

2020

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

EDUCATION AMENDMENT BILL 2020

REVISED EXPLANATORY STATEMENT

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August 2020

EDUCATION AMENDMENT BILL 2020

The Bill **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*.

OVERVIEW OF THE BILL

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

Consultation occurred throughout the process of the Bill and allowed for the detailed provisions and operation of the various amendments and concerns of stakeholders to be considered in both the Bill, and amendments to the Regulations.

In August 2018, the ACT Government released the Future of Education: An ACT Education Strategy for the next ten years (the Strategy). Through the Strategy, one of the first actions under the foundation of ‘systems supporting learning’, was to review and amend the Act to strengthen equity, student agency, access and inclusion. Amendments to the Act will provide the legislative framework to enable the vision of the Strategy to be realised.

The amendments in this Bill bring clarity to the roles and responsibilities of people carrying a duty of care to children and young people in schools, and ensure that our most vulnerable students are protected by implementing a recommendation from the *Royal Commission into Institutional Responses to Child Sexual Abuse*.

The amendments will also provide mechanisms to ensure every child is accessing education through strengthening the Government’s ability to enforce the attendance of non-ACT residents enrolled in ACT schools, and share information with the relevant State/Territory government agency in the best interests of the child.

The Bill will also address an anomaly relating to parent and citizen (P&C) representation on school boards, enabling parental and local citizen engagement in schools, where it has not previously been possible for schools which do not have a current P&C.

Boarding schools

The Bill proposes amendments to section 21 for government schools and sections 86, 88, 88B, 90, 91 and 97 for non-government schools in the *Education Act 2004*. It also proposes amendments at part 3, sections 25 and 26 of the *Education Regulation 2005*.

The amendments relating to schools who provide boarding facilities in this Bill bring clarity to the roles and responsibilities of people carrying a duty of care to children and young people in schools, and ensure that our most vulnerable students are protected by implementing a recommendation from the *Royal Commission into Institutional Responses to Child Sexual Abuse* (the Royal Commission).

Schools in the ACT are currently not required to abide by specific conditions relating to the operation of boarding facilities. However, there is a risk to a child's safety and wellbeing if they are residing in facilities that are not kept to a recognised standard.

The Bill proposes amendments to section 21 for government schools and sections 86, 88, 88B, 90, 91 and 97 for non-government schools in the *Education Act 2004*. It also proposes amendments at part 3, sections 25 and 26 of the *Education Regulation 2005*.

The purpose of these amendments is to include a requirement within the Act stating that as part of the operation of government schools and the registration and regulation process of non-government schools, all schools with boarding facilities are required to adhere to AS 5725:2015 - *Australian Standard: Boarding Standard for Australian schools and residences* (the Australian Standard). Adherence to the standard will need to be demonstrated through appropriate policy and procedures at the individual school level.

While the ACT Government does not intend to provide boarding school services, all ACT schools, both government and non-government, have been included in the scope of this amendment for the sake of completeness and to fully meet the Royal Commission recommendation.

These amendments are not intended to include locations at which a child or young person is currently residing for one purpose and receiving subsidiary educational services during their stay (for example Murrumbidgee Education and Training Centre or The Canberra Hospital School), or temporary accommodation such as home stays, school camps etc.

The use of the Australian Standard will ensure that children are residing in facilities that are kept to a recognised standard, in which the governance; facilities; parent, family and community engagement; staff; and the protection, safety, wellbeing and holistic development of boarders are being met.

The Australian Standard provides a common national framework that is intended to provide owners, operators, management and staff of schools who provide boarding facilities with guidance relating to a range of matters to ensure the delivery of a quality boarding facility.

The Australian Standard provides a benchmark for best practice in providing boarding facilities in Australia. The lack of consistent guidance across states and territories as to how schools around Australia are required to manage their boarding services was an important impetus behind the creation of the Australian Standard.

Ongoing work at the whole-of-government level will articulate the streamlined approach to introducing the Child Safe Standards across the ACT, which will complement the requirement in the *Education Act 2004* for schools providing boarding facilities to adhere to the Australian Standard.

In addition to the child protection; safety; health and wellbeing; holistic development; and care and supervision of boarders, the Australian Standard includes requirements relating to the operation of schools with boarding facilities.

