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

EDUCATION AMENDMENT BILL 2022

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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EDUCATION AMENDMENT BILL 2022

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

This explanatory statement relates to the *Education Amendment Bill 2022* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The statement is to be read in conjunction with the Bill, it is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

This explanatory statement provides information about why a Bill is proposed together with an explanation about the proposed legislative amendments.

The proposed legislative amendments are regulated by the *Education Act 2004* (the Act) and the *Education Regulation 2005* (the Regulations). Consultation occurred throughout the development of the Bill and allowed for the detailed provisions and operation of the various amendments to be informed by feedback from key stakeholders.

In August 2018, the ACT Government released the *Future of Education: An ACT Education Strategy for the next ten years* (the Strategy). Through the Strategy, one of the first actions under the foundation of ‘*systems supporting learning*’, was to review and amend the Act to strengthen equity, student agency, access and inclusion.

A phased approach is being applied to the process of revising the Act. The first phase of amendments was passed by the Legislative Assembly in February 2019, through the *Child Safety in Schools Amendment Bill 2018*. The second phase of amendments was passed in August 2020 through the *Education Amendment Bill 2020*.

The third phase of amendments forms the *Education Amendment Bill 2022* (the Bill). This Bill revises the registration and registration review requirements for non-government schools, and clarifies the definitions of suspensions, transfers, expulsions, and exclusions, as well as reporting requirements for all schooling sectors.

All amendments included in the Bill have been developed through extensive research, particularly into other states' and territories' approaches to suspensions, transfers, expulsions and exclusions and the different regulatory models and registration criteria for non-government schools. All the amendments have also been developed in consultation with both non-government and government stakeholders.

The amendments to the Act and the *Education Regulation 2005* (the Regulation) are arranged under five core areas:

1. strengthening the reporting of unenrolments, terminations of contract, transfers, expulsions and exclusions, by all schooling sectors;
2. clarifying and updating the processes for suspension, transfer, expulsion and exclusion for all schooling sectors;
3. clarifying the role of non-government school principals and proprietors, and their obligations to meet legislative and compliance requirements;
4. streamlining the non-government school registration process and requirements, including a shift from five-year registration to ongoing registration with risk-based review processes; and
5. amending the powers of the Registrar to review and support compliance with the Act in non-government schools, in consultation with a Registration Standards Advisory Board.

Student Movement Register

Since the Coronial *Inquest into the death of Bradyn Stuart Dillon*, there has been a focus on the need to monitor the movement of students between schools, to ensure students stay connected with the education system. Oversight of student movement will also allow for the identification of known signs of risk and vulnerability, such as multiple movements between schools within a short period of time.

The Student Transfer Register, as it is currently articulated in the Act, records the transfer of students between schools in the ACT. The Director of Catholic system schools or the principal of an independent school must also notify the registrar if a child is excluded under the current definitions of exclusions. However, there is no time period specified for this reporting and some schools only provide updates once a term, which when there is potential of risk to a vulnerable student, is not adequate.

The reporting requirements relating to student movement are also limited and do not capture instances in which a student is unenrolled by the parent or where a non-government school terminates the contract with a parent for the provision of education.

The Bill proposes amendments to require the reporting of transfers, the newly created category of expulsion, exclusions, unenrolments and contract terminations within 5 days of occurrence, through the Directorate's Student Movement Register.

This is a significant expansion of reporting requirements which will provide the Education Directorate with increased timely oversight of student movement, which will in turn allow for the identification of known signs of risk and vulnerability.

Section 10AA now articulates that the Director-General must keep a register of these changes and the principal of a school must record information prescribed in the *Education Regulation 2005* (the Regulation) within 5 days after the event happens.

Section 10AB also outlines that the Director-General must establish procedures for recording information in the student movement register and tell principals of schools in the ACT about the procedures. It also outlines that a principal of a school who is recording information in the student movement register under section 10AA must comply with the procedures established under subsection 10AB.

In the *Education Regulation 2005*, section 2AA outlines the information prescribed for the Student Movement Register outlined in section 10AA of the Act. Information required by the receiving school includes the name of the school and the student, the day of enrolment, where a student has moved from and the name and contact details of the parents. For the school which the student is leaving, they are required to provide the name of the school and the student, the day the enrolment ended and the reason the enrolment ended. If known, they are also asked to provide the proposed education provider or home education the student proposes to move to, or if the student does not propose to transfer to another education provider or home education—the proposed arrangements for the student’s education after the enrolment ends. This is alongside the name and contact details of the student’s parents.

The same requirements are provided to students who intend to move from a school and become registered for home education or for those who are registered for home education and intend to enrol at a school.

Oversight and monitoring of the Student Movement Register will be the responsibility of the Education Directorate, including following up on students who have not re-enrolled at a new school or education provider, or registered for home education. This is a critical and significant expansion of the Directorate’s role to ensure all children and young people in the ACT are connected with education, and the protective factors that education brings.

Suspension, transfer, expulsion, and exclusion for all schooling sectors

Reports such as the *Interim Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* have identified that nationally there are reports of disproportionate use of suspensions and expulsions for students with disability and there is “misuse of disciplinary measures, including suspensions and exclusions, in response to behaviours of concern, which can occur where school

staff struggle to understand the nature and manifestations of the student's disability"¹.

The *Report of the Expert Panel on Students with Complex Needs and Challenging Behaviours* noted that "the use of suspension is generally not a long-term solution for students with complex needs and challenging behaviours and may increase risks of disengagement and other difficulties"².

Therefore, the sections in the *Education Act 2004* relating to suspensions, transfers, expulsions and exclusions were identified as needing reform to provide clarity for when and why they can be used and to also provide safeguards for students, including students with disability.

Changes to suspensions, transfers, exclusions, and expulsions for all schooling sectors have also been prompted by recommendations from the ACT Civil and Administrative Tribunal (ACAT).

In December 2020, ACAT handed down a decision relating to the suspension of a student at a government school in the ACT and whether the events enlivened the discretion to suspend (*APPLICANT 201987 v DIRECTOR-GENERAL, EDUCATION DIRECTORATE (Administrative Review) [2020] ACAT 12*). As part of their finding, ACAT noted that the Act's "overarching principle is the right of every child to a high-quality education. With that in mind and taking all the circumstances of this matter into account, we have concluded that the correct or preferable decision was not to exercise the discretion to suspend the applicant's child, but rather to pursue one of the alternatives identified above"³.

In the current Act, the section relating to suspension is currently combined with exclusions and transfers in one section. This applies to government, Catholic system and independent schools (sections 36, 104 and 105 respectively). The amalgamation of three different concepts within the one section has caused significant confusion for schools, parents and students. The meaning of suspension has also not been previously defined in the legislation.

Amendments made through the Bill have separated out these concepts into discrete sections, with the meaning of unsafe or noncompliant behaviour (which is the rationale for enacting a suspension, transfer, expulsion or exclusion) (section 17B); the requirement to exhaust all reasonable alternatives before making a decision (section 17D); and the requirements for communicating with parents and students (section 17E) consistent across all four sections.

The proposed amendments to suspension, transfer, expulsion and exclusion will provide clear parameters in which these actions can be taken, as well as balance the

¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People Interim Report (2020:23).

² Report of the Expert Panel on Students with Complex Needs and Challenging Behaviours (2015:18).

³ *APPLICANT 201987 v DIRECTOR-GENERAL, EDUCATION DIRECTORATE (Administrative Review) [2020] ACAT 12* (2020:57).

right of the child to an education alongside the safety and wellbeing of the student, other students and staff at the school.

Suspension

Suspensions should only be used for the purpose of ensuring a safe and effective learning environment at the school, therefore provisions have been included that require the school to exhaust all reasonable alternatives to suspending the student. Clarity for all schools as to the reasons why a suspension can be enacted aims to prevent the misuse of suspensions in ACT schools and will result in consistency in practice for schools across both government and non-government sectors.

Should a student be suspended, to be compliant with the s27A of the *Human Rights Act 2004* (the HR Act), the amendments aim to clarify that schools are required to support the student to continue their education during the suspension; and for students with disability or complex care needs, to make any reasonable adjustments the principal considers would support the student to return to school safely.

Part 2A.2 (sections 17G – 17O) outlines the requirements and process for enacting a suspension. Section 17G outlines that the use of a suspension is only for the purpose of ensuring a safe and effective learning environment at the school. Section 17H provides the criteria to be satisfied before suspending a student and section 17I refers to the notice required to be given.

Section 17J limits the length of a suspension to no more than 20 days and prevents the ability to enact concurrent suspensions. Section 17K outlines the process for enacting a suspension in a government or Catholic system school, with the information requirements a principal must provide to the decision-maker if the decision-making power is not delegated, in order for a decision to be made. For government schools, the decision-maker is the Director-General of the Education Directorate and for Catholic system schools it is the Director of Catholic Education. Section 17L outlines how students and parents should be involved in the process, including outlining how they can take part in the decision-making process and have their views heard.

Section 17M outlines that if a student is suspended, they must be given the materials and support needed to continue their education during the period of suspension. This is to ensure that a suspension is consistent with Section 27(1) of the *Human Rights Act 2004* and outlines that if a student is suspended for a total of 7 or more school days in a school term (consecutively or otherwise), the principal of the school must ensure the student is given a reasonable opportunity to attend counselling.

