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THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

EDUCATION AMENDMENT BILL 2017

REVISED EXPLANATORY STATEMENT

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This revised explanatory statement relates 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 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

Background

This explanatory statement provides information about why a Bill is proposed together with an explanation about the proposed legislative amendments.

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.

Following introduction of the Bill the government consulted on consequential amendments to the Regulations and on proposed government amendments to the original Bill. This consultation allowed for the detailed provisions and operation of home education registration to be agreed upon and concerns of stakeholders addressed in both the Bill, and amendments to the Regulations.

Overview of the Bill

Registration for home education is currently a two-step process: provisional registration automatically provided for six months on application followed by full registration for up to two years. The primary purpose of the Bill is to remove provisional registration and have only one step for registration, which is full registration, for up to two years, as decided by the director-general upon the applicant meeting the conditions of registration.

A child can currently be removed from school education with no plan or evidence of appropriate education being provided in the home during the six month provisional registration period. There is also no limit on the number of times a parent may apply for provisional registration without demonstrating the child is receiving a high quality education. There is a real risk to a child's long term educational outcomes if they can be removed at any time from school education with no evidence that high quality education will be delivered, or is being delivered, in the home setting as is required as a condition of full registration.

In proposing this change, the government recognises that parents who register their child for home education may take a few weeks or months to develop curriculum material, develop modules for learning subjects and generally learn themselves how best to educate their child before being able to provide documentation supporting their teaching practices. The Director-General currently manages this need administratively by granting registration for six months and working with parents to develop an educational approach appropriate to the needs of the child. This practice will continue.

Supporting this change, the Bill proposed that information required to support an application for registration (or registration renewal) may be prescribed by Regulation.

Currently there is no legislative requirement that a child be living in the ACT for parents to apply for home education registration or provisional registration. The purpose of the Bill is to make clear that the Act does not intend to allow for home education registration of children who do not live in the ACT. It adds a condition that the child being registered lives, or usually lives, in the ACT. Parents of a child will also be obliged to inform the director-general if their child stops living, or usually living, in the ACT.

The lack of a requirement that a child be an ACT resident creates a risk that interstate parents may seek registration for home education in the ACT to:

- avoid educational obligations in their State or Territory of residence;
- because interstate parents perceive the ACT obligations to be less onerous; or
- because another jurisdiction has refused registration in the child's State or Territory of residence.

It is also difficult for the director-general to satisfy themselves that non-resident parents are complying with the conditions of home education registration.

In making this change, the Bill intends to provide sufficient flexibility for circumstances where a child who usually lives in the ACT is temporarily living outside the ACT. For example, a home-educated child may accompany their family during travel across Australia for an extended period or a shared custody arrangement may involve a child periodically living with a parent who does not live in the ACT.

The Bill also improves the management of the home education register by expressly providing for the information it contains to be prescribed by Regulation and requiring parents to inform the Director-General of changes to information on the register. The purpose of this change is to assist the Director-General to maintain the register and ensure that it contains contemporary information. The register allows the government to contact parents about the administration of a child's home education registration. Regulations made under the general regulation-making power in the Act currently provide particulars that must be included in the register.

Additionally, the Bill supplements the general regulation-making power in the Act with a specific power to prescribe requirements for the home education reports that parents must already provide to the Director-General once every year. These reports allow the government to monitor the educational progress of home educated children, however, the expected content of a report is not currently set out.

Human rights implications

The Bill primarily engages with the right to protection of the family and children, the right to privacy and the right to education. While other human rights, such as the right to freedom of thought, conscience, religion and belief, are engaged by compulsory education and requirement for parents to register a child for home education, these

rights are largely unaffected by the Bill because it only amends the structure of home education registration, not the requirements for registration.

The primary purpose of the Bill advances the right to education by assisting the government to ensure that all children have access to an education sufficient to attain minimum education standards regardless of setting, including a home education setting.

As provided in section 27A of the *Human Rights Act 2004* (Human Rights Act), the right to education recognises that the parent or guardian may choose schooling for a child that ensures religious and moral education in conformity with the convictions of the child's parent or guardian.

