

2011

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**WORKING WITH VULNERABLE PEOPLE (CONSEQUENTIAL AMENDMENTS)
BILL 2011**

EXPLANATORY STATEMENT

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Working With Vulnerable People (Consequential Amendments) Bill 2011

Explanatory Statement

This explanatory statement relates to the Working with Vulnerable People (Consequential Amendments) Bill 2011.

Overview of the Bill

The Working with Vulnerable People (Consequential Amendments) Bill 2011 (the Consequential Bill) amends legislation because of the enactment of the *Working with Vulnerable People (Background Checking) Act 2011*. The Bill complements and builds on existing legislation and replaces current checking requirements across a range of regulated activities.

The Bill makes consequential amendments to:

- *ACT Teacher Quality Institute Act 2010*;
- *Children and Young People Act 2008*;
- *Public Sector Management Act 1994*; and
- *Spent Convictions Act 2000*;

The Consequential Amendments Bill does not repeal any legislative instrument.

Human Rights and Discrimination- Considerations

The premise of background checking is that the past behaviour of an individual provides an indication of the possible future behaviour of that individual¹. Examples or patterns of abusive or inappropriate behaviour can sometimes be evident in information available for assessment, which includes an individual's criminal record or employment history.

The *Working with Vulnerable People (Background Checking) Act 2011* (WWVP Act) asks an individual to provide their conviction and non-convictions information, including spent conviction information, to assist in determining their suitability to work or volunteer with vulnerable people accessing a regulated activity or service.

The Consequential Bill aligns the *ACT Teacher Quality Institute Act 2010*; *Children and Young People Act 2008*; *Public Sector Management Act 1994*; and *Spent Convictions Act 2000* with the WWVP Act on implementation of the background checking scheme, and will result in an individual being required to be registered under the WWVP Act if they wish to work or volunteer with vulnerable people accessing a regulated activity.

Consideration of human rights and discrimination, as provided in Section 28 of the *Human Rights Act 2004* and Sections 7 (Grounds) and 8 (What constitutes discrimination) of the *Discrimination Act 1991* (ACT) were integral to the development of the consequential amendments.

The use of an individual's conviction and non-conviction information, in particular their spent conviction information, engages the individual's right to recognition and equality before the law, privacy and reputation, and to take part in public life.

¹ Creating Safe Environments for Children – Organisations, Employees and Volunteers National Framework. Schedule: An Evidence Based Guide for Risk Assessment and Decision-Making when Undertaking Background Checking, June 2006, p2

The following consequential amendments may, in certain circumstances, limit an individual's right to recognition and equality before the law, privacy and reputation, and to take part in public life:

- *ACT Teacher Quality Institute Act 2010* – consequential amendment clauses 1.1; 1.2, 1.6; 1.10; 1.16; and 1.18;
- *Children and Young People Act 2008* – consequential amendment clause 1.22;
- *Public Sector Management Act 1994* – consequential amendment clause 1.25; and
- *Spent Convictions Act 2000* – consequential amendment clause 1.26

Various protection measures are included in the *Working with Vulnerable People (Background Checking) Act 2011* to ensure an individual's human rights are not unreasonably limited as per Section 28 of the *Human Rights Act 2004* and an individual is not subject to unreasonable discrimination as a result of seeking registration or being registered under the ACT's working with vulnerable people legislation.

Protections include:

- background information cannot be sought without an applicant's consent;
- background checking and risk assessment must be conducted in line with the *Risk Assessment Guidelines 2011*;
- only spent conviction information relating to the inherent requirements of the applicant's employment or volunteer position can be considered during the assessment of their suitability for registration;
- the Commissioner must, at all times, have regard for the *Risk Assessment Guidelines 2011* when deciding an applicant's suitability to work with vulnerable people in a regulated activity or service;
- information held by the Commissioner will be held in accordance with the *Privacy Act 1988* (Commonwealth);
- protected information will not be disclosed to employers or organisations. Protected information means information about a person that is disclosed to, or obtained by, a person who is or has been the Commissioner or a person exercising a function under the WWVP Act;
- if the Commissioner is proposing to issue a conditional registration notice or a negative risk assessment notice the Commissioner is compelled to advise the applicant in writing of the intent to issue the notice; what the condition is; the reasons for proposing to register the person conditionally, and how the person can provide further information to assist the Commissioner in determining their suitability to work or volunteer with vulnerable people;
- the Commissioner must not inform the applicant's employer of a proposed negative notice or the analysis behind this decision;
- the current or prospective employer access the applicant's level of registration only;
- an applicant can ask the Commissioner to review a proposed conditional registration or negative risk assessment if he/she is not satisfied with the registration determination; and
- an applicant can ask the Civil and Administrative Appeals Tribunal to undertake a further review of the registration determination.

Working With Vulnerable People (Consequential Amendments) Bill 2011

Outline of Provisions

Clause 1 – Name of the Act

This clause states that the Act is the *Working with Vulnerable People (Consequential Amendments) Act 2011*.

