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

EDUCATION (EARLY CHILDHOOD) LEGISLATION AMENDMENT BILL 2023

EXPLANATORY STATEMENT

and

HUMAN RIGHTS COMPATIBILITY STATEMENT

(Human Rights Act 2004, s 28)

**Presented by
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EDUCATION (EARLY CHILDHOOD) LEGISLATION AMENDMENT BILL 2023

The Bill is 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 *Education (Early Childhood) Legislation 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 *Education Act 2004* (the Education Act) and the *ACT Teacher Quality Institute Act 2010* and the *ACT Teacher Quality Institute Regulation 2010* (TQI legislation). Consultation occurred throughout the development of the Bill and allowed for the detailed provisions and operation of the various amendments to be informed by feedback from key stakeholders.

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 Education Act to strengthen equity, student agency, access and inclusion. In 2020, the ACT Government launched *Set up for Success: An Early Childhood Strategy for the ACT*. Through this strategy, one of the actions under the foundation of ‘A fair start for every child’ is to ‘recognise early childhood education in ACT law’.

A phased approach is being applied to this process of amending the Act. The first phase was passed by the Legislative Assembly in February 2019, through the *Child Safety in Schools Amendment Bill 2018*. The second phase of amendments was passed in August 2020 through the *Education Amendment Bill 2020*. A third phase of amendments was passed on 8 June 2022 through the *Education Amendment Bill 2022*.

The fourth phase of amendments, to which this explanatory statement relates, aims to elevate the standing of early childhood education by formally recognising the importance of education in the early years in legislation and by recognising early

childhood education as part of the education system, including allowing for professional recognition of early childhood teachers.

In recognising early childhood education in ACT law, it is acknowledged that early childhood education and care services are regulated under the *Education and Care Services National Law Act (ACT) 2011* (the National Law) and amendments proposed in this Bill would not intend to replace or duplicate this.

The amendments to the Education Act have been arranged in four core areas:

1. recognising children start learning from birth;
2. recognising the importance of quality early childhood education in the two years prior to compulsory education;
3. making provision for the Directorate to support attendance for children enrolled in, but not attending, government preschool programs; and
4. including principles for collaboration and cooperation and encouraging information sharing.

The Bill includes an additional area of amendment to the Education Act, unrelated to early childhood education but that needed to proceed urgently, regarding:

1. clarifying provisions in relation to the delegation and review of suspension powers.

The amendments to TQI legislation have been arranged in five core areas:

1. establishing the registration of early childhood teachers;
2. strengthening the importance of protecting children's safety in TQI's provision of services;
3. authorising the sharing of a teacher's personal information (in addition to that which the Act already authorises TQI to share) with corresponding regulatory authorities;
4. authorising TQI to suspend a teacher's registration or a permit holder's permit to teach immediately, should there be an unacceptable risk of harm to a child or children; and
5. enabling TQI to issue a written notice to a teacher on the granting of teacher registration or to a permit holder on the approval of their permit to teach.

AMENDMENTS TO THE EDUCATION ACT

Recognising children start learning from birth

From birth, a child is already learning through their exploration of their surroundings

and growing awareness of themselves, developing crucial cognitive, physical and social skills at a rapid pace. Parents and carers also play a key role as the first educators in the early years and continue to play a key role, in partnership with schools, as a child enters the formal education system.

The Bill recognises that children learn from birth and their parents are their first teachers, through amendments to the General Principles of the Education Act. Specifically, the principles within section 7(1) have been updated to acknowledge that children start learning from birth, that the parents of a child are their first teachers, and that every child has a right to receive a high-quality education.

Section 7(2) (aa) also clarifies that a high-quality early childhood education is based on the principles that it provides long-term benefits for and is important for the future wellbeing of, the child; and should promote the objectives and guiding principles of the National Education and Care Services Quality Framework under the *Education and Care Services National Law* (ACT).

Recognising the importance of quality early childhood education in the two years prior to compulsory education

The Act currently makes provision for high quality education of children in school or at home in the ACT, however, is silent on the universal access to preschool. For the ACT to continue to be a leader in delivering quality early childhood education nationally, there is a need to formally recognise the importance of early childhood education and care in the two years prior to compulsory education in ACT law.

The Main Objects of the Act Sections 8 (a) and 8(2), have been updated to include the promotion of high-quality early childhood education and defining ACT government funded preschool programs, including universal 3-year-old preschool, universal 4-year-old preschool, or equity-based programs.

The universal 3-year-old preschool program is defined as a government-funded preschool program attended by a child in the year in which the child is at least 3 years old on 30 April of the year. For the universal 4-year-old preschool program, it is defined as a government-funded preschool program attended by a child in the year in which the child is at least 4 years old on 30 April of the year.

Equity-based programs have been defined to mean a government funded preschool program delivered to a child on the basis of equity, through offerings such as a targeted 3-year-old initiative, Koori preschools, or early entry preschools.

The addition of new Chapter 1A will further solidify the importance of quality early childhood education within legislation, by providing that every eligible child can receive an early childhood education funded by the ACT Government in the two years prior to compulsory education age.

It is important to note that although there are various providers who may partner with

the ACT Government to deliver government-funded preschool programs, an individual provider may refuse to enrol an eligible child in the preschool program if doing so would be in breach of a condition of their service approval, for example, if the program had reached its maximum capacity allowed under their service approval.

These provisions also do not limit a provider's right to enrol children who do not meet the eligibility requirements for government-funded preschools programs, but rather establish the criteria for children entitled to access government-funded preschool programs in the ACT.

The dictionary definition of a government funded preschool program means a preschool program delivered by an entity that receives funding for the program from the Territory, other than funding paid by the Territory under an arrangement with the Commonwealth. This comprises the universal 3-year-old preschool program delivered by partnered providers, universal 4-year-old preschool delivered by public preschools, and equity-based programs delivered by both partnered providers and public preschools. It does not include 4-year-old preschool programs delivered by non-government preschools that receive Preschool Reform Agreement funding from the Commonwealth Government.

Although preschool remains non-compulsory, the addition of a new chapter and the various sections within the Act relating to early childhood education will assist in clarifying offerings available through the ACT Government's preschool programs, as well as promoting the ongoing commitment to quality early childhood education.

Making provision for the Directorate to support attendance for children enrolled in, but not attending, government preschool programs

While preschool is non-compulsory, it is recognised that low attendance in preschool can often indicate a family is needing additional support. It can also lead to future patterns of non-attendance at school. Establishing procedures for government schools delivering preschool programs to encourage attendance will give each child the best start to their schooling.

The addition of Section 8 (b) will require the Director-General to set up procedures for government delivered preschool programs to encourage attendance for children enrolled at the preschool program. The procedures must state that attendance is not compulsory, state the benefits of attendance, and include steps that may be taken to support a child's attendance.

By encouraging and supporting attendance of government preschool students and their families, this provision has the ability to assist in protecting vulnerable, young children particularly in situations such as a breakdown in family supports.

This provision relates only to government delivered preschool programs because non-government preschool programs have existing levers to encourage attendance

through the childcare subsidy scheme, which limits the number of allowable absences. ACT Government delivered preschool programs do not attract childcare subsidy and therefore do not have the same levers available to encourage attendance of preschool children.

Including principles for collaboration and cooperation, and encouraging information sharing

The Bill includes an update, through section 7 (4A) to the General Principles of the Act that recognises that information sharing relating to a child's education and care allows the child to receive education and care services that are well coordinated; enables the best education outcomes for, and promotes the wellbeing of, the child; and facilitates the child's transition between education and care services. This amendment does not alter the legal framework for information sharing. It is instead intended that this provision will encourage information sharing within the current legal framework.

Clarifying provisions in relation to the delegation and review of suspension powers

The Bill makes a minor amendment to the Education Act that gives effect to an aspect of the policy approval for the *Education Amendment Bill 2022* passed last year, but which was not accurately captured in the drafting of that bill and has resulted in an ambiguity in the current legislation.