This includes requirements around governance and management; records and financial management; health, safety and wellbeing of staff; management; the competence and professional learning of staff; and facilities.

Compliance with the Australian Standard will require schools to have policies and procedures in place that will assist with the identification and management of risks that may arise in relation to students and young people in vulnerable circumstances living away from home and ensures that children and young people in boarding facilities in the ACT are protected.

Furthermore, requiring adherence to the Australian Standard will provide an assurance mechanism that requires schools providing boarding facilities in the ACT to be kept to a recognised standard in all aspects of their operation.

In proposing this change, the government recognises the importance of protecting the safety and wellbeing of students and young people in vulnerable circumstances.

The amendment to the *Education Act 2004* relating to schools who provide boarding facilities was developed in consultation with the Association of Independent Schools and the two schools currently providing boarding facilities in the ACT. Both schools have indicated they already comply with the Australian Standard and are supportive of the amendments.

The updated operation of government schools, as well as the amendments to the registration and renewal processes for non-government schools through these amendments is making visible the commitment that the ACT Government shares with the Association of Independent Schools and the two schools currently providing boarding facilities in the ACT in keeping their students safe.

The amendment will also ensure that the recommendation of the *Royal Commission into Institutional Responses to Child Sexual Abuse* is met and children and young people in boarding facilities in the ACT are protected.

As further work on Child Safe Standards in the ACT is introduced, the ACT Government will review the current approach to boarding schools, to ensure it continues to provide the best protections for children and young people in boarding facilities in the ACT.

Waiving of fees for international students on certain humanitarian and financial hardship grounds

The proposed amendment to section 26 will articulate the Minister's ability to waive fees for international students, having regard to human rights, under certain humanitarian and financial hardship grounds. This amendment aims to ensure that all children and young people have access to education in an ACT government school.

The amendment also ensures that children and young people can attend an ACT government school while their application for fee waiver is being assessed. This amendment will ensure that children who are on temporary visas or are dependents of temporary residents are still able to access an education if they are unable to pay fees for their education in government schools.

Fees have previously been waived for international students under certain humanitarian and financial hardship grounds, however the amendment will provide the means for this to be enacted through legislation.

Composition of school boards

There are currently six government schools in the ACT known to not have an active Parents and Citizens (P&C) Association. By not having an active P&C Association, parents and local citizens do not currently have a legislated mechanism through which to elect to school boards and participate in school matters. This means their school boards are not currently constituted in accordance with the *Education Act 2004*.

In addition to responding to the issue of an unconstitutional board, parental and local citizen engagement with schools is a valuable and essential part of engagement. Parental and citizen involvement ensures a wide variety of views are incorporated, that are also representative across the diverse school community.

Currently, three parent and citizens members of school boards are elected by the P&C association of the school. Where there is no P&C association, parent and citizen members have in some cases been elected to the board through other mechanisms however these amendments will ensure those mechanisms are consistent with the *Education Act 2004*.

The proposed amendment to sections 41 (2) and 42 (2) of the *Education Act 2004* details the composition of the parent and citizen members, ensuring the opportunity for both parent and citizen representatives to be elected to the school board of a government school. This can include up to 3 parent representatives, or a combination of parent and citizen representatives to a total of 3. It also will enable the appointment of parent and citizen representatives to school boards at schools where there is not an active P&C Association.

By ensuring appropriate representation, parents and citizen members will have the opportunity to fully engage with their school community. To accommodate this amendment, updates will be made to the policies and procedures supporting this process.

Attendance, participation and information sharing

There is currently no mechanism to enforce attendance for students who are enrolled in ACT schools but reside in NSW. For ACT residents, if a child does not attend an ACT school, the Government can act and enforce student attendance. However, for NSW residents enrolled in ACT schools, there is no such power to enforce their attendance.

The lack of enforceable attendance requirements for a child living in NSW enrolled at a school in the ACT poses several risks regarding the safety and wellbeing of that child. Not only does lack of attendance deny a child the right to education, but also as the Report of the Inquiry: Review into the system level responses to family violence in the ACT noted: (2016:90) “the inquiry heard during consultation that a child not attending school, or moving schools frequently, can be a sign of child abuse and neglect”. Therefore, it is essential to strengthen the mechanism to also follow up on student attendance of non-ACT residents, in the same way that we do for students who live in the ACT.