Clause 2 – Commencement

This clause states that this Act is to commence on the day the *Working With Vulnerable People (Background Checking) Act 2011* commences.

Clause 3 – Legislation amended

This clause states that this Act amends the legislation mentioned in schedule 1.

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS

PART 1.1 ACT Teacher Quality Institute Act 2010

The *ACT Teacher Quality Institute Act 2010* (the TQI Act) established the ACT Teacher Quality Institute as a Territory Authority with responsibility for teacher registration, accreditation of pre-service teacher education programs, and certification of teachers against national standards.

Clause 1.1

The TQI Act prescribes the application information which must be provided if the applicant is seeking full registration as a teacher; provisional registration as a teacher; or the granting of a permit to teach. The application information includes the provision of the person's criminal history information.

This clause inserts a new Division 4.1A which provides for the definition of criminal history guidelines, criminal history record; police certificate, and CRIMTRAC.

Division 4.1A is to expire one year after subsection 27A commences or on a date prescribed by regulation. This ensures consistency between the TQI Act and the *Working with Vulnerable People (Background Checking) Bill 2010* (WWVP Bill). On commencement of the *Working with Vulnerable People (Background Checking) Act 2011* (WWVP Act) a person applying for full or provisional registration as a teacher or a permit to teach will be required to hold a working with vulnerable people registration.

Clause 1.2

This clause replaces the requirement that a person seeking full registration as a teacher must provide a police certificate and/or criminal history record with: a person seeking full registration being required to hold a working with vulnerable people registration.

Clause 1.3

This clause inserts a new section providing that subsection 32 (1) (d) does not apply if the Teacher Quality Institute is satisfied, on reasonable grounds, that a person's criminal history has been assessed in accordance with the criminal history guidelines and their criminal history does not have a high degree of direct connection with the inherent requirements of the teaching profession.

Clause 1.4

This clause replaces the reference to section 32 (1) (e) and with a reference to the new subsection 32 (1A) (b).

Clause 32 (1A) (b) provides that Teacher Quality Institute may waive the prescribed requirements if the Teacher Quality Institute is satisfied, on reasonable grounds, the person applying for full registration as a teacher has taken all reasonable steps to obtain a copy of their criminal record or is unable to obtain the record.

Clause 1.5

This clause inserts a new section which provides the expiry of subsections 32 (1A); 32 (2); and 32 (2A) one year after they commence or on a date prescribed by regulation. This ensures consistency between the TQI Act and the WWVP Bill. On commencement of the WWVP Act an application for full registration will be required to hold a working with vulnerable people registration.

Clause 1.6

This clause replaces the requirement that a person seeking provisional registration as a teacher must provide a police certificate and/or criminal history record with: a person seeking provisional registration as a teacher being required to hold a working with vulnerable people registration.

Clause 1.7

This clause inserts a new section providing that subsection 33 (1) (c) does not apply if the Teacher Quality Institute is satisfied, on reasonable grounds, that a person's criminal history has been assessed in accordance with the criminal history guidelines and their criminal history does not have a high degree of direct connection with the inherent requirements of the teaching profession.

Clause 1.8

Clause 33 (1A) (b) provides that Teacher Quality Institute may waive the prescribed requirements if the Teacher Quality Institute is satisfied, on reasonable grounds, the person applying for provisional registration as a teacher has taken all reasonable steps to obtain a copy of their criminal record or is unable to obtain the record.

This clause replaces the reference to section 33 (1) (d) with a reference to the new subsection 33 (1A) (b).

Clause 1.9

This clause inserts a new section which provides the expiry of subsections 33 (1A); 33 (2); and 33 (2A) one year after they commence or on a date prescribed by regulation. This ensures consistency between the TQI Act and the WWVP Bill. On commencement of the WWVP Act an applicant provisional registration will be required to hold a working with vulnerable people registration.

Clause 1.10

This clause replaces the requirement that a person seeking the granting of a permit to teach must provide a police certificate and/or criminal history record with: a person seeking the granting of a permit to teach being required to be registered under the WWVP Act.

Clause 1.11

This clause inserts a new section providing that subsection 35 (1) (b) does not apply if the Teacher Quality Institute is satisfied, on reasonable grounds, that a person's criminal history has been assessed in accordance with the criminal history guidelines and their criminal history does not have a high degree of direct connection with the inherent requirements of the teaching profession.

Clause 1.12

This clause replaces the reference to section 35 (1) (c) with a reference to the new subsection 35 (1A) (b).

Clause 35 (1A) (b) provides that Teacher Quality Institute may waive the prescribed requirements if the Teacher Quality Institute is satisfied, on reasonable grounds, the person seeking the granting of a permit to teach has taken all reasonable steps to obtain a copy of their criminal record or is unable to obtain the record.