The *Education Amendment Bill 2022* maintained the previous provision allowing the decision-maker to delegate their power under this part in relation to suspending a student at a school to the principal of the school. In this part, for a government-school, the decision-maker is the Director-General of the Education Directorate (the Director-General) and the decision to suspend a student from a government school is an internally reviewable decision.

In reviewing the policies that underpin suspensions and reviews, it has come to light that these provisions make it unclear if the decision-maker can delegate their power to review the decision to suspend a student to someone other than the school principal which may be interpreted to mean the only person with the authority to review a decision to suspend a student is the Director-General which is not practical.

Previously the review of a decision to suspend a student would be delegated to a Director of School Improvement (DSI) within the Education Directorate. This ensures the internal reviewer not only has a close understanding of the school environment and would be better suited to review the suspension decision, but also that reviews are able to be undertaken within the required 28-day time period.

The Bill includes amendments that will clarify this issue by including a provision to allow the decision-maker in this part to delegate their power to suspend a student to a school principal and another officer within the Education Directorate.

This amendment relates to schools rather than early childhood education and care, however, would enable timely clarification and delegation of reviews to Directors of School Improvement as originally intended. Addressing this legal ambiguity is a matter of urgency, in order to ensure fair and timely processes are in place to support suspension reviews.

AMENDMENTS TO TQI LEGISLATION

Authorising the establishment of registration of early childhood teachers

The Bill will broaden the regulatory framework to provide professional registration to enable Early Childhood Teachers (ECTs), holding Birth to Five qualifications and Australian Early Childhood Education and Care Quality Authority (ACECQA) approved ECT qualifications, to apply for and be granted teacher registration with TQI. This includes those who are teaching in early childhood education and care services regulated and monitored by the ACT regulatory authority, Children's Education and Care Assurance (CECA). CECA regulates services approved under the National Quality Framework and monitors services which operate in the ACT under the *Children and Young People Act 2008*. Teachers who work in out of school hours care are included.

Drivers

Set up for Success: An Early Childhood Strategy for the ACT is a plan for government, providers and the community to support the education and care workforce through enhancing skills and qualifications, and recognising the direct, positive educational and developmental impact the workforce has on children's early lives.

The *Automatic Mutual Recognition Act* was passed in June 2021 and will include teachers from 2027. Jurisdictions have undertaken to require early childhood teachers in Australia, regardless of their employment setting, to be registered by teacher regulatory authorities, under a consistent national approach. (Recommendation 5 - the 2018 *One Teaching Profession – Teacher Registration in Australia Report*).

The TQI Act currently authorises TQI to register people who hold an accredited four-year initial teacher education qualification. Teachers who hold this qualification are qualified to teach children and young people in an ACT school.

Currently, under the TQI Act, early childhood teachers who are qualified to teach children aged birth to five years are not eligible for teacher registration. Teachers in this category are mostly employed in centre-based education and care services. The Bill proposes that teacher registration can be expanded to include teachers who have a birth to five teaching qualification.

Teacher registration protects students by ensuring child safety and the suitability of

teachers, promotes teacher quality by upholding the *Standards*, and maintains public confidence by delivering excellence in education and allowing only qualified, professional, competent, and fit-and-proper people to teach.

In order that early childhood education and care service providers can absorb registration requirements into regular practice, TQI is proceeding with voluntary early childhood teacher registration from April 2024.

ACT teachers are part of a regulated and registered profession, and through mutual recognition, registration is recognised in all Australian states and territories, and New Zealand.

Teacher registration for teachers who teach in schools is mandatory. It is proposed that early childhood teacher registration for teachers teaching in early childhood education and care services is voluntary, to allow time for the early childhood sector providers to absorb ECT registration requirements into regular practice - for those teachers who choose to be registered. Teachers who choose to be registered will gain by:

- having the ACT community recognise the direct, positive educational and developmental impact the early childhood teacher workforce has on children's early lives and future prospects;
- increasing the professionalism of the early childhood teaching profession;
- increasing access to a wide range of professional learning programs which have been accredited by TQI;
- enabling teachers who meet the requirements for full registration to work towards achieving Highly accomplished or Lead Teacher certification;
- being a part of the broader network of education professionals in the ACT; and
- being a part of communities of learning where they can meet and collaborate with other teachers across sectors – sharing effective practices, learnings and reflections in the online space and in TQI workshops.

Strengthening the the importance of protecting children's safety in TQI's provision of services.

The Bill strengthens TQI's role in protecting children's safety in the provision of services, stipulating that TQI must exercise its functions in the best interests of children's safety and welfare.

Authorising the sharing of teachers' personal information (additional to information that is currently able to be shared)

The Bill will strengthen information sharing requirements to ensure only suitable and quality teachers are registered in the ACT and in other Australian jurisdictions and New Zealand. It is essential that Teacher Regulatory Authorities (TRAs) have relevant and most complete information about teachers who travel between jurisdictions to ensure that sound regulatory decisions are made, the professional, competent and safe practice of teaching and standards of professionalism within the occupation of teaching are upheld and the paramount consideration in regulation of the teaching profession is the best interests of children, including their safety and wellbeing.

Drivers

The ACT Government has committed to actioning recommendations from the 2017 Report from the *Royal Commission into Institutional Responses to Child Sexual Abuse* (the Royal Commission) with regard to Teacher Regulatory Authorities sharing information about teachers who may pose an unacceptable risk to children.

The BDO report outlines recommendations from a TRA National Scoping project on information sharing (April 2022).

In accordance with requirements under Section 37 of the Mutual Recognition Act 1992, TQI and other TRAs are requested to share the following information:

- In relation to their registration as a teacher, this person is not the subject of disciplinary proceedings, preliminary investigations or any action which may lead to disciplinary proceedings;
- The person's teacher registration is not cancelled or currently suspended or cancelled (authorisation already exists for this);
- This person is not otherwise personally prohibited from carrying out the duties of a teacher;
- This person is not subject to any special conditions in relation to their teaching as a result of criminal, civil or disciplinary proceedings;
- This person is subject to the following conditions while carrying out the duties of a teacher.

Broadening the amendments to include changes to information sharing supports the ACT's response to the *Royal Commission into Institutional Responses to Child Sexual Abuse* about Teacher Regulatory Authorities sharing information about teachers who may pose an unacceptable risk to children. It also supports TQI's compliance with Section 37 of the *Mutual Recognition Act 1992* and anticipates the inclusion of teachers in the Automatic Mutual Recognition Scheme by 2027.

Requirements under mutual recognition require TQI and other TRAs to share

information about registered teachers who are subject to investigation or who have conditions placed on their registration, and about those who have had their registration suspended and cancelled.

To support compliance with this legislation and the introduction of automatic mutual recognition in 2027, it is proposed the scope of the *Education Legislation (Early Childhood) Amendment Bill 2023* be expanded to include amendments which will authorise the sharing of personal information, in addition to information TQI is already authorised to share.

It is further proposed that TQI, if it reasonably assesses that there is an unacceptable risk of harm to a child, is authorised to share the information with TRAs without their request.

Authorising TQI to suspend a teacher's registration or a permit holder's permit to teach immediately, should there be an unacceptable risk of harm to a child or children.

The current TQI Act authorises TQI to give to a registered teacher 14 days' written notice of intention to suspend a registered teacher. Grounds for suspension are if the person contravenes a condition of their registration or permit to teach; if they have become mentally or physically incapacitated such that their incapacity prevents them from teaching; and/or if the Institute believes on reasonable grounds that there are grounds for suspension. A teacher can continue to teach until the suspension takes place. This could happen after 14 days, or in the case of a teacher responding to the intention to suspend notice, and TQI's response to the teacher's response, longer than 14 days.

TQI will draw on the authority proposed in this amendment to suspend immediately if harm has already occurred. This amendment, however, is also designed to prevent harm before it can occur.