The Bill proposes amendments to sections 10A (1) and 10D (1) and section 145C. In making this change, the Bill intends to strengthen the attendance requirements where a child attends school in the ACT and resides in NSW, by removing the requirement to live in the ACT associated with school attendance and participation. It also proposes amendments to the information sharing provisions between the ACT Government and relevant interjurisdictional bodies with authoritative responsibility,

such as NSW Education or NSW Department of Communities and Justice in relation to participation and attendance, where required in the best interests of the child.

Updating specific powers to reinforce attendance requirements for all children and young people enrolled in the ACT, regardless of the state or territory of which they reside, will help to ensure the safety of children and young people and that all students are accessing education.

Privacy obligations will be managed appropriately, whilst also acting in the best interests of the child. For this reason, the types of information shared will be related to enrolment and attendance in order to enable supports for students to access education.

This amendment follows previous legislation changes in 2018, in the interest of ensuring that the current information sharing provisions are sufficient and are intended to further strengthen oversight on students fulfilling appropriate participation and enrolment requirements.

CONSULTATION ON THE PROPOSED APPROACH

Consultation was undertaken with the ACT Association of Independent Schools,; Catholic Education Archdiocese of Canberra and Goulburn; Human Rights Commission; Australian Education Union; Independent Education Union; ACT Council of Parents and Citizens Associations; Association of Parents and Friends of ACT Schools; Teacher Quality Institute, Board of Senior Secondary Studies, ACT Principals Association and the Department of Education and Training Victoria.

Consultation with these external stakeholders included discussion papers to prompt conversation and one-on-one and group face-to-face meetings.

CONSISTENCY WITH HUMAN RIGHTS

This section provides an overview of the human rights that may be engaged by the Bill, together with a discussion on reasonable limits. This primarily engages with the right to protection of the family and children, the right to privacy and reputation and the right to education.

Rights engaged

The Bill engages and **promotes** a number of sections of the Human Rights Act, including section 8, the right to equality and non-discrimination; section 11(2), the right of every child to protection; section 16, the right to freedom of expression; section 17, the right to take part in public life; and section 27A, the right of every child to non-discriminatory access to free, school education appropriate to his or her needs.

This Bill also engages and may **limit** section 12(a), the right of everyone not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

Rights Promoted

The Bill **promotes** section 11(2) of the Human Rights Act, that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind, by strengthening the requirements for schools with boarding facilities in the ACT. As recommended by the *Royal Commission into Institutional Responses to Child Sexual Abuse*, it is essential to monitor government and non-government boarding schools to ensure they meet the Child Safe Standards.

While further work continues to articulate the streamlined approach to introducing the Child Safe Standards across the ACT, an amendment has been proposed to require any school with boarding facilities to, as part of the registration and regulation process, adhere to AS 5725:2015 of the *Australian Standard: Boarding Standard for Australian schools and residences*. This will ensure stronger safeguards are in place to provide appropriate protections for those children and young people who in a vulnerable position living away from home.

The Bill engages and **promotes** sections 8 and 27A of the Human Rights Act, which provide for the right to equality and non-discrimination, and for each individual's right to non-discriminatory access to free, school education appropriate to his or her needs.

The primary purpose of the Bill is to advance the right to education by assisting the government to ensure that all children have access to an education on a non-discriminatory basis. As outlined in section 27A, the right to education recognises that every child has the right to have access to a school education appropriate to his or her needs.

For some parents, accessing the right to education that meets the needs of their children may involve choosing to enrol their child, who is a NSW resident, in an ACT school. In these instances, the parent is making a choice to utilise the services of an ACT school and therefore their child's enrolment is bound by the conditions of the *Education Act 2004*. When a child who resides in NSW is enrolled, but no longer attending an ACT school, the ACT government has a justifiable responsibility in ensuring the child is accessing education.

The Bill also provides the Minister for Education and Early Childhood Development with the ability to waive fees for students holding a temporary visa, having regard to human rights under certain humanitarian and financial hardship grounds. The

amendment also ensures that child for whom a request for a fee waiver is made can still attend an ACT Government school while the Minister considers the request. This ensures all children have access to education in ACT government schools and prevents disruption to those currently enrolled whose circumstances may change.

