

**2023**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**ACT TEACHER QUALITY INSTITUTE AMENDMENT BILL 2023**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004*, s 37)**

**Presented by  
Yvette Berry MLA**

## **ACT TEACHER QUALITY INSTITUTE AMENDMENT BILL 2023**

The *ACT Teacher Quality Institute Amendment Bill 2023* is **not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

### **INTRODUCTION**

This explanatory statement relates to the *ACT Teacher Quality Institute Amendment Bill 2023* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The statement is to be read in conjunction with the Bill, it is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts. This statement provides information about why a Bill is proposed together with an explanation about the proposed legislative amendments.

The proposed legislative amendments are regulated by the *ACT Teacher Quality Institute Act 2010* and the *ACT Teacher Quality Institute Regulation 2010* (TQI legislation).

### **OVERVIEW OF THE BILL**

The purpose of the *ACT Teacher Quality Institute Amendment Bill 2023* is to amend the *ACT Teacher Quality Institute (TQI) Act 2010* to validate the registration of teachers whose registration may have been invalidly issued.

This Bill includes transitional provisions to validate any registrations issued by TQI in the period between the notification of the Validation Bill to 31 March 2023.

### **CONSULTATION ON THE PROPOSED APPROACH**

TQI has consulted with the Government Solicitor's Office (GSO), the Parliamentary Counsel's Office (PCO), the Education Directorate, and via the TQI Board, teacher employers, education unions, teacher and principal representatives and a community representative.

### **BACKGROUND**

TQI's role in relation to the ACT teaching profession stems from the *ACT Teacher Quality Institute Act 2010* (TQI Act). TQI undertakes its responsibilities by integrating the direct regulation of the teaching workforce with specific strategic measures designed to raise the quality of that workforce. The primary strategy is embedding the Australian Professional Standards for Teachers (the Standards) in the teaching practice of all ACT teachers.

Under the TQI Act, TQI is authorised to issue teacher registration to eligible people. TQI has been issuing registration to teachers since 2011.

### *Teacher registration*

Only registered teachers may be employed to teach in schools. This is the same for every Australian jurisdiction and in New Zealand.

There are two categories of teacher registration in the ACT – provisional registration and full registration.

Provisional registration acknowledges that teachers e.g. teachers who have recently graduated, or teachers who have had a break from teaching, may not have taught long enough or whose experience is not recent, to meet the proficient standard detailed in the Standards. They are capable teachers who meet the graduate standard of the Australian Professional Standards for Teachers (the Standards).

Full registration acknowledges that a teacher has provided evidence that their knowledge and skills enable them to meet the proficient level of the Standards. In order to move to full registration, a teacher must be recommended by a professional guidance panel consisting of the teacher's principal or delegate, their mentor and their supervisor. The teacher must demonstrate to this panel via 6-10 pieces of evidence and classroom observations that they meet all seven of the Standards at the proficient level.

The intent of the categories of provisional and full registration is to allow teachers time to develop their skills and knowledge at the provisional level and to encourage them to move from meeting the graduate Standards to meeting the proficient Standards within a reasonable timeframe.

Education ministers endorsed the *Nationally Consistent Registration Framework* in 2011. The Framework states:

- the process for achieving full registration should be flexible to accommodate different contexts and experience
- the maximum period for meeting the requirements for full registration is five years with provision for extension on a case-by-case basis.

S 48 of the TQI Act supported by Regulation 16 allows for a teacher to teach for five years, with a possible one-year extension to six years, before moving to full registration. This section acknowledges that each teacher's circumstances are different, and that while one teacher may be able to demonstrate evidence of meeting the proficient Standards after one year of teaching, another teacher may need more time to develop their education knowledge and practice to meet all of the seven Standards at the proficient level.

S 48 of the TQI Act with its supporting Regulation 16 aligns with the *Nationally Consistent Registration Framework* allowing some flexibility about when a teacher moves from provisional to full registration.

### *Provisional registration*

TQI has identified errors in its practice when issuing provisional registration to teachers. Specifically, in section 33 (1) (a), the Act states that teachers are eligible for provisional registration if they have not taught for the period prescribed by regulation – 180 days in the previous five years (see Regulation section 9).

Where teachers have taught more than 180 days, TQI's practice in issuing provisional teacher registration when they have taught more than 180 days contravenes the Act. Due to TQI's incorrect interpretation of the Act, TQI has invalidly issued registration to a number of teachers. Teachers affected are not registered and therefore are not able to teach. It also means that the teachers and their employers may be liable for criminal offences.

The unintended consequence of S (33) 1 (a) is that a teacher who does not meet the eligibility for requirements for full registration after teaching for 180 days is not eligible for full registration. But if they have taught 180 days in the previous five years, they are not eligible for provisional registration. They are therefore not eligible for either category of registration and therefore they are not entitled to teach.

The Act, as it currently reads, denies the entitlement to teach, sometimes up to four years, to a large number of teachers – to women who take maternity leave, and to men and women who choose to stay home with their child for one or two years, or who take carers leave for an elderly or sick relative, or for any of the other myriad of reasons a person may take time away from teaching.

