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

**ACT TEACHER QUALITY INSTITUTE BILL 2010**

**EXPLANATORY STATEMENT**

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# **ACT TEACHER QUALITY INSTITUTE ACT 2010**

## **EXPLANATORY STATEMENT**

### **Outline**

This explanatory statement relates to the Bill as introduced into the ACT Legislative Assembly.

### **Aim and purpose of the legislation**

This legislation provides for the establishment of the Teacher Quality Institute, a statutory authority with responsibility for teacher registration, accreditation of pre-service teacher education programs, and certification of teachers against national standards.

The establishment of the Institute brings the ACT into line with other jurisdictions and enables the Territory to incorporate national consistency in the way teachers are registered, the quality of pre-service education received by prospective teachers, and the standard of skills and knowledge applied by teachers in the classroom and school leaders.

### **Overview of Bill**

The main purpose of this Bill is to provide the legal basis for the establishment of the Teacher Quality Institute. Inherent in this Bill is the formation of a board responsible for ensuring that the rights of teachers, students and the community are protected through sound governance and adherence to legislation protecting the rights of persons to employment and the minimisation of risk to children whilst at school.

### **Background**

In 2008 the Council of Australian Governments (COAG) reached an inter-governmental agreement that provided for an overarching framework for federal financial relations. Included in this framework is the National Partnership Agreement on Improving Teacher Quality to drive and reward reforms in teaching and leadership in Australian schools. The ACT government is signatory to the National Partnerships agreement.

The COAG agreement may be accessed from the COAG website:  
[http://www.coag.gov.au/intergov\\_agreements/federal\\_financial\\_relations/index.cfm](http://www.coag.gov.au/intergov_agreements/federal_financial_relations/index.cfm)

The aim of the National Partnership Agreement is the delivery of system-wide reforms targeting critical points in a teacher's lifecycle through pre-service education to whole-of-career. It is also to attract, train, place, develop and retain quality teachers and leaders in schools and classrooms. The objectives of the agreement will be achieved through a number of facilitation and reward reforms which include national

consistency in teacher registration and in accreditation/certification of teachers against national standards, and national accreditation for pre-service teacher education programs.

Other than NSW, where until 2005 it was voluntary, all jurisdictions require teachers who are working or seeking to work in any school (including, in some cases, pre-school and TAFE) to be registered with the local teacher registration body. Some jurisdictions are instituting additional pre-entry examinations for prospective teachers in order to ensure that they are capable of effectively teaching literacy, numeracy and science subjects. This is an example of where the conceptual frameworks for these reforms are moving towards nationally consistency but harmonised across all jurisdictions to a greater or lesser extent to meet the needs unique to each.

With this Bill the ACT will be aligned with other jurisdictions in providing the means to register teachers who are or wish to be employed in ACT schools. Further, this Bill will provide the framework for the development of systems and processes aimed at achieving national consistency in registration, accreditation and certification while at the same time meeting the unique needs of the ACT economic and community aspirations.

In 2010 the ACT Government issued an exposure draft of the Bill inviting comment on the legislation. Comments received on this draft included concerns that requiring a teacher to be registered in order to be employed in their chosen career may breach sections of the Human Rights Act and that the Teacher Quality Institute, by taking on the role of determining whether or not such registration may be suspended or cancelled, may cut across the function of the ACT Civil and Administrative Tribunal. Further drafting of the Bill ensured that such concerns were addressed.

## **DETAILS**

Detailed explanation of each section of the Bill follows.

## **Part 1 Preliminary**

### **Clause 1 Name of Act**

This is a technical clause that names the short title of the Act. The name of the Act is the *ACT Teacher Quality Institute Act 2010*.

### **Clause 2 Commencement**

This clause enables the Act to commence on a date set by the Minister. The Minister may commence the Act at an earlier time by notice.

### **Clause 3 Dictionary**

The dictionary is an important part of this Act as many of the terms used have assigned to them a nationally consistent meaning. The dictionary also points to the *Legislation Act 2001* for some definitions.

### **Clause 4 Notes**

This is a technical clause explaining the status of notes to the Act.

### **Clause 5 Offences against Act—application of Criminal Code etc**

This clause makes it clear that the *Criminal Code 2002* applies in relation to offences against this Act. This Act should also be read in conjunction with the *Legislation Act 2001* which provides for interpretation, common definitions, and legislative machinery for the ACT.

### **Clause 6 Purpose**

This clause sets out the purpose of the Act. This purpose is detailed in the National Partnerships Agreement and is consistent with other jurisdictions.

The role of the Teacher Quality Institute includes registration of teachers working or wishing to work in schools in the ACT, accreditation of pre-service teacher education programs, and the accreditation of teachers against national performance standards. While performing this role is relatively straightforward, doing so in line with the purpose described in the Act provides greater meaning and outcomes which accord more closely to community expectations. The Act, and thereby the institute, through this purpose demonstrate a commitment to the future of the Territory in general and its current and future citizens in particular.

## **Part 2 Key concepts**

### **Clauses 7-9 Meaning of teacher, teaching, approved teacher**

This section provides definitions for terms used throughout the legislation. These terms and their meanings are also used in other jurisdictions.

## **Part 3 ACT Teacher Quality Institute**

### **Division 3.1 Establishment and functions of the institute**

#### **Clause 10 Establishment of institute**

This clause establishes the institute.

#### **Clause 11 Functions of institute**

This section describes the functions of the Institute, which are to register teachers working or intending to work in the ACT, to accredit high quality teacher education and professional development programs, and to increase the levels of skill, knowledge, expertise and professionalism in the practice of teaching. Other functions include the facilitation and promotion of professional growth and development of teachers throughout their careers and, where necessary and appropriate, to take disciplinary action against approved teachers as allowed for in the Act.

The institute may exercise any other function given to it under the Act or another Territory law allowing flexibility for adaptation by the institute to future circumstances and needs. While differences may be observed in the ways in which these functions are carried out in the ACT and in all jurisdictions, they align with the principles of national consistency and facilitate effective recognition of teachers and school leaders for the purpose of mutual recognition and the achievement of the aims of the *Mutual Recognition Act 1992* (Cwlth) and the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth).