Rights Limited

This Bill may **limit** section 12(a), that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

This Bill may **limit** 8 and 27A of the Human Rights Act, which provide for the right to equality and non-discrimination, and for each individual's right to non-discriminatory access to free, school education appropriate to his or her needs.

Section 28 of the Human Rights Act provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including the following:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose;
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The amendments in this Bill have been carefully considered in the context of the objects of the Human Rights Act, as outlined below.

Nature of the right and the limitation (s28(a) and (c))

S12(a)

This Bill proposes that under the *Education Act 2004*, information about a child or young person's enrolment, participation and attendance in an ACT school may be shared under certain conditions.

The Bill proposes that information sharing should generally be undertaken with the consent of the child or young person and their parents. This requirement conforms with the Human Rights Act, with the *Information Privacy Act 2014* and best practice in the handling, storage and use of personal information.

The ACT Government has a duty of care to ensure the protection needed by the child and therefore the limitation on the right to privacy and reputation, through

information sharing with other jurisdictions is reasonable and proportionate to ensure student safety, wellbeing and access to education.

The limitation on the right to privacy will be mitigated by ensuring information is only shared with equivalent organisations (for example NSW Education, NSW Department of Communities and Justice or NSW Police) with consent unless authorised by law, on a need-to-know basis and following careful consideration and identification that it is in the best interests of the child.

Information will only be shared to ensure the safety of, and reason for non-attendance, which would be expected to occur across ACT government agencies for students who are ACT residents. This amendment is applying the equivalent restriction that ACT residents, or indeed NSW residents would have if enrolled in their respective schools.

For government schools, before invoking the information sharing power in a situation where a child is enrolled in an ACT school and the child and parents are residing in NSW, yet the child ceased to attend an ACT school, the Directorate will take steps in encouraging attendance. ACT Government school Principals are responsible for ensuring that their attendance processes align with the Directorate's *Education Participation (Enrolment and Attendance) Policy* and relevant procedures.

Regardless of their place of residence, families are supported to address attendance issues before compliance and information-sharing processes begin. In a situation where direct contact with a family may not achieve a desired level of engagement, additional support is available and can be engaged at the school level through appropriate individuals, parents and community organisations having regard for social, cultural and religious factors.

In a situation where unexplained absences reach a maximum of seven days in a school year (see Attendance at ACT Public Schools Procedure 4.3.3), school Principals will commence official procedures to ensure students meet the school attendance requirement. If it is believed that the student's participation and attendance requirements are not being met, a Deputy Principal may issue an Attendance Advice Letter 1, while a Principal may issue an Attendance Advice Letter 2 to the parents and/or carers of the student. If there is no response to Attendance Advice Letter 2, the school is required to consult with Network School Engagement Team to ensure all possible steps and opportunities for re-engagement have been taken by the school.

In the situation where the consultation identifies no further available action for the school, a referral would be made to the ACT Education Directorate's School Attendance Team to review the non-attendance and attempt contact with the parents and/or carers. Should this be unsuccessful, and a lack of engagement and attendance continue, the School Attendance Team would progress child safety checks through the ACT Community Services Directorate (Child and Youth

Protection Services) to NSW Department of Communities and Justice and/or NSW Police.

The outcome of the child safety checks through the ACT Community Services Directorate (Child and Youth Protection Services) and NSW Department of Communities and Justice and/or NSW Police would be the point that the information sharing power is invoked and is a last resort. However, in the situation that there was a pre-existing concern for the child's safety and wellbeing, the information sharing power may be invoked at the same time.

Non-government schools also have procedures to encourage attendance at non-government schools as per s102 of the *Education Act 2004*. The procedures must include encouraging the child to attend, assisting the parents to encourage their children to attend school regularly and referring parents and children to support services that encourage children to attend school regularly when the methods to encourage attendance are not successful.

The principal of a non-government school may, by written notice, may also require the student's parents and the student to meet with an authorised person (non-government) at a stated place and time.

Information sharing relating to participation and attendance, with equivalent organisations in other jurisdictions for non-government schools, is anticipated to be a rare occurrence. Parents of children in non-government schools enter into a contract with the school and pay fees for the education. In the case of non-attendance, parents tend to cease the contract with the school and the student's transfer to another school is entered into the Student Transfer Register by the school. This way the ACT Education Directorate can monitor the enrolment of the student.

