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THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

EDUCATION AMENDMENT BILL 2017

SUPPLEMENTARY EXPLANATORY STATEMENT

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## SUPPLEMENTARY EXPLANATORY STATEMENT

This explanatory statement relates to government amendments to the Education Amendment Bill 2017 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the government amendments. 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.

### **Background**

This supplementary explanatory statement provides information about why government amendments are proposed to the Bill with an explanation about the proposed legislative amendments.

The government has proposed amendments to refine the application process and obligations for registration for home education in the ACT. Home education in the ACT is regulated by the *Education Act 2004* (the Act), chapter 5 and in *Education Regulation 2005* (the Regulations) part 4.

The government has proposed amendments following consultation with home educators, home education networks and parents during the development of the Bill, consequential amendments to the Regulations and proposed government amendments. Consultation undertaken following tabling of the Bill and proposed amended Regulations allowed for detailed provisions to be agreed upon and concerns of stakeholders addressed in both government amendments and Regulations.

The main areas highlighted by consultation and incorporated into the government amendments relate to:

- allowing parents of new home education registrations with three months to comply with certain conditions of registration including provision of education documents and education statement of intent to the director-general;
- requiring the director-general of the Education Directorate to make a decision on a registration application and notify the applicant within 28 days of receiving a complete application;
- including as a condition of registration that the home base is suitable for education of the child; and
- requiring home education reports to be provided once every year as a condition of registration.

The government amendments include at schedule 1 consequential amendments to the Regulations. These amendments to the Regulations were subject to exposure draft consultation and provide the process through which home education registrations are administered through conditions of registration for new registrations and renewal registrations. The consequential amendments include the type of documents, and when,

they are to be provided at each stage of registration and renewal. The consequential amendments also set out requirements for home education registration applications and particulars for the home education register.

Consultation with stakeholders highlighted that a key concern with the Bill is the amount of time required for parents to prepare and provide education materials and a statement of intent to the director-general. With the removal of provisional registration, a six month period, parents raised concerns that applicants would not have sufficient time at registration to develop their education statement of intent detailing how they would educate their child and meet the conditions of registration. The Bill would particularly affect parents who made the choice to home educate their child on short notice due to wellbeing or educational concerns.

The government amendments provide a three month period for parents with new registrations to learn how to teach their child, collect materials and programs, and produce their statement of intent before these materials must be provided to the director-general. This period is intended to operate like a shortened provisional period for parents of new registrations. It effectively creates a grace period of three months to allow parents to establish their approach to home education before meeting with an authorised person and providing their written statement of intent as outlined in the Regulations.

The government amendments require the director-general to make a decision on a registration application and notify the applicant within 28 days of a complete application being received. Feedback was received during consultation raising concern that without a prompt decision on an application families may be left in an uncertain position. The government amendments will require a decision within 28 days, provided a full and complete application is made including the particulars set out in the Act and Regulations.

The government amendments add the condition that the home base is suitable for educating the child. This is intended as a broad general condition that will be subject to director-general discretionary decision making only in extreme examples or identified cases of safety and welfare concerns for a child. Administratively parents will be asked at registration to make a statement that their home base is safe and suitable for home education and the director-general would make a decision otherwise by exception based on evidence to the contrary. This condition is not intended to impose on the privacy of the family nor necessitate a home visit be conducted at registration. Instead it is intended to provide the director-general an option to cancel registration if there is evidence of safety or welfare concerns from the home environment. Parents will be given the opportunity to rectify any issues or concerns prior to a cancellation being issued.

During consultation the government identified that providing a home education report about the educational progress of the child, while required by the Act at section 138, was not a condition of registration. This meant there was no consequence or recourse for parents who did not provide a home education report. The government amendments include a requirement that parents provide a home education report once per year as a condition of registration. The Regulations additionally include that the most recent home education report is required as part of a registration renewal application.

