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

**EDUCATION (CHILD SAFETY IN SCHOOLS) LEGISLATION
AMENDMENT BILL 2018**

EXPLANATORY STATEMENT

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EDUCATION (CHILD SAFETY IN SCHOOLS) LEGISLATION AMENDMENT BILL

Introduction

This explanatory statement relates to the *Education (Child Safety in Schools) Legislation Amendment Bill 2018* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

Purpose

The Bill brings more clarity to the roles and responsibilities of people carrying a duty of care to children and young people in schools. It has several purposes:

- (a) Through an amendment of the *Teacher Quality Institute Act 2010* (TQI Act), enhance the robustness of teacher registration decisions by allowing the ACT Teacher Quality Institute to require a teacher employer to provide to the Institute certain information to protect child safety and welfare;
- (b) Through an amendment of the TQI Act, strengthen requirements around Working with Vulnerable People Registration as a condition of teacher registration;
- (c) Through an amendment of the *Education Act 2004* (the Education Act), require non-government schools to comply with certain conditions that give effect to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse regarding the regulation of non-government schools;
- (d) Through an amendment of the Education Act, make amendments to enable the sharing of information about children and young people in relation to their education in certain circumstances.

Overview of the Bill

Amendments to the TQI Act

Provision of information

The Bill proposes amendments to section 67 of the current TQI Act, which requires teacher employers to notify the Teacher Quality Institute if they have 'reasonable grounds for believing the teacher has contravened a condition of registration'.

The Teacher Quality Institute does not undertake investigations of conduct matters or discipline of teachers. Investigation of conduct and discipline of teachers is undertaken by employers, other government agencies and police. However, the outcome of these investigations can be relevant to a teacher's registration status.

At present, the TQI Act does not give the Institute the power to obtain information from teacher employers in relation to the Institute's function of making decisions about an individual teacher's registration status in the ACT. The Bill makes clear the type of information and when teacher employers are able to disclose information to the Institute.

Experience with the operation of section 67 of the current TQI Act, has shown that the process regarding the obligations on employers of ACT teachers to notify the Institute in situations where there may have been a breach by a teacher of their conditions of registration has not always worked as intended. Since 2011, circumstances have occurred when a teacher employer has notified the Institute of a situation fitting the requirement of 'reasonable grounds for believing the teacher has contravened a condition of registration', but has not provided further information.

Some teacher employers also currently interpret s 67 as meaning employers can only provide information about a teacher once an investigation regarding that teacher is fully completed, including the report and giving the teacher the right of reply.

On the basis of this interpretation, employers have not notified the Institute about a teacher who is under investigation, on the basis that they do not have reasonable grounds for believing the teacher has contravened a condition of registration. It is only when the investigation is totally finalised that employers believe they can form reasonable grounds that the teacher has contravened a condition of registration.

Instances in the history of the TQI Act have occurred when a teacher employer instigates an investigation, the teacher is informed and then resigns, the investigation is consequently terminated and the Institute is not notified. The Institute has no information and is therefore unable to make a decision about the teacher's registration status. A possible result of the Institute's lack of access to critical information is that the teacher, who may pose a risk to children, is free to work in another ACT sector or another jurisdiction.

The Bill remedies these operational problems by making it clear to employers that notifying TQI at the beginning of a process examining a teacher's conduct is authorised and codified under the provisions of the TQI Act, and that they have a positive obligation to do so.

A decision to suspend or cancel a teacher's registration has serious consequences. A teacher with suspended teacher registration cannot work as a teacher in Australia or New Zealand while the suspension is in effect. If a person's registration as a teacher is cancelled, the person may not work as a teacher in Australia or New Zealand again. The serious consequences of a suspension or cancellation of a teacher's registration make it all the more important that the legislation is clear for employers about the provision of information.

The Institute's decisions must be robust, evidence-based and defensible. Having access to all the information necessary is critical to the Institute exercising its regulatory function. Part 6 of the current TQI Act requires that to come to a decision, the Institute must act in a manner which affords people affected by decisions procedural fairness and explain those decisions in a manner which people can

understand. The Institute must consider all relevant matters in making the decision and ensure that findings are based on persuasive evidence that has been obtained fairly and lawfully.

Working with Vulnerable People Legislation

There may be a possible gap in the interaction between current requirements regarding registration as a teacher in the ACT and the individual holding a current Working with Vulnerable People (WWVP) registration. This gap exists due to differing renewal cycles associated with the three year WWVP renewal and the annual teacher registration renewal. To remove any doubt, the proposed amendment requires teachers to maintain a current Working with Vulnerable People registration at all times if they wish to retain their registration status.