S27A(1)

This Bill requires the Minister to waive fees for students holding a temporary visa, including international students and students holding a bridging visa, having regard to human rights, under certain humanitarian and financial hardship grounds.

The Bill engages and **promotes** sections 8 and 27A of the Human Rights Act, which provide for the right to equality and non-discrimination, and for each individual's right to non-discriminatory access to free, school education appropriate to his or her needs

Fees have previously been waived for international students under certain humanitarian and financial hardship grounds, however the amendment will provide a statutory basis for the administrative discretion. This amendment aims to ensure that all children and young people have access to education in an ACT government school.

However, the Bill may also limit sections 8 and 27A of the Human Rights Act, as fees are still charged to international students and students holding a bridging visa.

Legitimate purpose (s28(b))

The underlying policy outcomes of the Bill are to ensure children have access to education, that every child has the right to the protection needed by the child because of being a child and that parents have the rights to freedom of expression and to take part in public life.

S12(a)

The objective of protecting the child and promoting the importance of wellbeing and safety will be achieved by implementing a recommendation from the *Royal Commission into Institutional Responses to Child Sexual Abuse* and by enabling information sharing provisions between the ACT Government and relevant interjurisdictional bodies with authoritative responsibility in relation to participation and attendance, where required in the best interests of the child. This action may **limit** section 12(a), the right of everyone not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The ACT Government has a duty of care to ensure the protection needed by a child enrolled in an ACT school. In relation to a NSW resident enrolled in an ACT school, the ACT Education Directorate has limited powers to enforce their participation and attendance. Lack of participation and attendance by a child living in NSW enrolled at a school in the ACT not only denies a child the right to education, but it can also pose several risks regarding the safety and wellbeing of that child. The *Report of the Inquiry: Review into the system level responses to family violence in the ACT* noted: (2016:90) “the inquiry heard during consultation that a child not attending school, or moving schools frequently, can be a sign of child abuse and neglect”.

When in the best interests of the child, it is proposed that by invoking information sharing provisions with relevant interjurisdictional bodies, the ACT Education Directorate can share information relating to participation and attendance. This information sharing will only occur after all other avenues of engaging with the family have been exhausted. The only the exception to this is when there is a pre-existing concern for the child’s safety and wellbeing. In this case the information sharing power may be invoked at the same time.

It is essential to strengthen the mechanism to follow up on student attendance of non-ACT residents, in the same way that we would for students who live in the ACT and therefore the limitation on the right to privacy and reputation, through information sharing with other jurisdictions is justified to ensure student safety, wellbeing and access to education.

S27A(1)

The objective of ensuring all children and young people have access to education in an ACT government school will be achieved by the providing the Minister with the ability to waive a fee if a person has demonstrated financial hardship and the persons circumstances justify the waiver. This is further strengthened by ensuring the child can attend a government school in the ACT while their application for fee waiver is being assessed.

The ACT Education Directorate charges tuition fees to holders of temporary visas on a cost recovery basis. This is calculated on the actual cost of educating a student in a government school in the ACT for one year in the preschool, primary, high and college sectors. These fees are confirmed on a biennial basis by the Minister for Education and Early Childhood Development. The Minister also determines those visa categories exempt from paying fees.

1. Rational connection between the limitation and the purpose (s28(d))

S12(a)

In a situation where unexplained absences reach a maximum of seven days in a school year; schools will commence official procedures to ensure students meet the school attendance requirement. Attendance ensures a child's right to education and provides protections relating to safety and wellbeing of that child.

When all other avenues of engagement and participation have been exhausted, following consultation between the school, family and the ACT Education Directorate, information will be shared with relevant interjurisdictional bodies. The interjurisdictional bodies, such as NSW Education or NSW Department of Communities and Justice, have authoritative responsibility to act in relation to enforcing participation and attendance of NSW residents enrolled in an ACT schools.

The limitation is on the right of everyone not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily. However, when in the best interests of the child, who is not accessing an education (which is another human right) or who's safety and wellbeing is at risk, the ACT Government has a duty of care to pursue action.

S27A(1)

Temporary visa holders (which may include children) are not always entitled to free education in Australia. ACT and Commonwealth funding for students in ACT schools is based on numbers in the school census. These numbers exclude full fee-paying international students.

