

EDUCATION (GENERAL PROVISIONS) AMENDMENT BILL 2003

EXPLANATORY NOTES

SHORT TITLE OF THE BILL

Education (General Provisions) Amendment Bill 2003.

POLICY OBJECTIVES OF THE BILL AND REASONS FOR THOSE OBJECTIVES

The Education (General Provisions) Amendment Bill 2003 (the Bill) has two primary policy objectives aimed at bolstering school security and thereby promoting safer learning environments and ensuring the day-to-day operation and good management of schools, namely:

- Providing clear statutory powers under the *Education (General Provisions) Act 1989* (EGPA) to assist principals, the Department of Education and the non-State school sector to deal with individuals who disrupt the good order and management of a school, or who threaten the safety of staff or students at school premises by inserting new provisions into Part 4 of the EGPA; and
- Increasing the penalties relating to wilful disturbance and trespass on premises of State educational institutions in sections 47 and 48, Part 4, Division 6 – Offences of the EGPA.

MEANS OF ACHIEVING OBJECTIVES

The policy objective of the legislation will primarily be achieved by amending the *Education (General Provisions) Act 1989* in the following ways to:

- provide principals with new powers allowing them to require persons on school premises to provide their name and address;

- provide principals with new powers to issue directions for persons to refrain from certain conduct on school premises (direction about conduct or movement);
- provide principals with new powers to order a person to leave the school premises and not return for a maximum of 24 hours (direction to leave and not re-enter);
- allow the Chief Executive of the Department of Education and the governing body of a non-State school to order a person not to attend school premises for up to 60 days (Prohibition from entering premises);
- allow the Chief Executive of the Department of Education and the governing body of a non-State school to apply to the Magistrates Court for prohibition orders for a period of 60 days but not exceeding 12 months (Magistrates' prohibition from entering premises);
- allow the Chief Executive of the Department of Education to apply to the Magistrates Court for orders preventing persons from attending all State educational institutions and non-State schools for up to 12 months (Magistrates' Prohibition from entering all State educational institutions and non-State schools); and
- allow the Chief Executive of the Department of Education to apply to the Magistrates Court for orders preventing persons from attending all State educational institutions for up to 12 months (Magistrates' Prohibition from entering all State educational institutions).

The second policy objective will be achieved by amending sections 47 and 48 of the EGPA to increase the maximum penalties for breach of the current sections 47(1), 47(2) and 48 to 20 penalty units (\$1500).

REASON WHY THE PROPOSED LEGISLATION IS NECESSARY

Over recent months a number of hostile incidents have taken place in Queensland schools. The Queensland Government and school communities want to send a clear message that violent or threatening incursions into schools will not be tolerated, and that intruders will be subject to harsh penalties if they enter schools to threaten or assault the people working and learning there.

Currently, principals of Queensland schools have limited powers to formally regulate the behaviour of visitors to school premises, and have no statutory power to prohibit people who are violent or intrusive from entering school premises. In Queensland schools are traditionally open and accessible environments. Schools are acknowledged as community centres and are a vital community concern. Parents are encouraged to participate fully in their child's schooling and become a visible influence within the school. Traditionally, the ability to move freely on school premises has not been restricted.

However, recent incidents at schools have highlighted the fact that from time to time it is necessary to place limitations on people's movements at school premises. Such restrictions are necessary to maintain stable and secure environments in which effective teaching and learning may take place. Therefore, the Bill will enable those in charge of school premises to exercise new powers to minimise inappropriate behaviour of some visitors on to school premises.

In respect of other jurisdictions there has also been an escalation in violent incidents in schools over recent years. In an effort to improve this situation governments in South Australia, New South Wales and Western Australia have taken legislative measures to bolster school security.

Western Australia has legislative provisions, which specifically address the management and control of school premises. The proposed amendments to the EGPA have drawn on a number of elements of the *Western Australian School Education Act 1999* (ss.119 and 120) and the *School Education Regulation 2000* (Part 5 - "Management and control of government school premises"), in particular those provisions in the regulation relating to:

- the maintenance of good order on school premises;
- the conduct of persons on school premises; and
- the conferral on school officials of powers to:
 - (1) require a person on school premises to give his or her name and address; and
 - (2) prohibit a person from entering school premises.

Whilst it is arguable that principals, in their positions as persons in charge of the day to day operation of schools, already are able to take any action necessary in order to manage and control premises, the Bill will introduce commensurate penalties associated with a failure to comply with a principal's directions. In this way, the Bill provides a proactive approach

to the management and control of school premises. Such measures will not only provide consequences for those who disregard principals' directions, but they will also serve as preventative measures.

The proposed powers are not anticipated to be a first line response to all incidents that occur on school premises. Principals will be encouraged to continue with the current mechanisms they use for dealing with disputes or disagreements on school premises. These mechanisms, which include mediation, counselling and interviews, have been effective in dealing with the majority of cases of disruption. Additionally, principals in their role as the persons responsible for the school's day-to-day management already make directions to others about their conduct and movement on school premises, and in the majority of cases individuals comply with these directions.

The powers will not be able to be applied to students or staff at the school.