These amendments embed current WWVP registration as a component of teacher registration. The changes make very clear that the responsibility for maintaining WWVP registration rests with the teacher and is an expected element of professional registration. The changes also put some onus on the employer who under the new legislation must take a stronger role in monitoring and passing on information about the WWVP registration status of teachers in their employ.

Amendments to the Education Act

Non-government school regulation

This Bill commences the implementation of some of the agreed recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) as they relate to non-government schools.

In December 2017, the Royal Commission published its final report. Among its recommendations were some that would require action by some or all non-government schools. These related to child safe standards, record keeping, responses to incidents, complaint handling, and information sharing.

The ACT Government published its response to the Royal Commission's recommendations on 15 June 2018. The Government accepted or accepted in principle 19 recommendations relating to non-government schools, and this Bill allows for the implementation of the Government's response regarding introducing arrangements to require the non-government education sector to achieve the recommendation.

The Bill allows the Minister to make regulations specifying the conditions and criteria that non-government schools must meet in order to be registered as a non-government school in the ACT. The current criteria and conditions do not provide non-government schools or proposed non-government schools with sufficient clarity on what is required for registration, or which matters must be addressed in their policies and procedures, such as the Child Safe Standards recommended by the Royal Commission.

This approach allows for ongoing implementation of the Royal Commission's recommendations over time and allows for sustained engagement and participation by the non-Government sector over the longer term. This approach also enables the

integration of national approaches once developed. Initially, the regulations will reflect the Royal Commission's recommendations relating to Child Safe Standards. Placing the requirements in regulation also ensures that the obligations placed on non-government schools are transparent and able to be scrutinised by the Legislative Assembly.

Information sharing

The Bill enhances the safety and protection of children and young people. As a human rights jurisdiction, the ACT is committed to protecting the rights of children and young people, including their right to special protection, because of their vulnerability to exploitation and abuse. The issue has been highlighted in respect of family safety and child sexual abuse in a number of recent reports, including:

- a) *Report of the Inquiry: Review into the System level responses to family violence in the ACT* by Laurie Glanfield AM (Glanfield Inquiry);
- b) *Review of Domestic and Family Violence Deaths in the ACT* by the Domestic Violence Prevention Council;
- c) *Domestic Violence Service System Gap Analysis Project Final Report* by the Community Services Directorate;
- d) *DVPC Extraordinary Meeting Report to Attorney-General* by the Domestic Violence Prevention Council; and
- e) the *Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse* (the Royal Commission).

Specifically, this Bill implements recommendation 26 of the *Report of the Inquiry: Review into the System level responses to family violence in the ACT* (the Glanfield inquiry), that when a child is unenrolled from school, and the school has had concerns about the particular child, the Education Directorate should confirm the move with the family and confirm enrolment in the new jurisdiction. The ACT Government accepted this recommendation and committed to working to share information with other jurisdictions to ensure that children at risk stay connected with the education system.

This Bill allows the Director-General of Education in the ACT to respond to a request for information from another jurisdiction about the enrolment status of a child. Providing this information will enable the child or young person to be located in the education system, or to assist the requesting jurisdiction to make decisions about further action. This may assist in reducing the risk of harm to a child or young person, and providing support to their family if appropriate.

In addition, the Royal Commission also made recommendations to improve information sharing to support vulnerable people, including children. The ACT Government has committed to working internally, and with other states and territories, to improve information sharing to better protect children.

Education Regulation 2005

This Bill also amends the *Education Regulation 2005* to confirm the ACT Government's commitment to working with non-government schooling sectors to develop the regulations or requirements that will reflect the Royal Commission's recommendations for non-government schools. It acknowledges that the

implementation of the recommendations is a collaborative process that will require the expertise of the non-government school sector and involve active engagement and participation over time.

Overview of human rights considerations

This section provides an overview of the human rights that may be engaged by the Bill, together with a discussion on reasonable limits.

The Bill **supports** section 11(2) of the Human Rights Act, that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

This Bill may **limit** section 12(a), that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

This Bill may **limit** section 12(b), that everyone has the right not to have his or her reputation unlawfully attacked.

The Bill may **engage** section 22 (1), that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

This Bill **supports** section 27A, the every child has to right to school education appropriate to his or her needs.

Section 28 of the Human Rights Act provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including the following:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose;
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

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

Section 12 – Privacy and reputation

Section 12 of the Human Rights Act states that everyone has a right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily, and not to have his or her reputation unlawfully attacked.