The Bill will strengthen the authorisation to enable TQI to immediately suspend a teacher's registration or permit to teach if the institute is satisfied on reasonable grounds that an unacceptable risk of harm to a child would exist if the person's registration or permit to teach were not suspended.

Not suspending immediately, for example, giving 14 days' notice, allows the teacher to continue to teach. The period the teacher continues to teach could extend beyond 14 days, if the teacher responds to the intention to suspend notice and TQI is required to respond to their response. The time lapse between the presenting behaviour of the teacher, TQI's decision to suspend, and then suspension, could give the teacher time to harm a child, or to take up a teaching position in another jurisdiction. If TQI is reasonably satisfied there is unacceptable risk of harm to a child, it is unacceptable for the person to continue to teach.

A teacher can appeal the suspension (see (TQI Act 2004, Schedule 1, item 25). The teacher may apply to have that decision reviewed by the ACT Civil and Administrative Tribunal (ACAT) or apply for a statement of reasons under section 22B of the ACT Civil and Administrative Tribunal Act 2008.

Enabling TQI to issue a written notice to a teacher on the granting of teacher registration or to a permit holder on the approval of their permit to teach.

The Bill seeks to enable TQI to issue a written notice as evidence of teacher registration. Currently, the TQI Act requires TQI to issue a registration card. TQI issues a plastic card annually at the time of registration, renewal and again if the card is lost or stolen, and if the person's level of registration changes, for example, moving from Provisional to Full, or achieving Highly Accomplished or Lead teacher certification. The type of card is not specified but could be interpreted as a physical card. TQI currently issues a plastic card. The Bill proposes requiring TQI to issue 'written notice' of teacher registration, which then gives TQI the option of issuing a digital card.

This proposed change to the legislation will allow for a TQI Digital Registration Card consisting of a badge - a graphical representation of the registration that can be easily embedded in online communications such as an email signature block. The digital registration credential enables easy sharing, verification and access so that teachers can securely prove the currency of their teacher registration.

It is important that a teacher's registration status and permit holder's approval status are accessible whenever needed. Issuing a digital card means that a person's details and status can be updated in real time.

The digital badge also links to TQI registration details, including the teacher's name, registration number, registration status and registration conditions (where applicable). Importantly, teachers can choose with whom they share their digital credential and will still have access to a downloadable digital certificate.

The digital badge makes it easy for teacher employers, school leaders and their delegates to check that a teacher is registered. Teacher registration information is readily available via the badge on the behind-the-scenes registry, providing secure, real-time online access to the same information which is currently available on the ACT Teacher Register.

TQI has assessed the possible concerns a person might have of having their registration or permit to teach credential on-line. Teachers and permit holders conduct most of their registration and approval transactions on-line through the TQI portal and via email. All the details on the digital card are already held by TQI in digital format.

Teachers and permit to teach holders have greatly strengthened their on-line capability during the COVID-19 crisis. They have adapted to an on-line environment and are able to manage their affairs on-line.

In the transition to a digital credential, TQI will communicate with teachers and permit to teach holders about the importance of strong passwords and the need to change them regularly.

TQI implements user security measures, including frequently changed passwords and role-based permissions both within client-facing systems and the Institute's own information systems. Web Application Firewalls sit between Institute systems and any internet facing services, and the core information systems themselves cannot be accessed from outside the ACT Government network. The Institute is working to further strengthen its security stance with Multi-Factor Authentication on all systems, as well as moving all systems into ACT Government managed infrastructure as a matter of urgency.

The production and distribution of over 8000 plastic cards per annum comes at significant cost and environmental burden. The plastic cards themselves weigh in at over 5kg and are essentially a distributed block of plastic destined for landfill.

Costs and benefits statement

The Teacher Quality Institute will undertake the administrative and regulatory actions associated with the registration of early childhood teachers within their existing budget. The registration fee for early childhood teachers will be the same as for currently registered teachers - \$115 as at 1 April 2023.

CONSULTATION ON THE PROPOSED APPROACH

External stakeholders

Key partners and stakeholders have been engaged throughout the development of this Bill.

The Education Directorate has engaged with the early childhood education and care sector and related stakeholders throughout all stages of the Bill. These stakeholders have taken part in various forms of consultation, including meetings and the provision of written feedback, to help develop the scope of the Bill. Key stakeholders have also been provided with consultation copies of the Bill and have provided feedback for the Directorate to consider. All feedback has been incorporated where possible.

TQI, through the TQI Board and the Board Committees, has met with early childhood teachers, providers of early childhood education and care, industry representatives and non-government school sector delivery partners, unions and higher education providers.

The TQI, through its Teacher Professional Registration Committee (TPRC), has consulted on how it might provide professional registration for all early childhood teachers, not just those working in a school setting.

Nine consultation sessions with the early childhood sector were held in term 4, 2021 to end of term 1, 2022. The themes of Qualifications, Professional Learning, Standards and Workforce Supports arose during the consultation and are outlined in the consultation report: Broadening the Registration Framework to Include Early Childhood Teachers.

Consultation sessions showed that early childhood teachers wished to be recognised as teaching professionals, along with their counterparts who teach in schools. They also expressed their wish to be held to the same high professional standards as their school teacher counterparts, in the areas of Australian Professional Standards for Teachers and professional learning requirements.

TQI also consulted widely – with employers, principals, and unions, about the changes to the TQI Act covering child safety, additional information sharing and the change from a plastic registration card to a digital credential.

The Education Directorate has engaged with the Human Rights Commission throughout the development of the Bill to ensure that the proposed amendments are human rights compliant. Feedback from the Human Rights Commission has informed the development of the final Bill.

ACT Government agencies

Extensive consultation on the Bill has occurred both internally within the Education Directorate and across other areas of the ACT Government such as Policy and Cabinet within the Chief Minister, Treasury and Economic Development Directorate, Treasury, the Community Services Directorate and the Justice and Community Safety Directorate, including the Human Rights Unit within the Legal Policy and Programs branch.

CONSISTENCY WITH HUMAN RIGHTS

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

Rights engaged

The Bill engages the following sections of the *Human Rights Act 2004*:

- section 11 - right to protection of the family and children (promoted)
- section 12 - right to privacy and reputation (engaged and limited)
- section 21 – right to a fair trial and hearing (engaged and limited).
- section 27A – right to education (promoted)
- section 27B - right to work and other work-related rights (promoted and limited)

Section 12 - right to privacy and reputation

The right to privacy and reputation is engaged through the inclusion of principles for collaboration and cooperation and encouraging information sharing in the Education Act.

This right is engaged, rather than promoted or limited, as these amendments do not create a new means of or requirement to share information. ACT legislation already enables information sharing to occur, however, information sharing often does not occur on the ground. Sometimes education and care workers are unaware of the legislative environment they are operating within and generally take a risk averse approach to sharing information, with some choosing not to share information unless explicitly asked to.

These amendments seek to encourage behaviour that is consistent with current information sharing laws.

Section 21 – right to a fair trial and hearing

The right to a fair trial and hearing is engaged through the inclusion of provisions clarifying the delegation and review of suspension powers in the Education Act.

These provisions give effect to an aspect of the policy approval for the Education Amendment Bill 2022 which was not fully captured in the drafting of that Bill and has resulted in an ambiguity in the current legislation. The right to a fair trial and hearing is engaged in that these provisions clarify who can be delegated the power to suspend a student and who can be delegated the power to internally review the decision to suspend a student.

Presently, the power to suspend a student can be delegated to the Principal of a school but not to anyone else. In practice, this means that if the decision to suspend the student needs to be reviewed and noting that, in the interest of procedural fairness, it cannot be reviewed by the Principal that made it, the review can only be done by the decision-maker under that section (the Director-General). The amendments allow the power to suspend a student and to review the decision to suspend a student, in government schools, to be delegated to a public servant within the Education Directorate, as well as to the Principal of the school. In practice, this will allow a Director of School Improvement (DSI) to review suspension decisions. This will ensure procedural fairness for students as DSIs have strong knowledge of the school and its environment and have the capacity to ensure reviews are undertaken within the required 28-day period.