ALTERNATIVE METHOD OF ACHIEVING THE POLICY OBJECTIVES

A number of alternative proposals were considered in relation to achieving the policy objectives. However, the policy objectives should be implemented by legislation as they empower principals and certain others to make directions and to seek orders relating to the a person's conduct or movement at, or entry onto school premises, which if contravened will attract a penalty.

ESTIMATED COST FOR GOVERNMENT IMPLEMENTATION

The proposed arrangements will result in additional costs to government. Costs may be incurred in the training of school personnel regarding the extent and use of the new provisions. There will also be costs associated with the serving of certain directions and the bringing of applications in court. Costs will be met within current budget allocations.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

Aspects of the Bill that raise fundamental legislative principles issues are outlined below:

Principals' power to require a person's name and address

Sections 48B and 48J give principals the power to request a person on school premises to supply him or her with their name and address. This may be seen to infringe upon a person's rights especially in relation to an individual's privacy. However, the information may only be requested where a principal proposes to make a direction under ss 48C, 48E, 48L and 48N in response to a person's inappropriate conduct.

Principals' power to issue a direction about conduct or movement

Principals will have power to direct a person about their behaviour while on school premises. The exercise of these powers may be seen, in some circumstances as imposing a limitation on a person's freedom of movement.

This power is consistent, however, with the main objective of the Bill, as it will assist principals or those in charge of a school in the exercise of their obligation to manage and control school premises.

The exercise of this power in directing a parent may also be seen to contradict s.114 of the EGPA which requires parents to ensure that their enrolled children attend school on each school day.

Many parents bring their children to school and may accompany them into the school grounds or classroom. However, this does not mean that they can behave in a manner which is disruptive to the good order of the school.

If a persons' behaviour is such that it disrupts the good order or management of the school or threatens the safety or welfare of students, staff and other visitors to the school premises, or if they are willfully damaging school property, then it is important for a principal to be able to use this power. It is not intended that the power be used to ban a person from the school premises.

The power will include a review process as well as a limitation on the time period for which a direction can be imposed. A direction may be imposed for up to 30 days.

A person to whom a direction applies may seek a review of the direction by the principal's supervisor, i.e. the Executive Director of Schools for State educational institutions and the governing body for non-State schools. The supervisor reviewing the direction may confirm the direction; or set the direction aside.

Enabling the principal's supervisor to review a principal's direction will ensure the accountability of the use of the power.

Principals' power to impose a direction to leave and not re-enter the school premises

Principals will have power to require a person to leave the school's premises and not re-enter for up to 24 hours. The exercise of these powers may also be seen, in some circumstances, as imposing a limitation on a person's freedom of movement.

This power is also consistent with the main objective of the Bill, as it will assist principals or those in charge of a school in the exercise of their role to manage and control school premises.

The exercise of this power against a parent may also be seen to be inconsistent with s.114 of the EGPA which requires parents to ensure that their enrolled children attend school on each school day. Many parents bring their children to school and may accompany them into the school grounds or classroom. It appears, therefore, that parents could claim lawful authority and a reasonable excuse to be on school premises. However, if a parent's behaviour is disruptive of the good order of the school or if they are threatening, abusive or violent, then it is arguable that they could be subject to a direction. In those circumstances it would not be a reasonable excuse to breach the direction so that they may deliver the child to the classroom.

The power may be used if a person's behaviour is such that it meets one or more of the following criteria:

- has committed, or is about to commit, an offence at the premises; or
- has used, or is about to use, threatening, abusive or insulting language towards another person at the premises; or
- has engaged, or is about to engage, in threatening or violent behaviour towards another person at the premises; or
- has otherwise disrupted, or is about to disrupt, good order at the premises; or
- does not have a good and lawful reason to be at the premises.

There is no review for this direction to leave and not re-enter the school premises. An appeal mechanism was considered unnecessary because of the urgency and short time frames inherent in circumstances under which these powers would be invoked. The main purpose of the direction to leave

and not re-enter is to provide a circuit breaker in volatile, and temporarily irresolvable, circumstances. The exercise of the power provides an instantaneous response to such a situation.

The power of the Chief Executive or governing body to prohibit a person from entering premises of State educational institutions or non-State schools

The Chief Executive or, in the case of a non-State school, the governing body of the non-State school is enabled to prohibit a person from entering the school premises when they are concerned that the person's behaviour or conduct has a seriously disruptive effect on the good order of the school, or that the person is behaving in a manner which threatens safety or property. Before the Chief Executive or governing body makes such a direction, they must be satisfied that unless the direction is made, such conduct will continue or is likely to take place. The direction can be made for a period of up to 60 days.

Operationally, the principal or their supervisor would make a recommendation to the Chief Executive or governing body on the basis that the behaviour of the individual will have been of significant concern to them. Such an order may be seen as an infringement of people's rights and liberties and therefore could be criticized for breaching fundamental legislative principles. However, the breach is justified, having regard to the purpose of the order, namely to keep schools safe places. In addition, all decisions may be appealed in the Magistrates Court. In the process there will be ample opportunity for the person affected to be afforded a right to be heard. The provision therefore strikes an appropriate balance between achievement of the Bill's objective and preserving the rights and liberties of individuals.