#### **Clause 12 Exercise of institute functions**

The institute must comply with directions given to it under this Act or another territory law. A direction given by the Minister in relation to the exercise of the institute's functions is a notifiable instrument and must be complied with. However, the Minister cannot give any direction in regard to individual cases (eg, an application for registration or accreditation), the Annual Report, or about how to provide advice to the Minister.

#### **Clause 13 Delegation by institute**

This clause allows the Institute to delegate the exercise of its functions to a member of the Institute (including a Board member), a committee of the Board or an entity prescribed by regulation.

### **Division 3.2 Institute board**

#### **Clause 14 Establishment of institute board**

This clause states that the institute has a governing board. Any appointment of a governing board member is an appointment under this section.

The principal responsibility of the board is to implement policies and regulations handed down by government. Its primary role is to monitor and guide the performance of the institute in accordance with the guidelines laid down for it by the government of the ACT through the relevant legislation and by-laws. The makeup of the board is described in clause 15.

#### **Clause 15 Institute board members**

Defines membership of the governing board and is consistent with the provisions in the Legislation Act. Members of the board represent the key stakeholders in the ACT, including the Department of Education and Training, private and Catholic schools, unions, pre-service teacher education institutions, teachers and principals, and the community.

Board members have a duty of care to the institute and its objectives. Except for the Chair, who is independent and approved by the Minister, and CEO all members have been nominated to their position by their constituency in order to ensure that the functions of the institute are performed in a manner which does not discriminate against any sector of the community or disadvantage any group or individuals. Board members serve for three years and may be renominated by their constituency for a further period.

Except for the Chair, board members do not receive remuneration beyond compensation for reasonable expenses incurred in the performance of their duties.

#### **Clause 16 No deputy chair**

This section ensures that a deputy chair cannot be appointed for the governing board under the *Financial Management Act 1996*, s79, however the Minister may appoint an acting chair (see Legislation Act, s 209) in the absence of the Chair. An acting chair also may be elected to chair meetings in the absence of the Chair.

#### **Clause 17 Chief executive officer of institute**

This clause states that the chief executive officer must be appointed under the *Financial Management Act 1996*, s8.

#### **Clause 18 Reimbursement for board members**

Except for the chair, board members will not receive remuneration for performing their functions. They will, however, receive reimbursement for expenses incurred whilst performing these functions either at board meetings, while attending committee meetings (s22), or when representing the board.

### **Division 3.3 Institute board committees**

#### **Clause 19 Establishment of committees**

This section provides for the institute to establish committees to assist the board in the exercise of its functions. In the main, the primary function of the board is to promote and protect the interests of the institute. To achieve this, the board will form sub-committees (termed committees in this legislation) to oversee specific responsibilities and provide guidance, as required, to the board and CEO.

### **Clause 20 Exercise of committee functions**

This section provides for the institute to stipulate how a committee is to exercise its functions and includes the power to decide when committee meetings are held, who can attend, arrangements for chairing the meeting, how questions are decided and the necessity of minutes.

Subject to any decision of the institute under the above, a committee may decide its own procedures.

The purpose of committees is to provide board management oversight of certain elements of the institute's functions or to discuss issues and make decision on behalf of the board. Committees have the delegated authority of the board to investigate and make decisions on behalf of the board.

Except where defined in their terms of reference, committees will not be required to report to the board until the relevant issues are resolved and decisions made, although progress reports may from time to time be called for. The one exception to this is the proceedings of the Professional Practice and Disciplinary committee which will form to investigate any allegation against a teacher of breaches against the Act or code of practice and make recommendations to the board for, where appropriate, further action. Such an inquiry is charged only with determining the facts of any allegation before them and assessing the implications under the Act and the code of practice. No other matter will be taken into account, including (but not limited to) other allegations which may have been brought against the person concerned either previously or at the same time as the issue before the committee.

### **Clause 21 Membership of committees**

This section states that committees consist of people appointed by the institute board and may consist completely or partly of board members.

Except for the chair of the Registration Committee also being a member of the Standards and Professional Development committee, board members will not normally serve concurrently on more than one committee of the institute. Board members are encouraged to periodically rotate between appointments to committee, but in the event that this is impractical members should not serve on any committee for greater than three years.

### **Clause 22 Reimbursement for committee members**



Committee members will not be remunerated for services to a committee, however, this section allows for the payment of a reimbursement for expenses reasonably incurred in the exercise of the member's functions.

### **Division 3.4 Institute staff and consultants**

#### **Clause 23 Institute staff**

This clause states that institute staff must be employed under the *Public Sector Management Act 1994*

#### **Clause 24 Institute consultants**

This section provides for the institute to engage consultants but not enter into a contract of employment.

### **Division 3.5 Miscellaneous**

#### **Clause 25 Ministerial directions**

While the Minister must not give a direction that relates to a particular teacher or a particular assessment directions may be given to the institute about the exercise of its functions. Such a direction is a disallowable instrument.

#### **Clause 26 Institute's annual report**

The institute must provide an annual report as per the *Annual Reports (Government Agencies) Act 2004* and include any directions given to the institute and a statement about action taken during the year to give effect to any direction given under this section, the number of new approved teachers, the training programs available for the professional growth and development of teachers, the current assessment and certification standards that are required to be met by teachers, and anything else prescribed by regulation.

## **Part 4 Registration and permits to teach**

### **Division 4.1 Application—pt 4**

#### **Clause 27 Application**

This section states those persons to whom this part does not apply.

### **Division 4.2 Offences—unapproved teachers**

#### **Clause 28–29 Offences**

This section details the offences committed by, and the penalties imposed on, those teaching in school without being an approved teacher, or employing, engaging or allowing a person who is not an approved teacher to teach in a school.

Although it is important, the purpose of registering teachers is not simply to create a database of those persons teaching in schools in the ACT. It is to also ensure that those who teach in ACT schools have undertaken certain checks of their qualifications, work experience, professional credentials (if appropriate), and their fitness to be placed in a position of trust with children and other vulnerable people. Such checks will be conducted in the ACT by the Teacher Quality Institute or in other jurisdictions by local registration authorities. This will ensure that the needs of both the territory and wider Australian community are addressed and protected.