Section 17N provides for any reasonable adjustments to be put in place that would support the student to return to school safely. Section 17O provides that for government and Catholic system schools, the decision-maker for a government

school or Catholic system school may delegate the decision-maker's power under section 17H to suspend a student at a school to the principal of the school.

Transfer (government schools only)

Section 27(1) *Right to education* of the *Human Rights Act 2004* states, "every child has the right to have access to free, school education appropriate to his or her needs."

As a human rights jurisdiction, the ACT has an obligation to provide free school education to every child in a government school and when a student's enrolment at a particular government school is no longer in the best interests of the student, another student or a member of staff at the school, the student can be transferred to another government school.

For many students, a transfer to a new government school provides them with a fresh start to engage in education and with their peers and educators.

Part 2A.3 (sections 17P – 17T) outlines the requirements and process for enacting a transfer between government schools. It outlines that a transfer can be considered if the student has engaged in unsafe or noncompliant behaviour; the school at which the student is enrolled has exhausted all reasonable alternatives to transferring the student, it is not in the best interests of the student, another student or a member of staff for the student to remain enrolled at any government school and it is reasonable, proportionate and justifiable to transfer the student considering all the circumstances, including any views of the student and their parents about the proposed transfer (section 17P).

The proposed amendments also outline the notice required to be given (section 17Q) and the information requirements a principal must provide to the decision-maker, for a decision to be made (section 17R). How students and parents should be involved in the process, including how the student and their parents may take part in the process and have their views heard is outlined at section 17S and the requirement to make available access to counselling for the student is at section 17T.

Expulsion (Catholic system and independent schools)

The current definition of 'exclusion' in the Act has different meanings for different sectors. For government and Catholic system schools, it means preventing the student from continuing to be enrolled or being re-enrolled at any school within the government system or any school within the Catholic system. Whereas for an independent school it means preventing the student from continuing to be enrolled or being re-enrolled at a particular independent school.

This inconsistency causes significant confusion and to address this, a new category of 'expulsion' has been created.

For Catholic system schools, 'expulsion' means preventing the student from continuing to be enrolled or being re-enrolled at a particular Catholic school. For independent schools, it means preventing the student from continuing to be enrolled or being re-enrolled at a particular independent school.

Amendments through Part 2A.4 (sections 17U - 17Y) have been made to clarify the provisions for expulsion from a Catholic system school or independent school with the requirements and process for enacting an expulsion outlined in the legislation.

Section 17U outlines that expulsion from a Catholic system school or independent school can only be enacted if the student has engaged in unsafe or noncompliant behaviour; the school at which the student is enrolled has exhausted all reasonable alternatives to expelling the student; it is not in the best interests of the student, another student or a member of staff for the student to remain enrolled at the particular Catholic system school or independent school; and it is reasonable, proportionate and justifiable to expel the student considering all the circumstances, including any views of the student and their parents about the proposed expulsion.

Section 17V outlines the notice required to be given and for Catholic system schools the information requirements a principal must provide to the decision-maker, for a decision to be made is provided at section 17W. Section 17X outlines how students and parents should be involved in the process and the requirements to make available access to counselling for the student is at section 17Y.

Exclusion (government and Catholic system schools only)

As aforementioned, the current definition in the Act of 'exclusion' has a different meaning for a system of schools, in comparison to the meaning for an independent school. Therefore, clarity has been given to refer to an 'exclusion' as to exclude a student from enrolling at any school in a particular system (e.g., exclusion from all government schools or all Catholic system schools).

Government schools

As previously noted, 27(1) of the *Human Rights Act 2004* states, "every child has the right to have access to free, school education appropriate to his or her needs."

As a human rights jurisdiction, the ACT has an obligation to provide free school education to every child in a government school. Therefore, exclusion from a government school is only possible for a child who is not of compulsory education age. Amendments have been made to clarify these are the only circumstances in which exclusion from the government system of schools can occur.

The Education Directorate's *Suspension, Exclusion and Transfer of Students in ACT Public Schools Policy* outlines that exclusion from all government school "will only be

used in exceptional circumstances when a student's presence in any public school would create an extreme risk to the safety and welfare of staff and students"⁴.

Division 2A.5.1 (sections 17Z – 17ZE) outlines that exclusion from all government schools can only be enacted if the student is not of compulsory education age (section 17Z) and has engaged in unsafe or noncompliant behaviour; the school at which the student is enrolled has exhausted all reasonable alternatives to excluding the student, it is not in the best interests of the student, another student or a member of staff for the student to remain enrolled at any government school and it is reasonable, proportionate and justifiable to exclude the student considering all the circumstances, including any views of the student and their parents about the proposed exclusion (section 17ZA).

The proposed amendments also outline the notice required to be given (section 17ZB) and the information requirements a principal must provide to the decision-maker, for a decision to be made (section 17ZC). Consideration must also be given to the student's history across the whole school system when deciding to exclude a student from the system.

How students and parents should be involved in the process is outlined at section 17ZD and the requirements to make available access to counselling for the student is outlined at section 17ZE.

For exclusion from all government schools, a requirement has also been added for the principal of the school to give the student information about options to continue their education after the exclusion, such as enrolment at a non-government school, distance education provided by another jurisdiction or enrolment at a vocational education training organisation section 17ZE.

Catholic system schools

Attendance at a Catholic system school is based upon a contractual arrangement between the parent and the school, which means Catholic system schools do not have the same obligation to provide education to a child as government schools.

As a result, amendments through Division 2A.5.2 (sections 17ZF – 17ZJ) have been made to clarify the provisions for exclusion from all Catholic system schools, with the requirements and process for enacting an exclusion outlined in the legislation.

Exclusion from all Catholic system schools can only be enacted if the student has engaged in unsafe or noncompliant behaviour; the school at which the student is enrolled has exhausted all reasonable alternatives to excluding the student, it is not in the best interests of the student, another student or a member of staff for the student to remain enrolled at any Catholic system school and it is reasonable, proportionate and justifiable to exclude the student considering all the

⁴ Suspension, Exclusion and Transfer of Students in ACT Public Schools Policy, Clause 2.9.

circumstances, including any views of the student and their parents about the proposed exclusion (section 17ZF).

The proposed amendments also outline the notice required to be given (section 17ZG) and the information requirements a principal must provide to the decision-maker, for a decision to be made (section 17ZH). Consideration must also be given to the student's history across the whole school system when deciding to exclude a student from the system.

Section 17ZI outlines how students and parents should be involved in the process and section 17ZJ articulates the requirement to make available access to counselling for the student, following an exclusion.

Non-government school registration, review and compliance

Registration is required before a non-government school in the ACT can operate as a school. Currently, to be fully registered a school must go through a three-step process that consists of in-principle approval, provisional registration and registration.

Registration of a non-government school is currently for a period of five years and to obtain either provisional registration or registration, schools must meet certain conditions. At the end of the five-year period, a school must apply for re-registration and be assessed against the conditions for registration by a panel, with recommendation on whether a school should have their registration renewed provided to the Minister.

The majority of non-government schools already consistently deliver high quality educational services and are compliant with their legislative requirements. Requirements for these schools to obtain registration renewal every five years can provide an administrative burden for non-government schools and detract their focus from their core business — educating children and young people.

In addition to the need to streamline processes for non-government school registration, the Education Directorate's need to respond to recommendations from the ACT Human Rights Commission has also partly shaped the focus of the non-government schools' section of Bill. The Human Rights Commission's *Final report to a complaint brought to the ACT Human Rights Commission regarding the provision of a service for a child or young person by Brindabella Christian College* (the HRC Report) made two recommendations for the Directorate.

The report by the Human Rights Commission, alongside provisions identified for update has resulted in a complete review of the non-government schools' registration, review and compliance processes.

The review has enabled the Education Directorate to meet the recommendations of the report from the Human Rights Commission, reduce red tape, streamline processes and also acknowledge that the majority of non-government schools already consistently deliver high quality educational services. This will enable the Education Directorate to focus compliance efforts on those schools that require additional support and oversight.

Introduction of Non-government School Registration Standards

To meet Recommendation 4 of the HRC Report, the Education Directorate has collaborated with the Association of Independent Schools (AIS) and Catholic Education for the Archdiocese of Canberra and Goulburn (CECG) to develop a comprehensive set of Non-government School Registration Standards (the Registration Standards) which will provide greater clarity on the obligations and compliance requirements for non-government school principals and proprietors.

Division 4.3.1 (sections 84 – 85) outlines the Registration Standards which will replace the existing registration conditions currently in the Act and the detail will be contained within the Regulations, allowing them to be updated as required. Section 84 outlines the four key areas of the Registration Standards:

- a) governance
- b) educational courses and educational programs
- c) safety and welfare
- d) other requirements for operation.

Section 85, outlines that the registrar may make guidelines about how a registered school may comply with the registration standards (the registration standards guidelines) in consultation with the non-government sector and the Registration Standards Advisory Board.

The Registration Standards are set out in detail in Schedule 2 of the Regulations. Part 2.1 outlines the Registration Standards related to governance, including that the proprietor of a registered school must be a corporation (2.1), the proprietor of a registered school must be registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth) (2.2); the proprietor of a registered school must ensure the governance structure of the school enables the school to fulfill its legal obligations, be financially viable and operate safely (2.3) and the governance responsibilities of the governing body of a registered school must be separate from the day-to-day control and management responsibilities of the principal of the school.