## **Provisions in detail**

The Bill proposes a number of amendments to the *Education Act 2004* (the Act). The government amendments to the Bill are detailed below.

### **Clause 1 Long title**

This clause provides that the Act is to amend the *Education Act 2004* and the *Education Regulation 2005*.

### **Clause 2 Commencement**

This clause provides for the commencement of the Act which are delayed from the Bill due to consultation and drafting.

The provisions of the Act will commence on a day the Minister fixes by written notice.

### **Clause 3 Proposed new note**

This clause inserts a new note identifying the Bill also amends the *Education Regulation 2005* (see schedule 1).

### **Clause 4 Proposed new guidelines**

This clause expands the director-general's powers to issue guidelines under the Act by including a power to issue guidelines relating to chapter 5 (Home Education).

### **Clause 5 Proposed new section in part 5.1, Definitions – ch 5 section 127C**

This proposed new section defines:

- home education report by reference to section 138; and
- the term 'new registration' as meaning a child not previously registered for home education or a child not registered for home education in the last 12 months or more.

### **Clause 6 Proposed new note**

This clause inserts a note directing readers to the reviewable decisions set out under schedule 1 and in chapter 6 of the Act that relate to home education registration and decision making of the director-general.

### **Clause 7 Meaning of home education**

This clause omits section 129 in order to move the definition of home education to the Dictionary via new proposed clause 12.

### **Clause 8 Proposed wording Section 131 (3) director-general decision to register**

This clause substitutes the word 'may' for 'must' in Section 131 (3) which references the director-general decision making for registration. The word 'may' implied a discretion in decision making which was not intended in the registration process. The word 'must' defines a more definitive and positive decision making position once the director-general is

satisfied that the conditions of registration will be met. This change removes the perception of discretion in decision making beyond the consideration of the conditions of registration.

#### **Clause 9 Proposed new section Registration for home education sections 131 (4) to (6)**

This clause substitutes section 131 (4) of the Act and replaces it with proposed new sections 131 (4) to (6).

Section 131 (4) allow an authorised person, in deciding whether conditions for registration will be complied with, to inspect education programs, materials and other records used in the child's home education. A caveat is inserted at section 131 (5) that disapplies this requirement for new registrations. Operating alongside amendments to the Regulations, section 131 (5) establishes the grace period of three months that replaces provisional registration being removed by the Bill.

The director-general is required by section 131 (6) to make a decision on an application for home education registration and notify the parents of that decision within 28 days after a complete application has been received by the director-general. A complete application must be in writing and supply all the particulars of a new registration application as set out in part 4 of the Regulations relating to particulars of a new application, such as the parents' names, contact details, name of the child, any medical or special needs of the child which may affect their education and other personal documentation.

#### **Clause 10 Proposed section Conditions of registration for home education section 132**

This clause substitutes proposed amended section 132 that sets out the conditions of home education registration that parents are required to comply with during registration of a child for home education. This is an expanded set of conditions designed to better address the various requirements that parents must meet throughout a period of home education registration.

Sections 132 (1)(a) to (c) are existing conditions in the Act at current section 132 and are unchanged. However, these conditions will not apply during the first three months grace period.

Section 132 (1)(d) retains the proposed new condition of registration included in the Bill that a child must live, or usually live, in the ACT.

This construction is intended to be flexible in order to allow for a broad range of travel or occupation circumstances and parenting arrangements. For example, a home-educated child may accompany their family during travel for an extended holiday. A home-educated child may also accompany their parents on a short-term employment posting with the intention to return to the ACT and the wish to continue their child's home education.

The requirement for a child to live, or usually live, in the ACT is intended only to be restrictive or limiting if a child moves out of the ACT and becomes resident in another jurisdiction. The child and their parents then become subject to the laws for education in their jurisdiction of residence. The parents of a child wishing to home educate must meet the requirements for home education in the state, territory or country in which they reside.