Persons who teach in schools but who have not been approved by the institute, and those who employ such persons in full knowledge that they have not been approved by the institute, are breaching an important level of trust placed in the government to protect their most vulnerable. In order to ensure that doing so is punished to the full extent commensurate with the seriousness of the event, an offence against this section is a strict liability offence.

The penalties imposed under this clause are similar to those imposed by other jurisdictions.

## **Division 4.3      Applications for registration and permits to teach**

### **Clause 30 Application for registration or permit to teach**

This section defines the categories of registration (full or provisional registration) or authorisation to teach (Permit to Teach) for which teachers may apply. It also defines how an application is to be made and that a fee must be paid in accordance with regulations. These categories accord with those of other jurisdictions (except Victoria where Permit to Teach is referred to as a category of registration) and allow for ease of transfer of a teacher's registration between jurisdictions.

This section also describes how the institute may seek additional information from an applicant and that if such information is not forthcoming within 28 days then the application may lapse.

### **Clause 31 Extension of time for meeting registration or permit to teach requirements**

This section explains the steps an applicant may take when seeking additional time to meet any information requirements or conditions that the institute places on an application and what must occur in the event that the Institute does not agree to such a request.

In the main such requests will be approved, however experience from other jurisdictions is that extensions of time are most often sought for reasons other than a genuine delay in the receipt by the applicant of additional information. By placing a time limitation, such as that detailed at clause 29, applicants are motivated to expedite the meeting of any conditions imposed by the institute.

Under this clause applicants for an extension of time will be informed, by the institute, and in writing any decision to grant or deny such application. Where the decision is to deny the application reasons will be given along with avenues the applicant may pursue if they disagree with the institute's decision, for example a review of the decision by ACAT under clause 82 (Reviewable Decisions).

### **Clauses 32–33 Eligibility for full or provisional registration**

These sections define the criteria a person must meet in order to be eligible for full or provisional registration.

These criteria are essentially the same as those applied in other jurisdictions and in line with the emerging national registration system. Under the *Mutual Recognition Act 1992* (Cwlth) and the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth) the institute may also register as teachers people who are registered or otherwise authorised to teach in a State, the Northern Territory or New Zealand if the teaching practices authorised are substantially the same.

However, a person who would be eligible under this section, but for cancellation of the person's registration, is eligible to be registered as a teacher if the institute is satisfied, after considering the reason for the cancellation and anything relevant that the person has done since the cancellation, that the person should be registered.

### **Clauses 34–35 Eligibility for permit to teach**

These sections describe the criteria against which authorisation to teach (Permit to Teach) may be granted to a teacher. The aim of this authorisation is to allow those who do not meet all of the criteria at clauses 31 and 32 to teach if they are making substantial progress towards meeting such criteria, or to allow schools to employ teachers with a specialist skill to teach those skills, for example, music or a trade.

This section is substantially the same as other jurisdictions except Victoria where Permit to Teach is a category of registration, not an authorisation to teach.

### **Clause 36 Decision on registration or permit to teach application**

This section details what the institute must do as soon as a decision has been made regarding a person's application.

Included in this is the need for the institute to approve any application which meets the requirements laid down for registration or permit to teach, to approve registration or permit to teach at a level lower than that applied for if some but not critical elements of the application are missing, or reject the application. Critical elements of an application, in this respect, mean those which do not bar an applicant from registration but which are not sufficiently complete for the level sought. For example, educational qualifications. Under the current transitional arrangements (clause 94) applicants without the full range of qualifications may gain full registration but must provide evidence of their commitment to gaining the additional qualifications in order to maintain registration status. Similarly, a teacher who is working towards a

qualification may be granted permit to teach in order to undertake practicum or work placement as part of their studies.

Applicants will be informed, in writing, of any decision regarding an application along with details of avenues the applicant may pursue if they disagree with the institute's decision, for example a review of the decision by ACAT under clause 82 (Reviewable Decisions).

### **Clause 37 Extension of period for decision on registration or permit to teach application**

This clause allows for the institute, upon application by the applicant, to extend the period for which a decision regarding whether or not to approve an application for registration or permit to teach. The reason for this is twofold:

- a. information upon which it may rely in order to make a considered decision is not always readily available to the institute or the applicant, for example it may have to come from overseas or from a jurisdiction who itself may have difficulties gathering and forwarding it; or
- b. an applicant may require additional time in order to properly complete their application or gather additional information sought by the institute in order that it may make an informed decision regarding their application.

While the Act (and the Legislation Act) allows the institute to reject an application which does not meet all of the requirements, in the interests of fairness it is important that an applicant be given every opportunity to rectify any errors or omissions they may have made in their application. By giving the institute the authority to extend the period for a decision each application, and what needs to be done to ensure that each meets all of the requirements, can be addressed on a case-by-case basis. The only alternative is to develop one rule which fits all applications but this is neither practical nor fair.

Where a decision to extend or not extend the period is made, the applicant must be informed in writing of the reasons and be given directions on how they may, if they so wish, seek a review of this decision by ACAT under clause 82 (Reviewable Decisions). If the decision is made to extend the period then the institute must also inform the applicant of the period for which the extension is granted.

### **Clause 38 Conditions of registration and permits to teach**

Aside from possession of a relevant pre-teacher education qualification and evidence of their suitability to teach in an ACT school, persons seeking registration or permit to teach must meet certain criteria (described at clause 31). To maintain or renew their registration they must meet additional criteria which includes, for example, undertaking ongoing professional development. These conditions are similar to those imposed by other jurisdictions and accord with the principles of national consistency.

Where these criteria are not met to the satisfaction of the institute may impose certain conditions or additional conditions (ie, conditions over and above those already imposed) on a person's registration or authorisation in order to ensure that the person meets or continues to meet eligibility requirements for registration or authorisation. In such cases applicants will be informed, in writing, of any decision regarding conditions attached to registration or permit to teach, along with details of avenues the applicant may pursue if they disagree with the institute's decision, for example a review of the decision by ACAT under clause 82 (Reviewable Decisions).