Requirements for financial viability is outlined at 2.4 and the requirements for policies and procedures is detailed at 2.5. Standard 2.6 details the reporting requirements to make an annual statement of compliance with the Registration Standards, and 2.7 outlines the requirements to ensure continuous improvement in the operation of the school.

Standard 2.8 details the requirements for non-government school enrolment policies, procedures and contracts, including the requirement to have clear enrolment policies and to apply natural justice and procedural fairness when making decisions to end an enrolment. Standard 2.9 also outlines the requirements for complaints policies and procedures.

Part 2.2 outlines the Registration Standards related to educational programs and educational courses. Standard 2.10 outlines the curriculum requirements for non-government schools, Standard 2.11 requires that information about a school's educational programs must be available to students, parents and staff and Standard 2.12 details the requirements for monitoring and reporting a student's educational performance. Standard 2.13 outlines the requirement to set learning outcomes for all students at the schools and have processes in place to support students to achieve their learning outcomes.

Part 2.3 outlines the Registration Standards related to safety and welfare. Standard 2.14 details the requirements for protection from harm for students, members of staff at the school and other people in the school's operation. Standard 2.15 details that schools must comply with the National Principles for Child Safe Organisations.

Standard 2.16 requires schools to have procedures in place to encourage attendance and Standard 2.17 outlines that the proprietor of a registered school must ensure that the school has procedures in place to ensure the principal of the school complies with procedures established by the director-general of the Education Directorate in relation to the Student Movement Register.

Standard 2.18 details that the proprietor of a registered school must ensure that the school has behaviour management policy and procedures.

Part 2.4 outlines the Registration Standards related to other operational requirements. Standard 2.19 outlines the requirements for compliance with territory and Commonwealth laws and Standard 2.20 details the suitability requirements of key individuals for the proprietor.

Standard 2.20 states that each person employed to teach at the school is an approved teacher under the *ACT Teacher Quality Institute Act 2010* and Standard 2.22 requires that each person carrying out a regulated activity for the school complies with the requirements of the *Working with Vulnerable People (Background Checking) Act 2011*.

Standard 2.23 requires the school's buildings, facilities and grounds comply with all territory and Commonwealth laws that apply to the buildings, facilities or grounds, including laws about planning, sustainability, building and work health and safety.

Standard 2.23 outlines that the proprietor of a registered school must ensure that the school's educational facilities are sufficient to enable the school to effectively provide

the educational program offered by the school and suitable for the ages of the students attending the school.

Standard 2.25 outlines that schools providing residential boarding services must comply with AS 5725:2015 (Boarding Standard for Australian schools and residences) as in force from time to time and Standard 2.26 requires a registered school to have an emergency management plan and in developing the emergency management plan, the school has regard to AS 3745-2010 (Planning for emergencies in facilities) as in force from time to time.

Establishment of a Registration Standards Advisory Board

To oversee these new Registration Standards and processes to ensure compliance, the amendments propose to reorganise the oversight mechanisms for non-government schools.

Registration for non-government schools is currently administered by a Registrar of Non-Government Schools (the Registrar), who is appointed by the Minister.

To support the introduction of Registration Standards, it is proposed to create a Registration Standards Advisory Board (the Board), with the day-to-day administrative functions remaining with the Education Directorate, through the Registrar. Division 4.2.2 (sections 75 – 83) outlines the provisions relating to the Board.

Section 75 provides for the establishment of the Board, with section 76 detailing the Board's functions and section 77 outlining that the Minister may, at any time, direct the registration standards advisory board to provide advice to the Minister about a matter relating to the registration standards.

Section 78 outlines the membership of the Board, all of whom are ministerially appointed. The Board comprises representatives of the Education Directorate, Catholic Education, Archdiocese of Canberra and Goulburn and the Association of Independent Schools of the ACT, alongside an independent Chair and members appointed by the Minister with appropriate expertise. The Minister may appoint a member only if satisfied that the person has qualifications, expertise and experience relevant to the functions of the board and they are registered under the *Working with Vulnerable People (Background Checking) Act 2011* to engage in regulated activities involving children. Consultation is required with particular entities prior to appointment and persons who are not eligible are outlined under subsection 3(b).

The term of appointment is for not longer than 3 years as outlined in section 79 and the reasons for which the Minister may end an appointment is at section 80. Section 81 outlines that the Director-General of the Education Directorate must provide administrative support and facilities for the Board and the conduct of meetings is

outlined at section 82. Section 83 details the requirements for the disclosure of interests by members of the Board.

Registration of non-government schools

The Bill makes amendments to the Act to streamline the non-government school registration process and remove the requirement for provisional registration.

Division 4.3.2 outlines the provisions relating to in principle registration. Section 86 outlines the requirements for the application and section 87 enables the request for further information to support the application. Section 88 details the requirements for a decision to be made on an application.

Division 4.3.3 sets out provisions relating to the registration of a school. Section 89 outlines the requirements for the application for registration and section 90 enables the request for further information to support the application. Section 91 requires the application to be referred to the registration standards advisory board for their consideration and assessment and section 92 details the requirements for a decision to be made on an application. Section 93 outlines the conditions of a non-government school's registration.

To acknowledge that the majority of non-government schools already consistently deliver high quality educational services and are compliant with their legislative requirements and reduce the administrative burden for non-government schools, it is proposed to move away from five-year registration, instead enabling ongoing registration with risk-based review cycles that consider compliance with the Registration Standards. Section 94 states that registration of a school continues until the registration is cancelled or surrendered. Section 95 outlines the requirements for the Registrar to enter the school into the register of non-government schools and give the proprietor a registration certificate.

Division 4.3.4 outlines how to amend the registration of a non-government school, either through a notifiable or registerable change. Section 96 outlines the changes which require notification to the Registrar and the information required. These include stopping operating at a registered campus, stopping providing a level of education at a registered campus and stopping providing residential boarding services at a registered campus. They also include restarting operating at a registered campus, restarting providing a level of education at a registered campus and restarting providing residential boarding services at a registered campus within 2 years after they had previously been provided.

Section 97 outlines the changes which require registration approval and the information required. These changes include starting to operate at a new campus, starting to provide a new level of education at a registered campus and starting to provide residential boarding services at a registered campus. Section 98 outlines the information requirements for an application for registration amendment, section 99

enables the request for further information to support the application, section 100 requires the application to be referred to the registration standards advisory board for their consideration and assessment and section 101 details the requirements for a decision to be made on an application. Section 102 also outlines that as part of the amendment to their registration, the Minister may impose or amend a condition of a non-government school's registration, if considered appropriate.

Section 103 provides for where there is an urgent temporary change to the operation of the school made in response to a natural disaster or other unforeseeable emergency. In this case, the proprietor must notify the Registrar within 5 days, keep the Registrar informed about progress returning to the arrangements for which the school is registered and tell the Registrar when the arrangements for which the school is registered have been restored.

Division 4.3.5 continues the registration offences currently in the Act under section 82 updating them in line with the proposed amendments. Section 104 outlines that it is an offence to operate an unregistered non-government school and section 105 states that it is an offence to operate a registered school other than within the scope of the school's registration.

Division 4.3.6 details the requirements of the Register for Non-government Schools, including the requirement to keep a register and the information that must be included for each registered school. Information includes the name of the school, the proprietor, details of the principal and the chair of the governing body as well as particulars relating to the location and levels of education provided at the school and whether residential boarding services are provided at the campus.

Review of non-government schools

To accompany ongoing registration, the Bill provides for regular reviews of non-government schools. Before the end of each calendar year, the Registrar, in consultation with the Board, will prepare a program for registration reviews of registered schools that the Registrar intends to conduct in the next calendar year. The program for the reviews will outline the registered schools to be reviewed during the year and the areas of focus for registration reviews. A review can also be conducted after a concern is raised about a school's non-compliance with the Act.

Part 4.4 outlines the registration reviews of non-government schools. Division 4.4.1 details the reasons for which a registration review can be carried out. Section 108 outlines the meaning of a registration review; section 109 outlines the requirements for annual registration reviews; and section 110 outlines how a registration review may be conducted after a concern is raised.

Division 4.4.2 details the reasons to not carry out a registration review, such as when the concern raised is frivolous, vexatious or was not made honestly, lacks substance, cannot be made under the Act or is not appropriate for the Registrar to

consider (section 111). Section 112 outlines that a person may withdraw a concern and section 113 outlines the reasons for which a concern must be referred to school. Section 114 outlines when a concerned may be referred to another entity.

Division 4.4.3 relates to carrying out a registration review. Section 115 outlines the registration review procedure and section 116 outlines that the registrar must develop guidelines about registration reviews in consultation with the Registration Standards Advisory Board and non-government schooling sectors. Section 117 outlines the requirement for the proprietor to participate constructively in the registration review, section 118 enables further information to be requested and section 119 outlines the actions that may be taken on completing a registration review.

Compliance with the Act and regulatory action

Division 4.4.4 details the requirements should a school be non-compliant with the Act and Division 4.4.5 outlines regulatory action that can be taken. It is acknowledged that the majority of non-government schools already consistently deliver high quality educational services and are compliant with their legislative requirements, therefore it is anticipated these provisions would rarely be used, however at present, the only power available in the Act in instances of non-compliance is for the Minister to cancel a non-government school's registration.

