

2025

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

**EDUCATION AMENDMENT BILL 2025
EXPLANATORY STATEMENT**

**Presented by
Yvette Berry MLA**

Minister for Education and Early Childhood

EDUCATION AMENDMENT BILL 2025

The Bill is a not a Significant Bill.

INTRODUCTION

This explanatory statement relates to the *Education Amendment Bill 2025* (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 *Education Regulation 2005* (the Regulation).

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.

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*. The third phase of amendments was passed in June 2022 through the *Education Amendment Bill 2022*. A fourth phase of amendments was passed in November 2023 through the *Education (Early Childhood) Legislation Amendment Bill 2023* and a fifth phase of amendments was passed in September 2024 through the *Education Amendment Bill 2024*.

The Bill introduces an amendment to Chapter 4 – Non-government schools with impacts on the non-government sector, by amending section 98 *Registration amendment—application* to enable in certain circumstances the Minister to provide written approval to reduce the amount of time given to make submissions about the application for a registration amendment.

Section 98 *Registration amendment—application*

It is proposed to amend **section 98 - Registration amendment—application** to

enable with permission of the Minister, the reduction of the public submission period associated with an application for a registration amendment.

The legislative amendment updates section 98 (3)(c) to include “or a shorter period approved by the Minister” after “at least 60 days after notice is given” in reference to a registration application amendment.

This provision enables prompt enactment of a registration amendment, where time is a critical factor. For example, should a registration amendment be proposed to transfer a school’s registration to a new proprietor because the current proprietor is not fit or proper, then a 60-day period for submissions would require the school to close, impacting on the continuity of education for students. Therefore, with permission from the Minister, a reduced submission period would enable the prompt appointment of a new proprietor in these extreme circumstances.

CONSULTATION ON THE PROPOSED APPROACH

Due to the urgent nature of this legislation, consultation has not been possible with key stakeholders including the Association of Independent Schools – ACT Branch, Catholic Education Canberra and Goulburn, the ACT Human Rights Commission and the Registration Standards Advisory Board. However, we do not anticipate any sensitivities associated with the proposed legislative amendment.

ACT Government agencies

Consultation on the Bill has occurred both internally within the Education Directorate and across other areas of the ACT Government.

Consultation occurred with other areas of the ACT Government, such as Policy and Cabinet within the Chief Minister, Treasury and Economic Development Directorate, Treasury, and the Justice and Community Safety Directorate, including the Human Rights Unit.

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 27A – right to education (promoted)
- section 27B – right to work and other work-related rights (promoted)
- section 17 – taking part in public life (limited).

Rights promoted

Section 27A – right to education

(1) Every child has the right to have access to free, school education appropriate to their needs.

(2) Everyone has the right to have access to further education and vocational and continuing training.

(3) These rights are limited to the following immediately realisable aspects:

(a) everyone is entitled to enjoy these rights without discrimination;

(b) to ensure the religious and moral education of a child in conformity with the convictions of the child's parent or guardian, the parent or guardian may choose schooling for the child (other than schooling provided by the government) that conforms to the minimum educational standards required under law

The Bill promotes *section 27A – right to education* by including provisions that will enable the Minister, in writing, to reduce the submission period associated with an application for a registration when required.

These provisions will ensure students' continued access to education, should the submission of an application for a registration amendment be time critical — e.g. an application to transfer a school to a new proprietor to ensure the school does not close. This continued operation of the school and uninterrupted provision of education to students enrolled in the school promotes the right to education.

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

The Bill promotes *section 27B – right to work and other work-related rights* by ensuring staff at a non-government school are still able to work, should the submission of an application for a registration amendment be time critical — e.g. an application to transfer a school to a new proprietor to ensure the school does not close. This continued operation of the school supports uninterrupted ability to work for staff at the school.

Rights limited

The preamble to the *Human Rights Act 2004* notes (section 28) that few rights are absolute and that they may be subject only to the reasonable limits set by law that can be demonstrably justified in a free and democratic society.