Under the Act the institute may also make guidelines for imposing additional conditions on registration or permit to teach. These guidelines may include, but are not limited to, the number of additional conditions which may be imposed without causing a person's application to be rejected or their registration/permit to teach to be cancelled. However, the institute is mindful that it must be certain that conditions are warranted because of issues which the person alone is capable of addressing, and not issues which arise because of, for example, system problems or a failure within the registration processes. For this reason generic guidelines will not be developed until such time as the institute is fully confident that system and process problems are less likely to occur when properly followed or applied.

### **Clause 39 Extension of period for decision on additional conditions**

Upon application the institute may extend the period for a decision on additional conditions for the same reasons, and under the same circumstances, as for an extension of the period for a decision on an application (Clause 37).

Generally conditions will be applied for the purpose of ensuring a person is capable of meeting the requirements of initial or continued registration and in the experience of other jurisdictions this is mainly in regard to professional development or the gaining of skills or knowledge relevant to their position. However, such opportunities are not always available to teachers, or available at a time appropriate to their needs, therefore the institute needs to be flexible when it comes to determining the period in which a person must meet any conditions over and above those already imposed.

### **Clause 40 Registration and permit to teach certificates and cards**

Upon being registered or issued with a permit to teach, teachers are to be given a certificate and a card (registration/permit to teach certificate and registration/permit to teach card) signifying that their application has been approved and that they are registered or have a permit to teach for the period described thereon.

The registration/permit to teach card will contain details of the person's name, the date that their registration/permit to teach commences and when it expires, the type of registration (full or provisional), and any conditions attached to the registration or permit to teach. They will also contain a number unique to the person and which will be used to identify the person in all records and registers.

In addition to the above, a permit to teach card will also contain details of the school(s) at which the person has permission to teach. The reason for this is because a

permit to teach is generally granted to enable a person to teach at a specific school or schools and for a specific purpose, for example as a music or vocational teacher. They will be filling a need experienced by that school or those schools therefore the terms of their permit to teach will reflect this.

The registration/permit to teach certificate and registration/permit to teach card are the property of the institute and must be returned when registration/permit to teach ceases for whatever reason (clause 51).

#### **Clause 41 Lost, stolen or damaged certificates and cards**

Certificates and cards issued by the institute to approved teachers remain the property of the institute and must be returned once the person ceases to be registered or authorised in the ACT. This section describes the action that the institute must take if a certificate or card is reported as lost, stolen or damaged to the extent that it is no longer useable.

### **Division 4.4 Register of teachers**

#### **Clause 42 Keeping teachers register**

A purpose of the institute is to register teachers, therefore a register must be kept which contains all of the relevant details which, in a restricted form, are also available to anyone seeking to determine whether or not a teacher is registered in the ACT. The information to be kept, and the information available to the public, is described in this section.

A national database is being developed which may impact on the form and format in which the register is kept, however this section allows for a register to be kept in any form.

#### **Clause 43 Details to be entered in teachers register**

This section describes the details which must be entered into the register.

Clause 40 (1) (c) states that a teacher's home address is to be entered on the register. Because a teacher may move between schools, especially if they are a casual relief teacher, it is not always appropriate to list a school as their preferred contact address. Having such an address on the register is important to ensure that invoices, receipts and notices, particularly notice of registration renewal, are received by the teacher in time for its contents to be actioned (if necessary) or the information to be of use to the teacher. Further, if a teacher works in two jurisdictions, for example in the ACT and NSW, by including these details on the register they are able to select in which state or territory they wish to be registered. This avoids them having to pay two registration fees.

Clause 40 (e) and clause 40 (f) state that the teacher's gender and whether they identify themselves as an indigenous person are also to be detailed on the register. These are required for the following reasons:

- a. the development and application of improved data collection is identified as a priority in the Department of Education and Training’s Implementation Plan. The purpose of this is to ‘contribute to the development, population and maintenance of a national dataset and therefore improve both national and local workforce planning’ (Cross Sectoral Reform 4). While the full extent of the required data is not yet known it is assumed that any improvement to national and local workforce planning will include details of demographics of the workforce. The imbalance between men/women teachers in schools and the need to create more flexible pathways for indigenous person to complete school or take up careers as teachers are well known, and it is only through empiric and quantitative research analysis that improvements in either may be charted.
- b. under the National Partnerships for Improving Teacher Quality agreement the ACT has agreed to encourage indigenous persons to enter teacher education courses and to ‘build professional pathways for indigenous people and indigenous Education Workers who wish to progress to teaching’ (clause 33 (a)). There is little or no empirical data illustrating current demographics of teachers who identify as indigenous persons, either working in or seeking to work in the ACT, therefore the collection of such data is essential if the terms of this agreement are to be met; and
- b. in the ACT Implementation Plan a commitment is made to develop an indigenous student scholarship program and increase the number of indigenous Education Workers placed in schools (Facilitation Reform 4).

Aside from a need to maintain such records for the purpose of national consistency, in order that the underrepresentation of indigenous people, or the relative numbers of men/women be addressed in all or part of the ACT school system, records of registered or authorised (permit to teach) teacher need to be kept on the teachers register.

While this information is on the register it will be used only by the institute and for the purposes stated here. Clause 86 provides penalties for the improper or reckless disclosure of any information.

#### **Clause 44 Register information may be shared**

This section states that information in the register, including that which is not available to the public, may be shared with other jurisdictions where it could assist in the regulation of teachers in that jurisdiction. This will include, but not be limited to, instances where the information is sought for the purpose of identifying teachers seeking mutual recognition of their registration, or for ensuring that the correct person has been named in an application.

#### **Clause 45 Changes to teachers register**

The register must be kept up to date, especially details regarding a teacher’s address for the purpose of maintaining contact with them. However out of date information

must also be removed when it is no longer needed, and this includes details of teachers who are no longer employed in the ACT. Notwithstanding the importance of removing such details it is also important that a record of teachers having been employed in the ACT, and previous addresses of currently registered teachers, also be kept whether they are on the register or not, therefore arrangements are to be made to ensure that such records are kept in accordance with the ACT.

#### **Clause 46 Teacher may correct teachers register**

This section allows for teachers to be shown all of the information on the register concerning them and be given an opportunity to correct or amend such information as appropriate.