The nature of the right affected

Providing information about a notification event, as proposed by this Bill, is necessary to ensure that only teachers who meet the registration requirements listed under the TQI Act are teaching in ACT schools. Providing this information about a teacher may limit an approved teacher's rights to privacy and reputation.

Teachers and/or employers providing information about a teacher's changed WWVP registration status may also limit an approved teacher's rights to privacy and reputation.

Under the Human Rights Act, ACT teachers have the right to privacy and the right to be protected from unlawful attacks on their reputation. This means that when information about a notification event or a change in a teacher's WWVP registration status is provided to the Institute, that information should be provided in such a way that does not compromise the privacy and reputation of the person who is the subject of the 'notification event'.

The imposition of strict liability offences has the potential to trespass on an individual's fundamental human right as set out in subsection 22(1) of the HRA which states that: "everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law".

With regard to the strict liability offence, for reasons of safeguarding the welfare of children and their right to a quality education, a strong deterrent to non-compliance is required.

This Bill also proposes that under the Education Act, certain information about a child or young person may be shared.

The Bill proposes that information sharing should generally be undertaken with the consent of the child or young person and their parents. This requirement conforms with the Human Rights Act, with privacy legislation and good practice in the handling, storage and use of private information.

The Bill allows, however, the sharing of information without consent under certain circumstances.

The *Information Privacy Act 2014* (ACT) regulates how personal information is handled by ACT public sector agencies. Exceptions to the right to privacy referenced in that Act include the use or disclosure of personal information that is required or authorised by or under an Australian law or a court or tribunal order. In addition, information may be used or disclosed where reasonably necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health and safety. This exception only applies where it is unreasonable or impracticable to obtain the individual's consent.

The exception has changed significantly in recent years. Prior to 2014, the requirement was that a threat be both serious *and imminent*, setting a very high bar to the use and disclosure of personal information. A 2008 Australian Law Reform

Commission report highlighted that the requirement of imminence was preventing important information sharing in certain circumstances, including in circumstances of progressive abuse. This led to amendment of the exception in both Commonwealth and ACT legislation to reflect its current form.

The new regime recognises that privacy restrictions should not prevent designated entities taking reasonable steps to coordinate information that may identify risks to the safety, welfare or wellbeing of young people.

The importance of the purpose of the limitation

It is critical that the Institute has information about an approved teacher relating to a 'notification event' in order for TQI to make robust, evidence-based and defensible decisions about a teacher's registration. Making such decisions will safeguard the safety, health and wellbeing of children and young people and help to ensure a quality education for children attending ACT schools.

It is also critical that the Institute has timely information about a teacher's WWVP registration status. A teacher whose WWVP registration is lapsed, suspended, cancelled or surrendered does not meet a condition of their teacher registration and is therefore ineligible to teach, either temporarily or permanently in an ACT school.

With regard to the strict liability offence, for reasons of safeguarding the welfare of children and their right to a quality education, a strong deterrent to non-compliance is required.

The strict liability offences in the Bill carry a maximum penalty of 50 penalty units. In developing these offences due regard was given to the guidance provided in the *Guide for Framing Offences* that the maximum penalty is usually limited to 50 penalty units.

In regards to information sharing, the purpose of this limitation is to ensure the safety, health and wellbeing of children and young people.

Each of the family violence reviews in 2016 and the Royal Commission noted above identified improving information sharing as a key to improving system collaboration and integration in order to keep victims of family violence and child sexual abuse safe.

A number of cases considered in the reviews highlighted that circumstances of extreme risk for children and young people could be more readily identified if there was improved information sharing between key organisations. Recommendations in both the Glanfield Inquiry and the Royal Commission call on the ACT Government to improve support to children through better information sharing arrangements. The amendments in this Bill recognise these findings and the need for improved exchange of information about vulnerable children and young people.

The Glanfield Inquiry heard that "it was not unusual for perpetrators of family violence to move their families around within jurisdictions or to a different state or territory. Families escaping family violence may move interstate to distance themselves from

perpetrators. Given this and the reality that a number of Australian states border two or more others it is important that there should be appropriate and consistent information sharing between one another.”

The nature and extent of the limitation

Proposed amendments as set out in 70A and 70B require teacher employers to notify the Institute of a notification event, give the power to the Institute to request further information about this event and require teacher employers to respond to this request.

Approved teachers are protected in that the Bill does not require teacher employers to notify of an allegation. It is only once an approved teacher has been informed by their employers that a formal investigation has been instigated, that the Institute must be informed.

