

**2011**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN TERRITORY**

***ACT TEACHER QUALITY INSTITUTE AMENDMENT BILL 2011***

**EXPLANATORY STATEMENT**

Presented by

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Minister for Education and Training

# ***ACT TEACHER QUALITY INSTITUTE AMENDMENT BILL 2011***

## **Background and overview**

In December 2010 the *ACT Teacher Quality Institute Act 2010* was passed and came into effect on 1 January 2011. This Act provides the legislative basis for the establishment of the ACT Teacher Quality Institute (TQI) and provides guidance on its operations.

The purpose of the ACT Teacher Quality Institute is to register teachers or issue permits to teach, accredit pre-service teacher education programs, and certify teachers against professional standards.

An essential element of teacher registration and permit to teach is an assessment of the criminal history of applicants in order to determine their suitability to teach in the ACT. Presently under the *ACT Teacher Quality Institute Act 2010* spent convictions are not required to be assessed during the processes followed by people applying for registration or a permit to teach.

However, under section 19 of the *Spent Convictions Act 2000* there is such a requirement for spent convictions to be assessed for persons seeking employment as a teacher. This means that persons seeking registration or a permit to teach with the ACT Teacher Quality Institute will not have spent convictions assessed during the application process.

The Bill removes this inconsistency and will bring the *ACT Teacher Quality Institute Act 2010* into line with the *Spent Convictions Act 2000*.

The Bill will align the criminal history checks of ACT registration to those across Australia and avoid the need for an additional criminal history check to satisfy employer requirements. By incorporating these amendments into the Act, the processes for assessing an applicant's criminal history will be more reliable and against a single standard of practice.

The Bill will also give effect to amendments to Transitional Arrangements to:

- include people with education qualifications who are working in the administration of education service roles and not actively teaching
- allow the issue of a permit to teach to a person who is teaching in a school without education qualifications but who has appropriate skills and experience.

## **Human Rights considerations**

Criminal risk assessment, including looking at spent convictions engages a number of rights protected under various statutes including the *Human Rights Act 2004*, *Discrimination Act 1991* and the *Privacy Act 1998 (Cwth)* as it applies in the ACT. Most rights are not absolute and proportional limitations may be permitted where demonstrably justified in a free and democratic society. In deciding whether a limit is reasonable, all relevant factors must be considered as specified in section 28 of the *Human Rights Act 2004*. While it is important to be mindful of the rights of applicants to privacy, reputation, discrimination and recognition and equality before the law, it must be balanced against the rights of children and young people to right to life, protection, liberty, security and humane treatment.

It is believed the requirement to undertake criminal history checks and the assessment of spent convictions are proportionate given the potential risk to children and young people of coming into contact with people who may have criminal history of inappropriate behaviour. Care will be taken to ensure that the use of personal information about the conviction will only be used for the purposes necessary to meet the requirements of the *ACT Teacher Quality Institute Act 2010*.

## **Clause notes**

### **Clause 1**

#### **Name of Act**

This section states the title of the Act as the *ACT Teacher Quality Institute Amendment Bill 2011*.

### **Clause 2**

#### **Commencement**

This section sets out the commencement date for the Act, which is the day after its notification.

### **Clause 3**

#### **Legislation amended**

This section states that this Act amends the *ACT Teacher Quality Institute Act 2010* and the *ACT Teacher Quality Institute Regulations 2010*. A consequential amendment to the *Spent Convictions Act 2000* will also occur.

### **Clause 4**

#### **Section 32 (1)(f)**

This clause replaces paragraph (f) which refers to convictions revealed during a criminal history check but did not give guidance on how an assessment of them should be conducted.

Section 32(1)(f) provides that convictions will be assessed in accordance with criminal history guidelines described in the proposed section 35A and that where such an assessment determines that the conviction does not have a direct connection with the inherent requirements of the teaching profession then an application for full registration should be approved.

The term conviction in this section and the following sections will include a spent conviction given the consequential amendment to the *Spent Convictions Act 2000*.

### **Clause 5**

#### **Section 33(1)(e)**

This clause is similar to section 32(1)(f) above except that it refers to applications for provisional registration.

### **Clause 6**

#### **Section 35(1)**

This is a technical amendment which clarifies what the Institute must do under this section. It places the onus on the Institute to be satisfied that the applicant meets certain criteria rather than stating that the applicant must meet certain requirements.

### **Clause 7**

#### **Section 35(1)(d)**

This clause is similar to clause 32(1)(f) and clause 33(1)(e) except that it refers to applications for permit to teach.

### **Clause 8**

#### **Section 35(4)**

Permit to teach is not a class of registration under the Act, therefore this amendment more correctly refers to the granting of a permit to teach rather than to the registration of an applicant under this section.

**Clause 9**  
**Sections 35A and 35B**

**New section 35A**

This section requires the Institute to develop and apply guidelines on how an assessment is to be conducted of a person's police certificate and criminal history record. These will be developed separately and are a notifiable instrument.

**New section 35B**

This section lists the assessment criteria against which such an assessment is to be carried out.

**Clause 10**

**Section 51(5)(d)**

The amended clause allows for an assessment of a person's application for renewal of their full or provisional registration to be carried out in accordance with the guidelines set out in section 35B.

Once the conviction is assessed, consideration must be given to ensure the conviction does not have a high degree of direct connection with the inherent requirements of the teaching profession.

**Clause 11**

**Section 53(5)(d)**

The amended section allows for an assessment of a person's application for renewal of their permit to teach to be carried out in accordance with the guidelines detailed at clause 35B.

Once the conviction is assessed, consideration must be given to ensure the conviction does not have a high degree of direct connection with the inherent requirements of the teaching profession.

**Clause 12**

**Section 151 new section (5)**

This amended section includes people working in the administration of education services with teaching qualifications who were not actively teaching. It also aligns with section 8(a)(iii) of the Act which refers to teaching to include the administration of education services.

The amendment to this clause defines a teacher under transitional arrangements as a person immediately before 30 June 2012.

**Clause 13**

**Section 151 new section 151A**

This section has been added to clarify that a person who is not qualified to teach but has specialist knowledge, training, skills or qualifications in the subject they are teaching and has been employed or engaged to teach in a school will be issued with a permit to teach under transitional arrangements. For example, a person with trade or vocational certificates, not formal teaching qualifications, teaching a specialised technical or vocational class.

**Clause 14**

**Dictionary, new definition of *criminal history guidelines***

This clause is a consequential amendment to insert a new signpost of *criminal history guidelines* in the dictionary.

## **Clause 15**

### **Dictionary, new definition of *police certificate*, note**

This clause amends the note under the dictionary definition of *police certificate* to provide that a conviction includes spent convictions.

## **Clause 16**

### **New section 21A**

This section refers to the new section 151A(2)(a). An applicant is required to apply for a permit to teach by 30 June 2012.

## **Clause 17**

### ***Spent Convictions Act 2000*, new section 19 (8A)**

Section 19 of the *Spent Convictions Act 2000* states that the consequences of a conviction becoming spent are:

- the person is not required to disclose information about the spent conviction
- a question about the person's criminal history is taken not to refer to a spent conviction, but refers only to convictions that are not spent
- a reference to the person's conviction or character does not allow for a spent conviction to be considered.

Section 19(8A) is a consequential amendment following on from the *ACT Teacher Quality Amendment Bill 2011* providing that section 16 of the *Spent Convictions Act 2000* does not apply in relation to an application or renewal of registration or a permit to teach under the *ACT Teacher Quality Institute Act 2010*.