

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Education and Early Childhood Development)

Education (Child Safety in Schools) Legislation Amendment Bill 2018

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Education (Child Safety in Schools) Legislation Amendment Bill 2018

A Bill for

An Act to amend legislation about education, child safety, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Education (Child Safety in Schools) Legislation*
4 *Amendment Act 2018*.

5 **2 Commencement**

6 (1) Part 2 commences on 1 April 2019.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 (2) The remaining provisions commence on the day after this Act's
10 notification day.

11 **3 Legislation amended**

12 This Act amends the following legislation:

- 13 • [ACT Teacher Quality Institute Act 2010](#)
14 • [Education Act 2004](#)
15 • [Education Regulation 2005](#).

1 **Part 2** **ACT Teacher Quality Institute**
2 **Act 2010**

3 **4** **Conditions of registration and permit to teach**
4 **New section 38 (1) (c) and (d)**

5 *insert*

6 (c) maintains current registration under the *Working with*
7 *Vulnerable People (Background Checking) Act 2011*; and

8 (d) tells the institute, in writing, if any of the following happen:

9 (i) the teacher is given a negative notice under the *Working*
10 *with Vulnerable People (Background Checking) Act 2011*,
11 section 40;

12 (ii) the teacher's registration under the *Working with*
13 *Vulnerable People (Background Checking) Act 2011*—

14 (A) lapses; or

15 (B) is made subject to a condition; or

16 (C) is suspended or cancelled; or

17 (D) is surrendered.

18 **5** **Grounds for suspending or cancelling registration or**
19 **permits to teach**
20 **New section 63 (2)**

21 *after the note, insert*

22 (2) The institute may, at any time, consider whether there is a ground for
23 suspending or cancelling a person's registration or permit to teach
24 under subsection (1).

- 1 **6 Section 67**
- 2 *substitute*
- 3 **67 Employer's obligation to notify institute about teacher**
- 4 The employer of an approved teacher must tell the institute, in
- 5 writing, if the employer has reasonable grounds for believing any of
- 6 the following has happened:
- 7 (a) the teacher has become mentally or physically incapacitated and
- 8 the incapacity prevents the person from performing an inherent
- 9 requirement of their job as a teacher;
- 10 (b) the teacher is given a negative notice under the *Working with*
- 11 *Vulnerable People (Background Checking) Act 2011*,
- 12 section 40;
- 13 (c) the teacher's registration under the *Working with Vulnerable*
- 14 *People (Background Checking) Act 2011*—
- 15 (i) has lapsed; or
- 16 (ii) is made subject to a condition; or
- 17 (iii) is suspended or cancelled; or
- 18 (iv) is surrendered.

7 New division 6.3*insert***Division 6.3 Disclosure of information****70A Disclosure of information to institute**

- (1) The institute may, by written notice, ask the employer of an approved teacher for any information that the institute believes on reasonable grounds is relevant to—
- (a) considering, under this part, whether there is a ground for suspending or cancelling an approved teacher’s registration or permit to teach; or
 - (b) imposing a condition on an approved teacher’s registration or permit to teach under section 38 (Conditions of registration and permit to teach).
- (2) The employer of an approved teacher must give the institute any information in relation to an approved teacher that is requested under subsection (1).

70B Employer to tell institute about notification event

- (1) The employer of an approved teacher commits an offence if—
- (a) a notification event happens in relation to the approved teacher; and
 - (b) the employer does not, on the day of the notification event or within 5 working days after the event, give written notice of the event to the institute.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

- 1 (3) In this section:
- 2 ***disciplinary action*** means any of the following actions by the
3 employer of an approved teacher:
- 4 (a) terminating the employment of the approved teacher;
- 5 (b) if there is a formal investigation of, or a full admission by, the
6 approved teacher—
- 7 (i) giving a written warning to the approved teacher; or
- 8 (ii) imposing a financial penalty on the approved teacher; or
- 9 (iii) lowering the classification level of the approved teacher;
10 or
- 11 (iv) transferring the approved teacher to another position at
12 their current classification level or a lower level (either
13 permanently or temporarily); or
- 14 (v) removing an employment-related monetary benefit from
15 the approved teacher.
- 16 ***formal investigation***, by an employer—
- 17 (a) includes an investigation of a matter—
- 18 (i) under an internal or external procedure of the employer; or
- 19 (ii) by an independent or external body engaged by the
20 employer for the investigation; but
- 21 (b) does not include a preliminary factual inquiry by the employer
22 about a matter.
- 23 ***notification event*** means any of the following:
- 24 (a) the employer of an approved teacher tells the teacher that the
25 employer has decided to begin a formal investigation of the
26 teacher;