The power for the Chief Executive or governing body to apply to the Magistrates Court to prohibit a person for between 60 days and 12 months.

The Chief Executive or governing body may apply to the Magistrates Court for a prohibition of longer duration. These applications would not be made lightly and the behaviour of the individual will have been of significant concern so as to warrant the making of an application to the Magistrates Court. Nevertheless, such an order may be seen as an infringement of people's rights and liberties and therefore could be criticized for breaching fundamental legislative principles. However, the breach is justified, having regard to the purpose of the order, namely to prevent or further harm to persons or property at the school or to prevent disruption or further disruption to the good order or management of

the school. In addition, the decision-making is for the Magistrate. Those decisions would be appealable to the District Court on a question of law. In the process there will be ample opportunity for the person, the subject of the order to be afforded a right to be heard.

The power for the Chief Executive to apply to the Magistrates Court to prohibit a person from all State educational institutions and non-State schools or all State educational institutions only

The purpose of such orders to prohibit a person from all schools or all State educational institutions is to prevent persons, who pose an unacceptable risk to the safety or wellbeing of students, teachers, staff and visitors to school premises from entering onto school premises. For example, in a situation where persons have assaulted, abused or threatened members of the school community at a number of schools on a number of occasions, it could be arguable that those persons could pose an unacceptable risk to all Queensland school communities in general, based on evidence of their conduct at every school with which they have been involved in the past.

A decision to ban a person from entering any school premises in Queensland affects that person's rights and liberties in a significant way, and this arguably is a breach of fundamental legislative principles. However, the breach is justified, having regard to the purpose of the order, namely to prevent harm to persons or property at the school or to prevent disruption of the good order or management of the school. In addition, the decision-making is for the Magistrate, and all decisions made by the Magistrates Court. A decision made by the Magistrates Court may be appealed to the District Court on a question of law. In the process there will be ample opportunity for the person the subject of the order to be afforded a right to be heard.

CONSULTATION

Community

Consultation on the preparation of the Bill has been undertaken with the following key stakeholders:

- Association of Independent Schools Queensland Inc;
- Association of Special Education Administrators in Queensland;

- Federation of Parents and Friends of Catholic Schools of Queensland;
- Isolated Children's Parent's Association;
- P 10/12 Principals' Association;
- Queensland Association of State School Principals;
- Queensland Catholic Education Commission;
- Queensland Council of Parents' and Citizens' Association;
- Queensland Independent Education Union;
- Queensland Independent Schools Parents' Council;
- Queensland Secondary Principals' Association;
- Queensland Teachers' Union.
- Western Australian Department of Education and Training
- New South Wales Department of Education

Government

The following government departments were consulted during the preparation of this Bill:

- Department of the Premier and Cabinet
- Queensland Treasury
- Department of State Development
- Department of Justice and the Attorney-General
- Department of Primary Industries
- Department of Employment and Training
- Queensland Police Service
- Department of Corrective Services
- Department of Families
- Commission for Children and Young People
- Office of the Queensland Parliamentary Counsel

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act commences on a date to be fixed by proclamation.

Clause 3 states that the Bill amends the Education (General Provisions) Act 1989 (the Act).

Clause 4 inserts an amendment of section 2, the Interpretation section in the Act. It includes a reference to “appellant”, which is defined in s.146D of the Bill. Reference is made to the meaning of “original direction” (see section 146D).

There is also a definition of “at”, in relation to premises, which includes “in or on the premises”. This captures persons who are in school buildings as well as persons on the school grounds.

Clause 4 also inserts a definition of “premises” to include both the school buildings and the surrounding land.

Clause 5 amends section 4(1) to limit the section’s application to only division 1, part 10, rather than the entire part.

Clause 6 inserts a new Part 4, Division 1AA – Preliminary

Section 26A provides that in this part “court” means for an application or appeal relating to a child - the Childrens Court or otherwise, the Magistrates Court

Clause 7 amends section 47 (Wilful disturbance) of the Act to omit 10 penalty units and increase the penalties to 20 penalty units. This is to keep them in line with the penalty regime to be included in the Bill.

Clause 8 amends section 48 (Trespass) of the Act to omit 10 penalty units and increase the penalty units to 20.

Clause 9 inserts a new Part 4, divisions 7 to 10.

Division 7 is about directions and orders in relation to conduct or movement at, or entry to premises of State educational institutions.

The new subdivision 1 - preliminary comprises section 48A, and inserts two new definitions into the Act for the purposes of this division:

An “employee” of the department is defined to mean an employee or a contractor of the department, including an employee or subcontractor of a contractor.

An “exempt person” is defined, for State educational institutions, as a student of the institution or a person employed by the department to perform work at the institution’s premises. Read together these definitions mean that exempt persons include not only the State educational institution’s students, but also its teachers, ancillary staff, those who maintain the grounds and also those contracted by the department to undertake other work on school premises such as tradespersons.

Subdivision 2 comprises the new section 48B and inserts a power for a principal to require a person to state their name and address. Section 48B(1) states that the principal of a State educational institution may require a person to provide their name and address. The principal may make this request if the principal proposes to make a direction under sections 48C or 48E.