Cancellation of a school's registration for a low-level instance of non-compliance is disproportionate and therefore, in consultation with the AIS and CECG, a range of regulatory actions has been developed. These changes aim to introduce proportionate actions with the intent of supporting schools to meet compliance requirements.

The amendments would, in instances of low to medium risk non-compliance, enable the Registrar, following advice from the Registration Standards Advisory Board, to issue the proprietor of a non-government school with a compliance direction. Should the non-compliance be medium to high risk, following advice from the Registration Standards Advisory Board, the amendments enable the Minister to take regulatory action such as impose or amend a registration condition for the school; cancelling the school's registration; or cancelling the school's registration and disqualifying the proprietor of the school from applying for a further registration.

These powers would not be required to progress in sequence, as cases of non-compliance which are medium or high risk may require immediate firm action. The Minister's power to cancel a non-government school's registration would remain but would be subject to advice from the Registration Standards Advisory Board.

Section 121 explains the meaning of regulatory action under this chapter and 122 outlines the grounds for taking regulatory action in relation to non-compliance with the Act. Section 123 outlines that if the Registrar believes on reasonable ground that

regulatory action may be taken, it must refer the matter to the Registration Standards Advisory Board for initial consideration.

Section 124 details the requirements for notification of proposed regulatory action including the issue of a show cause notice that enables the proprietor to provide a written submission. Section 125 outlines the requirement to refer the proposed regulatory action, the show cause notice and any written submissions from the proprietor to the Registration Standards Advisory Board for their further consideration and assessment.

Should the Minister be satisfied on reasonable grounds that it is appropriate to take the regulatory action, following the advice of the Registration Standards Advisory Board, the details of taking regulatory action are at section 125A. Should the proposed regulatory action be cancellation of a school's registration, section 125B outlines when this takes effect and section 125C provides the ability for the Minister not to take regulatory action.

Part 4.5 relates to approved educational courses and registers of enrolments and attendances at non-government schools. Amendments to these sections are consequential amendments as a result of the updates to the chapter and provisions relating to registration of non-government schools. Section 125D has been moved from section 81 of the current Act. Section 125E through 125J were formerly at sections 99 to 102 of the current Act. Where required, these sections have been reworded to provide clarity however the intent has not been changed.

Authorised people (non-government)

The day-to-day administrative functions of the non-government registration and review process sits with the Registrar of non-government schools. To support the Registrar in administering the provisions, authorised persons (non-government) may be appointed.

Part 4.6 relates to authorised persons (non-government) with section 125L outlining the meaning of an authorised person, who is a person appointed under section 125M or the Registrar. Section 125M also outlines the requirements for appointment as an authorised person (non-government), including that the person is a public servant, an Australian citizen or a permanent resident, registered under the *Working with Vulnerable People (Background Checking) Act 2011* and the registrar is satisfied that the person is a suitable person to be appointed, having regard in particular to criminal convictions, the person's employment record and the person has satisfactorily completed adequate training to exercise the powers of an authorised person (non-government).

Section 125N outlines the functions of authorised people (non-government) and that they must only exercise a function under this part for the purpose of assisting the registrar in the exercise of the registrar's functions under part 4.4 (Non-government

schools—registration reviews). Section 125O details the requirement for identity cards and section 125P states that an authorised person (non-government) must show an identity card on exercising the power of entry.

Division 4.6.3 outlines the powers for an authorised person (non-government). Section 125Q details the powers of entry to premises, section 125R outlines the requirement of the production of an identity card and the requirement to ask for consent to entry is detailed at section 125S.

The general powers of an authorised person (non-government) are stated at section 125T, which include the power to examine, copy and take extracts of documents and require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else (whether the information, document or other thing is at the premises or elsewhere) that the occupier or person at the premises has, or has access to, that are reasonably necessary to exercise a function under the Act.

Section 125U outlines the power to obtain information and section 125V details abrogation of privilege against self-incrimination. Section 125U also states that a warning must be given to a person when requesting documents or information.

CONSULTATION ON THE PROPOSED APPROACH

Key partners and stakeholders have been engaged throughout the development of this Bill from within the Education Directorate, across the government and the non-government school sectors, the ACT Human Rights Commission, education unions and representative bodies.

External stakeholders

The Directorate has engaged with the Association of Independent Schools (AIS) and Catholic Education, Canberra and Goulburn (CECG) throughout all stages of the development of the Bill. These stakeholders have taken part in several collaborative workshops to help develop the scope of the Bill and the structure of the new non-government school regulatory system. Both stakeholders have also been provided with consultation copies of the Bill and have provided extensive feedback for the Directorate to consider. All feedback has been incorporated where possible and the Directorate will continue to work with both sectors in the development of implementation guidelines.

The Directorate has engaged extensively with the HRC throughout the development of the Bill to ensure that the proposed amendments are human rights compliant. In particular, the Directorate has liaised with the Office of the Public Advocate and Children and Young People Commissioner and the Office of the Discrimination, Health Services, Disability and Community Services Commissioner. Feedback from the Human Rights Commission has informed the development of the final Bill

Engagement has taken place with a range of education union and representative bodies, particularly with the Australian Education Union (AEU), Independent Education Union (IEU) and the ACT Principals' Association (ACTPA). Consultation meetings were held with these stakeholders, and they have all also had access to consultation copies of relevant sections of the draft Bill.

Consultation has also occurred with school community groups such as the ACT Council of Parents and Citizens Associations and the Association of Parents and Friends of ACT Schools. Both of these groups engaged in consultation meetings with the Directorate and provided feedback on relevant sections of the draft Bill. Comments from these stakeholders have been incorporated where possible.

A consultation session on proposed changes in the Bill also took place with the ACT Youth Advisory Council, providing useful feedback which influenced the Bill's focus.

Consultation was also undertaken with the ACT Teacher Quality Institute and Board of Senior Secondary Studies on sections that relate to the role of their authorities, and updates made as required.

The Aboriginal and Torres Strait Islander Elected Body has been consulted through a letter and factsheet outlining the proposed changes in the Bill. They have not made a submission or sought further consultation in response.

Correspondence inviting feedback has also been sent to the ACT Catholic Secondary Principals Australia, ACT Catholic Primary Principals Association, and the LGBTIQ Ministerial Advisory Council.

ACT Government agencies

Extensive consultation on the Bill has occurred both internally within the Education Directorate and across other areas of the ACT Government such as Policy and Cabinet within the Chief Minister, Treasury and Economic Development Directorate, Treasury, the Environment, Planning and Sustainable Development Directorate and the Justice and Community Safety Directorate, including the Human Rights Unit and Criminal Law section within the Legal Policy and Programs branch.

Consultation has also been undertaken with the Human Services Sub-Committee of Cabinet.

CONSISTENCY WITH HUMAN RIGHTS

The vast majority of non-government schools deliver high quality education services and are compliant with legislative requirements. The proposed amendments will make it easier for those schools to concentrate on their role of educating students and enable the Education Directorate to focus compliance efforts on those schools that require additional support and oversight.

By clarifying the legislative obligations and compliance requirements and providing powers to support compliance, the ACT community can be confident in the education delivered by non-government schools.

The proposed amendments will meet recommendations 4 and 5 of the HRC Report as well as addressing concerns about the misuse of disciplinary measures such as suspensions and exclusions expressed by the Royal Commission in its *Interim Report*.

Proposed amendments will also assist in meeting recommendations outlined in the *Coronial Inquest into the death of Bradyn Stuart Dillon*. Addressing these recommendations is especially critical given the grave consequences that can occur when children and young people are lost from the education system.

The Bill primarily engages with s27A of the *Human Rights Act 2004* — the right to education. The primary purpose of the sections in the Bill relating to suspensions, transfers, expulsions, exclusions and the Student Movement Register is to clarify the occasions as to when these sections can be enacted with the aim to maintain compliance with the s27A of the *Human Rights Act 2004* (the HR Act) and to ensure students stay connected with education.

Rights engaged

The Bill engages the following sections of the Human Rights Act 2004:

- section 27A - right to education (promoted)
- section 8 – recognition and equality before the law (promoted)
- section 11 - right to protection of the family and children (promoted)
- section 12 - right to privacy and reputation (limited)
- section 14 - freedom of thought, conscience, religion and belief (promoted)
- section 21 - right to a fair trial (promoted and limited)
- section 22(1) – right to presumption of innocence
- section 27B - right to work and other work-related rights (limited).

Rights Promoted

Section 27A - right to education

The right to education is recognised both as human right in itself and as a means of promoting human rights, overcoming inequality and empowering people who are marginalised.

Since the *Coronial Inquest into the death of Bradyn Stuart Dillon*, there has also been focus on the need to monitor the movement of students between schools, to ensure students stay connected with the education system. Oversight of student movement through sections 10AA and 10AB will also allow for the identification of known signs of risk and vulnerability, such as multiple movements between schools

within a short period of time and will promote the right to education and protection of the child.

Should a student be suspended, all schools (government and non-government) are required to support the student to continue their education during the suspension (sections 17I, 17K, 17L and 17M). This promotes the right to education by ensuring a student continues to be provided with an education even should the student not be physically on school grounds.