The provisions also make clear that the person who is delegated the power to review the decision to suspend a student cannot be the same person who was delegated the power to suspend the student in the first place. This ensures procedural fairness for the student.

Rights Promoted

AMENDMENTS TO THE EDUCATION ACT AND TQI LEGISLATION

Section 11 – right to protection of the family and children

Under section 11 of the *Human Rights Act 2004* the family is the natural and basic group unit of society and is entitled to be protected by society, and every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

The right to protection of the family and children is promoted under section 7 (1) (b), through recognising that children begin learning from birth and parents are their first teachers. This recognition follows the overwhelming evidence that the years prior to compulsory education are the most important in a child's life in terms of brain development. The first five years of a child's life is the period when they will learn to communicate, get along with others and control and adapt their behaviour, emotions and thinking.

In recognising that children begin learning from birth, the Bill acknowledges that a child's parents are their first teachers. This reflects how important parents are to the health, wellbeing, learning and development of their child and prioritises the protection of the family unit.

This recognition is in line with the ACT Children and Young People's Commitment 2015–2025 in that it contributes to the whole of government approach to promote the rights of children and young people aged 0–25.

The rights of the child are promoted within Chapter 1A, under section 8 (a), through recognising the importance of quality early childhood education in the two years prior to compulsory education. This recognition is based on strong evidence that quality early childhood education can break a cycle of disadvantage for a family. Two years of early childhood education has a significant benefit for young children. High quality early childhood education it is linked to higher levels of employment, income and financial security, improved health outcomes and reduced crime.

Children's rights are also promoted under section 8 (b), through making provision for the Directorate to support attendance for children enrolled in, but not attending, government preschool programs. The Bill will require by law that the Director-General establish procedures to encourage attendance at government preschools that acknowledge the non-compulsory nature of preschool attendance, note the benefits that regular attendance at preschool has for the child and focus on supporting attendance, such as through understanding the barriers to attendance and linking to support services, where appropriate.

While encouraging attendance in the preschool years helps establish strong patterns of attendance once compulsory education starts, these provisions also acknowledge that failure to attend preschool regularly may be symptomatic of other issues a family may be facing and could benefit from support for.

The right to protection of the family and children is also promoted under section 7 (4A), through including principles for collaboration and cooperation and encouraging information sharing. Collaboration, cooperation and information sharing between education and care providers ensures a smooth transition between services for that child or young person and can ensure tailored, holistic support can be provided. It also minimises the burden on families to share their story multiple times to different people, especially if communicating about this may be painful for them.

Early childhood teachers registered under the *Teacher Quality Institute Act 2004* (TQI Act) will be subject to regulation by TQI so that only suitable teachers are registered to teach. TQI will be authorised to regulate the cohort of early childhood teachers, and collect, store and share the same categories of personal information which are currently able to be collected, stored and shared about currently registered teachers.

The right to protection of the family and children is promoted by assigning TQI legal obligation to exercise all its functions in the best interests and safety of children. The safety and wellbeing of children needs to be built into all aspects of teacher registration and regulation. This responsibility gives TQI a strong mandate, to ensure children's safety is at front and centre of all its responsibilities.

Sharing of a teacher's personal information with corresponding regulatory authorities enables effective screening of teachers to ensure a quality and safe learning environment for all children.

The collection of personal information, and particularly the ability to share it, is necessary to ensure that only teachers who meet the registration requirements listed under the TQI Act, are teaching in ACT schools and early childhood education and care services. Sharing this information about a teacher with other entities will enable teacher regulatory authorities across Australia and New Zealand to better screen teacher registration applicants to ensure their suitability to teach, or if already registered, to regulate them if they fail to meet all registration requirements. Effective screening and regulation will help to promote the rights of children by ensuring a quality and safe learning environment for all children in the ACT and across Australia and New Zealand.

Children attending early childhood education and care services, when their teachers are registered, will be better protected when important personal information about a registered teacher is shared between the CECA and TQI, and other Australian and New Zealand TRAs and TQI. This information could be critical to regulatory authorities preventing a person who is not suitable to teach, from causing harm to a child or young person.

Enabling immediate suspension of a teacher when there is potential unacceptable risk of harm to a child protects children in the ACT and in other Australian and NEW Zealand jurisdictions. Strengthening the authorisation of TQI to immediately suspend a teacher's registration or permit to teach will assist TQI to better protect a child or children from potential harm.

Section 27A – right to education

Under section 27A of the *Human Rights Act 2004* every child has the right to have access to free, school education appropriate to his or her needs.

The right to education is promoted within Chapter 1A, under section 8 (a), by expanding the availability of free education to include quality early childhood education in the two years prior to compulsory education and giving every child in the ACT the right to access a government-funded 3-year-old preschool and 4-year-old preschool program. Some students can also access an equity-based program in addition to the universal offering, to ensure they can access education appropriate to their needs. For example, Aboriginal and Torres Strait Islander children can access Koori preschool.

Access to quality, play-based early learning is a powerful way to support children's learning, wellbeing, and development and has life-long benefits. Children who participate in quality preschool programs in the two years before formal school are

more likely to make a successful transition to school, stay longer in school, continue to further education and fully participate in employment and community life as adults.

The right to education is also promoted under section 8 (b), by making provision for the Directorate to support attendance for children enrolled in, but not attending, government preschool programs.

The right to education is also promoted through including principles for collaboration and cooperation and encouraging information sharing which ensures a smooth transition between services involved in the education and care for that child or young person and can ensure tailored, holistic support can be provided.

Rights Limited

The preamble to the *Human Rights Act 2004* notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society.

This is further reflected in section 28 of the *Human Rights Act 2004*, with the first subsection of that provision stipulating that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Subsection (2) then instructs that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- 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 purposes; and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

However, the reasonable limits test may not require the adoption of the least restrictive means identified, but rather that when determining the reasonableness of the relevant limitation, it is sufficient that the means adopted falls within a range of reasonable responses to the problem confronted.

The limits that are placed on human rights by the Bill are reasonable and justifiable in a free and democratic society. An assessment of the Bill's impact on relevant provisions of the *Human Rights Act 2004*, against all factors in section 28 (2), is provided below.

AMENDMENTS TO THE EDUCATION ACT

Section 12 - right to privacy and reputation

1. Nature of the right and the limitation (s 28 2(a) and s 28 2(c))

The right to privacy and reputation may be limited under section 8 (b), through

making provision for the Directorate to support attendance for children enrolled in, but not attending, government preschool programs. This provision sets out, in law, that although attendance at preschool is not compulsory, the Director-General of the Education Directorate must set up procedures to encourage attendance in preschool programs. The procedures must state that attendance at the program is not compulsory, must state the benefits of a child's regular attendance at the program and must include steps that may be taken to support a child's attendance at the program.

Taking steps to support a child's attendance at the program could include connecting the child's parents to a support service. This would require understanding what the barriers were to the child attending and then connecting them with an appropriate service. For example, if the child was not attending preschool due to a parent having a mental health condition, the parent could be connected to a mental health support service. This would only occur with the parent's consent unless otherwise required by law (such as when child safety concerns are identified) and therefore, the limitation is the least restrictive means available to achieve the purpose of the proposed amendment.

2. Legitimate purpose (s 28 2(b))

The purpose of the limitation is to promote the right to education. It does so by supporting attendance at a preschool program once the child is enrolled in that program.

Encouraging attendance in preschool years ensures that children benefit from participating the preschool program in which they are enrolled, which expands their access to education. It also helps establish strong patterns of attendance once compulsory education starts, to ensure they continue to access their right to education.

These provisions also acknowledge that failure to attend preschool regularly may be symptomatic of other issues a family may be facing and could benefit from support for.