A further safeguard to teachers’ privacy is contained in section 92 of the Teacher Quality Institute Act which makes it an offence for the Institute to use or divulge the information it has been provided for any other purpose than the purpose for which it was provided. The amendment will require employers with any information which could help the Institute make a decision about a teachers’ registration status, to provide such information. Information which may be required could be about:

- the teachers’ behaviour, practice or conduct in the context of the ‘approved code of practice’ which is approved by the Minister for Education under section 59 of the TQI Act. This is the most likely type of information which would be required; and
- information about the teachers’ compliance or otherwise with the conditions of teacher registration as detailed in section 38 of the TQI Act.

In relation to the strict liability offence, it is reasonable to expect that the employer knows, or ought to know, its legal obligations. While the inclusion of strict liability limits the range of defences that may be available, a number of defences remain open to the accused, depending on the particular facts of each case. Section 23 (1) (b) of the Criminal Code provides a specific defence to strict liability offences of mistake of fact.

The provisions relating to information sharing have been drafted to ensure that any interference with an individual’s privacy is not arbitrary and is limited as far as possible to achieve the outcome required.

The Bill provides that the consent of the child or young person or their parents or carers be sought where it is reasonable and practical to do so. If consent is given, there is no interference with the right to privacy. However, the Bill also provides that the Director-General may share information without consent where it is not reasonable or practical to gain consent, or where the Director-General believes that is in the best interests of the safety and wellbeing of the child or young person to do so. In making this decision, the Director-General must consider the objects and principles of the Act.

The limitation extends only so far as is necessary to ensure the safety, health and wellbeing of the child or young person.

Where the Director-General of Education shares or receives enrolment information with another jurisdiction, this information is limited to whether or not the child or young person in question is enrolled in education. No further information, such as the type of education or education course in which the child or young person is enrolled, the name of the school, or who enrolled the child or young person, will be disclosed. This limits the interference with the right to privacy while still meeting the purpose of the amendment.

The Director General is governed by information collection and sharing provisions of the *Public Sector Management Act 1994*. As a public authority, the Director-General and Education Directorate staff must act consistently with the Human Rights Act. The necessary protections are in place to ensure information that is collected and shared remains confidential.

The relationship between the limitation and its purpose

The purpose of the amendments are to enable the Institute to have access to information about a teacher's WWVP registration status, behaviour, practice and/or conduct which will assist the Institute to perform its statutory function relating to maintaining, suspending or cancelling a teacher's registration. This information could be sensitive information. Any decision to suspend or cancel a teacher's registration must demonstrate procedural fairness and be based on consideration of evidence of sufficient detail to support the decision.

The limitation on privacy relating to information sharing achieves the purpose of ensuring the health and wellbeing of children and young people.

The limitation also supports the right of children and young people to education. Sharing certain enrolment information between jurisdictions assists to keep the child or young person engaged with the education system, which can provide a protective factor against family violence and enhances outcomes for children and young people.

The overriding rationale for the strict liability offences is to provide an appropriate deterrent to non-compliance with regulatory measures which support protecting the safety and wellbeing of children and young people and ensure the quality of their education. A robust regulatory framework is important in deterring conduct that has the potential to bring harm to a range of people.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

The ACT Government has concluded that, in balancing the respective rights of children and young people to an education and to safety and wellbeing, these amendments do not unreasonably or unnecessarily limit the human rights of employers or teachers. This is because people and organisations responsible for

children's school education have a duty to ensure their quality education and their safety, welfare and wellbeing.

There is no less restrictive means of the Institute gaining the information needed to make fair decisions regarding a person's registration status. It is anticipated the proposed amendment will provide employers with clarity about their responsibilities to provide information to the Institute. The Institute believes that teacher employers would appreciate clearer guidelines about at what point and what information they must provide to the Institute. Requiring them to provide the information would clarify their obligations with regard to balancing the need to respect the personal privacy of teachers, with the need to safeguard the safety and wellbeing of children and young people and ensure the quality of their education. Under the ACT Human Rights Act, S11(2), 'Every child has a right to the protection needed by the child because of being a child without distinction or discrimination of any kind' and every child has a right to school education appropriate to his or her needs.

Consequently, there is a rational connection between the proposed amendments and the issues they aim to address.

The amendments represent a small and reasonable limitation on the right to privacy, which is greatly outweighed by the increased protections available to the rights of children to be protected from abuse and mistreatment.

An evidential onus, rather than a strict liability offence, would be less restrictive on the right to be presumed innocent until proven guilty. It would not, however, prove to be as effective in prosecuting the proposed offences. While the inclusion of strict liability limits the range of defences that may be available, a number of defences remain open to an accused, depending on the particular facts of each case. Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Subsection 23 (3) of the *Criminal Code* provides that other defences may also apply to strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the *Criminal Code*.