- 1 (b) the employer of an approved teacher takes disciplinary action
2 against the teacher under the terms of the teacher's employment;
- 3 (c) the employer of an approved teacher removes, cancels or ends
4 the access of the teacher to casual employment;
- 5 (d) an approved teacher, who is the subject of a formal investigation
6 or preliminary factual inquiry by the employer, resigns.

7 *preliminary factual inquiry*, by an employer, means an investigation
8 of a matter by the employer to assess whether to conduct a formal
9 investigation of the matter.

10 **70C Institute may request further information**

11 (1) If notice is given under section 70B by the employer of an approved
12 teacher, the institute may, by written notice, ask the employer to give
13 further information within a stated time in relation to the notification
14 event.

15 (2) In this section:

16 *further information*, in relation to a notification event, includes the
17 following:

- 18 (a) identifying details of the approved teacher;
- 19 (b) a description of the notification event;
- 20 (c) the date the notification event occurred;
- 21 (d) details about any planned, ongoing or completed investigation
22 of the notification event;
- 23 (e) other information in relation to the notification event.

24 *notification event*—see section 70B (3).

- 1 **70D Protection of information disclosed under this division**
- 2 (1) A requirement to disclose information to the institute under this
- 3 division—
- 4 (a) applies despite any territory law to the contrary; and
- 5 (b) does not limit the disclosure of information that may be made
- 6 under any other territory law.
- 7 (2) A person disclosing information to the institute under this division is
- 8 not civilly liable for anything done or omitted to be done honestly and
- 9 without recklessness—
- 10 (a) in complying with this division; or
- 11 (b) in the reasonable belief that the disclosure complied with this
- 12 division.

Part 3 Education Act 2004

8 Provisional registration New section 86 (6) (h)

insert

(h) the school will comply with criteria prescribed by regulation.

9 Registration New section 88 (6) (h)

insert

(h) the school complies with criteria prescribed by regulation.

10 Conditions of provisional registration or registration New section 91 (h)

insert

(h) the school complies with a condition prescribed by regulation.

11 Cancellation of provisional registration or registration Section 95 (1), note

substitute

Note Section 91 (Conditions of provisional registration or registration) sets out the conditions of registration and allows for the prescription of conditions by regulation. Contravention of a prescribed condition may lead to the cancellation of provisional registration or registration under this section.

12 Renewal of registration New section 97 (6) (h)

insert

(h) the school complies with criteria prescribed by regulation.

1 **13 New part 6.1A**

2 *insert*

3 **Part 6.1A Information sharing**

4 **145B Meaning of *young person*—pt 6.1A**

5 In this part:

6 *young person* means a person who turns 18 years old while a student.

7 **145C Director-general may give certain information to other**
8 **States**

- 9 (1) This section applies if a corresponding officer asks the
10 director-general, in writing, whether a child or young person is
11 receiving an education in the ACT.
- 12 (2) Subject to subsection (4), the director-general may tell the
13 corresponding officer—
- 14 (a) if the child or young person is enrolled at an education provider
15 or registered for home education under this Act—that the child or
16 young person is receiving an education in the ACT; or
- 17 (b) if the director-general is satisfied on reasonable grounds that the
18 child or young person is not enrolled at an education provider or
19 registered for home education under this Act—that the child or
20 young person is not receiving an education in the ACT; or
- 21 (c) if the child or young person, or a parent of the child or young
22 person, has been issued with an exemption certificate under
23 part 2.3—that the child or young person is exempt from
24 receiving an education in the ACT; or
- 25 (d) in any other circumstances—that the director-general is not able
26 to confirm whether the child or young person is receiving an
27 education in the ACT.

1 (3) However, the director-general must not tell the corresponding officer
2 any information related to the child or young person's enrolment or
3 registration.