3. Rational connection between the limitation and the purpose (s 28 2(d))

There is a rational connection between the potential limitation on the right to privacy and the promotion of the right to education in that connecting a family to support services, where appropriate, can encourage attendance at preschool which can go on to establish good patterns of attendance once the child commences compulsory education.

4. Proportionality (s 28 2(e))

The limitation on the right to privacy that may occur through the establishment of a provision for the Directorate to support attendance for children enrolled in, but not

attending, government preschool programs could see a family connected to a support service, if appropriate.

Connecting to a support service would only occur with the consent of the family. It would also only serve to encourage attendance by the child in the preschool program. Given the procedures acknowledge that preschool attendance is not compulsory, the procedures cannot legally compel them to attend the program. It also only applies to children who are already enrolled in a preschool program and have therefore indicated a willingness to attend the program, it does not apply to children who have not been enrolled in preschool. Therefore, the limitation is the least restrictive means available to achieve the purpose of the proposed amendment.

AMENDMENTS TO TQI LEGISLATION

Rights Limited

Section 12 - right to privacy and reputation

1. Nature of the right and the limitation (s 28 2(a) and s 28 2(c))

The Bill will broaden the regulatory framework to provide professional registration to enable Early Childhood Teachers (ECTs), holding Birth to Five qualifications and Australian Early Childhood Education and Care Quality Authority (ACECQA) approved ECT qualifications, to apply for and be issued registration as an early childhood teacher or provisional or full registration (see clauses 9, 16 and 80).

As it already does for currently registered teachers, when early childhood teachers are registered, TQI will be required by legislation to collect and store information about an early childhood teacher's identity, qualifications, regulatory action, and registration status relating to the teacher. TQI will also be required to share with other TRAs when a second regulatory authority is approached by a teacher to be registered under mutual recognition, or when a teacher's registration is suspended or cancelled.

The human right to privacy of all teachers – those currently registered and the new category of early childhood teachers will be limited by the amendment allowing a teacher's personal information to be shared with corresponding regulatory authorities (in addition to that which the TQI Act already authorises TQI to share).

The TQI Act already authorises TQI to share certain information about teachers with other regulatory authorities including: name, registration type and status (i.e. current, suspended or cancelled) any conditions, and education programs undertaken by the teacher. To meet the recommendations of the Royal Commission and the requirements of the Mutual Recognition Act, that the Bill makes amendments that will authorise TQI to share with corresponding regulatory authorities additional information about teachers, and about previously registered teachers.

Additional information that is proposed in the Bill to be shared is:

- in relation to their registration as a teacher, if the teacher is the subject of disciplinary proceedings, investigations or any action which may lead to disciplinary proceedings;
- if the person is subject to any special conditions in relation to their teaching as a result of criminal, civil or disciplinary proceedings;
- the conditions if any, that are placed on the teacher's registration; and
- if the person has been refused registration.

2. *Legitimate purpose (s 28 2(b))*

The legitimate purpose of these amendments is:

- Early childhood teacher registration –
 - i. to give early childhood teachers who register with TQI access to the benefits of registration – increased recognition for their skills, experience and professionalism, access to targeted professional learning, being a part of communities of learning where they can meet and collaborate with other teachers across sectors – sharing effective practices, learnings and reflections; and
 - ii. to authorise the regulation of early childhood teachers who choose to be registered to ensure only suitable early childhood teachers are teaching in early childhood education and care services and that children are safe when attending such services.
- Requirement to share additional information - to protect children's safety in education settings. It does so by sharing information relating to a teacher, when a teacher applies for mutual recognition, and when TQI is reasonably satisfied there is an unacceptable risk of harm to a child.

3. *Rational connection between the limitation and the purpose (s 28 2(d))*

There is a rational connection between the potential limitation on the right to privacy through the collection and storage of personal information and the benefits of being registered to an early childhood teacher.

When early childhood teachers are regulated, they will experience limitations on their privacy when information is shared with TQI by employers, and if relevant, when TQI shares that information with other regulatory authorities. Registering an early childhood teacher and sharing of information relating to a teacher enables TRAs across Australia and New Zealand to better screen teacher registration applicants to ensure their suitability to teach, or if already registered, to regulate them if they fail to meet all registration requirements. Effective screening and regulation will help to

ensure a quality and safe learning environment for all children attending centre-based and family day care services.

While the registration of early childhood teachers may limit an early childhood teacher's right to privacy through the collection, storage and sharing of personal information, the children's right to protection is promoted.

When TQI shares additional information about a teacher or permit to teach holder, there is a limit on the privacy of that person. The sharing of additional information with teacher regulatory authorities in Australia and New Zealand about a registered school teacher, early childhood teacher or a permit to teach holder will promote a child's right to protection and safety. When teacher regulatory authorities have access to relevant information shared by TQI, they can make more informed decisions about whether to approve registration for that person in their state or territory.

4. *Proportionality (s 28(2)(e))*

Registration of early childhood teachers

Just as for the existing categories of teacher registration for teachers registered to teach in primary and secondary schools, early childhood teacher registration requires the collection, storage and sharing of personal information. Information that can currently be collected, stored and shared and the additional information proposed in the Bill (see clause 54) can be about a person currently registered or a holder of a permit to teach, a person whose registration or permit to teach has expired or has been suspended or cancelled, and a person whose registration has been refused. The information being collected, stored and when appropriate shared is as follows:

- name and former names;
- teaching address;
- home address, contact address and email address;
- date of birth;
- gender;
- whether the teacher identifies as an Aboriginal and Torres Strait Islander person;
- registration status – full; provisional or permit to teach;
- registration number;
- start and expiry date of registration or permit to teach;
- whether the person is, or has been, a permit-holder;
- whether the person's application for registration or permit to teach has been refused;

- whether the person's registration or permit to teach is suspended or cancelled;
- the nature of any conditions imposed on the person's registration or permit to teach;
- the nature of any notification event that has happened in relation to the person;
- the person's teaching qualifications; and
- whether the person holds working with vulnerable people registration.

The Bill does not require any information to be collected that is not necessary for TQI's registration scheme.

Requirements for information sharing

The limitations on the right to privacy through the sharing of additional information about a teacher in the case of a teacher applying for mutual recognition in another jurisdiction or New Zealand, or when TQI is reasonably satisfied there is unacceptable risk of harm to a child, places children's safety as a priority and can help to ensure only suitable people are teaching in schools and early childhood education and care services across Australia and New Zealand.

This measure supports the ACT's response to the *Royal Commission into Institutional Responses to Child Sexual Abuse* about TRAs sharing information about teachers who may pose an unacceptable risk to children. It also supports TQI's compliance with Section 37 of the *Mutual Recognition Act 1992* and anticipates teachers becoming part of the national mutual recognition scheme in 2027.

Safeguards include:

- The legislation includes a safeguard that relevant information can only be shared if TQI receives a written request from a corresponding regulatory authority about a person who is or has been a registered teacher.
- TQI must provide relevant information, even without a request from a corresponding regulatory authority, only if TQI reasonably believes there is unacceptable risk of harm to a child, and giving the relevant information could prevent the person from harming a child.
- TQI, other regulatory authorities and employers are bound by privacy legislation.
- TQI has processes in place to limit the risk of misuse of information including ensuring all supervising persons and TQI staff are aware of their obligations under the Privacy Act; monitoring TQI staff's access to TQI data bases and records.; and putting in place security measures to protect client data.

Section 21 - Right to a fair trial or hearing

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

The amendment to the TQI Act to immediately suspend a teacher (without first providing notice) when TQI is reasonably satisfied there is unacceptable risk to a child (Clause 46) enables TQI to suspend a teacher's registration, therefore suspends their eligibility to teach in Australia or New Zealand for the period of their suspension. Immediate suspension without notice limits the right of the person to a fair hearing, which is concerned with procedural fairness and can relate to administrative proceedings.