As the government school system has an obligation to provide free school education to every child in a government school, provisions have been revised to state that exclusion from all government schools is only possible for a child who is not of compulsory education age (section 17Z). This provides safeguards for students of compulsory education age to ensure that they are provided with an education and the protective factors that education brings.

Furthermore, should an exclusion from all government schools be enacted for a student who is of non-compulsory education age, a requirement has also been added for the principal of the school to give the student information about options to continue their education after the exclusion, such as enrolment at a non-government school, distance education provided by another jurisdiction or enrolment at a vocational education training organisation (section 17ZE).

Section 8 – recognition and equality before the law (promoted)

Section 8 of the HR Act provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that everyone is equal before the law and entitled to the equal protection of the law without discrimination. Subsection 27A(3)(a) of the HR Act also provides that in relation to the right to education, there must be no discrimination in access to schooling or further education. ‘Discrimination’ refers to any treatment that, either directly or indirectly, draws distinctions between persons based on prohibited grounds, such as race, religion, sex or disability. ‘Indirect discrimination’ can occur when rules or practices that appear neutral on the surface are enacted in a way that disproportionately impacts certain groups.

Reports such as the *Interim Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* has identified that nationally there are reports of disproportionate use of suspensions and expulsions for students with disability. The *ACT Report of the Expert Panel on Students with Complex Needs and Challenging Behaviours* noted that “the use of suspension is generally not a long-term solution for students with complex needs and challenging behaviours and may increase risks of disengagement and other difficulties”⁵.

⁵ Report of the Expert Panel on Students with Complex Needs and Challenging Behaviours (2015:18).

Amendments made through the Bill for all school sectors have clarified the rationale for enacting a suspension, transfer, expulsion or exclusion and included a new requirement to exhaust all reasonable alternatives before making a decision (sections 17D, 17H, 17K, 17L, 17P, 17R, 17S, 17U, 17W, 17X, 17ZA, 17ZC, 17ZD, 17ZF, 17ZH and 17ZI). This aims to promote the right to equality and the right to education and prevent the misuse of suspensions in ACT schools by ensuring that they are not used in a way that disproportionately affects students with a disability. The measures will result in consistency in practice for schools across both government and non-government sectors.

Amendments also require the principal of a school to review reasonable adjustments and make any changes to reasonable adjustments the principal considers would support the student to return to school safely (section 17N). This also promotes the right to equality and the right to education by ensuring the individual student is considered, with specific action tailored to their needs.

Section 11 - right to protection of the family and children

Children have special rights under human rights law taking into account their particular vulnerabilities. This right to special protection is in addition to all other rights, which children enjoy as individuals.

Providing clarity to the reasons for which a suspension, transfer, expulsion and exclusion can occur promotes the right to protection of the family and children by articulating it is related to ensuring the safety or effectiveness of the learning environment at the school (section 17B). The right to protection of the family and children is also promoted by the requirement to ensure the student is given a reasonable opportunity to attend counselling should a decision be made to suspend, transfer, expel or exclude a student (sections 17M, 17T, 17Y, 17ZE and 17ZJ). This ensures the student is given the opportunity to talk with someone about the suspension, transfer, expulsion or exclusion and understand why it was enacted and options following its enactment.

The right to protection of the family and children is also promoted by articulating that if the principal of a school is required to tell a student, or give their parents written notice, about a proposed decision under this chapter, the principal must endeavour to ensure that the student and their parents understand (section 17E). The provision also states that the principal must ensure the student has a parent, or someone else chosen by the student, present when taking part in the decision-making process to support the student and assist the student to effectively take part in the decision-making process and have their views heard. This enables the student to have a voice in the decision-making process.

The amendments also clarify that a decision-maker can only suspend, transfer, expel or exclude a student if it is reasonable, proportionate and justifiable to do so considering all the circumstances, including any views of the student and their

parents about the proposed suspension (sections 17H, 17L, 17P, 17U, 17ZA and 17ZF).

Section 14 - freedom of thought, conscience, religion and belief

Subsection 27A(3)(b) of the HR Act provides that there must be no restriction on the ability of the parents or guardian of a child to choose to enrol their child in a private school that will provide religious and moral education of a child in conformity with their convictions that meets minimum standards.

The amendments in the Bill promote this aspect of the right to education as well as the right to freedom of thought, conscience, religion, and belief by providing ongoing registration for non-government schools with regular risk-based reviews of compliance with the Act (section 94). This provides certainty to parents that registered non-government schools will continue to operate unless there are concerns of serious non-compliance with the Act, supporting parental choice in the education offering most suitable to their beliefs and preferences.

Section 21 - right to a fair trial

The right to fair trial encompasses the right to fair hearing which is concerned with procedural fairness, and equal access in proceedings. In administrative decisions, as in criminal trials, a fair hearing means that each party must have a reasonable opportunity to present their case, ability to seek review and access to legal representation and other support.

The amendments in the Bill promote the right to a fair trial through the involvement of parents and student in decision-making relating to suspensions, transfers, expulsions and exclusions (sections 17E, 17H, 17K, 17L, 17P, 17R, 17S, 17U, 17W, 17X, 17ZA, 17ZC, 17ZD, 17ZF, 17ZH and 17ZI).

The right to a fair trial is also promoted in relation to instances of non-compliance by non-government schools, in relation to the ability to provide a right of reply through a submission in response to a show cause notice (section 124, 125, and 125C). This is also promoted throughout the process when the Board is involved, providing an assessment of registration, review and regulatory action when they consider and make an assessment to provide to the Minister for their consideration (sections 91, 100, 123 and 125)

The right to a fair trial is also promoted through the requirement by both the Registrar and schools to apply natural justice and procedural fairness in decision making (section 115 and sections 2.8, 2.9 and 2.18 of the *Education Regulation 2005*).

The right to a fair trial is further promoted through processes provided for the review of decisions, with sections 17H, 17P, 17ZA, 88, 92(2), 93, 101(3), 102(1), 120 and 125A all reviewable decisions under the Act.

Rights Limited

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

This is further reflected in section 28 of the *Human Rights Act 2004*, with the first subsection of that provision stipulating that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Subsection (2) then instructs that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

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

However, the reasonable limits test may not require the adoption of the least restrictive means identified, but rather that when determining the reasonableness of the relevant limitation, it is sufficient that the means adopted falls within a range of reasonable responses to the problem confronted.

The limits that are placed on human rights by the Bill are reasonable and justifiable in a free and democratic society. An assessment of the Bill's impact on relevant provisions of the *Human Rights Act 2004*, against all factors in section 28 (2), is provided below.

Section 27A - right to education

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

The right to education may be limited through the enactment of suspension, transfer, expulsion or exclusion of a student (chapter 2A), which limits a student's access to education at a particular time.

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

The purpose of the limitation is to protect the education rights and safety of students and others at a school. It does so by enabling action to be taken by the school should a student engage in unsafe or noncompliant behaviour that reduces the safety or effectiveness of the learning environment at the school or poses an unacceptable risk to the safety or wellbeing of another student at the school or a member of staff of the school or someone else involved in the school's operation.

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

The suspension, transfer, expulsion or exclusion of a student which results in a limitation on the right of that student to education, has a rational connection to the objective. The measures will enable schools to take steps, with appropriate consideration of the students needs and in consultation with students and parents, to resolve the unsafe or noncompliant behaviour, or find other solutions that will support the education rights and safety of students and others at the school.

4. Proportionality (s 28(2)(e))

The right to education under Chapter 2A is the least restrictive means to ensure the safety and wellbeing of others at the school. Consideration of the impact of the behaviour of the student for whom action is being considered, on others at the school promotes the right to protection of family and children.

In all instances of enacting a provision under Chapter 2A, all reasonable alternatives must be considered prior to taking action, which results right to privacy only being limited when there is no alternative available.

To ensure limitation of access to education at a particular time following the enactment of a suspension, transfer, expulsion or exclusion of a student is reasonable, safeguards have been added into the Bill to clearly outline that these sections can only be enacted for the purpose of ensuring a safe and effective learning environment at the school (section 17G). This section promotes the right to protection of family and children and the right to education, by requiring consideration of the impact on the student, other students, and staff.

Should a student be suspended, all schools (government and non-government) are required to support the student to continue their education during the suspension (sections 17I, 17K, 17L and 17M). This ensures that any limitation on the right to education is reasonable by and a student continues to be provided with an education even should the student not be physically on school grounds.

As the government school system has an obligation to provide free school education to every child in a government school, provisions have been revised to state that exclusion from all government schools is only possible for a child who is not of compulsory education age (section 17Z). This provides safeguards for students of compulsory education age to ensure that they are provided with an education and the protective factors that education brings.

Furthermore, should an exclusion from all government schools be enacted for a student who is of non-compulsory education age, a requirement has also been added for the principal of the school to give the student information about options to continue their education after the exclusion, such as enrolment at a non-government

school, distance education provided by another jurisdiction or enrolment at a vocational education training organisation (section 17ZE).

Action taken under Chapter 2A for suspension, transfer and exclusion from a government school is also a reviewable decision.

Section 12 - right to privacy and reputation

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

The right to privacy protects individuals from unlawful or arbitrary interference with privacy, family, home or correspondence. The right encompasses the idea that individuals should have a separate area of autonomous development, interaction and liberty, free from intervention by authorities and unsolicited intrusion by other individuals.