### **Division 4.5 Term of registration and permits to teach**

#### **Clause 47 Term of full registration**

Once registered a teacher may remain on the register indefinitely provided that they fulfil the requirements for renewal of such registration or do not apply to have their registration removed (eg, because they move to another jurisdiction).

In order to maintain their registration teachers must apply for and renew their registration annually prior to a date determined in the regulations. The criteria under which registration will be renewed are described at clause 36.

#### **Clause 48 Term of provisional registration**

In order that teachers are encouraged to attain full registration the period they may spend in provisional registration is limited by regulation. At the end of this period, and in exceptional circumstances, provisional registration may be approved for a further period as determined in the regulations.

#### **Clause 49 Term of permit to teach**

A permit to teach is an authorisation to teach granted under certain circumstances. This section describes the period of time for which such authorisation may be granted and the circumstances under which it may be extended. This section also provides the basis upon which a person, having been granted permit to teach, may apply for provisional or full registration.

### **Division 4.6 Renewal of registration and permits to teach**

#### **Clause 50 Notice of renewal for registration or permit to teach**

The procedures for renewing registration or authorisation (permit to teach) will be the same. This section states that a notice of renewal will be sent to teachers whose registration or authorisation is about to lapse, however a failure to receive such a notice – whether through the institute failing to send it out or for other reasons – does not affect the registration period or a teacher's obligation to renew their registration or authorisation prior to the date it would lapse.



### **Clause 51 Renewal of registration**

This section details the processes to be followed when submitting an application for renewal of registration.

### **Clause 52 Renewal of registration with conditions**

This section provides for the institute to impose conditions on a renewal of registration. The purpose of this is to enable a person to maintain their registration in cases where there are issues which are not sufficiently important to deny renewal of their registration but which impose a limitation on their ability to meet all of the requirements of renewal.

Examples of such conditions are similar to those which may be applied during the process of initial registration (Clause 38).

A condition may only be applied if the institute provides written notice to the person inviting their comments (for which a time period of not less than 14 days may be imposed). Under Clause 55 an application for an extension of time to meet these conditions may be made.

### **Clause 53 Renewal of permits to teach**

This section details the processes to be followed when submitting an application for renewal of a permit to teach.

### **Clause 54 Renewal of permits to teach with conditions**

This section provides for the institute to impose conditions on a renewal of permit to teach. The circumstances under which conditions may be imposed, and the institute's responsibilities in doing so, are the same as for the imposition of conditions on a renewal of registration (Clause 52).

### **Clause 55 Extension of period for decision on renewal of registration or permit to teach or imposition of condition**

On written application an extension may be granted of the period for which a decision on the renewal of registration or permit to teach, or the imposition of a condition or conditions, may be made. The purpose in doing this will generally be to enable the person sufficient time to fully meet the requirements for the renewal of their registration or permit to teach, or to meet the conditions attached to either.

Each application will be considered on its merits, however the institute must inform the person whether or not their application for extension will be extended and, if so, the period of the extension.

The person must also be informed of the avenues available to the person should the application for extension be denied, including a review of the decision by ACAT under clause 82 (Reviewable Decisions).

## **Division 4.7      Amendment and end of registration and permits to teach**

### **Clause 56 Amendment of registration or permit to teach on institute's initiative**

The purpose of registration is to create a database of teachers who are fit to teach in ACT schools. Failure to maintain the standard required to teach in the ACT may see conditions placed on registration or penalties imposed on the teacher, including suspension or cancellation of their registration or permit to teach. In order to do this the institute is provided with the authority under legislation to make changes to registration or permits to teach as fits the nature or seriousness of the issue for which such changes are demanded. These will be determined on a case by case basis.

While this section states that such changes do not include a condition that the teacher undertakes professional development (clause 36 (1)), it may include a requirement that the teacher undertakes a course of training or development in order to achieve a standard of performance which enables their registration or permit to teach to be fully restored.

A person for whom an amendment is to be made will be invited to make a written comment on the reasons for the amendment(s). They will be given, in writing, a period to make such submissions however this will be no less than 14 days after they have received this notice. On written application the institute may grant an extension of the period stated in this notice but only if the institute is satisfied that it is appropriate to do so. Should the institute decide not to extend this period it is obliged, under this section, to inform the person as to the reasons and any avenue they may have to review this decision, including a review by ACAT under clause 82 (Reviewable Decisions).

### **Clause 57 Amendment of registration or permit to teach on application**

Teachers may seek to have amendments made to their registration or permit to teach, including the lifting of conditions, through written application to the institute. Such applications will be considered and, where conditions have been met, the teacher's registration or permit to teach will be amended. Where conditions have not been met in full the application will be refused and/or the conditions amended to reflect those which have been met.

### **Clause 58 End of registration or permit to teach**

This section describes the conditions under which a teacher's registration or permit to teach ceases.

## **Part 5      Codes of practice**

### **Clause 59 Codes of practice**

Maintenance of a teacher's registration or permit to teach will be inherent upon their abiding by a code of practice established by the institute for the purpose of achieving

its objective of enhancing teacher quality in the ACT. The code of practice has been developed by and for teachers and the community within which they are employed and is the benchmark against which teachers and teaching in the ACT will be measured.

The code of practice applied by the institute is approved by the Minister and is a disallowable instrument.

#### **Clause 60 Notice of code approvals**

This section describes how notice of approvals of a code of practice are to be published and their availability for public comment.

#### **Clause 61 Approved code of practice may be considered**

The purpose of this section is to ensure that in considering whether or not a teacher is performing or has performed at a recognised professional standard of practice such consideration includes whether or not they are doing so or have done so in a manner which complies with the approved code or practice.

This is an important consideration given the need for professional standards endorsed at the national level to be contextualised to take into account aspects of performance relevant to teaching at regional and community level.

#### **Clause 62 Relationship of Act with approved codes of practice**

Where there is inconsistency between the approved code of practice and the Act the latter shall prevail. Where appropriate, however, where the approved code of practice is not consistent with the regulation the two can operate concurrently as if they were consistent.

## **Part 6 Regulatory action**

### **Division 6.1 Suspension or cancellation of registration and permits to teach**

#### **Clause 63 Grounds for suspending or cancelling registration and permits to teach**

A teacher's registration or permit to teach may be suspended or cancelled if they fail to adhere to the conditions of registration or permit to teach (which includes, as a mandatory condition, abiding by the approved code of practice), or whose mental or physical incapacitation prevents them from continuing as a teacher either temporarily or permanently.