2. Legitimate purpose (s 28(2)(b))

The legitimate purpose of the amendment is to protect children's safety in schools and education settings, and to prevent harm before it can occur.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

Immediate suspension of a teacher without the 14 days' notice of intention to suspend, prevents a teacher from working as teacher for the period of the suspension, in Australia and New Zealand, thereby preventing an unacceptable risk of harm to a child.

4. Proportionality (s 28(2)(e))

TQI can only apply immediate suspension if it is reasonably satisfied there is unacceptable risk of harm to a child. A teacher can appeal the suspension (see (TQI Act 2004, Schedule 1, item 25).

Not suspending immediately, for example, giving the currently required 14 days' notice, allows the teacher to continue to teach. The period the teacher continues to teach could extend beyond 14 days, if the teacher responds to the intention to suspend notice and TQI is required to respond to their response. The time lapse between the presenting behaviour of the teacher, TQI's decision to suspend, and then suspension, could give the teacher time to take up a teaching position in another jurisdiction. If TQI is reasonably satisfied there is unacceptable risk of harm to a child, the person continuing to teach is also unacceptable and an immediate suspension is required to protect the safety of children.

TQI is required to notify the teacher or permit holder in writing of their immediate suspension and the grounds for suspension (See TQI Act S 65 (2). A teacher or permit holder can appeal the suspension (see (TQI Act 2004, Schedule 1, item 25). The teacher may apply to have that decision reviewed by the ACT Civil and Administrative Tribunal (ACAT) or apply for a statement of reasons under section 22B of the ACT Civil and Administrative Tribunal Act 2008.

Section 27B – right to work and other work-related rights

1. Nature of the right and the limitation (s 28 2(a) and s 28 2(c))

The amendment to the TQI Act will establish voluntary early childhood teacher registration. Registered early childhood teachers will be required to comply with requirements and will be subject to decisions made by TQI in accordance with the Act, for example if TQI decides to place a condition on, suspend or cancel their registration. Registered teachers who have their suspension suspended or cancelled may not work as a teacher in Australia or New Zealand.

The expansion of the teacher registration scheme to early childhood teachers engages and limits the right to work by regulating the practice of an occupation. Elements of the teacher registration scheme include:

- assessment of application for registration or permit to teach, including assessment against eligibility criteria and a decision by TQI on registration or permit to teach;
- the issuing of registration and permit to teach certificates and cards;
- keeping of a teachers register;
- renewal of registration or permit to teach; and
- regulatory action including suspension or cancellation of registration or permits to teach.

2. Legitimate purpose (s 28 2(b))

The purpose of the limitation posed by the registration of early childhood teachers is to promote the right to protection of children.

3. Rational connection between the limitation and the purpose (s 28 2(d))

The amendment enables TQI to regulate teachers who elect to be registered, therefore enabling TQI to place conditions on a teacher's registration, or to suspend or cancel a teacher's registration.

Teacher registration across Australia aims to ensure that teachers are suitable to teach and are suitable to work with children. In pursuit of this aim, each jurisdiction provides various regulatory powers, functions and practices for the relevant TRA to promote child safety and wellbeing by ensuring people who seek or hold registration as a teacher are suitable to teach and work with children.

Registering an early childhood teacher enables TRAs across Australia and New Zealand to better screen teacher registration applicants to ensure their suitability to teach, or if already registered, to regulate them if they fail to meet all registration

requirements. Effective screening and regulation will help to ensure a quality and safe learning environment for all children attending centre-based and family day care services.

To be eligible for early childhood teacher registration, TQI must assess that the person holds an approved teaching qualification; meets English language proficiency requirements; holds working with vulnerable people registration; is an Australian or New Zealand citizen or holds a visa allowing them to work; and meets any requirements prescribed by regulation in the TQI Act (see clause 16 of the Bill). TQI, by ensuring only people who meet these eligibility requirements can teach children in early childhood settings, better protects the safety of children and ensure the quality of their early childhood education.

4. *Proportionality (s 28(2)(e))*

While the registration of early childhood teachers is voluntary, once a teacher is regulated they are regulated by the TQI in accordance with the Act. This includes the capacity for TQI to decide to place a condition on their registration, or suspend or cancel it.

Early childhood teacher registration will recognise the direct, positive educational and developmental impact early childhood teachers have on children's early lives and their future.

The existing safeguards in place for the teacher registration scheme will apply for early childhood teachers. For example, teachers who have their registration suspended have the right to appeal the suspension. (TQI Act 2004, Schedule 1, item 25).

Early childhood teachers will be provided with information about the registration scheme by TQI, and encouraged to apply for registration however this will not be a requirement to teach in early childhood education and care services in the ACT. Teachers will be provided with information about the benefits of registering and what their obligations would be if they did register.

Education (Early Childhood) Legislation Amendment Bill 2023

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Education (Early Childhood) Legislation 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*.

.....

Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 **Name of Act**

The clause provides that the name of the Act is the *Education (Early Childhood) Legislation Amendment Bill 2023*.

Clause 2 **Commencement**

This clause provides for the commencement of the Act.

Section 3, 97 and 100 commence on the day after this Act's notification day and the remaining provisions commence on 1 April 2024.

Clause 3 **Legislation amended**

This clause identifies the legislation that will be amended is the *Education Act 2004*, the *Teacher Quality Institute Act 2010* and the *Teacher Quality Institute Regulation 2010*.

PART 2 **ACT TEACHER QUALITY INSTITUTE ACT 2010**

Clause 4 **Section 8**

The new section 8, by leaving out 'in a school' expands the delivery of education services to include teaching provided by teachers teaching in early childhood education and care services. New section 8 (b) (ii) explains that teaching is not delivered by persons who support a child's learning in an early childhood education and care service.

Clause 5 **Functions of institute Section 11 (1) (a)**

This clause replaces the word grant(ed) with the word issue – to better reflect the Institute's action when issuing a permit to teach.

Clause 6 **New section 11 (3)**

The new section formally assigns as a fundamental guiding principle for all TQI's functions as being in the best interests of children, taking into account their safety and welfare.

Clause 7 & 8 Institute board members Section 15 (1) and new section 15 (2) (ka)

These new sections require the Minister to appoint an additional member to the TQI Board – 1 member representing early childhood teachers.

Clause 9 Application for registration or permit to teach new section 30 (1) (ba)

This new section enables the new registration category – early childhood teacher registration.

Clause 10 Section 30 (2) (b), except note

The substitution under this clause reformats sentence format into a list format, separated by semi-colons. The list includes reference to new section 33A – which details the eligibility requirements for early childhood teacher registration.

Clause 11 Eligibility for full registration Section 32 (1) (a)

This clause clarifies the eligibility requirements for full registration.

Clause 12 Section 32 (1) (c)

A person who previously held full registration (i.e. lapsed registration) or who is an early childhood teacher has to show the institute that they have an accredited ITE qualification when applying for full registration.. They also have to show they meet English language proficiency requirements.

Clause 13 Section 32 (1) (e)

This substituting section replaces sentence format with a list format. It also more accurately describes the required work visa required by a person who does not hold Australian or New Zealand citizenship.

Clause 14 Section 33 (1) (d)

This substituting section replaces sentence format with a list format. It also more accurately describes the required work visa required by a person who does not hold Australian or New Zealand citizenship.

Clause 15 New section 33 A

This clause inserts a new section to describe the eligibility requirements for early childhood teacher registration.

Clause 16 Additional eligibility requirements for permits to teach Section 35 (1) (c)

This substituting section replaces sentence format with a list format. It also more accurately describes the required work visa required by a person who does not hold Australian or New Zealand citizenship.

Clause 17 Section 35 (2)

This clause replaces the word granted with the word issued – to better reflect the Institute’s action when issuing a permit to teach.

Clause 18 Section 35 (3)

This clause replaces the word granting with the word issuing – to better reflect the Institute’s action when issuing a permit to teach.

Clause 29 Decision on registration or permit to teach application Section 36

This clause replaces the word grant with the word issue – to better reflect the Institute’s action when issuing a permit to teach.