The right to privacy may be limited in the Bill through the ability to take action under chapter 2A if a student's behaviour may be unsafe or noncompliant behaviour even if the behaviour does not happen on school premises or during school hours such as through social media (section 17B).

The right to privacy may also be limited through the requirement to keep personal information in both the register of enrolments and attendances (Part 4.5) and through information captured in the Student Movement register (sections 10AA and 10AB of the *Education Act 2004* and section 2AA of the *Education Regulation 2005*).

The right to privacy may be limited through the general powers on entry of the authorised person (section 125T), who can enter a premises and take photos, videos and make copies of documents.

The right to privacy may also be limited through provisions that require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else (whether the information, document or other thing is at the premises or elsewhere) that the occupier or person at the premises has, or has access to, that are reasonably necessary to exercise a function under this Act and the requirement that the occupier, or anyone else at the premises, to give the authorised person (non-government) copies of documents that are reasonably necessary to exercise a function under this Act (section 125U).

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

The intent of the provision under Chapter 2A enables action to be taken by the should a student engage in unsafe or noncompliant behaviour whether in school or outside school hours or premises. An example of such behaviour is cyber bullying another student at the school outside of school hours. This is limited to behaviour that reduces the safety or effectiveness of the learning environment at the school or poses an unacceptable risk to the safety or wellbeing of another student at the

school or a member of staff of the school or someone else involved in the school's operation.

Obtaining personal information such as the name and contact details of a student and parent is legitimate and required to promote the right to education and the right protection of family and children. This information is required to for a school to operate knowing which students are enrolled in their school and how to contact parents. It also enables the school or Education Directorate to ensure students are connected to the education system and allows for them to follow-up with the parent should a student not be attending school or not be re-enrolled following a unenrolment, contract termination, transfer, exclusion or expulsion.

The limitation of the right to privacy through sections 125T and 125U is directed at the legitimate purpose of promoting the right to protection of family and children. Parents enrol their child at a non-government school on the understanding that it is a safe and effective learning environment and expect that these schools are regulated appropriately to ensure compliance with relevant standards and legislative obligations.

As a result, reviews of non-government schools are required to ensure compliance with the Act. As part of a review and to ensure compliance, an authorised person (non-government) may be required to examine and copy, or take extracts from, documents relating to a contravention, or possible contravention, of this Act. This is in addition to taking photographs, films, or audio, video or other recordings, requiring the occupier, or anyone at the premises, to give information, answer questions, or produce documents or require the occupier, or anyone else at the premises, to give the authorised person (non-government) copies of documents produced under that are reasonably necessary to exercise a function under the Act.

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

Whilst the behaviour by a student may not take place on school grounds, or within school hours, this kind of behaviour by a student can reduce the safety or effectiveness of the learning environment at the school or pose an unacceptable risk to the safety or wellbeing of others at the school.

Therefore, the ability to enact a provision under Chapter 2A which limits the right to privacy has a rational connection to the objective of ensuring the safe and effective learning environment of other students, members of staff or other persons involved in the school's operation at the school.

There is a rational connection to limit the right to privacy by obtaining personal information, such as the name and contact details of a student and parent to ensure students are connected with education, to enable the school or Education Directorate to contact the parent and discuss the non-attendance or enrolment status of a student.

In relation to the general powers on entry of the authorised person, these powers are required to review a school's compliance with the Act and have a rational connection to the aim of promoting, the right to protection of family and children.

The majority of non-government schools already consistently deliver high quality educational services and are compliant with their legislative requirements. However, should there be an instance of non-compliance, an authorised person (non-government) must have the ability to obtain information to support a recommendation to the Board and Minister about any required action to be taken against the school.

There is a community expectation that the government should be able to act on instances of non-compliance and that all schools, both government and non-government, should be safe and effective learning environments for children and young people in the ACT.

4. Proportionality (s 28(2)(e))

The limitation on the right to privacy that may arise under Chapter 2A is the least restrictive means to ensure the safety and wellbeing of others at the school. Only specific types of behaviour occurring away from school premises or out of school hours is relevant. There are defined parameters for the types of behaviour that take account of the impact of the behaviour on the student for whom action is being considered, on others at the school promotes the right to protection of family and children.

In all instances of enacting a provision under Chapter 2A, the legislation contains specific safeguards including that all reasonable alternatives must be considered prior to taking action and consultation must occur with the student and parents. This limits the actions that can be taken with respect to conduct occurring in a student's home or private life and ensures any limitation on the right to privacy is reasonable and proportionate. Action taken under Chapter 2A for suspension, transfer and exclusion from a government school is also a reviewable decision.

The limitation in relation to the right to privacy by obtaining personal information, such as the name and contact details of a student and parent is proportionate to ensure a student is connected with the education system. Having this information enables the school or Education Directorate to work with the family to re-engage the student and in turn provides safeguards for students of compulsory education age to ensure that they are provided with an education and the protective factors that education brings.

The personal information collected as part of these sections are subject to safeguards such as restrictions on the purpose for which information is collected and can be used, restrictions on who can access the information and that the information is also subject to protections under the *Information Privacy Act 2014*.

Whilst the right to privacy and reputation is limited through part 4.6 of the Bill, an authorised person can only exercise a function under this part for the purpose of assisting the Registrar in the exercise of the Registrar's functions under part 4.4 (*non-government schools—registration reviews*). The scope of the powers under s125T and 125U are limited by the functions set out at 125N.

Safeguards are also provided in which powers of entry are exercised with consent (section 125Q) and additional safeguards have also been provided for residential premises (section 125Q(2)), limiting the entry to after 8 am and before 6 pm and if the residents are given reasonable notice of the entry, including the purpose of the entry and a member of staff of the school is present during the entry and any exercise of powers under section 125T (General powers on entry to premises).

By limiting the scope of which these functions can be exercised in part 4.6 of the Bill, the non-government school sector can be confident that functions will only be used when in the exercise of the Registrar's functions under part 4.4 (*non-government schools—registration reviews*) and should instances of non-compliance be identified.

Section 17 - taking part in public life

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

The right to take part in public life applies to all citizens in the ACT, subject to eligibility requirements for voting or holding public office. These requirements must be reasonable and based on objective criteria. The right to take part in public life may be limited through appointments to the Registrations Standards Advisory Board under Division 4.2.2.

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

Section 78 outlines the membership of the Registration Standards Advisory Board and section 80 outlines the reasons for which the appointment of a member of the Registration Standards Advisory Board can be ended.

The membership of the Registration Standards Advisory Board is limited to people with qualifications, expertise and experience relevant to the functions of the board and people who are registered under the *Working with Vulnerable People (Background Checking) Act 2011* to engage in regulated activities involving children. These measures are directed at the legitimate aim of ensuring that advice to the Minister on education matters is well-informed authoritative and provide a sound basis for decisions on education matters in the ACT.

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

The functions of the Registration Standards Advisory Board are:

- a) to advise the Minister about whether applications to register non-government schools meet the criteria for registration;
- b) to assist the registrar in developing annual registration review programs, including identifying registered schools for registration reviews and areas of focus for registration reviews;
- c) to advise the Minister on matters relating to the registration standards, including matters arising from registration reviews;
- d) to assist the registrar in advising the Minister about proposed regulatory action against registered schools;
- e) to advise the Minister about potential improvements to the registration standards;
- f) any other function given to the board under this Act or another territory law.

There is a rational connection between the limitation that only relevantly qualified people are eligible to be appointed to the Board and the objective of ensuring well-informed authoritative advice on education matters and a sound basis for decisions on education matters in the ACT. For the Minister, non-government sector and the community to have trust in the advice provided by the Registration Standards Advisory Board, there is a need for its members to have qualifications, expertise and experience relevant its functions.

Furthermore, to ensure confidence there is a need to know that all members have the appropriate background to be making decisions that impact some of our most vulnerable community members, children and young people.

4. *Proportionality (s 28(2)(e))*

Any limitation on the right to take part in public life through who can be appointed to the Registrations Standards Advisory Board under Division 4.2.2, is considered reasonable and proportionate.

The measures are based on objective criteria and ensure diversity of appointments. There is a requirement for the Minister to consult with the Association of Independent Schools of the ACT and Catholic Education, Archdiocese of Canberra and Goulburn in relation to the members appointed by the Minister, to ensure the members appointed are representative of the community and have the appropriate qualifications, expertise and background to be appointed to the Registration Standards Advisory Board.

Section 21 - right to a fair trial. Section 22(1) – right to presumption of innocence

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

The right to fair trial and fair hearing is concerned with procedural fairness, and encompasses notions of equality in proceedings. Equal access to a fair hearing means that each party must have a reasonable opportunity to present their case.

The right to be presumed innocent of a criminal offence until proven guilty by law is a fundamental and well recognised right under both human rights and the common law. Strict liability offences limit the presumption of innocence because they allow for the imposition of criminal liability without the need to prove fault. Strict liability offences may be more likely to be justified in the context of regulated activities or industries where there is an assumption of responsibility by those regulated.

The right to a fair trial and the right to the presumption of innocence may be limited through the inclusion of strict liability offences at sections 104, 105, 125F, 125G, 125H, 125I, 125O, 125T and 125U.

