approval holder. The committee notes that clause 23 could potentially impose obligations on an approval holder retrospectively. The committee has recommended an amendment to clause 23 (see section 2.6 of this report).

#### **3.2.5 Immunity from civil proceedings**

Clause 102 provides protection from civil liability for authorised persons who are not state employees by applying section 26C of the *Public Service Act 2008* (PSA) to those people. Liability is transferred to the state under section 26C(2), which ensures that aggrieved persons have an avenue for recourse should they wish to launch a civil action.

The committee considers that it is appropriate that non-state employees who are authorised persons enjoy the same protections as apply to state employees under section 26C of the PSA.

#### **3.2.6 Seizure of evidence**

Clause 74 provides for an item seized as evidence to be forfeited to the state if the owner cannot be found after making reasonable inquiries, or, after making reasonable efforts, the item cannot be returned to its owner. Regard must be had to the condition of the thing, its nature and value, in deciding what would be reasonable efforts and inquiries to locate the owner or return the thing to the owner. Clause 75 provides that a thing becomes the property of the state if it is forfeited.

Clauses 74 and 75 raise a potential FLP issue as acquisition of property should generally occur only with compensation, unless there is good reason. The committee notes that forfeiture of an item would occur only after reasonable steps to contact the owner, or where the condition, nature or value of the

<sup>61</sup> See for example, *Racing Integrity Act 2016*, section 210; *Public Health (Medicinal Cannabis) Act 2016*, section 162

item was such that its return is unwarranted. The committee is satisfied that clauses 74 and 75 strike an appropriate balance to enable disposal of evidence while protecting the rights of the owner.

### **3.3 Explanatory notes**

The LSA 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. However the committee notes that the explanatory notes did not address the fundamental principle issues discussed above in relation to clauses 23 and 66.

Appendix B

## Appendix A – List of submissions

<b>Sub #</b>	<b>Submitter</b>
001	Independent Schools Queensland
002	Australian Catholic University
003	Independent Education Union of Australia (Queensland and Northern Territory Branch)

Appendix B

## **Appendix B – List of witnesses at public departmental briefing**

### **Department of Education and Training**

- Ms Annette Whitehead, Deputy Director-General, Policy Performance and Planning
- Ms Vanessa Fensom, Manager, International Quality (Schools) Unit
- Mr Michael Shephard, Director, Strategic Innovation
- Mr Stuart Busby, Director, Legislative Services

Appendix B