Clauses 20 Section 36 (1)

The additional clause authorises TQI to make a decision on the registration of an early childhood teacher.

Clause 21 Section 36 (1) (ba)

The additional clause authorises TQI to make a decision on the registration of an early childhood teacher.

Clause 22 Section 36 (2A) and (2B)

This clause makes clear that TQI can issue provisional or full registration to an early childhood teacher if they are eligible, and if not eligible for full or provisional registration, that TQI can issue early childhood teacher registration if they are eligible for early childhood teacher registration.

Clause 34 Section 36 (4)

This clause updates the section to align with Clause 23.

Clause 24 Section 36 (5)

This clause makes the current section 36 (5) more concise, without changing its intent.

Clause 25 Conditions of registration and permit to teach. New section 38 (1) (e) and (1A)

This clause details the levels of schooling an early childhood teacher is eligible to teach.

Clause 26 Section 38 (4), except examples

This substituting section replaces sentence format with a list format without changing the intent of the subsection. It also adds that TQI can impose conditions on the registration of an early childhood teacher.

Clause 27 New section 38 (8)

The new section includes definitions of ‘compulsory education age’, kindergarten, and ‘levels of education’.

Clause 28 Section 40

This clause replaces TQI’s requirement to issue a registration card, with the requirement to issue a ‘written notice’ of registration or permit to teach.

Clause 29 Lost, stolen or damaged certificates and cards new section 41 (6)

This clause removes the need to legislate on lost and stolen cards – once the legislation to issue digital cards is implemented.

Clause 30 Details to be entered in the teachers register Section 43 (1) (b)

This clause substitutes ‘registered teaching address’ for ‘registered school address’, to include early childhood education and care services.

Clause 31 Section 43 (1) (g)

This clause includes the requirement to enter on the register the details of a registered early childhood teacher.

Clause 32 Section 43 (1) (h)

This clause adds the word ‘unique’ to describe a teacher’s registration number.

Clause 33 Sharing teachers register information—status of registration or permit Section 43A (1) (a) and (3)

This clause includes the requirement to provide to an employer the status of the registration of a registered early childhood teacher.

Clause 34 Changes to teachers register Section 45 (2)

This clause corrects a grammatical error.

Clause 35 Section 45 (5), definition of *address*

This clause substitutes ‘registered teaching address’ for ‘registered school address’, to include early childhood education and care services.

Clause 36 Section 47 (2)

This clause includes the term of registration for the additional category of registration as an early childhood teacher.

Clauses 37 Notice of renewal for registration or permit to teach Section 50 (2), definition of *notice of renewal*

This clause replaces the word ‘expire’ with the word ‘end’.

Clauses 38 Renewal of registration Section 51 (1)

This clause replaces the word ‘expire’ with the word ‘end’.

Clause 39 Section 51 (5) (a) (ii)

This clause sets out the requirements for renewal of registration, including early childhood teacher registration.

Clause 40 Renewal of registration with conditions Section 52 (1), except examples and note

This clause changes the sentence format to a list format and includes TQI’s power to renew registration for early childhood teacher registration with conditions.

Clause 41 Renewal of permits to teach Section 53 (1)

This clause replaces the word ‘expires’ with the word ‘ends’.

Clause 42 End of registration or permit to teach Section 58 (a)

This clause replaces the word ‘expires’ with the word ‘ends’.

Clause 43 Renewal of permits to teach with conditions. Section 54 (1), except examples and note

This clause changes the sentence format to a list format and includes requirements for the permit holder to meet eligibility requirements for early childhood teacher registration.

Clause 44 Relationship of Act with approved codes of practice Section 62, except note 2 Section 62 (1) and (2)

This clause substitutes ‘this Act’ for ‘the Act’.

Clause 45 Grounds for suspending or cancelling registration or permits to teach New section 63 (1A)

This clause changes the heading to ‘Institute may suspend or cancel registration or permits to teach on certain grounds’

Clause 46 Notice of proposed suspension or cancellation of registration or permits to teach new section 64 (1A)

This clause authorises TQI to suspend a person’s registration, without giving them 14 days to respond to a notice on intention to suspend, if TQI is satisfied on

reasonable grounds that an unacceptable risk of harm to a child would exist if the registration or permit to teach were not suspended.

Clause 47 Suspending or cancelling registration or permit to teach Section 65 (1)

This clause takes into account the previous clause authorising TQI to suspend a person's registration, without giving them 14 days to respond to a notice on intention to suspend, if TQI is satisfied on reasonable grounds that an unacceptable risk of harm to a child would exist if the registration or permit to teach were not suspended.

Clause 48 Section 65 (2)

New wording describes TQI's responsibility more concisely when making a decisions to suspend or cancel a person's registration or permit to teach.

Clause 49 Section 68

This clause is consequential to the change from a plastic registration card to a digital card.

Clause 50 Inquiries about registered addresses Section 69 (1) (b)

This clause substitutes 'registered teaching address' for 'registered school address', to include early childhood education and care services.

Clause 51-52 Return of registration or permit certificates and cards on amendment, suspension or cancellation 70 (1), 70 (7) and 70 (8)

These clauses are consequential to the change from a plastic registration card to a digital card.

Clause 53 New section 70CA

This clause authorises TQI to share relevant information to prevent child harm. Some of the information included in the list is in addition to information TQI is already authorised to share. The additional information is:

Whether the person has previously held registration or permit to teach and no longer holds it; whether the person has been refused registration; whether there are conditions on the registration or permit to teach, and the nature of those conditions; whether there has been a notification event and the nature of the event, the person's teaching qualifications; and the person's Working with Vulnerable People registration status.

Clause 54 Criteria for accreditation of education programs Section 76 (a) (i) Section 76 (a) (i)

This clause expands the criteria to for the accreditation of education programs to those that prepare early childhood teachers for employment.

Clause 55 Determination of standards New section 97 (3)

This amending provision allows the Institute to determine a standard for the ACT Teacher Quality Institute Act 2010 by incorporating a law of another jurisdiction or instrument, as in force from time to time. Without this amending provision, under the Legislation Act 2001, section 47 (3), the Institute may only incorporate a law or instrument as in force only at a particular time. If, after this amending provision commences, the Institute determines a standard by incorporating an instrument as in force from time to time, any changes made to the incorporated instrument after the determination will automatically form part of the standard. This is a more efficient way of incorporating an instrument like the Australian Professional Standards for Teachers, which is periodically revised by the Australian Institute for Teaching and School Leadership. As a determined standard is a notifiable instrument, it must be notified on the ACT Legislation Register under the Legislation Act 2001.

Clause 56 Reviewable decisions Schedule 1, item 2, column 3

This clause replaces the word grant with the word issue – to better reflect the Institute’s action when issuing a permit to teach.

Clause 57 Schedule 1, new items 3A and 3B

Items 3A and 3B allow a person to seek review of TQI’s decision to issue a registration type not applied for by the person.

Clause 58 Schedule 1, items 4 and 7, column 3

This clause replaces the word grant with the word issue – to better reflect the Institute’s action when issuing a permit to teach.

Clause 59 Schedule 1, item 10

This clause omits reference to the registration card – which has been replaced by a digital card.

Clause 60 Dictionary, new definition *early childhood teacher*

This clause inserts a new definition of *early childhood teacher*.

Clause 61 Dictionary definition of *permit card* and *permit certificate*

This clause omits the definition of *permit card* and *permit certificate*.

Clause 62 Dictionary, definition of *pre-service teacher education program*

This clause is inclusive of programs which prepare all teachers , including early childhood teachers.

Clause 63 Dictionary, definition of *registered school address*

This clause omits this definition as a school address no longer applies as it excludes early childhood education and care services.

Clause 64 Dictionary, definition of *registered teacher*

This clause redefines the definition of registered teacher to include early childhood teacher.

Clause 65 Dictionary, new definition *registered teaching address*

This clause inserts a new definition of *registered teaching address*.