Regarding sharing of enrolment information, it is currently outside of the Education Directorate's powers and functions as an administrative unit to enter into formal information sharing arrangements with other jurisdictions through policy, protocols, memorandums of understanding or other alternatives. The amendments in this Bill will allow certain information to be shared with other jurisdictions.

ACT privacy legislation provides a framework in which information can generally only be shared with an individual's consent. There are specific provisions in Chapter 25 of the *Children and Young People Act 2008* (the CYP Act) which allow information relating to children or young people to be shared without consent.

There are mechanisms available to share information across jurisdictions, but these are not sufficient to respond to the circumstances covered by the Glanfield Inquiry. Certainly, if there is evidence of sexual or physical abuse of a child, an Education Directorate employee is required to make a child concern report (a mandatory report) under the CYP Act. This then could provide an avenue for sharing information

between jurisdictions in the event of the child moving interstate, as the CYP Act provides for information sharing in certain circumstances.

Options for sharing information where there is no evidence of sexual or physical abuse are more limited. The CYP Act provides that a person may make a child concern report (a voluntary report) if they believe that a child is being abused, neglected or at risk in these respects. This Bill allows for information to be shared between jurisdictions in cases where the threshold for a mandatory report is not reached nor is an exception to the privacy legislation invoked.

The National Scientific Council of the Developing Child defines neglect as “the absence of sufficient attention, responsiveness, and protection appropriate to the age and needs of a child”. Such neglect could include educational neglect, as when a parent or carer fails to ensure their child’s formal education needs are being met.

In the case where a parent withdraws their child from school in the ACT and does not re-enrol them, this element of the CYP Act could be triggered. In practice, however, it is difficult for a school to determine that a child has not been re-enrolled and is therefore at risk, particularly if they have been advised that the child has moved interstate.

As a result, the Bill allows for information to be shared between jurisdictions in cases where the threshold for a mandatory report is not reached nor is an exception to privacy legislation invoked. It is likely that this would mostly constitute cases where educational neglect is suspected. Research indicates that children who experience neglect also frequently experience abuse¹, and continued engagement with the education system can provide a protective factor against this, as well as facilitating improved support for the child or young person.

CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause provides that the name of the Act is the *Education (Child Safety in Schools) Legislation Amendment Act 2018*.

Clause 2 Commencement

This clause provides for the commencement of the Act on the day after the notification day, except for Part 2, which will commence on 1 April 2019, which is the commencement date for the 2019 teacher registration period.

Clause 3 Legislation Amended

¹ Fallon et al., 2015; Trocme et al., 2010 in Parkinson, Bromfield, McDougall and Salveron, 2017

This clause identifies the legislation amended by the Bill – the *ACT Teacher Quality Institute 2010* and the *Education Act 2004*.

PART 2 AMENDMENTS TO THE *TEACHER QUALITY INSTITUTE ACT 2010*

Clause 4 New section 38 (1)(c) and (d)

This clause inserts a requirement into s38 (1) that teachers must maintain a current Working with Vulnerable People (WWVP) registration to retain their teacher registration status. Teachers must inform the Institute in writing if their WWVP registration status lapses, is made subject to a condition, is suspended or cancelled, or is surrendered.

The previous legislation required teachers to have WWVP registration, at registration and at registration renewal. By not mentioning maintaining WWVP registration, there was a possible loophole, which if challenged, could have made it possible for a teacher to continue to teach when their WWVP registration had expired.

New section 63 (2) does not change or give a new power to the Institute. Rather it gives emphasis to the Institute's function '*to register, or grant permits to teach to, eligible people.*' Section 11(a) and the Institute's subsequent power to suspend or cancel an approved teacher's registration or permit to teach and to impose a condition of registration on an approved teacher's registration or permit to teach (s 63).

Clause 6 Section 67

Content from section 67 (a)(i) and 67 (b) has been moved to and refined in s 70B.

The former s 67 (a)(ii) remains the same in the Bill's s 67.1. Maintaining this clause is not intended to limit the right of an employee to reasonable adjustment as required to achieve equity under the *Discrimination Act 2001*.

The newly added s 67(b) places a responsibility on the employer to inform the institute in writing if a teacher's WWVP lapses, is made subject to a condition, is suspended or cancelled, or is surrendered. This is in addition to the individual teacher's responsibility outlined in s 38 (1) (d).

Clause 6 New Division 6.3

New section 70A (1) makes it clear that the Institute may ask employers of teachers in the ACT for information relating to an approved teacher which may be relevant to making a regulatory decision about that teacher's registration status. That is whether to cancel, suspend or place a condition upon registration or permit to teach. This clause gives the Institute the power to request information from a teacher employer about a notification made by the employer about an approved teacher.