Section 48B(2) states that when making the requirement to provide name and address, the principal person must warn the person of the requirement to comply.

Section 48B(3) states that the principal may ask for evidence of the accuracy of the name and address provided by the person if the principal reasonably suspects that the stated name and address is false.

Section 48B(4) states that the person must comply with the requirement to provide name and address unless they have a reasonable excuse.

The maximum penalty imposed will be 10 penalty points. (\$750)

The new subdivision 3 concerns directions about conduct or movement at premises of State educational institutions.

The new section 48C inserts procedures associated with the power of a principal of a State educational institution to make directions about the conduct or movement of persons, other than exempted persons, on school premises.

Section 48C(1) provides the power in the principal to direct another person, about their conduct or movement whilst on school premises. The principal must provide the direction in writing. The direction may be about the person’s conduct or movement for a period of up to 30 days. The principal must be reasonably satisfied that the direction is necessary:

- to ensure the safety or wellbeing of other persons lawfully at the premises; or

- to prevent or minimise damage to property comprising, or located at the premises; or
- to maintain good order at the premises; or
- for the proper management of the institution.

The purpose of giving a direction is so that students and teachers may go about their day-to-day business without disruption. For example, following a disagreement between a teacher and a parent of a child, the parent is unable to address that teacher in a respectful manner and actively seeks further contact with the teacher in order to continue the argument. A principal may direct that parent to come to the principal's office, rather than the classroom when delivering the child to the school. The parent's behaviour, if left unchecked, would have had the effect of preventing the teacher from carrying out his or her obligations to the students and may also have damaged the teacher's standing in the eyes of the students or depending on their age, distressed the students, had they witnessed the offending behaviour.

The behaviour must be such that a reasonable person would be satisfied that the direction was necessary for one of the above reasons.

This provision does not empower a principal to direct a person to leave the premises.

Section 48C(2) states that a direction given under section 48C(1) may not be given to a person who is exempt from directions as defined in the Interpretation section.

Section 48C(3) lists the information to be included in a written direction. This includes the terms and grounds of the direction, an outline of the facts and circumstances forming the basis for the grounds and the time period for the direction. In addition, the direction must outline the process to be followed if a directed person wishes to apply to have their direction reviewed. Under section 48D the directed person may apply to the principal's supervisor to have the direction reviewed. The contact details for the principal's supervisor must be provided on the written notice. The review process protects a person from being the unfair or inappropriate target of a principal's attention.

Section 48C(4) states that the direction will not take effect until it is served in writing on the person. This means that while a principal might give an informal, oral direction to a person whose behaviour is objectionable, the person will not be committing an offence until the

direction is given to the person in writing, with the appropriate details as outlined under section 48C(3).

Section 48C(5) states that a directed person must comply with the direction unless they have a reasonable excuse. A person may have a reasonable excuse to breach a direction if, for example, there is a case of an emergency such as a life-threatening situation involving the person's child. A breach of a direction may lead to a maximum penalty of \$1500.

Section 48D inserts a review procedure for those who have been given a direction about conduct or movement and who wish to seek a review. This provision is designed to uphold the natural justice of those to whom directions apply. Section 48D(2)(a) states that a person may apply to the principal's supervisor for a review of a direction within 7 days of the person receiving the direction and (b) states that if the direction is for a period of time less than 7 days, then the review must be sought before that time elapses. The applications must be made in writing (section 48D(3)) and must outline the grounds on which the person wants the direction to be reviewed.

Section 48D(4)(a) and (b) state that the principal's supervisor will consider the grounds on which the direction was made and must either confirm the direction or cancel it. The principal's supervisor may not alter the direction or make another direction. In this way, the principal's supervisor will be able to monitor the use of this power to minimise any possible abuse.

Section 48D(5) provides that as soon as the review decision is made by the principal's supervisor, written notification of the decision must be provided to the applicant and the institution's principal. Section 48D(6) provides that a principal's supervisor must give notice within 5 days of the application, or the direction will be taken to have been cancelled. This section protects the directed person against delay by the principal's supervisor, and ensures that appeals are addressed expeditiously.

The new subdivision 4 concerns Directions to leave and not re-enter premises of state educational institutions for up to 24 hours.

Sometimes, a circumstance may arise which will not be alleviated by the principal issuing a direction alone about conduct on the school premises. Instead, a stronger measure is required. An example may be where a parent has lost control of their emotions and is abusing the principal or a staff member and is refusing to behave in a reasonable manner. Their abusive behaviour may significantly impede the ability of the principal and staff to go about their duties. In such circumstances the principal may decide to

issue the direction to leave, to allow the person to go away, calm down and return in a less volatile state.

Section 48E(1) inserts the power for a principal to issue a written direction to a person (referred to as the prohibited person) to leave the school premises and not return for at least 24 hours.

The written direction can be issued if the principal reasonably suspects that the prohibited person:

- has or is about to commit an offence on the school premises; or
- has or is about to use threatening, abusive or insulting language towards another person on the premises; or
- has or is about to engage in threatening or violent behaviour towards another person on the premises; or
- has disrupted or is about to disrupt the good order of the premises; or
- does not have a good and lawful reason to be at the premises.

