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

TENTH ASSEMBLY

**Education Amendment Bill 2022
Supplementary Explanatory Statement**

**Presented by
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EDUCATION AMENDMENT BILL 2022

OVERVIEW OF THE BILL

This supplementary explanatory statement relates to the *Education Amendment Bill 2022* (the Bill) as presented to the Legislative Assembly. It has been prepared to address comments from the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), outline proposed government amendments, assist the reader of the Bill, and to help inform debate. 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 and initial Explanatory Statement, 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 supplementary explanatory statement provides further information about why a Bill is proposed together with an explanation about the proposed legislative amendments and subsequent government 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.

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.

GOVERNMENT AMENDMENTS

Education Act 2004

2 Commencement (See Government Amendment 1)

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in Scrutiny Report 15 of 27 April 2022 noted that the Bill previously listed the commencement date of Section 3, Part 2 and Section 61 to commence on 1 July 2022, with the remaining provisions to commence on 1 January 2022. The Committee noted that by providing a fixed date, this may result in the retrospective operation of the Education Bill if it is passed by the Assembly and registered after that date. The Committee also raised concerns that offences might apply retrospectively if the Bill is registered after the fixed dates.

Government Amendments are being proposed to change the commencement date of the Bill to 20 December 2022.

The commencement date of Section 3, Part 2 is intended to ensure that these important provisions are in effect for the new school year. The fixed date of 20 December 2022 coincides with the end of the current school year, ensuring that these amendments do not come into effect mid-way through a school term.

The requirement to have these amendments in effect in time for the 2023 school year is to enable the timely oversight of student movement across schools in the ACT, which will in turn allow for the identification of known signs of risk and vulnerability. Reports such as the *Coronial Inquest into the death of Bradyn Stuart Dillon* highlighted the need to monitor the movement of students between schools, to ensure students stay connected with the education system and the protective factors that education brings.

We have learnt from reports such as the *Interim Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* that nationally there is disproportionate use of suspensions and expulsions for students with disability. The requirement to have these amendments in effect in time for the 2023 school year is to ensure that clarity as to when the provisions relating to suspensions, transfers, expulsions and exclusions can be enacted, to ensure the provision of safeguards for all students, including students with disability in time for the 2023 school year.

Government amendments are also proposed for commencement for the remaining provisions, with a new commencement date of 20 December 2022 in line with the aforementioned provisions. This fixed commencement date is intended to coincide

with the commencement of the new 2023 school year but prior to the end of the previous registration cycle for non-government schools, ensuring that those schools who are registered in 2022 can transition to ongoing registration in 2023. A fixed date is also intended to give certainty to non-government schools about the proposed registration requirements for 2023, as they start preparing for the process towards the end of the year prior.

17B— Meaning of unsafe or noncompliant behaviour—ch 2A (See Government Amendments 3 and 4)

A Government Amendment is proposed to section 17B to further clarify the provision relating to the suspension, transfer, expulsion, or exclusion of a student where their behaviour has been unsafe or non-compliant, including if the behaviour does not happen on school premises or during school hours.

Action taken in relation to behaviour which does not happen on school premises or during school hours is intended to be limited to when the behaviour reduces the safety or effectiveness of the learning environment at the school.

As such, 17B (1) has been updated to clarify that behaviour of a student is unsafe or noncompliant if the behaviour reduces the safety or effectiveness of the learning environment at the school, either through persistent or disruptive noncompliance, or through posing an unacceptable risk to safety or wellbeing.

The example for section 17B (2) has also been updated to further clarify when action may be taken, if the behaviour does not happen on school premises or during school hours. Examples of this would be using social media outside school hours to encourage violence against a student at school the next day. This behaviour has an impact on the effectiveness of the victim's learning environment whilst at school. This example has been included in the amendment for further clarity.

17C- Definitions- Ch 2A (See Government amendment 5)

A Government Amendment is proposed to section 17C to add a definition of 'reasonable alternative' to ensure clarity of intent throughout the Bill. Reasonable alternative is defined as an alternative that a person is reasonably able to take considering all relevant matters.

17D — Exhausting all reasonable alternatives (See Government Amendment 6)

A Government Amendment is proposed to section 17D (b) to specify that a decision maker must be satisfied that no other 'reasonable' alternative is likely to be suitable or successful for managing the student's unsafe or noncompliant behaviour, as defined in the proposed amendment to 17C. This is to ensure that schools are not expected or required to implement alternatives that they are not reasonably able to implement. An example of a reasonable alternative to suspension is where a student is required to attend school to participate in an alternative program. This alternative

action may not be considered a reasonable alternative that the school can take when the student's unsafe or noncompliant behaviour means that they cannot be safely at school until other adjustments can be implemented.