No funding is provided for these students; therefore, education is provided on a cost recovery basis calculated on the actual cost of educating a student in a government

school in the ACT for one year, at their relevant year level. Not charging fees to international students would utilise funding provided for the education of local students and place local students at a disadvantage.

However, students with families experiencing financial hardship or experiencing circumstances that justify the waiver can have their fees waived by the Minister. An example of financial hardship circumstances can include if the payment of tuition fees would restrict the ability of the temporary resident to provide basic necessities (e.g. food, accommodation, clothing, medical) for themselves and their dependant(s). Circumstances that justify the waiver can include a significantly adverse medical diagnosis requiring surgery and/or extended treatment (e.g. cancer) that was unanticipated and identified post-arrival in Australia.

When seeking a waiver, supporting documentation is required as to evidence of assets (e.g. salary, bank account balances, investments, scholarships) and liabilities (e.g. rent, mortgage, utilities, phone, groceries, health cover, car running expenses) to assist the decision-making process.

When making a decision, it is unlawful for a public authority, including a Minister, to fail to give proper consideration to relevant human rights as outlined in section 40B of the *Human Rights Act 2004*. In this case, when considering fee waiver applications for students holding a temporary visa, the Minister has an obligation to give proper consideration to human rights relevant to the application when making a decision. The Minister must also decide on fee waiver applications that is compatible with human rights. These considerations will form part of the assessment of each fee waiver application.

2. Proportionality (s28 (e))

S12(a)

The proposed approach is considered the least restrictive means to achieve the objective of ensuring a child's right to education and protecting the regarding the safety and wellbeing of that child.

Alternative options were considered, including the cancellation of the enrolment of a non-ACT resident enrolled in an ACT school, which would require immediate action by the jurisdiction in which they reside. However, this action was considered to significantly limit on the student's right to education and could potentially put vulnerable children and young people at risk if they were not engaged with the education system.

Sharing information between jurisdictions assists to keep the child involved in the system and can provide protections against family violence, as well as enhancing educational outcomes for children and young people. For this reason, whilst the

proposed amendment limits a human right it does so in the least restrictive manner to achieve the outcome of keeping children safe and ensuring access to education.

The *Information Privacy Act 2014* (ACT) regulates how personal information is handled by ACT public sector agencies. Exceptions to the right to privacy referenced in that Act include the use or disclosure of personal information that is required or authorised by or under an Australian law or a court or tribunal order. In addition, information may be used or disclosed where reasonably necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health and safety. This exception only applies where it is unreasonable or impracticable to obtain the individual's consent and is already allowable under the *Education Act 2004*. This bill does not extend on this existing exception.

The existing exception recognises that privacy restrictions should not prevent designated entities taking reasonable steps to coordinate information that may identify risks to the safety, welfare or wellbeing of young people.

The types of information that may be shared is limited to those that are reasonably necessary to achieve the statutory objectives. The Director-General can share with a corresponding officer only the following information:

- i) whether a child or young person is receiving an education in the ACT;
- ii) whether a child is contravening participation and school attendance requirements;
- iii) whether a child or young person is receiving education in the ACT;
- iv) whether a child or young person is exempt from receiving education in the ACT;
- v) the fact that the Director-General is unable to confirm if a child or young person is receiving education in the ACT; and
- vi) the fact that the Director-General has immediate concerns for the child or young person's safety and wellbeing.

S27A(1)

The proposed approach is considered the least restrictive means to achieve the objective of ensuring a child's right to education. The ability to waive all fees for international students in ACT government schools would place too significant a burden upon the Territory's finances.

Inserting subsections 26 (2B) (a) and (b), and subsection 26 (2C) into the *Education Act 2004* provides a form of safeguard to restrict the limitation upon human rights. It provides a mechanism to ensure that vulnerable temporary residents can still access education in ACT government schools if their financial or other circumstances prevent them from paying fees. Applications will be considered and decided in a

human-rights compatible manner, as is required by section 40B of the *Human Rights Act 2004*. The amendment also ensures that the temporary residents' access to education is not restricted whilst a waiver application is considered, ensuring continued access to education for those whose circumstances have changed since they first accessed education in government schools in the ACT.

Although the new subsection 26 (2) (2B) requires the Minister to waive the fee charged if the Minister is satisfied that there is demonstrated financial hardship or the student's circumstances justify a waiver, it does not prevent the Minister from waiving a fee charged on other grounds.