Section 132 (1)(e) inserts a requirement that parents must tell the director-general, in writing, within 28 days about a change to information on the home education register. This could be a name change of the parents or child, change of address or change of contact details. This is a new requirement which has been inserted to ensure that the home education register is kept up to date with the details of families registered for home education. Parents must also tell the director-general within this timeframe when a child registered for home education stops living, or usually living, in the ACT.

Section 132 (1)(f) inserts a requirement that parents submit a home education report. Section 138 (below) explains that this home education report is to be provided once every year before a date approved by the director-general. This is not a condition of registration in the current Act and was identified as a gap in ensuring compliance with the requirement to submit a home education report.

Section 132 (1)(g) inserts a requirement that the home base for a child's home education is suitable for the education of the child. This is a new condition to ensure that children are not registered for home education in home environments that are unsafe or pose unreasonable risk to the child or their long term educational outcomes. This condition will also be taken into consideration when home education is conducted in circumstances beyond the norm, such as extended travel, postings or part time arrangements, to ensure that appropriate consideration is given to the educational requirements of the child and reasonable adjustments are made.

Section 132 (1)(h) allows further conditions of registration to be prescribed by Regulation.

Section 132 (2) establishes that sections 132 (1)(a) to (c) do not apply in relation to new registration within three months after the day of registration. This grace period of three months in this way works together with the Regulations to provide an arrangement similar to provisional registration. During this period parents of a child with a new registration have the opportunity to settle into home education, learn how best to educate their child at home and adapt their strategies and opportunities for education to the child's particular educational needs. This period also allows parents to document a statement of intent that sets out how they will provide a high quality education.

#### **Clause 11 Proposed wording Section 137 (3) director-general decision to renew registration**

This clause substitutes the word 'may' for 'must' in Section 137 (3) which references the director-general decision making for renewal of registration. This change aligns the wording with Clause 8 (Section 131 (3)) for registrations. The word 'may' implied a discretion in decision making which was not intended in the registration process. The word 'must' defines a more definitive and positive decision making position once the director-general is satisfied that the conditions of renewal have been met. This change removes the perception of discretion in decision making beyond the consideration of the conditions of renewal.

#### **Clause 12 Proposed section home education reports section 138**

This clause substitutes proposed amended section 138 to provide that the parents of a child registered for home education must give the director-general a home education report once

a year, before a date approved by the director-general. The report must comply with requirements prescribed by regulation that are set out in part 10 of the Regulations inserted by schedule 1.

Allowing the director-general to set a date by which parents must submit home education reports has been included to ensure that these reports are produced in time to be considered as part of an application for renewal of registration.

### **Clause 13 and 14 New definitions of ‘home education’, ‘home education report’ and ‘new registration’**

Clause 13 and 14 insert new dictionary definitions of ‘home education’, ‘home education report’ and ‘new registration’ into the Act.

### **Schedule 1 proposed new schedule Education Regulation 2005 – consequential amendments**

This clause inserts a proposed new schedule, schedule 1, that will amend the Regulations in line with process for home education application and registration established by the Bill.

The proposed amended Regulation will detail the information that must be included in an application for home education registration, provide conditions of registration for home education, detail the information that must be included in an application for renewal of home education registration, list the requirements for home education reports and prescribe the particulars to be included on the home education register.

Importantly, section 8 (1)(a) gives effect to the three month grace period for new registrations during which parents establish their approach to home education and provide a written statement of intent. During this three month period parents must also meet with an authorised person.

Sections 8 (1)(b) and (c) deal with registrations that are not new registrations, which are not granted the three month grace period, by requiring a written statement of intent and meeting with an authorised person within ten school days from the day of registration.

A registration is not a new registration if a child is currently registered for home education or if a child was previously registered for home education and the registration ended less than twelve months from the day that their current registration begins. This arrangement aims to discourage short term registrations and prevent parents from re-applying for registration, including multiple times in succession, to avoid the requirement to produce a written statement of intent and comply with the conditions of registration.