New section 70A (2) makes it clear that teacher employers must, in certain circumstances, give to the Institute information about approved teachers which may

be relevant to making a decision about that teacher, That is, whether to cancel, suspend or place a condition upon registration or permit to teach.

During the lifetime of the TQI Act, in some investigations of approved teachers, employers' legal advice has been not to provide information to TQI, or to limit the information they provide. Under the proposed changed legislation, because the information is requested by TQI, who will have legislated power to make the request, and because not responding to the request is an offence, teacher employers' possible concerns about their ability to provide the information can be allayed. The information provided by the employer is protected from misuse by under s 92 of the current TQI Act, any information that is disclosed by the teacher employer can only be used by the Institute for the purposes of carrying out its functions relating to the administration of teacher registrations.

This amendment provides a legislative framework in which teacher employers are obliged to provide information as requested by the Institute, resolving possible concerns regarding breaches of privacy. Furthermore, under the TQI Act, any information that is disclosed by the teacher employer can only be used by the Institute for the purposes of carrying out its functions relating to the administration of teacher registrations.

This information enhances the Institute's ability to make evidence-based regulatory decisions, noting that the Institute can only suspend or cancel an approved teacher's registration if there are clear grounds for such action under section 63 of the TQI Act. This includes that the person has contravened a condition of their registration; or the person has become mentally or physically incapacitated and the incapacity prevents the person from performing an inherent requirement of their job as a teacher; and the Institute believes on reasonable grounds that suspension or cancellation is necessary for the Act.

New section 70B clarifies for employers of teachers in the ACT when they must notify the Institute about a teacher. The employer must notify the Institute within five working days if any one of the four instances listed below occurs in relation to an approved teacher. Notice must be given to the Institute by the teacher employer when:

- (a) the employer notifies an approved teacher of the decision to proceed with a formal investigation:
 - i. The definition of what a formal investigation is, and is not, is set out in s70;
 - ii. A formal investigation is not a preliminary inquiry into a matter by the employer to assess whether to conduct a formal investigation of the matter;
 - iii. A formal investigation includes an internal or external procedure of the employer, usually undertaken after a preliminary inquiry shows that a rigorous examination is warranted; and
 - iv. A formal investigation includes an investigation of a matter by an independent or external body engaged by the employer for the

investigation, usually undertaken after a preliminary inquiry shows that a rigorous examination is warranted.

The proposed amendments about employers' notification requirements differ from reports required from designated entities in the Reportable Conduct Scheme (RCS). The RCS requires reports at allegation and conviction stage. In contrast, amendments to the TQI Act propose that unless the teacher resigns during a preliminary factual inquiry, the Institute does not require a notification at the allegation point. An additional difference is that notification events in the Bill are wider in their scope than reportable conduct in the RCS. The RCS requires employers to report about reportable conduct in relation to children. Notification events in the Bill require employers to notify the Institute about matters under investigation relating to their employment conditions. As well as matters relating to children, other matters which could trigger notification are possible breaches of employment conditions relating to relationships with staff, parents and the community and standards of professional practice.

The Bill's notification requirements may overlap with or duplicate the RCS's reporting requirements and certainly complement them. In fact, due to the different agencies' responsibilities, teacher employers may be required to report to seven different agencies under eight pieces of legislation – the institute, the Ombudsman, the police, Access Canberra, Community Services Directorate, and the Education Directorate.

The TQI Act gives the Institute the responsibility for registering and granting permits to teach to eligible people and for ensuring that only suitable people remain registered and for applying codes of practice about the professional conduct of teachers. While matters which are required to be reported to other agencies may also be required to be notified to the Institute, the Institute requires this information to carry out its functions.

The exercise of reporting/notifying functions is to be informed by principles that encourage and enable designated entities to work collaboratively, respecting each other's functions and expertise, whilst communicating efficiently with each other in order to improve the provision of services.

- (b) the employer takes disciplinary action against an approved teacher under the terms of the teacher's employment;

Disciplinary action does not include such actions as a discussion with an approved teacher about how to improve performance, implementing a performance improvement plan or a verbal warning. It usually follows a formal investigation or full admission, and includes one or more of the following actions in relation to the approved teacher:

- i. a written warning;
- ii. a financial penalty or lowering of the approved teacher's classification level;

- iii. transferring the employee temporarily or permanently to another position at level or to a lower classification level;
 - iv. removal of any monetary benefit derived through an existing employment agreement; and
 - v. termination of employment.
- (c) the employer removes, cancels or ends the access of an approved teacher to casual employment;

Government and Catholic systems and Independent schools may have different procedures for giving and removing approved teachers' access to casual employment, for example, the government and catholic sectors remove access to casual employment at the system level. Independent schools, where the principal of each school is the employer, remove access to casual employment at each individual school. Whatever approach the employers take to engaging and terminating a casual teacher, under the changed legislation, the employer must notify the Institute if they remove an approved teacher's access to casual employment.