### *Full registration*

There has been a further error identified in TQI's interpretation of the Act with regard to its issuing of full registration. TQI practice has been to approve the renewal of full registration if teachers have met the recency of practice requirement stated in Regulation 9 (1) (b) i.e. 100 days. This regulation is not authorised by the current Act which therefore makes the regulation invalid. The unintended consequence of this is that TQI has renewed the full registration of teachers who may not have met the eligibility requirement to have taught 180 days in the last five years.

## AMENDMENTS TO THE TQI ACT

The TQI Amendment Bill 2023 proposes to

- a. remove from the TQI Act the requirement to have taught less than 180 days in the previous five years to be eligible for provisional registration. Removing this requirement acknowledges that a teacher may have taught the full year, but that their personal circumstances may prevent them preparing and submitting their portfolio of evidence demonstrating they meet the proficient teacher Standards to enable the move to full registration. This does not mean they are not a competent teacher. They still meet the graduate standards. Removing the requirement to progress to full registration after one year gives teachers more flexibility in combining their career decisions with their personal circumstances.
- b. give TQI the authority to renew a teacher's provisional registration on a case-by-case basis taking into account the teacher's individual personal and professional circumstances.
- c. Make clear in the TQI Act that teachers who hold full registration who wish to renew their full registration, must be able to demonstrate recency of practice which is at a minimum 20 days of teaching in the previous year, or 100 days of teaching in the previous five years.
- d. validate registrations granted to date and all decisions made by employers and TQI about those registrations. This includes for an employer, engaging a teacher to teach at a school, conducting the performance management program with a teacher, promoting a teacher, or imposing disciplinary action. For TQI, this means any regulatory actions taken by TQI, including suspension, cancellation or imposing a condition on their registration.

## CONSISTENCY WITH HUMAN RIGHTS

The Bill is consistent with the *Human Rights Act 2004*.

### Rights engaged

The right to work (section 27B Human Rights Act) is promoted by this Bill. Under s 27B (1) of the *Human Rights Act*, the practice of trade, occupation or profession may be regulated by law. The *ACT Teacher Quality Institute Amendment Bill 2023* will amend the TQI Act to validate the registration of all teachers who have been invalidly registered in the ACT and therefore authorise them to teach in ACT schools.

### *Rights Limited*

Nil.

## CLAUSE NOTES

### PART 1 PRELIMINARY

#### **Clause 1      Name of Act**

The clause provides that the name of the Act is the *ACT Teacher Quality Institute Amendment Act 2023*.

#### **Clause 2      Commencement**

This clause provides for the commencement of the Act on the day after notification.

#### **Clause 3      Legislation amended**

This clause identifies the legislation that will be amended is the *ACT Teacher Quality Institute Act 2010 and the ACT Teacher Quality Institute Regulation 2010*.

#### **Clause 4      Eligibility for provisional registration Section 33 (1) (a)**

This clause deletes from Section 33 (1) (a) that a teacher must not have taught for the period prescribed by regulation.

#### **Clause 5      Term of registration and permit to teach**

This clause sets out the terms of registration and permit to teach, and authorises the Teacher Quality Institute (TQI) to renew provisional registration for a period that TQI is satisfied on reasonable grounds is appropriate. It gives examples for circumstances it may consider to be appropriate.

#### **Clause 6      Renewal of registration Section 51 (5) (i)**

This clause authorises TQI to renew a teacher's full registration if they have taught 20 days in the previous year or 100 days in the previous five years. (See Section 51 (5) (a) (1))

#### **Clause 7      Reviewable decisions Schedule 1, item 13, column 3**

This clause is consequential to the amendment which allows TQI to renew provisional registration for a period that TQI is satisfied on reasonable grounds is appropriate.

#### **Clause 8      Schedule 1, item 15, column 3**

Amendments to the TQI Act have caused changed numbering of sections. This clause refers to the Schedule to the correct section of the Act.

#### **Clause 9      New part 17**

New Part 17 validates TQI decisions about registration purported to be made before the commencement of the *TQI Amendment Act 2023*.

### **ACT Teacher Quality Institute Regulation**

#### **Clause 10      Eligibility for full registration – period of teaching – Act, Section 32 (1) (b) Section 9 (1)**

This clause leaves out mention of the five-year period because it is mentioned in 32 (1) (b).

**Clause 11    Sections 15-18 Term of registration and permit to teach- Act section 47 (1) (a)**

Regulation 15 Term of registration and permit to teach – Act section 47 (1) (a) This regulation specifies that TQI's registration period is from 1 April to 31 March the following year except when a teacher is issued registration or permit to teach on or after 1 January in the previous registration year.

Regulation 16 – Permit to teach – renewal period – Act Section 47 (4)  
This regulation sets out the period for which TQI can renew a person's permit to teach.

Regulation 17 – Renewal of full registration – period of teaching – Act Section 51 (5)  
(i)

This regulation sets out the specific number of days – 20 in the 12 month period before renewal or 100 in the previous five years - a person is to have taught to be eligible for renewal of full registration.

## ACT Teacher Quality Institute Amendment Bill 2023

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **ACT Teacher Quality Institute Amendment Bill 2023**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA  
Attorney-General