Unlike other jurisdictions, in the ACT it will not be the institute but the employer who determines whether or not a teacher has breached the conditions of their registration or permit to teach. Further, the institute will not instigate any investigation into a teacher's performance or their fitness (physical or mental) to teach. This is the role of

their employer. Whether or not a teacher's registration or permit to teach is suspended or cancelled will be determined in consultation with the employer and after the teacher has been given opportunity to respond.

Under the Act the person must also be informed of the avenues available to the person should their registration or permit to teach be suspended or cancelled, including a review of the decision by ACAT under clause 82 (Reviewable Decisions).

#### **Clause 64 Notice of proposed suspension or cancellation of registration or permits to teach**

This section describes how a notice is to be given. This section also provides for an application to be considered for an extension of the period within which a person must respond to such a notice and, if such an application is rejected, the reasons why and the avenues that the person has for reviewing the decision, including a review of the decision by ACAT under clause 82 (Reviewable Decisions).

#### **Clause 65 Suspending or cancelling registration or permits to teach**

This section describes the way and the conditions under which notice of suspension or cancellation of registration or permits to teach may take effect. Suspension or cancellation by the institute of a teacher's registration or permit to teach is not in itself finalisation of the matter as under the Act it may be reviewed by the ACT Civil and Administrative Tribunal (clause 83). Under the Act teachers must be provided with a reviewable decision notice in relation to the decision to suspend or cancel registration or permit to teach.

#### **Clause 66 Giving local corresponding registering authorities information about suspension or cancellation action**

When a teacher's registration or permit to teach is suspended or cancelled the institute must inform the registration bodies in other jurisdictions where the agreement to do so exists. This section provides details of the information which must be given to other jurisdictions.

#### **Clause 67 Employer's obligation to notify institute about teacher**

Employers are to inform the institute of any issues concerning an approved teacher which may have an impact on their continued registration or authorisation (permit) to teach. Employers do not have to report every disciplinary action they take against a teacher, only those which, in the opinion of the employer and the institute, may have a bearing on whether or not the teacher continues to be registered or hold a permit to teach in the ACT.

### **Division 62 Other regulatory action**

#### **Clause 68 Voluntary cancellation of registration or permit to teach**

Except in cases where the institute believes that a teacher has contravened, or is contravening, the Act an application in writing by the teacher for cancellation of

registration or permit to teach must be accepted. In seeking such cancellation the teacher must return any registration certificate and/or card issued to them for the purpose of registration or permit to teach.

#### **Clause 69 Inquiries about registered addresses**

In order to maintain an up-to-date database of teachers it is essential that the institute be fully informed as to their residential and employment addresses. To this end the institute may, from time to time, enquire of teachers their current address. Failure to respond to such requests within two months of such a request being delivered to their recorded address may see their registration or permit to teach cancelled.

#### **Clause 70 Return of registration or permit certificates and cards on amendment, cancellation or suspension**

This section provides the penalty for a failure, on the part of the teacher, to return a registration or permit to teach certificate and/or card without verifiable proof that it has been lost or destroyed.

Certificates of registration or permits to teach, and any card identifying a teacher as registered or authorised to teach (permit to teach), are the property of the institute, however for the duration of their registration or authorisation they are issued to a teacher upon approval of their application. The only time that a teacher will be asked to surrender their certificate or card, outside of suspension or cancellation of a registration or authorisation, will be when there is a need to amend it to, for example, correct information subsequent to clause 4. A certificate or card which has been amended, or a certificate or card that has been surrendered due to suspension, will be returned to the teacher once the amendment has been made or the suspension lifted.

In the absence of access to the office of the institute or its database the certificate and/or card is the only evidence a teacher needs to demonstrate that they are an approved teacher in the ACT. This, however, also makes it useful to someone fraudulently presenting themselves as an approved teacher when they are not, therefore each must be returned to the institute on demand or when a teacher's registration or permit to teach is cancelled whether voluntarily or by the institute. Failure to do so increases the likelihood that either may fall into the hands of someone seeking to present themselves as approved and thereby illegally gain employment as a teacher. Therefore, a failure to return a certificate or card when there is no longer a need for it is a strict liability offence.

Under this clause a defence is that the certificate or card has been lost, stolen or that someone (other than the person concerned) has destroyed it. It is, however, up to the person to show proof that this has occurred.

As with other clauses the institute is to inform the person that the certificate and card is to be returned within a given period not less than 14 days. This notice must be complied with.

## **Part 7 Accreditation—education programs**

## **Division 7.1 Register of accredited education programs**

### **Clause 71 Education programs register**

For the purpose of the Act an education program is defined as a pre-service teacher education program or one which, upon the approval or accreditation of the institute, is recognised as contributing to the professional development of teachers.

Under the Act the institute must keep a register of all programs it accredits along with certain details which identify the program and whether or not its accreditation is suspended or cancelled.

This register may be kept in any form (manual or electronic) and must be available to the public. Details of the program which are unique to the education provider, however, or which may be of commercial sensitivity do not need to be registered nor made available to those not authorised to receive it without the express permission of the education provider.

## **Division 7.2 Accreditation of education programs**

### **Clause 72 Institute may initiate accreditation of education program**

This section states that the institute may on its own initiative accredit an education program provided that it meets the criteria at clause 69.

### **Clause 73 Applying for accreditation**

This section provides that a person may apply to the institute for accreditation of an education program. The application must be on the appropriate form. The applicant must also provide the institute with any information it needs in order to fully consider the application.

### **Clause 74 Decision about Accreditation**

This section provides that the institute must approve or refuse an application for accreditation of an education program. In deciding the application, the institute must apply nationally consistent standards for accreditation of education programs.

The institute may approve an application for accreditation with or without conditions. This section provides the criteria under which the institute may impose a condition.

Where the institute decides to grant the application it must immediately register the accredited education program on the register of accredited programs. If the institute decides not to grant the application the applicant must be informed of this decision and any action which must be carried out should the applicant seek to submit a further application for accreditation.