Section 48E(2) states that a direction given under section 48E(1) may not be given to a person who is exempt from directions as defined in the Interpretation section.

Section 48E(3) lists the information to be included in a written direction to leave and not re-enter. This includes the terms of and the grounds for the direction as well as an outline of the facts and circumstances forming the basis for the grounds. In addition the direction must state the time during which the person is not permitted to re-enter the school premises.

Subdivision 5 concerns Prohibition from entering premises of state educational institutions for up to 60 days.

Section 48F sets out a procedure for making a direction under this subdivision for up to 60 days. Section 48F(1) enables the Chief Executive to issue a direction to a person prohibiting them from entering the school premises for up to 60 days, commencing on the day on which the direction is given. The Chief Executive must be satisfied that unless the direction is made, the prohibited person is likely to:

- cause physical harm to, or apprehension or fear of physical harm, in another person when the other person is at the premises;
- to damage property comprising , or located at, the premises; or
- to disrupt the good order or management of the institution.

Section 48F(2) states that a direction given under section 48F(1) may not be given to a person who is exempt from directions as defined in the Interpretation section.

Section 48F(3) lists the information to be included in the direction, including the terms of, grounds for and period of the direction as well as outline the facts and circumstances forming the basis for the grounds. In addition the direction must include information about a person's right of appeal to the Magistrates Court if they do not agree with the terms and conditions of the direction. The appeals provisions are set out in Part 10, division 1AA.

Section 48F(4) states that the prohibition from entering premises will not take effect until it is given to the person.

Section 48F(5) states that a person subject to a prohibition from entering premises must comply with the direction unless they have a reasonable excuse or incur a penalty. An emergency such as a student at the school falling ill may constitute a reasonable excuse. The maximum penalty is set at 30 penalty units (\$2250).

Subdivision 6 concerns the Prohibition from entering premises of State educational institutions for more than 60 days, but not more than 12 months.

Section 48G(1) enables the Chief Executive to apply to a court for an order prohibiting a person from entering school premises for more than 60 days but for less than 12 months. The power includes the ability to commence an order at a later date.

Section 48G(2) states that a direction given under section 48G(1) may not be given to a person who is exempt from directions as defined in the Interpretation section of the Act.

Section 48G(3) states that the court must be satisfied that unless the order is made, on the balance of probabilities, the person is likely to:

- cause physical harm to or apprehension or fear of physical harm in another person who has a lawful reason for being at the school;
- damage property located at the school; or
- disrupt the good order or management of the institution.

This means that the court must be satisfied that on the evidence presented, it is more likely than not that the person will engage in conduct of the above nature.

Section 48H provides that a person aggrieved may appeal a decision made in a court to the District Court but only on a question of law. This gives a person against whom a direction has been made by a court an avenue of appeal to the District Court. Conversely, where the court has refused to make a direction, the Chief Executive may challenge that refusal in the District Court.

Division 8 concerns Directions and Orders about conduct or movement at, or entry to, premises of non-State schools.

Subdivision 1 - Preliminary

Section 48I provides two new definitions:

An employee of a non-State school's governing body means a person or a contractor employed by the governing body, or an employee or sub-contractor of the contractor employed by the governing body.

An exempt person is defined as a student of the school and also employees of the school's governing body.

Subdivision 2 – Powers relating to name and address

Section 48J of subdivision 2 inserts a power for a principal of a non-State school to require a person to state their name and address, if the principal proposes to exercise their powers of direction (under 48L or 48N). Section 48J(1) states that the non-State school principal can require a person to provide their name and address.

Section 48J(2) states that while making the requirement to provide name and address, the non-State school principal must warn the person of the requirement to comply unless they have a reasonable excuse.

Section 48J(3) states that the principal of a non-State school may ask for evidence of the accuracy of the name and address provided by the person if the authorised person reasonably suspects that the stated name and address is false.

Section 48J(4) states that the person must comply with the requirement to provide name and address. The maximum penalty imposed will be 10 penalty points (\$750).

Subdivision 3 concerns Directions about conduct or movement at premises of non-State schools.

Section 48K relates to a review body of a non-State school.

Section 48K(1) defines the term “review body” to be where the governing body has nominated a person to conduct a review, that person, or otherwise the school’s governing body.

Section 48K(2) states that the governing body cannot nominate the school’s principal for this role. This will avoid the possible circumstance of a principal reviewing his or her own decision.

Section 48L inserts procedures associated with the power of a non-State school principal to make directions about the conduct or movement of persons on non-State school premises.

Section 48L(1) provides the power in the principal to direct another person, other than an exempted person, about their conduct or movement whilst on school premises. The principal must provide the direction in writing. The direction may be about their conduct or movement for a period of up to 30 days. The principal must be reasonably satisfied that the direction is necessary:

- to ensure the safety or welfare of those lawfully at the premises; or
- to prevent or minimise damage to property located at the premises; or
- to maintain the good order at the premises; or
- for the proper management of the school.

Section 48L(2) states that a direction given under section 48L(1) may not be given to a person who is exempt from directions as defined in the Interpretation section.