Clause 1.13

This clause inserts a new section which provides the expiry of subsections 35 (1A); 35 (2); and 35 (2A) one year after they commence or on a date prescribed by regulation. This ensures consistency between the TQI Act and the WWVP Bill. On commencement of the WWVP Act a person seeking the granting of a permit to teach will be required to hold a working with vulnerable people registration.

Clause 1.14

This clause inserts a new subsection which provides the expiry of 35 A one year after it commences or on a date prescribed by regulation. Section 35 A provides for the making of criminal history guidelines. The Teacher Quality Institute's criminal history guidelines will no longer be required once background checking commences under WWVP Act.

Clause 1.15

This clause inserts a new subsection which provides the expiry of 35 B one year after it commences or on a date prescribed by regulation. Section 35 B provides the criminal history guidelines assessment criteria. The assessment criteria will no longer be required once background checking on applications for full or provisional registration as a teacher or the granting of a permit to teach, commences under WWVP Act.

Clause 1.16

This clause replaces the requirement that in the five year period before renewal of full registration as a teacher, the teacher must have provided a police certificate and/or criminal history record with: a teacher must be registered under the WWVP Act.

Clause 1.17

This clause inserts new sections 51 (5A) and 51 (5B).

Section 51 (5A) provides subsection (5) (d) does not apply if the Teacher Quality Institute is satisfied, on reasonable grounds, that in the five year period before the renewal, a teacher's criminal history has been assessed in accordance with the criminal history guidelines and the criminal history does not have a high degree of direct connection with the inherent requirements of the teaching profession.

Section 51 (5B) provides for the expiry of subsections 51 (5A) and 51 (5B) one year after they commence or on a date prescribed by regulation. The Teacher Quality Institute will no longer be required under the TQI Act to undertake background checking once background checking commences under WWVP Act.

Clause 1.18

This clause replaces the requirement that in the five year period before renewal of a permit to teach, the permit to teach holder must have provided a police certificate and/or criminal history record with: a permit to teach holder must be registered under the WWVP Act.

Clause 1.19

This clause inserts new sections 53 (5A) and 53 (5B).

Section 53 (5A) provides subsection (5) (d) does not apply if the Teacher Quality Institute is satisfied, on reasonable grounds, that in the five year period before renewal, the permit to teach holder's criminal history has been assessed in accordance with the criminal history guidelines and the criminal history does not have a high degree of direct connection with the inherent requirements of the teaching profession.

Section 53 (5B) provides for the expiry of subsections 53 (5A) and 53 (5B) one year after they commence or on a date prescribed by regulation. The Teacher Quality Institute will no longer be required under the TQI Act to undertake background checking once background checking commences under WWVP Act.

Clause 1.20

This clause omits the definitions of criminal history guidelines; criminal history record; CRIMTRAC; and police certificates from the Dictionary. These terms are defined in the new section 27A (see clause 1.1)

PART 1.2 *Children and Young People Act 2008*

The *Children and Young People Act 2008* (the Act) provides for the safety and wellbeing of children and young people.

Clause 1.21

This clause compels certain entities to be registered under the *Working With Vulnerable People (Background Checking) Act 2011* (WWVP Act) unless they meet the criteria for exemption from registration or their duties/role do not fall within the purview of the WWVP Act.

Clause 1.22

This clause compels certain authorised persons to be registered under the WWVP Act unless they meet the criteria for exemption from registration or their duties do not fall within the purview of the WWVP Act.

Clause 1.23

This clause adds the WWVP Act as a further example of other laws.

Clause 1.24

This clause adds the WWVP Act to the Act's dictionary.

PART 1.3 *Public Sector Management Act 1994*

Clause 1.25

The clause notes that if a person is to be appointed to a position involving a regulated activity which is accessed by vulnerable people, the person may be required to be registered as prescribed by the *Working With Vulnerable People (Background Checking) Act 2011* (WWVP Act).

The amendment is not intended to encourage a person to believe that they can be appointed to the Public Sector without firstly satisfying all preconditions of appointment provided under section 68(2) of the *Public Sector Management Act 1994*.

The proposed amendment to the *Public Sector Management Act 1994* does not add unnecessary requirements to the appointment process.

If an unregistered person is seeking to work or volunteer in a regulated activity, nothing in section 14 of the *Working With Vulnerable People (Background Checking) Act 2011* prevents an ‘employer’ from refusing to engage an unregistered person in a regulated activity.

PART 1.4 *Spent Convictions Act 2000*

Clause 1.26

This clause permits consideration of a person’s spent convictions as prescribed by the working with vulnerable people *Risk Assessment Guidelines 2011*. The Risk Assessment Guidelines are a notifiable instrument.

The Risk Assessment Guidelines informs people that spent conviction information will be considered during the assessment process for registration to work or volunteer with vulnerable people accessing or attending a regulated activities or services.

Consideration of spent conviction information is one component used by the Background Screening Unit to determine an applicant’s suitability to work with vulnerable people.