For some parents this involves choosing home education in place of school education. In this, the family unit and primacy of parental responsibility for their child is respected. Balanced against the need to protect parental choice, the ACT government and community has a justifiable interest in ensuring that parental decisions about child education do not result in a child failing to attain minimum educational standards. This safeguards the best interests of the child.

As currently provided in the Act, provisional registration for home education, including repeated provisional registration, has the potential to undermine a child attaining minimum educational standards because there is no opportunity for the government to ensure that a sufficient education is being provided in the home setting. Removal of the provisional registration will not materially affect parental choice but will advance the best interests of the child.

The right to privacy is engaged through a requirement that parents report on the education progress of a home educated child, provide personal details for the home education register and provide a statement that the home base is suitable for home education.

This existing limit in the Act is not materially changed by the Bill, however, providing for regulations that set out the requirements of a report will assist in ensuring that reporting occurs on a rational and consistent basis that explains the measurable educational progress made by the child since the previous report. The requirement to report about the educational progress of a home education child advances the best interests of the child by providing the government with a periodic opportunity to check on the child's progress towards minimum educational standards, most particularly literacy and numeracy.

The condition that the home base is suitable for home education advances the best interests of the child through the opportunity for the government to ensure that there is no unreasonable risk to the educational outcomes, health and safety of the child from the home environment. It advances the best interests of the child by ensuring that in circumstances where home education is being provided during a period of extended travel or through shared custody arrangements that reasonable adjustments are made for the child to ensure that the home education environment remains suitable for education.

The existing limit in the Act is not materially changed by the provision of personal details through the home education register. The details for the register are for identification purposes and verification that conditions of the registration will be complied with. The term “child’s sex” has been modernised to “child’s gender” and the options for parents to provide on the register are male, female, other and undisclosed which is the least restrictive manner in which to reasonably achieve the purpose. This amended wording does not place any additional limit on the parent or child’s privacy through recording of this information on the home education register from the existing legislative framework. The right to privacy is limited by provision of this information but is balanced by the need to be able to identify a child being registered and verify their particulars.

In requiring a child registered for home education to live, or usually live, in the ACT, the Bill engages the right to protection of the family and children and right to education. The purpose of this amendment is to clarify that the Act does not ordinarily intend to operate outside the ACT for home education registration.

However, there are circumstances where a child who lives in the ACT could temporarily live outside the ACT. In these circumstances, too narrow a residency requirement could limit the right to protection of the family and children by, for example, requiring a child to be separated from their family or interrupting a shared custody arrangement where one parent lives outside the ACT. The right to education could be limited if a parent is unable to continue home education of a child because of the requirement that the child always live in the ACT.

Construction of the residency requirement to provide for a child who “usually lives” in the ACT is intended to moderate the potential for this limit to unreasonably restrict the right to protection of the family and children and right to education. The director-general will have discretion to allow a home education registration to continue while a child temporarily lives outside the ACT. Where a child ceases to live or usually live in the ACT, the ACT ceases to have jurisdiction, the law of the jurisdiction in which they live applies, and the ACT Human Rights Act is no longer relevant.

Regulatory impact analysis

The registration process for home education is being simplified to a single-step registration for home education by removing automatic provisional registration of six months. A reduced regulatory burden will result.

The requirement that a child be living in the ACT, or usually living in the ACT, to be registered for home education has a minor additional impact on applicants.

Applicants will need to demonstrate that a child lives, or usually lives, in the ACT and will be required to inform the director-general if a home educated child ceases to live, or usually live, in the ACT.

A new responsibility to inform the director-general of changes to the conditions of registration within 28 days of the change occurring will add a minor regulatory impact. This requirement will enable the director-general to maintain the home education register and ensure that contemporary information about a home educated child and their parents, such as name and contact information, are included on the register. Without this requirement the government could have difficulty communicating on a timely basis with the parents of a home educated child.

Combined these changes have minor regulatory impacts on parents of home educated children, and also operate to their benefit.

The right to appeal a decision relating to home education remains unchanged and is described in chapter 6 of the *Education Act 2004*.

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the name of the Act is the *Education Amendment Act 2017*.

Clause 2 Commencement

This clause provides for the commencement of the Act.

The provisions of the Act will commence on 1 January 2019 or by a day the Minister fixes by written notice, whichever is sooner.