- (d) an approved teacher subject to a formal investigation, or preliminary factual enquiry by the employer, resigns.

Once an approved teacher has been informed that they are subject to an investigation, a notification event occurs. This is so even if the approved teacher resigns after they have received the information about the formal investigation. Similarly, a notification event occurs if an approved teacher resigns during a preliminary factual inquiry. Further, a notification event occurs, if after they are informed of the investigation, or during the investigation, the approved teacher does not resign, but rather discontinues all contact with their employer or place of employment. The investigation may cease in these cases, but the requirement for the employer to notify the Institute stands. While notification in response to resignation in preliminary inquiry phase or the formal investigation phase might not trigger regulatory action, there may be instances where further monitoring action should occur and further information sought.

The notification of the above events will enable the Institute to receive timely notifications from teacher employers so that the Institute can undertake its regulatory functions efficiently and effectively, and thereby maintain community confidence in the ACT teaching profession. The notification of the above events within five working days of the event occurring allows the Institute to assess whether and if so when they require further information, and what information is required. Having the information does not mean the Institute will suspend or cancel an approved teacher's registration. The evidence must be assessed, procedural fairness must be in play, and grounds for taking regulatory action must be met.

New section 70C allows the Institute to request further information from a teacher employer, regarding a notification event. Such information may be required to ensure

that the Institute has sufficient information to make an evidence-based decision regarding an approved teacher's registration.

The Clause under new section 70B is a strict liability offence. The omissions has been listed as an offence with a penalty up to a maximum of 50 points. There are a number of reasons for imposing a penalty:

- (a) not notifying the Institute of a notification event is regarded as seriously impeding the Institute's ability to perform its functions. Information about a matter that may impact on a teacher's registration is critical information for the Institute. The consequences of not notifying could provide the opportunity for a teacher who has breached a condition of their teacher registration, to remain registered. A worst case scenario is that a teacher who poses a risk to children, could remain in contact with children and harm a child.
- (b) Making failure to notify a notification event an offence clarifies for teacher employers their obligations, and even protects them, when there may be a question of whether they are able to provide to the Institute sometimes very personal information about a teacher.
- (c) Strict liability offences more typically arise in a regulatory context where for reasons such as consumer protection and public safety, the public interest in ensuring that regulatory schemes are complied with, requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

The Institute will, by written notification, inform teacher employers at least annually

- (a) that the employer of an approved teacher commits an offence if—
 - i) a notification event happens in relation to the approved teacher; and
 - ii) the employer does not, within 5 working days after the notification event happened, give written notice of the event to the institute.
- (b) that the employer is not criminally responsible for omitting to notify the Institute in circumstances where the employer was under a mistaken but reasonable belief about the facts.

In its regular on-going communication with employers such as meetings, phone calls and presentations, the Institute supports employers to understand their obligations under the TQI Act, particularly regarding notification events.

New section 70D gives assurance to teacher employers that they will not be held liable if they notify 'notification events' as described in the Act; and or they provide information requested by the Institute.

PART 3 AMENDMENTS TO THE *EDUCATION ACT 2004*

Clause 7 New section 86 (6)(h)

This clause inserts a new section 86 (6)(h), that requires non-government schools seeking provisional registration to comply with criteria outlined in regulation. This clause commences the implementation of the ACT Government's response to the Royal Commission's recommendations in relation to non-government schools. Placing the criteria in regulation allows for consultation and ongoing implementation, ensuring that the regulation is as consistent as possible with other ACT legislation, and places the minimum regulatory burden on non-government schools while achieving the government's policy objectives, particularly in relation to child safety.

Clause 8 New section 88 (6)(h)

This clause inserts a new section 88 (6)(h), that requires non-government schools seeking registration to comply with criteria outlined in regulation. This clause commences the implementation of the ACT Government's response to the Royal Commission's recommendations in relation to non-government schools. Placing the criteria in regulation allows for consultation and ongoing implementation, ensuring that the regulation is as consistent as possible with other ACT legislation, and places the minimum regulatory burden on non-government schools while achieving the government's policy objectives, particularly in relation to child safety.