The right to minimum guarantees in criminal proceedings is also limited through 125V — *abrogation of privilege against self-incrimination*, in which a person is not excused from answering a question or providing information or a document under this part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

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

The strict liability offences in the Bill are directed at the legitimate aims of ensuring student's rights to education, access to schools that conform with the minimum educational standards required under law, and safety of children at risk.

Section 104 makes it an offence to operate an unregistered non-government school with a maximum penalty of 50 penalty units, and section 105 makes it a strict liability offence to operate a registered school other than within scope of registration with a maximum penalty of 10 penalty units.

For someone to be considered operating a non-government school, this refers to the person who is in charge of the school and would refer to proprietors, members of a governing body and a principal. All these people should be aware of the need for the school to be registered under the Act, and they should also be aware of the school's registration status to only deliver education at the approved campus, at the educational levels for which they are registered and whether or not they are approved to provide residential boarding services.

Section 125F requires that principal of a registered school must keep a register of enrolments and attendances for the school with a maximum penalty of 10 penalty

units for failing to do so, or recklessly making a record. Section 125G provides it is an offence for a principal of a registered school to produce a register for an authorised person or assist an authorised person exercising functions under the section (maximum 50 penalty units). Under section 125H it is an offence for a person giving an approved educational course (non-government) not to keep a register of enrolments and attendances for the course (maximum 10 penalty units) or be reckless about whether or not the entry is correct (maximum 10 penalty units) and section 125I outlines that it is an offence to not produce registers of enrolments and attendances for approved educational courses (non-government) (maximum 50 penalty units).

As mentioned in the overview of the Bill, since the Coronial *Inquest into the death of Bradyn Stuart Dillon*, there has been a focus on the need to monitor the movement of students between schools, to ensure students stay connected with the education system. Oversight of student movement will also allow for the identification of known signs of risk and vulnerability, such as multiple movements between schools within a short period of time.

In addition to monitoring movement between schools, the need to monitor student enrolments and attendance and allows for the identification of known signs of risk and vulnerability, such as multiple movements between schools within a short period of time.

Section 125O relating to identify cards for an authorised person (non-government) includes an offence should a person stop being an authorised person (non-government) and does not return their identity card to the registrar as soon as practicable, but no later than 21 days after the day the person stops being an authorised person (non-government).

Sections 125T makes it an offence to not take reasonable steps to comply with the requirements of general powers on entry to premises (maximum 10 penalty units) and 125U makes it an offence to not take reasonable steps to comply with the requirements of the power to obtain information (maximum 10 penalty units).

The limitation posed through the abrogation of privilege against self-incrimination is also required to ensure compliance with the Act. Individuals may have information or access to documentation that will assist with ensuring compliance with the Act or that identifies instances of non-compliance.

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

There is a rational connection between the strict liability offences and the aim of ensuring schools conform with minimum requirements and the safety of children at risk. There is the potential for significant risk of harm to both students, staff and others involved in the operation of the school if the school is not compliant with the conditions of registration and the Act. The offences are an effective deterrent to

persons operating an unregistered non-government school or outside the scope of registration.

By limiting the right to a fair trial and the right to the presumption of innocence, the Bill is instead providing safeguards for students, staff and others involved in the operation of the school by promoting the right to protection of family and children. It also promotes the right to work and other work-related rights, ensuring that all employees of non-government schools are provided of just and favourable conditions of work through safe and effective working environments in registered non-government schools.

Monitoring student enrolments and attendance is key to ensuring that vulnerable students stay connected to the education system and that concerns can be raised, and follow-up with the parents undertaken when there are extended periods of a student not attending school. The penalties provide a strong deterrent for failing to keep registers of enrolments and attendances for the school. The principal is responsible for the day-to-day management of the school, and as such responsibility should ultimately sit with that position when it comes to action, should instances of non-compliance be identified.

Failure for an authorised person (non-government) who stops being an authorised person (non-government) to return their identity card has a rational connection to a strict liability offence. Use of the identity card of authorised person (non-government) enables access to non-government school sites to access information. A non-government school would not be aware that a person is no longer an authorised person (non-government) and should they not return their identity card and try to enter a non-government school, they could potentially gain access to privileged information or a school site at which children and young people are present.

Failure for someone to comply with the requirements of general powers on entry to the premises and the power to obtain information could mean that instance of non-compliance continue to be present in non-government schools and as a result could pose a risk to the right to the right to protection of family and children and the safety and wellbeing of students and staff at the school. Therefore the use of an offence for failure to comply is legitimate when considering the connection to the risk.

In relation to the abrogation of privilege against self-incrimination, whilst this information may tend to incriminate the person or expose the person to a penalty, this is required to promote the right to protection of family and children to ensure all students enrolled at non-government schools are in a safe and effective learning environment.

4. Proportionality (s 28(2)(e))

Whilst limitations on the right to a fair trial and the right to the presumption of innocence are engaged through strict liability offences at sections 104, 105, 125F,

125G, 125H, 125I, 125T and 125U, the limitation is considered reasonable and justified. Having a strong deterrent for operating an unregistered non-government school or outside the scope of registration as well as not keeping register of enrolments and attendances for registered schools or persons giving an approved educational course (non-government) or not complying with the general powers on entry or power to obtain information is a proportionate response to the risk to the rights and safety of children and young people. The deterrent through the strict liability offence at 125O is also a proportionate response to the risk to the rights and safety of children and young people and the right to privacy in relation to access to information.

The rights contained in the *Convention on the Rights of the Child (CRC)*, requires that the best interests of the child must be a primary consideration in any decision that affects a child⁶. This consideration includes the need for safety and rights to education, which is also noted in s27A of the *Human Rights Act 2004*.

The strict liability offences carry penalties that are in proportion to their respective seriousness and are in accordance with the guide to framing offences. In addition, there is a specific defence of mistake of fact for strict liability offences (see sections 23 and 36 of the *Criminal Code 2002*).

In relation to the abrogation of privilege against self-incrimination, whilst a person is not excused from answering a question or providing information or a document, this limitation is proportionate to ensure the safety of children and young people. Furthermore section 125V(2) provides a safeguard for the individual which states any information, document or thing obtained, directly or indirectly, because of the giving of the answer or the production of the document is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

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

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

The right to work and other work-related rights may be limited by the Bill in relation to regulatory action against a school for instances of non-compliance which can include cancellation of school registration (section 125A). Should the cancellation of a school's registration be enacted, the right to work may be limited as employees of the school would be without employment.

⁶ Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('CRC') art 3

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

The cancellation of a school's registration is one form of regulatory action that can be taken against a non-government school who is found to be non-compliant with the Act and is aimed at ensuring students access to safe and effective learning environment in conformity with relevant standards.

When a parent enrolls their child at a non-government school, they do so with the expectation that it is a safe and effective learning environment and expect that these schools are regulated appropriately to ensure compliance with relevant standards and legislative obligations. Furthermore, when an employee accepts a position at a non-government school, they do so on the understanding that they will experience just and favourable conditions of work.

Cancellation of a school's registration is only enacted in significant cases of non-compliance, where there is considerable risk posed to the safe and effective learning environment and operation of the school.

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

There is a rational connection between the potential limitation on the right to work as a result of school's registration being cancelled and the objective of ensuring students access to education in conformity with relevant standards.

An instance, or multiple instances of non-compliance that would be sufficient grounds for the registrar to cancel a school's registration, if not acted upon could cause serious harm to students or members of staff and others involved in the operation of a school.

4. *Proportionality (s 28(2)(e))*

The approach used in the Bill is the least restrictive means of achieving the objective. There are a range of safeguards to guide decision making in cancellation of a school's registration and ensure that any resultant limitation on limit the right to work and other work-related rights is reasonable and proportionate.

As part of the review and processes for dealing with non-compliance, schools are given an opportunity to comply with instances of non-compliance prior to action being taken (section 120). Regulatory action must be proportionate to the seriousness of non-compliance and cannot be taken without a right of reply by the school (sections 124).

The decision to cancel a school's registration is subject to consideration by the Registration Standards Advisory Board (section 123 and 125) of the facts relating to the non-compliance and proposed regulatory action. Members of the Registration

Standards Advisory Board must have qualifications, expertise and experience relevant to the functions of the board and provide independent consideration of the matters, to support the Minister in making a decision to take regulatory action.

Action taken under section 125A — *taking regulatory action* is only taken when the Minister is satisfied on reasonable grounds that it is appropriate to take the regulatory action and all decisions taken under this section are reviewable decisions.

Education Amendment Bill 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Education Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

.....

Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Education Act 2004

Clause 1 Name of Act

The clause provides that the name of the Act is the *Education Amendment Bill 2022*.

Clause 2 Commencement of the Act

This clause provides for the commencement of the Act. Section 3, part 2 and section 62 commence on 1 July 2022 and the remaining provisions commence on 1 January 2023.

Clause 2 Legislation amended

This clause identifies the legislation that will be amended which is the *Education Act 2004* and the *Education Regulation 2005*.

Clause 4 Main objects of Act Section 8 (c)

This clause provides substitutions for the main objects of the Act.

Clause 5 Section 9 heading

This clause provides for the substitution of the heading of section 9.

Clause 6 Section 9

This clause omits the word *chapter* and substitutes it with *Act*.

Clause 7 New sections 10AA and 10AB

This clause inserts a new section which outlines the requirements for reporting through the student movement register.