CLAUSE NOTES

Clause 1 Name of Act

The clause provides that the name of the Act is the *Education Amendment Bill 2020*.

Clause 2 Commencement of the Act

This clause provides for the commencement of the Act. The provisions of the Act will commence 1 January 2021.

Clause 3 Legislation Amended

This clause identifies the legislation amended by the Bill – the *Education Act 2004* and the *Education Regulation 2005*.

Clause 4 Sections 10A(1)(a) and 10D(1)(a)

Omit.

Clause 5 Operation of government schools – New section 21(2A)

This clause inserts a new section stating that if a government school were to provide boarding facilities, that it must meet the requirements prescribed by regulation for the provision of boarding facilities.

Clause 6 Education to be free - Section 26(2A) to (2C)

This clause provides the Minister for Education and Early Childhood Development with the ability to waive fees for students who hold a temporary visa, including students who are holding a bridging visa.

The Minister must waive the fee charged if satisfied that financial hardship is demonstrated. The Minister must also waive the fee if a student's circumstances justify a waiver.

In considering and determining an application to waive a fee charged, section 40B of the *Human Rights Act 2004* requires the Minister to give proper consideration to human rights, and to make a decision that is compatible with human rights.

Clause 7 Composition of school boards generally – Section 41(2)(d)

This clause clarifies the composition of government school boards for schools in general.

Clause 8 Composition of school boards of small schools – Section 42(2)(d)

This clause clarifies the composition of government school boards for small schools.

Clause 9 Provisional registration – New section 86(6)(ga)

This clause inserts a new section stating that if a school was to provide boarding school facilities for students enrolled at the school, that it will meet the requirements prescribed by regulation for the provision of boarding facilities.

Clause 10 Registration – New section 88(6)(ga)

This clause inserts a new section stating that if a school provides boarding school facilities for students enrolled at the school, that it meets the requirements prescribed by regulation for the provision of boarding facilities.

Clause 11 Registration at additional campus – New section 88B(7)(ea)

This clause inserts a new section stating that if the additional campus provides boarding facilities for students enrolled at the school, that it meets the requirements prescribed by regulation for the provision of boarding facilities.

Clause 12 Registration at additional educational levels – New section 90(1)

This clause updates wording from ‘if an application made under’, to, ‘if an application is made under’.

Clause 13 New section 90(7)(ea)

This clause inserts a new section stating that if the school provide boarding facilities for students enrolled at the school at the additional educational level, that the school meets the requirements prescribed by regulation for the provision of boarding facilities.

Clause 14 Conditions of provisional registration or registration – New section 91(ga)

This clause inserts a new section stating that if a school provides boarding school facilities for students enrolled at the school, that it meets the requirements prescribed by regulation for the provision of boarding facilities.

Clause 15 Renewal of registration – New section 97(6)(ga)

This clause inserts a new section stating that if a school provides boarding school facilities for students enrolled at the school, that it meets the requirements prescribed by regulation for the provision of boarding facilities.

Clause 16 Director-general may give certain information to other States – Section 145C(1) and (2)

This clause clarifies the Director-General’s authority in sharing certain information with other states.

Clause 17 Section 145C(4) and note

This clause updates section, 145C(4), which provides a definition of a child having their information shared with other states.

Clause 18 Regulation-making power – Section 155(2)

This clause clarifies regulation-making power and offences.

Clause 19 Dictionary, note 2

This clause inserts ‘territory law’ in the dictionary for noting.

Clause 20 Dictionary, new definitions

This clause inserts a new definition of *boarding facilities* that applies to schools as defined by the Act and would not capture school-related institutions.

Clause 21 Reviewable decisions Schedule 1, new item 10A

This clause inserts a reviewable decision relating to refusing to waive a fee.

Clause 22 Further amendments, note

This clause notes further amendments for noting.

Clause 23 New Section 2B

This clause inserts a new section 2B into the *Education Regulation 2005*, which states that a school that provides boarding facilities must have policies for the provision of the facilities that comply with AS 5725:2015 (Boarding Standard for Australian schools and residences).

Clause 24 New section 4A

This clause inserts a new section, 4A, which states that a school that provides boarding facilities must have policies for the provision of the facilities that comply with AS 5725:2015 (*Boarding Standard for Australian schools and residences*).