To decide 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 nature and extent of the limitation;

- c) the relationship between the limitation and its purposes; and
- d) 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.

Section 17 – Taking part in public life

Every citizen has the right, and is to have the opportunity, to—

(a) take part in the conduct of public affairs, directly or through freely chosen representatives; and

(b) vote and be elected at periodic elections, that guarantee the free expression of the will of the electors; and (c) have access, on general terms of equality, for appointment to the public service and public office.

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

The right to take part in public life may be limited under the updates to section 98 (3)(c), through the provision to amend the time period associated with consultation on registration amendment applications only when the Minister is satisfied this is reasonable in the circumstances. This may reduce the amount of time a person has to make submissions about the application for a registration amendment and take part in public affairs and express their views on the application.

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

The purpose of the limitation on the right to take part in public life is to enable the Minister to reduce a consultation period where a shorter period is necessary to preserve the continuity, or facilitate the improvement, of the daily operations of a non-government school. For example, the amendment may enable the continuity of education at a non-government school, should a registration amendment be time critical (e.g. to transfer to a new proprietor to prevent school closure). This ensures the continued right to education (section 27A) for students and right to work and work-related rights (section 27B) for those employed at the school. A disruption may risk being damaging to students' education, unnecessarily burdensome for their parents

or caregivers and broader family life and harmony, and disruptive for the work of school staff.

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

The provision to reduce the submission period, with permission of the Minister, is rationally connected to the legitimate purpose of enabling the Minister to make a decision on a registration amendment in a shorter timeframe if necessary and reasonable to enable the continuation or improved functioning of a school. Such circumstance could limit the existing right to take part in public life by allowing the Minister to divert from a minimum 60 days for public consultation.

In the example of transferring a school to a new proprietor, the shortened timeframe would therefore promote the right to education and the right to work, as a shorter submission period will enable prompt transfer of the school to a new proprietor and ensure minimal disruption to students' education and employment for staff at the school.

As such, the ability of the Minister to shorten the submission period when necessary ensures minimal disruption of the continued education of students and overall functioning of a non-governmental school.

4. Proportionality (s 28 2(e))

A limitation on the right to take part in public life may occur through the provision to reduce the submission period associated with a registration amendment application through the insertion of "or a shorter period approved by the Minister". However, the reduction of the public submission period will only occur when the Minister is satisfied it is reasonably necessary in the circumstances, providing a safeguard to ensure that public consultation will still occur to the extent possible in the circumstances.

For most registration amendment applications, the full 60-day period will be observed, enabling adequate time for submissions to be made. However, the Bill will allow for exceptions, for example where an extended submission period will have significant impact on the operation of the school, the education of children and young people and the employment of staff within that school, for example to transfer the school to a new proprietor to prevent closure of the school.

A shortened public consultation period does not mean that there will be no consultation period, as the Registrar must still give public notice of the application and advise how a person may make a submission. It will instead, in extreme circumstances, enable a shortened period, for example when time is critical, such as the prevention of the closure of a school. In considering the appropriate timeframe for submissions, the Minister would take into account the urgency of the matter balanced by the intent to ensure the public have opportunity to express their views on the specific registration amendment.

Education Amendment Bill 2025
Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **EDUCATION AMENDMENT BILL 2025**. 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*.

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Tara Cheyne 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 Amendment Act 2025*.

Clause 2 Commencement

This clause notes the Act commences on the day after its notification day.

Clause 3 Legislation amended

This clause outlines that the Act amends the *Education Act 2004*.

Clause 4 Registration amendment—application Section 98 (3) (c)

This clause notes that after the word “given” in section 98(3)(c), the wording of “or a shorter period approved by the Minister” is inserted. This will enable the public consultation period associated with a registration amendment application to be reduced, with permission of the Minister.

Clause 5 Registration amendment—application Section 98 (4)

This clause notes that the Minister may only shorten the consultation period under subsection (3) (c) when satisfied it is reasonably necessary in the circumstances. The intent of this clause is to ensure appropriate safeguards in the use of this provision.