The purpose of giving a direction is so that students and teachers may go about their day-to-day business without disruption. For example, following a disagreement between a teacher and a parent of a child, the parent is unable to address that teacher in a respectful manner and actively seeks further contact with the teacher in order to continue the argument. A principal may direct that parent not to go within a certain distance of the child’s classroom or the teacher for a certain period of time. The parent’s behaviour, if left unchecked, would have had the effect of preventing the teacher from carrying out his or her obligations to the students and may also have damaged the teacher’s standing in the eyes of the students or depending on their age, distressed the students, had they witnessed the offending behaviour.

The behaviour must be such that a reasonable person would be satisfied that the direction was necessary for one of the above reasons.

The new section 48L(3) lists the information to be included in a written direction. This includes the terms and grounds of the direction, an outline of the facts and circumstances forming the basis for the grounds and the time period for the direction. In addition, the direction must outline the process to be followed if a directed person wishes to apply to have the direction reviewed. The review process protects a person from being the unfair or inappropriate target of a principal's attention.

The new section 48L(4) states that the direction will not take effect until it is given to the person in writing. This means that while a principal might give an informal, oral direction to a person whose behaviour is objectionable, the person will not be committing an offence until the direction is given to the person in writing.

Section 48L(5) states that a directed person must comply with the direction unless they have a reasonable excuse. A person may have a reasonable excuse to breach a direction if, for example, there is a case of an emergency such as a life-threatening situation involving the person's child.

Maximum penalty of 20 penalty units (\$1500).

The new section 48M inserts a review procedure for those who have been given a direction about conduct or movement and who wish to apply for a review of the direction. This provision is designed to uphold the natural justice of those to whom directions apply. Section 48M(2)(a) states that a person may apply to the review body for a review of a direction within 7 days of the person receiving the direction and (b) states that if the direction is for a period of time less than 7 days, then the review must be sought before that time elapses.

The application for review must be made in writing (section 48M(3)) and must outline the grounds on which the person wants the direction to be reviewed.

Sections 48M(4)(a) and (b) state that the review body must consider the grounds on which the direction was made and either confirm the direction or cancel it. It may not alter the direction or make another direction. In this way, the person reviewing the direction will be able to monitor the use of this power to minimise any possible abuse.

Section 48M(5) states that once the review decision is made, the review body must immediately give both the applicant and the school's principal written notice of the decision. Section 48M(6) provides that the review

body must give notice within 5 days of the application, or the direction will be taken to have been cancelled. This section protects the directed person against delay by the review body, and ensures that appeals are addressed expeditiously.

The new subdivision 4 concerns Directions to leave and not re-enter premises of non-State schools for up to 24 hours.

Sometimes, a circumstance may arise which will not be alleviated by the principal issuing a direction alone about conduct on the school premises. Instead, a stronger measure is required. An example may be where a parent has lost control of their emotions and is abusing the principal or a staff member and is refusing to behave in a reasonable manner. Their abusive behaviour may significantly impede the ability of the principal and staff to go about their duties. In such circumstances the principal may decide to issue the direction to leave, to allow the person to go away, calm down and return in a less volatile state.

Section 48N(1) inserts a power for a principal of a non-State school to issue a written direction to a person (referred to as the prohibited person) to leave the school premises and not return for at least 24 hours.

The written direction can be issued if the principal reasonably suspects that the prohibited person:

- has committed, or is about to commit, an offence at the premises; or
- has used, or is about to use threatening, abusive or insulting language towards another person at the premises; or
- has engaged, or is about to engage, in threatening or violent behaviour towards another person on the premises; or
- has otherwise disrupted, or is about to disrupt, the good order of the premises; or
- does not have a good and lawful reason to be at the premises.

Section 48N(2) states that a direction given under section 48N(1) may not be given to a person who is exempt from directions as defined in the Interpretation section.

Section 48N(3) lists the information to be included in a written direction to leave and not re-enter. This includes the terms of and grounds for the direction as well as an outline of the facts and circumstances forming the basis for the grounds. In addition, the direction must state the time during which the person is not permitted to re-enter the school premises.

Section 48N(4) states that the direction to leave and not re-enter will not take effect until it is given in writing to the person. This means that a person will not be committing an offence by staying at the premises, until the direction is given to the person in writing.

Section 48N(5) states that a person subject to the direction to leave and not re-enter must comply unless they have a reasonable excuse. An emergency situation, such as where a student at the school may fall ill and the prohibited person who is the student's parent enters the school premises to collect the student, would be a reasonable excuse for failure to comply with the direction. A breach of the direction may lead to the imposition of a maximum penalty of 20 penalty units or \$1500.

Subdivision 5 concerns Prohibition from entering premises of non-State schools for up to 60 days.

Section 48O sets out a procedure for making a direction under this subdivision for up to 60 days. Section 48O(1) enables a non-State school's governing body, or its nominee to issue a direction to a person prohibiting them from entering the school premises for up to 60 days. The governing body must be reasonably satisfied that unless the direction is made, the prohibited person is likely to:

- to cause physical harm to, or apprehension or fear of physical harm in, another person who has a lawful reason for being at the premises; or
- to damage property comprising, or located at the premises; or
- to disrupt the good order or management of the school.