Clause 8 New chapter 2A

This clause inserts a new chapter relating to the suspension, transfer, expulsion and exclusion of a student from a government, Catholic system or independent school (where applicable), including the reasons these sections can be enacted and the process to be followed.

Clause 9 *Suspension, exclusion or transfer of student by director-general* Section 36

Omit.

Clause 10 Sections 104 and 105

Omit.

Clause 11 *Student transfer register* Section 146A

Omit.

Clause 12 *New chapter 10*

This clause inserts a new chapter which includes the transitional arrangements for part 2 of the *Education Amendment Act 2022*.

Clause 13 *Reviewable decisions* Schedule 1, item 12

This clause substitutes reviewable decisions in relation to suspension, transfer and exclusion from a government school.

Clause 14 *Dictionary, new definition of Catholic system school*

This clause inserts a new definition of *at* and *Catholic system school*.

Clause 15 *Dictionary, definition of compulsory education age*

This clause substitutes the definition of *compulsory education age*.

Clause 16 *Dictionary, definition of decision-maker*

This clause substitutes the definition of *delegated principal* and *decision-maker* for chapter 2A and part 6.1.

Clause 17 *Dictionary, new definitions*

This clause inserts new definitions of *director of Catholic education* and *exclude*.

Clause 18 *Dictionary, definition of exclusion*

Omit.

Clause 19 *Dictionary, new definitions*

This clause inserts new definitions of *expel*, *independent school*, *principal*, *school day*, *student movement register*, *suspend*, *suspension notice*, *transfer*, *transferring school* and *unsafe or non-compliant behaviour*.

Clause 20 *Main objects of Act* Section 8 (f)

This clause provides substitutions for the main objects of the Act.

Clause 21 *Meaning of education course and education provider—Act Table 9A, items 1 and 2, column 3*

This clause omits the word *school* and substitutes with *government or non-government school*.

Clause 22 *Child of compulsory education age—school attendance requirement* **Section 10A (1) (b)**

This clause omits the word *school* and substitutes with *government or non-government school*.

Clause 23 *Child of compulsory education age—participation requirement* **Section 10D (1) (b)**

This clause omits the word *school* and substitutes with *government or non-government school*.

Clause 24 *Giving information notice* **Section 11C (2) (c)**

This clause omits the word *school* and substitutes with *government or non-government school*.

Clause 25 **Section 11C (2) (d)**

This clause omits the word *school* and substitutes with *government or non-government school*.

Clause 26 *Establishing government schools etc* **Section 20 (2) (b) and note**

This clause substitutes (b) the levels of education to be provided by government schools.

Clause 27 **Section 20B heading**

This clause substitutes *20B Impacts of closing or amalgamating government schools*

Clause 28 **Section 20B (1)**

This clause omits the word *school* and substitutes with *government or non-government school*.

Clause 29 *Operation of government schools* **Section 21 (3)**

This clause omits the word *boarding facilities* and substitutes with *residential boarding services*.

Clause 30 *Education to be free* **Section 26 (2) (a)**

This clause omits the word *course money* and substitutes with *tuition fees*.

Clause 31 **Section 26 (6), definition of *course money***

This clause substitutes *tuition fees—see the Education Services for Overseas Students Act 2000 (Cwlth), section 7*.

Clause 32 *Approved educational courses for students at government schools* **Section 31 (1)**

This clause after *the school* inserts (*an approved educational course (government)*).

Clause 33 Chapter 4

This clause substitutes chapter 4 relating to non-government schools, providing updates to the registration, review and compliance processes.

Clause 34 Offences on school premises Section 147 (5), definition of school premises

This clause omits the word *school* and substitutes with *government or non-government school*.

Clause 35 Evidence—certificate signed by principal etc Section 153A (2)

This clause substitutes sections 2 and 2A relating to *Evidence—certificate signed by principal etc Section 153A (2)*

Clause 36 Declaration—COVID-19 emergency Section 153B (2) (f) and (g)

This clause substitutes section numbers related to the declaration for a COVID-19 emergency.

Clause 37 New section 153C

This clause inserts provisions relating to *Extending in-principle approval—COVID-19 emergency*.

Clause 38 Regulation-making power Section 155 (3) and (4)

This clause substitutes regulation making powers.

Clause 39 New part 10.1A

This clause inserts transitional provisions in relation the part 3 of the *Education Amendment Act 2022*.

Clause 40 Section 313

This clause outlines the expiry date of chapter 10.

Clause 41 Reviewable decisions Schedule 1, items 13 to 21

This clause substitutes reviewable decisions relating to the registration of non-government school and non-compliance with the Act by non-government schools.

Clause 42 Dictionary, note 2

This clause inserts into note 2 the terms *corporation*, *Corporations Act* and *public notice*.

Clause 43 Dictionary, definitions of approved educational course etc

This clause substitutes definitions of *approved education course*, *approved education course (government)*, *approved education course (non-government)* and *authorised person (non-government)*.

Clause 44 Dictionary, definition of boarding facilities

Omit.

Clause 45 Dictionary, new definitions

This clause inserts new definitions for *compliance direction*, *connected*, *contact details*, *governing body*, *government or non-government school*.

Clause 46 Dictionary, definition of *in-principle approval*

This clause substitutes the definition of *in-principle approval*.

Clause 47 Dictionary, new definitions

This clause inserts new definitions for *key individuals* and *levels of education*.

Clause 48 Dictionary, definition of *non-government school*

This clause substitutes the definition of *non-government school*.

Clause 49 Dictionary, new definitions

This clause inserts new definitions of *notice of regulatory action*, *notifiable change*, *occupier*, *offence*, *permanent resident*, *premises*, *proposed campus*, *proposed change day*.

Clause 50 Dictionary, definition of *proposed opening day*

Omit.

Clause 51 Dictionary, new definitions

This clause inserts new definitions of *proposed starting day*, *proprietor* and *registered campus*.

Clause 52 Dictionary, definition of *registered non-government school*

This clause substitutes the definition of *registered non-government school*.

Clause 53 Dictionary, new definition of *registered school*

This clause inserts a new definition of registered school.

Clause 54 Dictionary, definitions of *register of enrolments and attendances* and *register of non-government schools*

This clause substitutes the definitions of *register of enrolments and attendances* and *register of nongovernment schools*.

Clause 55 Dictionary, new definition of *registrable change*

This clause inserts a new definition of *registrable change*.

Clause 56 Dictionary, definition of *registrar*

This clause substitutes the definition of *registrar*.

Clause 57 Dictionary, new definitions

This clause inserts new definitions of *registration condition*, *registration review*, *registration standards*, *registration standards advisory board* and *regulatory action*.

Clause 58 Dictionary, definition of *school*

This clause substitutes the definition of *school*.

Clause 59 Dictionary, new definition of *show cause notice*

This clause inserts a new definition of *show cause notice*.

Clause 60 Dictionary, definition of *student member*

Omit.

Education Regulation 2005

Clause 61 New part 1A

This clause inserts a new part 1A into the *Education Regulation 2005* in relation to the information prescribed for the student movement register.

Clause 62 Section 2B

This clause substitutes the *requirements for provision of residential boarding services*.

Clause 63 Part 3

This clause substitutes Part 3 relating to non-government schools, including that the registration standards are set out in schedule 2 and the information required for an application for in-principle approval and a registration application.

Clause 64 New schedule 2

This clause inserts the new registration standards for non-government schools.

Clause 65 Dictionary, note 2

This clause inserts into *note 2* the terms *Commonwealth, corporation, Corporations Act and the Territory*.

Clause 66 Dictionary, note 3

This clause inserts into *note 3* the terms *approved educational course (non-government), Catholic system school, educational course, education provider, governing body, independent school, key individual and proprietor*.

Clause 67 Dictionary, new definitions

This clause inserts new definitions of *adjustment* and *reasonable*.

Schedule 1 Consequential amendments

Part 1.1 ACT Teacher Quality Institute Act 2010

[1.1] Section 27 (2), definition of *home education*

This clause substitutes the definition of *home education* in the *ACT Teacher Quality Institute Act 2010*.

Part 1.2 Children and Young People Act 2008

[1.2] Section 731 (1) (f)

This clause omits the definition of *government school or non-government school* and substitutes with *government or non-government school in the Children and Young People Act 2008*.

[1.3] Dictionary, new definitions of *government school* and *government or non-government school*

This clause inserts new definitions of *government school* and *government or non-government school in the Children and Young People Act 2008*.

Part 1.3 Crimes Act 1900

[1.4] Dictionary, new definition of *government or non-government school*

This clause inserts new definitions of *government school* and *government or non-government school in the Crimes Act 1900*.

Part 1.4 Planning and Development Regulation 2008

[1.5] Section 108 (1) (a) (i) and (ii)

This clause substitutes section 108 (1) (a) (i) and (ii) of the *Planning and Development Regulation 2008*.

[1.6] Section 108 (4)

This clause inserts definitions of *in-principle approval*, *non-government school* and *proprietor* in the *Planning and Development Regulation 2008*.

Part 1.5 Rates Act 2004

[1.7] Section 8 (1), definition of rateable land, paragraph (b) (vi)

This clause omits *school* and substitutes it with *non-government school* in the *Rates Act 2004*.

[1.8] Section 8 (2), definition of school

This clause substitutes definitions of *non-government school* in the *Rates Act 2004*.