Clause 66 Dictionary, definition of *registration*

These clauses redefine the definition of registration to include registration as an early childhood teacher.

Clauses 67 Dictionary, new definition of *registration as an early childhood teacher*

This clause adds a new definition of *registration an early childhood teacher*.

Clause 68 Dictionary definition of *registration card, registration certificate and registration number*

This clause omits the definition of *registration card, registration certificate and registration number*.

ACT Teacher Quality Institute Regulation 2010

Clause 69 New section 5A

This clause adds the following definitions;

- *accredited under a corresponding law;*
- *higher education award;*
- *higher education program;*
- *IELTS test; and*
- *recognised country.*

Clause 70 Application for registration or permit to teach—details— Act, s 30 (2) (a) Section 6 (e)

This clause includes that details of early childhood teachers must be collected along with the details of teachers in the existing registration categories.

Clause 71 Eligibility for full registration—teaching qualifications—Act, s 32 (1) (a) Section 7

This clause omits the current section 7

Clause 72 Eligibility for full registration – period of teaching – Act Section 32 (1) (b) New section 9 (1A) and (1B)

This clause allows TQI to determine if a permit to teach holder's time working in a school can be counted as part of the 180 days teaching to meet eligibility requirements for full registration.

Clause 73 Section 9 (3)

This clause: recognises permit to teach equivalents issued by corresponding regulatory authorities and defines the meaning of 'teaching in Australia or New Zealand'.

Clause 74 Eligibility requirements for full registration – English language skills – Act, s 32 (1) (c) Section 10

This clause omits existing section 10.

Clause 75 Section 12

This clause rewords the description of required teaching qualifications and English language communication requirements. The intent of the current Section 7 is maintained.

Clause 76 New sections 12B and 12 C

This clause sets out the teaching qualification and English language communication requirements for early childhood teacher registration.

Clause 77 Additional eligibility requirements for permit to teach – English language skills – Act, s 35 (1) (a) Section 13 (1) (a)

This clause sets out the teaching qualification and English language communication requirements for permit to teach.

Clause 78 Section 13 (1) (b) (ii)

This clause replaces the word grant with the word issue – to better reflect the Institute's action when issuing a permit to teach.

Clause 79 Renewal of registration – period of teaching – Act Section 51(5) (a) (i) New section 17 (1A) and (1B)

This clause authorises TQI to recognise, when satisfied on reasonable grounds, the days teaching undertaken by a permit to teach holder as teaching days – which can be taken into account in an application for full registration.

Clause 80 Dictionary, new definitions

This clause adds new definitions for:

- *accredited under a corresponding law;*
- *higher education award; and*
- *higher education program.*

Clause 81 Dictionary, definition of IELTS test

This clause indicates the new section in the Act for the definition of *IELTS test*.

Clause 82 Dictionary, new definition of *recognised country*

This clause indicates the new section in the Act for the definition of *recognised country*.

PART 4 Education Act 2004

Clause 83 Dictionary Section 3, note 1

This clause omits the note ‘for example, the signpost definition ‘carer- see section 6’ means that the term ‘carer’ is defined in that section.

This clause adds the note ‘for example, the signpost definition ‘permanent resident- see the Australian Citizenship Act 2007 (Cwlth), section 5’- means that the term ‘permanent resident’ is defined in that section and the definition applies to this Act.

Clause 84 Section 6

This clause updates the definition of parent to reflect the definition used in the *Children and Young People Act 2008*. This definition also includes an out-of-home carer as defined in the *Children and Young People Act 2008*.

Clause 85 General Principles of the Act Section 7 (1)

This clause updates the General Principles of the Act to reflect that a child begins learning from birth and that a child’s parents are their first teachers.

Clause 86 Section 7 (2)

This clause updates the General Principles of the Act to reflect that the principles of which a high-quality education is based on includes a high-quality early childhood education which provides long term benefits for, and is important for the future wellbeing of, the child, and, which should promote the national education and care services quality framework under the *Education and Care Services National Law (ACT)*.

Clause 87 Section 7 (2) (b) (ix)

This clause updates the reference to Indigenous Students in the General Principles of the Act to instead refer to children who are Aboriginal or Torres Strait Islander

people.

Clause 88 Section 7 (2), new note

This clause adds a note to the General Principles of the Act that explains that the *Education and Care Services National Law (ACT) Act 2011*, s 6 applies the *Education and Care Services National Law* set out in the *Education and Care Services National Law Act 2010 (Vic)*, schedule as if it were an ACT law called the *Education and Care Services National Law (ACT)*.

Clause 89 New section 7 (4A)

This clause adds a new subsection to the General Principles of the Act that states the sharing of information relating to a child's education and care allows the child to receive education and care services that are well-coordinated, enables the best educational outcome for, and promotes the wellbeing of, the child, and facilitates the child's transition between education and care service providers.

Clause 90 Main Objects of the Act Section 8 (a)

This clause updates the Main Objects of the Act to include an object to promote early childhood education by ensuring that every child can access a high-quality early childhood education and universal 3-year-old preschool, universal 4-year-old preschool or an equity-based program.

Clause 91 New section 8 (2)

This clause defines *equity-based program* and provides examples including the targeted 3-year-old imitative, Koori preschools and early entry preschools. This clause also defines *universal 3-year-old preschool* as a government-funded preschool program attended by a child in the year in which the child is at least 3 years old on 30 April that year and *universal 4-year-old preschool* as a government-funded preschool program attended by a child in the year in which the child is at least 4 years old on 30 April that year.

Clause 92 New chapter 1A

This clause introduces a new chapter about early childhood education. This chapter gives every eligible child the right to access government-funded early childhood education in the two years prior to when the child is of compulsory education age.

This clause stipulates that an eligible child must live in the ACT and be at least 3 years old on 30 April in the year they wish to access preschool.

This clause also outlines that a provider of a government-funded preschool program may refuse to enrol an eligible child in a preschool program it runs if doing so would breach a condition of the provider's service approval (for example, if doing so would see them exceed the maximum number of students they are able to enrol).

This clause also introduces new provisions that outline the procedures the Education Directorate must develop to encourage attendance by a child enrolled in, but not attending, a preschool program delivered by a government school. The procedures must state that attendance at the program is not compulsory, state the benefits of a child's regular attendance at the program and include steps that may be taken to support a child's attendance at the program, for example referring the child's parents to a support service.

Clause 93 Section 17O

This clause relates to Chapter 2A Suspensions and allows the decision-maker for a government school to delegate their powers under this part in relation to suspending a student to a public servant in the Education Directorate, for example, a Director of School Improvement.

Clause 94 Impacts of closing or amalgamating government schools Section 20B (1) (a) (xi) and (d) (ii)

This clause updates the reference to Indigenous in this section to instead refer to Aboriginal or Torres Strait Islander people.

Clause 95 Section 67 (3) (a)

This clause removes the words 'of Australia' in relation to permanent residency to be consistent with drafting conventions.

Clause 96 Internal review New section 144 (1A)

This clause clarifies that in relation to internally reviewable decisions made under section 17H (Suspension), the decision may be reviewed only by a person mentioned in section 17O other than the person who made the decision.

Clause 97 Dictionary, new definition of *Aboriginal or Torres Strait Islander person*

This clause defines Aboriginal and Torres Strait Islander person as a person who is a descendant of an Aboriginal person or Torres Strait Islander person, and identifies as an Aboriginal person or a Torres Strait Islander person, and is accepted as an Aboriginal person or Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

Clause 98 Dictionary, definition of *carer*

This clause omits the definition of carer from the Act.

Clause 99 Dictionary, new definitions

This clause defines government-funded preschool program as a preschool program delivered by an entity that receives funding for the program under an agreement with

the Territory, other than funding paid by the Territory under arrangement with the Commonwealth.

This clause defines preschool program as a preschool program under the *Education and Care Services National Law (ACT)*, section 5 (1).