Section 48O(2) states that a direction given under section 48O(1) may not be given to a person who is exempt from directions as defined in the Interpretation section.

Section 48O(3) lists the information to be included in the direction including the terms of, grounds for and period of the direction as well as the facts and circumstances forming the basis for the grounds. In addition, the direction must include information about a person's right of appeal to the Magistrates Court if they do not agree with the terms and conditions of the direction. The appeals provisions are set out in Part 10, division 1AA, to be inserted by clause 10 of the Bill.

Section 48O(4) states that the prohibition from entering premises will not take effect until it is given in writing on the person.

Section 48O(5) states that a person subject to a prohibition from entering premises direction must comply with the direction unless they have a reasonable excuse or incur a penalty. An emergency such as a student at the school falling ill may constitute a reasonable excuse. The maximum penalty is set at 30 penalty units (\$2250).

Section 48O(6) states that for section (1), a governing body may not nominate the principal of the school in the exercise of these powers.

Subdivision 6 concerns Prohibition from entering non-State schools for more than 60 days but not more than 12 months.

Section 48P(1) enables the governing body of a non-State school, or its nominee to apply to a court for an order prohibiting a person from entering school premises for more than 60 days but for less than 12 months. The power includes the ability to commence an order at a later date.

Section 48P(2) states that a direction given under section 48P(1) may not be given to a person who is exempt from directions as defined in the Interpretation section.

Section 48P(3) states that the court must be satisfied, on the balance of probabilities, that unless the order is made the person is likely to:

- to cause physical harm to, or apprehension or fear of physical harm in another person, when the other person is at the premises;
- to damage property comprising, or located at the premises; or
- to disrupt the good order or management of the school.

This means that the court must be satisfied that on the evidence presented, it is more likely than not that the person will engage in conduct of the above nature.

Section 48P(4) states that for section (1), a governing body may not nominate the principal of the school to make the application.

Section 48Q provides that a person may appeal a decision made in a court at the District Court. Conversely, where a court has refused to make a direction, the governing body can challenge that refusal in the District Court.

Division 9 relates to prohibitions from entering the premises of all State educational institutions and non-State schools for up to 12 months.

Section 48R(1) enables the Chief Executive to apply to a court to prohibit a person from entering all State educational institutions and non-State schools for a period of up to 12 months. The power includes the

ability to commence an order at a later date. The person subject to such an application would be considered an unacceptable risk to all members of school communities in general.

This is a provision which endeavours to address behaviour of a much more serious nature than can be addressed by the previous provisions.

Section 48R(2) states that an application under 48R(1) may not be made in respect a person who is a student of either a State educational institution or a student of a non-State school.

Section 48R(3) gives the Court power to prohibit a person from entering all State educational institutions and non-State schools if they pose an unacceptable risk to members of school communities in general. The Court may make the order if the Court is satisfied on the balance of probabilities.

Such an order will not be easily obtained. An example where an order may be sought could be where a person has assaulted, abused or threatened members of the school community at a number of schools on a number of occasions to the degree that it could be shown that they pose an unacceptable risk to all Queensland school communities based on their past conduct. Evidence of such past conduct would need to satisfy the court that it is more likely than not that the person poses an unacceptable risk. For example, certificates of indictment in relation to criminal offences committed at schools may be brought as evidence in such an application to substantiate the person's past conduct.

Section 48S(1) enables the Chief Executive to apply to a court to prohibit a person from entering all State educational institutions for a period of up to 12 months. The power includes the ability to commence an order at a later date. The person subject to such an application would be considered an unacceptable risk to members of the communities of State educational institutions.

Section 48S(2) states that an application under section (1) may not be made in respect of a person who is a student of a State educational institution.

Section 48S(3) gives the Court power to prohibit a person from entering all State educational institutions if, on the balance of probabilities, they pose an unacceptable risk to members of school communities in general. The orders under 48R and 48S can be made for a maximum of 12 months. If the Chief Executive wishes to prohibit a person from entering school premises for longer than 12 months, a new application must be made to the Magistrates Court. This ensures that prohibitions do not remain in place

indefinitely and that the court is able to reconsider the circumstances for such an order after 12 months.

Section 48T inserts a statement that a person may appeal the decision made in the Magistrates Court to the District Court but only on a question of law.

Division 10 contains miscellaneous provisions relating to the amendments.

The new section 48U states that Divisions 7 and 8 do not apply to persons who are exercising their lawful powers under another Act, for example an authorised industrial officer under the *Industrial Relations Act 1999*, or emergency services officers under the various emergency services legislation such as the *Ambulance Service Act 1991* or the *State Counter-Diaster Organisation Act 1975*.

Section 48V relates to the notification of an application or a direction with section 48V(1) specifying that if an application is made under ss. 48G, 48P, 48R or 48S in relation to a child, the applicant must give the parent of the child written notice of the application as soon as practicable unless the parent cannot be found after reasonable inquiry.

Section 48V(3) applies if a direction is given to a child under sections 48F or 48O.

Section 48V(4) then provides that the person giving the direction must give the parent of the child written notice of the application as soon as practicable unless the parent cannot be found after reasonable inquiry.