4 **Examples—related information**

- 5 1 whether the child or young person is enrolled at an education provider or
6 registered for home education
7 2 the school at which the child or young person is enrolled
8 3 the nature of the education course in which the child or young person is
9 enrolled
10 4 who enrolled the child or young person

11 (4) Before the director-general tells the corresponding officer that the
12 child or young person is receiving an education in the ACT, the
13 director-general must have the consent of—

- 14 (a) a parent of the child or young person; and
15 (b) if the director-general is satisfied the child or young person
16 understands what information is being given, the purpose of
17 giving the information and who will receive the information—
18 the child or young person.

19 *Note* Consent is not required in certain circumstances (see s 145E).

20 (5) In this section:

21 ***corresponding officer*** means a person responsible for the
22 administration of the legislation under which children are enrolled at
23 an education provider or registered for home education in another
24 State.

25 *Note* ***State*** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

- 1 **145D Director-general may ask for certain information from**
2 **other States**
- 3 (1) Subject to subsection (2), the director-general may ask a
4 corresponding officer, in writing, for information about a child or
5 young person who is, or was, enrolled at an education provider or
6 registered for home education under this Act.
- 7 (2) Before the director-general asks the corresponding officer for the
8 information about the child or young person the director-general must
9 have the consent of—
- 10 (a) a parent of the child or young person; and
- 11 (b) if the director-general is satisfied the child or young person
12 understands what information is being asked for, the purpose of
13 asking for the information and who will receive the
14 information—the child or young person.
- 15 *Note* Consent is not required in certain circumstances (see s 145E).
- 16 (3) In this section:
17 *corresponding officer*—see section 145C (5).
- 18 **145E Consent not required in certain circumstances**
- 19 (1) This section applies if the director-general must have the consent of
20 a parent, child, or young person before asking for or giving
21 information under this part.
- 22 (2) The consent is not required if the director general is satisfied on
23 reasonable grounds that—
- 24 (a) it would not be in the best interests of the child or young person
25 to seek the consent; or

1 (b) it is not possible or reasonably practicable in the circumstances
2 to seek the consent.

3 **Example—par (b)**

4 despite reasonable efforts, contact details for a parent cannot be found

5 (3) In considering the best interests of a child or young person for
6 subsection (2) (a), the director-general must consider the following:

7 (a) the need to ensure that the child or young person is not at risk of
8 abuse or neglect;

9 (b) the child or young person's physical, emotional and intellectual
10 needs;

11 (c) the child or young person's access to, or benefit from, education;

12 (d) the child or young person's age, level of understanding or level
13 of maturity;

14 (e) any views or wishes expressed by the child or young person;

15 (f) the relationship the child or young person has with the child or
16 young person's parents;

17 (g) the attitude to the child or young person, and to parental
18 responsibilities, demonstrated by the child or young person's
19 parents;

20 (h) a court order or criminal investigation relating to the child or
21 young person or the child or young person's parents.

22 **14 Dictionary, new definition of *young person***

23 *insert*

24 ***young person***, for part 6.1A (Information sharing)—see
25 section 145B.

1 **Part 4 Education Regulation 2005**

2 **15 New sections 5A to 5C**

3 *insert*

4 **5A Criteria for provisional registration and registration—Act,**
5 **s 86 (6) (h) and s 88 (6) (h)**

- 6 (1) A school must, through a representative of the non-government
7 school sector, work with the Minister to implement the
8 recommendations of the Royal Commission into Institutional
9 Responses to Child Sexual Abuse.

- 10 (2) For this section:

11 *representative of the non-government school sector* means—

- 12 (a) the Association of Independent Schools of the ACT; or
13 (b) the Catholic Education Archdiocese of Canberra and Goulburn.

14 **5B Conditions of provisional registration and registration—**
15 **Act, s 91 (1) (h)**

- 16 (1) A school must, through a representative of the non-government
17 school sector, work with the Minister to implement the
18 recommendations of the Royal Commission into Institutional
19 Responses to Child Sexual Abuse.

- 20 (2) For this section:

21 *representative of the non-government school sector*—see s 5A (2).

22 **5C Criteria for renewal of registration—Act, s 97 (6) (h)**

- 23 (1) A school must, through a representative of the non-government
24 school sector, work with the Minister to implement the
25 recommendations of the Royal Commission into Institutional
26 Responses to Child Sexual Abuse.

- 1 (2) For this section:
2 *representative of the non-government school sector*—see s 5A (2).
-

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 November 2018.

2 Notification

Notified under the [Legislation Act](#) on 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