A denial of an application for accreditation for one education program will not cancel approved applications or influence decisions about other applications the applicant has submitted to the institute. Each will be determined on its own merits.

## **Clause 75 Accreditation guidelines**

This section states that the institute may make guidelines for the accreditation of education programs. This allows the institute to identify and accredit programs which do not fall into the category of pre-service teacher education programs for which national guidelines for accreditation are being developed and which must be used by the institute for the purposes of national consistency.

## **Clause 76 Criteria for accreditation of education programs**

Two forms of education program will be accredited by the institute:

- a. pre-service teacher education programs which result in the conferring of a degree in teaching to graduates; and
- b. programs which support the professional and continuous development of teachers throughout their career.

The criteria against which education programs will be evaluated for accreditation are limited in order that any program or part of a program, providing that it meets these criteria, may be put forward for accreditation. Each will be assessed on its merits and its ability to meet the initial and ongoing requirements of teachers and teaching in the ACT.

Elements of a program may provide critical skills and knowledge important to the enhancement of teaching in the ACT even though the program itself may not be directly targeted at new or experienced teachers. The essential point is that any accredited program, whether pre-service or professional development, meets either established or emerging professional standards for teaching developed nationally and/or contextualised to local conditions and community expectations.

## **Clause 77 Expert committee for div 7.2**

This section highlights that the institute will form a committee to assess and determine applications for accreditation.

The institute will accredit pre-service teacher education programs and any other courses the board may determine are acceptable for the purposes of meetings its responsibilities under the Act. A committee will be established to determine and agree the policies for accreditation and the criteria against which education programs and other courses are to be assessed. This committee will be chaired by a board member and include an experienced teacher, a school principal, teacher education (preferably from another jurisdiction), and representatives of individual employers and the community. The essential objective of this committee is to gain assurance that the skills, knowledge and attributes of a teacher successfully completing a course of education meet the eligibility requirements for provisional registration as a teacher in the ACT.

## **Clause 78 Period of accreditation**

Programs will be accredited for a period of no less than five years. This will allow sufficient time for students to commence and complete the program throughout which time the provider is expected to completely evaluate its contents and relevance against extant professional standards.

#### **Clause 79 Renewal of accreditation**

Re-accreditation may, upon application, be granted for a similar period provided that the application to do so has been received no more than six months prior to the end of the accreditation period.

The need to impose a time limit on the period by which an application must be received is so that the education provider is not disadvantaged should there be a requirement for adjustments to be made to the application or to the program itself. Such disadvantages may include additional effort being required to complete an application in time for a program to commence at the scheduled time or for additional discussions which may be required in order to ensure that all criteria and conditions associated with accreditation are met.

#### **Clause 80 Review of accredited education program**

It is not unusual that a program, once it commences, requires adjustment in light of new information concerning its content or conduct. In order that such adjustments do not significantly change the nature of the program or its ability to continue to meet the criteria for accreditation, a review will be carried out within the first twelve months of it being run.

As a result of this review the following decisions will be made:

- a. no changes are required to the program; or
- b. minor changes are required of the program and/or to the application to ensure that it/they continues to meet the criteria for accreditation; or
- c. minor changes are required to the criteria against which the program has been accredited to reflect cultural, professional or community influences not apparent during the application period; or
- d. major changes are required to the program to ensure that it meets the criteria for accreditation; or
- e. Accreditation of the program is suspended or cancelled.

Sub-paragraphs b. – f. will either be appended to an application approval as a condition of that approval or, if warranted, be a condition which must be met before an approval may be progressed. However, each program will be evaluated on its merits. The purpose of accreditation is to ensure that all programs meet the needs of teachers and teaching in the ACT, and the aim of this review is therefore to assist and support education and program providers to maintain such accreditation once gained.



### **Clause 81 Grounds for suspending or cancelling accreditation**

This clause provides the basis for the institute to suspend or cancel accreditation where a program either fails to meet the criteria against which it was approved or because it fails to adapt to changing professional and community needs.

Other grounds for suspending or cancelling accreditation are detailed in the regulations. These include a failure to pay a fee should one be imposed, a lowering of the quality of presentation and/or achievements made by students undertaking the program, failure to identify and incorporate regional and/or community needs regarding teaching and learning, and so on.

### **Clause 82 Notice of proposed suspension or cancellation of accreditation**

This section describes what the institute must do in providing notice of a proposal to suspend or cancel accreditation.

### **Clause 83 Suspending or cancelling accreditation**

This section describes what the institute must do when suspending or cancelling accreditation.

### **Clause 84 Voluntary cancellation of accreditation**

This section states that the institute must cancel a person's registration or permit to teach if the person requests the institute do so.

### **Clause 85 Suspension or cancellation of accreditation—education program previously agreed**

Suspension or cancellation of the accreditation of a program may have an impact on more than the education provider. Students enrolled in the program, for example, may be only part way through their studies and a decision by the institute to suspend or cancel accreditation will have a negative impact on their ability to complete the program.

Except in the case where a provider has had their accreditation unconditionally withdrawn and must therefore immediately cease providing the program, the institute may do any of the following to ensure that students are not disadvantaged:

- a. approve an application for the program to be transferred to another provider and continue the accreditation for a limited period (no longer than 2 years); or
- b. allow the provider to continue presenting the program but not to enrol new students.

Steps taken by the institute will depend on the reason for the suspension or cancellation of a program and the welfare of the students undertaking it at the time.

### **Clause 86 Registering end of accreditation**

This section instructs the institute to remove from the register the details of a program for which accreditation has ceased whether by expiry or cancellation.

### **Clause 87 Offence to falsely claim education program accredited**

Under the Act a person is liable for a penalty if they falsely claim or imply that a program is accredited.

In order to ensure that pre-service teacher education programs and professional development courses are in line with both the needs of students and their communities, and with the career needs of teachers, all programs and courses must meet strict nationally consistent accreditation criteria. The purpose of this is to ensure that such programs or courses are in line with agreed standards and to promote continuous growth in the profession of teaching in the ACT and throughout Australia.