Section 48V(5) defines a parent of a child for the purposes of this section to be someone who is apparently the parent of the child.

Section 48W provides that the Chief Executive must include certain matter relating to the new provisions in the Department of Education's annual report made under the *Financial Administration and Audit Act 1977*. For example, the annual report is to include statistical information about the number of directions and orders given under the various sections, including the number given to children, as well as any reviews and appeals started during the year under various sections. The information to be collected regarding appeals includes the number of directions confirmed or cancelled during the year. Publishing information about the use of these provisions in the annual report is an important accountability mechanism in relation to the use of these new powers.

Section 48W(2) obliges the Chief Executive to include the information obtained by the Minister under section 48X in the annual report.

Section 48X obliges the governing bodies of non-State schools to give to the Minister, within two months after the end of the financial year the number of applications, directions and orders relating to the school during the financial year made under ss.48L, 48N, 48O, 48P and 48M, including those relating to children.

Clause 10 inserts division 1AA before division 1 in Part 10. The new division will be named “*Division 1AA – Appeals against directions under sections 48F or 48O*”. The Bill creates an appeals process for directions given under the new powers.

The appeals mechanism, for those affected by a direction relating to a prohibition from entering school premises for up to 60 days amends the Magistrates Court’s procedures so as to make the appeals process less onerous and alienating than ordinary proceedings in the court. The new provisions are based largely on the appeals process contained in the *South Bank Corporations Act 1989*. Although State educational institutions and non-State school premises are not public places, it is considered appropriate to adopt most of the provisions contained therein as they allow for a relaxation of the legal process and enhance natural justice for those aggrieved by a decision of a Chief Executive or governing body.

Section 146C provides that in this division, a definition of “court” for an appeal relating to a child, the Childrens Court and for anyone else, a Magistrates Court.

Section 146D provides that a person who is given a direction under section 48F or 48O (prohibition from entering school premises for up to 60 days) may appeal to a court.

Section 146E provides that a notice of appeal must be filed with the registrar of the court within 10 days after the appellant is given the direction. The notice of appeal is a notice under the *Uniform Civil Procedure Rules 1999* (see chapter 18, Part 3).

Section 148F addresses the procedures for a hearing of an appeal. Section 148F(1)(a) states that in deciding the appeal, the court will have the same powers as the person who originally gave the direction, that is either the Chief Executive or delegate or the governing body or nominee. Section 148F(1)(b), which states that the hearing is not bound by the rules of evidence. It means that other information such as hearsay may be brought as evidence and the Magistrate may consider it. However, section 148F(1)(c) maintains that proceedings must still comply with natural justice so that fairness to all parties will be maintained. In order not to

deter appeals based on financial constraints, a court cannot impose costs on either party (section 148F(1)(e)) other than for filing fees).

Section 146F(1)(d) provides that a child involved in a hearing must be permitted to be represented by an associated adult. Section 146F(5) defines an “associated adult”. The definition includes the child’s parent, step-parent or guardian; the child’s spouse; a person who has parental rights and duties for the child or a person who may reasonably be expected to have authority over the child’s conduct.

Section 146F(2) states that section 20 of the *Childrens Court Act 1992* applies in relation to a review by the Childrens Court. This section relates to who may be present at a proceeding.

Section 146F(3) provides that the appeal is by way of rehearing on both the material before the original decision-maker and any further evidence allowed by the court. The Magistrate will not be affected by the original decision. As such, the Magistrate stands in the shoes of the original decision-maker and can make a decision based on all of the material before the court.

Section 146F(4) inserts a provision which states that the respondent to an appeal (that is the Department of Education or a non-State school’s governing body) may only have legal representation at the hearing if the appellant is also represented by a lawyer. This provision is made to minimise a possible imbalance in the power ratio between appellant and respondent.

Section 146G relates to the powers that the court of appeal has in relation to these matters. Section 146G(1) lists the alternatives outcomes of the appeal:

- (a) a confirmation or upholding of the original direction – which means that the direction about the prohibition made in the first instance will remain;
- (b) an amendment to the original direction – including a possible shortening or lengthening of the original time the prohibition was to remain in place;
- (c) a substitution of another direction for the original direction;
- (d) setting the original direction aside and making recommendations to the original decision-maker with regard to the issuing of a new direction.

Section 146G(2) provides that if the court amends or substitutes the original direction the amended or substituted direction is taken to be the original direction.

Clause 11 amends the heading for Part 10, division 1 relating to appeals under the *Education (General Provisions) Act 1989* by replacing the heading “Appeals” with “*Appeals against decisions under section 113, 130 or 132*”. The sections relate to “Dealing with submissions against removal” (113); “Dealing with submissions against principal’s decision” (130) and “Chief executive must consider and decide application for further semesters” (132). The provisions relating to these three existing forms of appeal will remain in place. This change is necessitated by the new appeals mechanism to be included in the new division 1AA relating to certain powers in this Bill.

Clause 12 amends section 149 of the EGPA to insert after the words “part 4” the words “divisions 1 to 6;”. The intent of this provision is to ensure that only certain powers provided to the Chief Executive may be delegated. The amendment allows the Chief Executive to delegate their new powers included by this Bill.