Delayed commencement is provided to allow the government time to consult parents who home register their children on a new Regulation and allow parents time to understand and prepare for change resulting from passage of the Bill.

Clause 3 Legislation Amended

This clause identifies the legislation amended by the Bill – the *Education Act 2004*.

Clause 4 Provisional registration for home education Section 130

This clause omits section 130 of the *Education Act 2004*.

Section 130 of the Act provides for provisional registration of six months upon application.

This clause removes provisional registration entirely meaning that parents only need to apply for full home education registration and meet the requirements and conditions of full registration.

Clause 5 Registration for home education Section 131 (1) and (2)

This clause substitutes new subsections for sections 131 (1) and (2).

The substituted subsection (1) removes reference to provisional registration as above, and states that the parents of a child living, or usually living in the ACT may apply for home education registration, including information on how to apply.

This adds a requirement that the child be living in the ACT, or usually living in the ACT, in order for parents to apply for home education registration in the ACT. Such a requirement was not expressly part of the Act previously. Examples of the broad interpretation of living or usually living in the ACT are included in Clause 6.

The substituted subsection (2) creates a requirement that the application be in writing and include any information required by Regulation. Specific regulation-making power is granted to the Executive and reference in this section alerts applicants to regulations involving registration for home education.

Clause 6 Conditions of registration for home education new section 132 (d) to (f)

This clause inserts new subsections for section 132 (d) to (f).

Section 132 (d) inserts the condition of registration that a child must live, or usually live, in the ACT. Examples are included to assist in interpretation of this section.

The intent of this construction is to be flexible in order to allow for a board 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 of another jurisdiction. The child and their parents then become subject to the laws about 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 (e) inserts a responsibility that parents must inform the Director-General, in writing, within 28 days of 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. The section specifically requires parents to inform the Director-General if a child registered for home education ceases to live, or usually live, in the ACT as a condition of registration.

Section 132 (f) inserts that a condition of registration may be prescribed by Regulation. Specific regulation-making power is granted to the Executive and reference in this section alerts applicants to regulations involving registration for home education.

Clause 7 Renewal of registration for home education section 137 (1)

This clause omits the words “in writing” from section 137 (1) as new clause 8 of section 137 (2) details the requirements of a renewal application.

Clause 8 Renewal of registration for home education section 137 (2)

This clause substitutes the current section 137 (2) to detail the requirements of a renewal application.

Section 137 (2)(a) replaces the words omitted in Clause 7 to require that a renewal application be made in writing.

Section 137 (2)(b) inserts a condition that a renewal application include any information prescribed by Regulation. Specific regulation-making power is granted to the Executive and reference in this section alerts applicants to regulations involving registration for home education.

Section 137 (2)(c) has been clarified to outline that the period within which a renewal application may be made is not later than three months before the registration ends, or if required, within a shorter period if approved by the Director-General. This subsection maintains existing flexibility at the discretion of the Director-General in recognition that reasonable circumstances may arise where parents of a home educated child should be able to seek renewal of a home education registration later than three months before the registration ends.

This subsection replaces the concept of “prescribed period” in subsection 137(4) of the Act with a simpler approach to setting out the time limit for making a renewal application that avoids potential confusion with matters prescribed by Regulation.

Clause 9 Section 137 (4)

This clause omits the current section 137 (4) that has been replaced by Clause 8.

Section 137 (4) has been omitted to avoid any confusion between “prescribed period”, as defined in this subsection and matters prescribed by Regulation.

The effect section 137 (2)(c) has been maintained and clarified by Clause 8.

Clause 10 Home education reports new section 138 (2)

This clause inserts a new section 138 (2) which states that home education reports must comply with any requirement prescribed by Regulation. Specific regulation-making power is granted to the Executive and reference in this section alerts parents to regulations detailing the required content of reports about the educational progress of a child registered for home education.

The requirement to report to the Director-General once every year is unchanged.

Clause 11 Home education register new section 139 (2)

This clause inserts a new section 139 (2) which states that the home education register maintained by the Director-General must comply with any requirement prescribed by Regulation. Specific regulation-making power is granted to the Executive and reference in this section alerts a reader to regulations involving the home education register.

The requirement for the Director-General to maintain a home education register is unchanged.