While the institute will provide all assistance to education and professional development providers to achieve such standards, a failure to meet or continue to meet them will result in an accreditation application being refused or current accreditation cancelled. Persons who claim, whether explicitly or implicitly, that a program is accredited will be liable for a penalty under this clause.

Where an application for accreditation is pending, or where an accreditation has been suspended due to issues which the provider must address in order that their course or program be reinstated as accredited, may claim that their course or program is accredited as long as they state also that an application is pending or that there are conditions on their accreditation. Failure to do so will be treated as if the course or program was being falsely claimed as accredited.

## **Part 8 Notification and review of decisions**

### **Clause 88 Meaning of *reviewable decision*—pt 8**

In this section a *reviewable decision* is defined as one which is mentioned in schedule 1 (Reviewable Decisions).

### **Clause 89 Reviewable decision notices**

This section requires the institute to give written notice of the renewable decision in accordance with the code of practice associated with the *ACT Civil and Administrative Appeals Tribunal Act 1989*.

### **Clause 90 Applications for review**

Any disagreement with a council decision, defined as reviewable decision in the schedule 1, may be taken to the ACT Civil and Administrative Appeals Tribunal.

## **Part 9 Miscellaneous**

### **Clause 91 Protection from civil liability**

This section states that officers of the institute, acting in good faith and without negligence, will not incur civil liability. Such liability will instead be attached to the Territory.

### **Clause 92 Offences—use or divulge protected information**

Confidentiality is an important safeguard in the maintenance of the integrity of the institute therefore strict rules will apply to the way in which information is gathered, stored, retrieved and used. In this section are details of the penalties which will be awarded for the divulging or reckless use of protected (confidential) information.

This section does not apply to persons required by law to divulge protected information or who divulge such information about a person with that person's consent. In divulging such information, however, it is stressed that it need not be divulged unless it is necessary to do so in order to comply with this Act or any other law applying in the ACT.

### **Clause 93 Evidentiary certificates**

This section gives the institute the authority to issue a certificate as proof of a person's registration or authorisation (permit) to teach, or a program's accreditation.

### **Clause 94 Disqualification orders**

This section states that if a court finds a person guilty of an offence against the Act then it may issue an order disqualifying the person from applying for registration or permit to teach for a certain period.

An adverse finding against a person in a court of law will not mean automatic suspension or cancellation of their registration or permit to teach. If found guilty of an offence it must be explicitly against the Act for suspension or cancellation to immediately follow.

Under this section an offence against the Act also means any offence which, in the opinion of the institute, would result in an application being denied.

### **Clause 95 Determination of fees**

Under this section the institute may set and charge fees as defined in the regulations. As decisions regarding the setting of fees is a disallowable instrument the final decision regarding the fees and their purpose will be made by the Minister.

### **Clause 96 Approved forms**

The institute may from time to time create a form for the purpose of registration, accreditation etc. Because, for the purpose of consistency, there will be a need for specific information to be provided in any application to the institute and a requirement for these forms to be submitted only in a certain way (eg, electronically) each approved form is a notifiable instrument under the *Legislation Act 2001* (s 255).

## **Clause 97 Determination of standards**

In discharging its responsibility for the registration of teachers, accreditation of pre-service teacher education programs, and certifying teachers against nationally approved standards, the institute will develop or adopt a range of standards by which the quality of its processes and outcomes may be evaluated and assessed. These standards are either generally accepted in similar organisations (eg, standard of record keeping, standard for conducting certification assessments etc.), developed as a means of assuring national consistency (eg, graduate and proficient teacher standards, standard of registration and data base maintenance), or adopted and contextualised to local conditions and requirements (eg, leadership and other standards).

Under this section the institute is empowered to seek out and adopt or develop standards as it deems appropriate to the needs of the institute, its purpose and responsibilities, and the community. They are, however, notifiable instruments and as such be approved as required under the Legislation Act.

## **Clause 98 Regulation-making power**

This section provides the institute with the power to make necessary regulations for the Act and includes a specific regulation-making power in relation to registration of teachers or the accreditation of programs.

## **Clause 99 Legislation amended—schedule 2**

This section provides guidance to the legislation which may be impacted upon or require amendment with the implementation of this Act.

# **Part 10 Transitional**

## **Clause 150 Definitions—pt 10**

This section states that the meaning of *commencement day*, as used throughout this part, as the day the Act commences.

## **Clause 151 Teachers currently teaching**

Transitional arrangements are put in place to enable teachers currently employed, or who have been employed, in the ACT to be registered based on their current qualifications and experience.

A requirement of registration is that an applicant can demonstrate that they meet the national standards for graduate and proficient standards (through their pre-service education and on-the-job experience respectively), however these are not yet nationally agreed or accepted by jurisdictions around Australia. In order that teachers currently employed, or who were employed, in the ACT may be registered their current qualifications and experience are ‘deemed’ to meet the minimum requirements for registration (or, if appropriate, permit to teach). A period defined in the regulations will be determined within which teachers affected by these arrangements will be

required to meet the emerging standards, or be making significant progress towards meeting these standards, when they are introduced. Teachers affected by these arrangements will not be required to pay a fee.

### **Clause 152 Education providers currently providing education programs**

Standards for the accreditation, and against which pre-service teacher education and professional development programs will be evaluated, are not expected to be agreed nationally at the time this Act is approved. However, most pre-service programs provided by education providers in the ACT are accredited in NSW, and all courses presented outside of the ACT are accredited in their respective jurisdictions. As a consequence the institute will upon application ‘deem’ these courses as meeting the accreditation requirements of the ACT.

### **Clause 153 Transitional regulations**

The transitional arrangements for teachers currently employed, or who were employed, in the ACT and for the accreditation of pre-service teacher education and professional development programs, are contained in the regulations.

### **Clause 154 Expiry—pt 10**

The period for which these arrangements are in force allows for teachers to progress towards meeting the requirements for full registration without the disadvantage of not having sufficient time or opportunities to meet them.

## **Schedule 1 Reviewable decisions**

This schedule sets out the decisions that are reviewable under part 8 It identifies the provisions of the Act under which the decision is made and the person to be notified.

## **Schedule 2 Consequential amendments**

This part provides the amendments to other Acts as a consequence of this Bill.

## **Dictionary**

The Dictionary defines terms used in the Bill.