Clause 9 New section 91 (1)(h)

This clause inserts a new section 91 (1)(h), that requires non-government schools to comply with requirements outlined in regulation as a condition of provisional registration or registration. This clause commences the implementation of the ACT Government's response to the Royal Commission's recommendations in relation to non-government schools. Placing the criteria in regulation allows for consultation and ongoing implementation, ensuring that the regulation is as consistent as possible with other ACT legislation, and places the minimum regulatory burden on non-government schools while achieving the government's policy objectives, particularly in relation to child safety.

Clause 10 Section 95 (1), note

This clause clarifies that not complying with the criteria or conditions detailed in regulation is grounds for the cancellation of provisional registration or registration.

Clause 11 New section 97 (6)(h)

This clause inserts a new section 97 (6)(h), that requires non-government schools seeking to renew their registration to comply with criteria outlined in regulation. This clause commences the implementation of the ACT Government's response to the Royal Commission's recommendations in relation to non-government schools. Placing the criteria in regulation allows for consultation and ongoing implementation, ensuring that the regulation is as consistent as possible with other ACT legislation,

and places the minimum regulatory burden on non-government schools while achieving the government's policy objectives, particularly in relation to child safety.

Clause 12 New Part 6.1A

New section 145B defines a young person for the purposes of this Part. The definition of young person is different to that in the *Children and Young People Act 2018*, as that Act does not include persons over 18 years of age, however, it is common for a person to be engaged with the education system in the ACT (that is covered by the Education Act) after having reached 18 years of age.

New section 145C

This section enables the Director-General of Education to provide limited information on the status of a child or young person's school enrolment in the ACT, if requested by the Director-General of Education (or equivalent) in another jurisdiction.

Information sharing provisions are critical to ensure that agencies in the ACT are able to make disclosures about individuals where appropriate, particularly where there may be a threat to the life, health and safety of a person, or to public safety. It is important to note, however, that a threat may not become apparent until after the information has been shared.

In response, this section allows for the Director-General to advise the corresponding officer of another jurisdiction of the child's education status on a limited basis – that the child is enrolled; that the child is not enrolled; that the status cannot be confirmed; or that the child is exempt. The purpose of providing this information is to locate an at-risk child or young person in the education system, or to assist the requesting jurisdiction to make decisions about further inquiries regarding the child or young person. Other information, such as the type of education or education course in which the child is enrolled, the name of the school, and who enrolled the child, is not disclosed.

The section provides that the Director-General must have the consent of the parent or carer of the child before any information is given to another jurisdiction, except in cases that fall within new section 145E.

In this section, a corresponding officer refers to, for example:

- a) The Secretary of the New South Wales Department of Education;
- b) The Chief Executive of the Northern Territory Department of Education;
- c) The Director-General of the Queensland Department of Education;
- d) The Chief Executive of the South Australian Department of Education;
- e) The Secretary of the Tasmanian Department of Education;
- f) The Secretary of the Victorian Department of Education;
- g) The Director-General of the Western Australian Department of Education;
- h) Or their legislated delegate.

New Section 145D allows the Director-General to request enrolment information from another jurisdiction. This amendment will not in itself result in other jurisdictions

sharing information about children living in their jurisdiction with the ACT Education Directorate, but facilitates such sharing in future should other jurisdictions' legislation allow it. Such a request is subject to the consent of a parent or the child or young person in question, except in cases that fall under new section 145C.

New section 145E allows the Director-General to share information in certain circumstances, without the consent of a parent or the child or young person to whom the information relates.

This can only be done if the Director-General is satisfied, on reasonable grounds, that it is not reasonable or practical to seek the consent. The circumstances in which this may occur include consideration of the matters listed in sub-section (3), that are intended to protect the child or young person from harm or increased risk of harm, or to ensure that the child or young person in question can give informed consent.

If enrolment information is shared by the Director-General without consent, the persons from whom consent would have been sought must be informed that the information was requested and if it was given. However, where it is not in the best interests of the child to do so, for example if it would increase the risk of harm to the child or young person, the information is not required to be given.

This clause balances the right of individuals to privacy with the safety of children and young people, requiring serious consideration of the costs and benefits of sharing enrolment information without the consent of the people to whom it relates.

Clause 13 Dictionary

This clause places the reference to the definition of child or young person in new section 145B in the Dictionary to the Act.

PART 4 AMENDMENTS TO THE *EDUCATION REGULATION 2005*

Clause 14 New sections 5A, 5B and 5C

These amendments provide for non-government schools to work through their sector representatives to implement the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. This ensures that non-government schools are represented in the development of any regulations or requirements that are necessary to implement the recommendations and allows for sustained engagement and participation by the non-Government sector over the longer term.