**Multiple sections related to suspension, transfers, expulsions and exclusions
(See Government Amendments 7, 9, 13, 15, 16, 18, 19, 23, 24, 28, 29)**

Government Amendments are proposed to sections 17H (3), 17L (5), 17P (1) (d), 17P (3), 17U (1) (d), 17ZA (1) (d), 17ZA (3), s 17ZF (1) (d) and 17ZF (3) which previously referred to the requirement that it is 'reasonable, proportionate and justifiable' for the decision-maker for a school to take action to suspend, transfer, expel or exclude a student. Government Amendments are proposed to remove 'proportionate and justifiable' from the provisions that decision makers must consider to be satisfied that a suspension, transfer, expulsion or exclusion is appropriate. Instead, decision makers must be satisfied that it is 'reasonable' to take this action considering all the circumstances, including any views of the student and their parents about the proposed suspension.

This is to ensure clarity in the provisions by removing unnecessary concepts, noting the preceding sections already require a decision maker to exhaust all reasonable alternatives (proportionate), limits the use of actions to ensuring a safe and effective learning environment (justifiable), and already requires decision makers to apply natural justice and procedural fairness.

**Multiple sections related to suspension, transfers, expulsions and exclusions
(See Government Amendments 8, 10, 11, 17, 20, 21, 22, 26, 27, 31, 32)**

Government Amendments are proposed to sections 17H, 17K, 17L, 17R, 17S, 17W, 17X, 17ZC, 17ZD, 17ZH, and 17ZI, to clearly link these provisions back to sections 17B — *Meaning of unsafe or noncompliant behaviour— ch 2A* and 17C — *Definitions- reasonable alternatives*. This is achieved through the inclusion of notes to provide clarity to the reader that actions taken under section these sections must be consistent with the earlier provisions in the Bill.

**Multiple sections related to suspension, transfers, expulsions and exclusions
(See Government Amendments 10, 11, 17, 20, 21, 22, 25, 27, 30, 32)**

Government Amendments are proposed to 17K, 17L, 17R, 17S, 17W, 17X, 17ZD, 17ZH, and 17ZI to clarify the requirement to outline in communications to decision makers and parents about how reasonable alternatives to suspending, transferring, expelling, or excluding a student have been exhausted. These amendments respond to feedback from stakeholders that the current wording was difficult to understand.

17L – Suspension- involving students and parents (See Government Amendment 12)

A Government Amendment is proposed at 17L (3)(a) to clarify the behaviours that would be grounds for enacting a suspension before giving the student’s parents written notice. In this case, suspending a student before giving a parent written notice can only occur if the student’s behaviour presents an immediate or imminent risk of harm. The previous wording of *exceptionally serious* was considered subjective and open to interpretation, therefore the proposed amended wording of *presents an immediate or imminent risk of harm* provides more clarity. The example has also been amended to provide clarity that immediate or imminent risk of harm may include threats of physical violence. This is intended to balance the objective of ensuring safety of people at the school in light of immediate risk of harm and would be the least restrictive means of ensuring worker and student safety.

17N — Suspension—review of student’s circumstances (See Government Amendment 14)

A Government Amendment is proposed to section 17N to explicitly state that a review of reasonable adjustments following suspensions includes reviewing the way the adjustment is implemented and making any reasonable adjustments can also include changing the way an adjustment is implemented. This is to ensure that schools are appropriately implementing reasonable adjustments to support a student to learn safely and effectively at school.

85 — Registration standards guidelines (See Government Amendment 33)

A Government Amendment is proposed to section 85 to clarify that the registrar *must* make guidelines about how a registered school is to comply with the registration standards, rather than the registrar *may* make guidelines. This amendment is intended to provide clarity of the responsibilities of the registrar as guidelines are required to support schools in ensuring they are compliant with the registration standards.

110 — Registration review after concern raised (See Government Amendment 34)

A Government Amendment is proposed to section 110 to add the requirement that the registrar must inform the registration standards advisory board if a concern has been raised in relation to a non-government school’s compliance with the Act. This is intended to ensure that the registration standards advisory board has visibility of concerns raised and reviewed in relation to a non-government school’s compliance with the Act. This visibility is important, as the registration standards advisory board has a role in assessing potential regulatory action that can be a result of the concern raised. A new section 110A has been included to achieve this visibility, and also outlines protections for people raising concerns by ensuring identifying information is not provided to the registration standards advisory board without consent.

116 — Registration Review Guidelines (See Government Amendment 35)

A Government Amendment is proposed to replace the word ‘standards’ with ‘review’ in reference to ‘registration review guidelines’. This is to correct a mistake in the original drafting which referred to ‘registration standards guidelines’.

117 — Proprietor etc to participate in registration review (See Government Amendment 36)

A Government Amendment is proposed to remove section 117 from the Bill. This amendment is required to remove duplicative provisions that require proprietors and other people involved in managing non-government schools to participate in registration reviews.

This amendment is proposed as the requirement to provide 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 school has, or has access to, that is required to assist with a registration review is outlined at section 125T.

Furthermore, section 125U outlines that a person must take reasonable steps to comply with a requirement made of the person under this section to give the authorised person (non-government) information, or produce documents or anything else, that the person has, or has access to, that are reasonably required by the authorised person (non-government) to assist with a registration review. Failure to comply with this attracts penalty units. Therefore, the removal of section 117 will reduce the duplication of these sections earlier on in the Bill.

119 — Registrar’s action on completing registration review (See Government Amendment 37)

A Government Amendment is proposed to section 119 to clarify that the registrar *must* take action under this section, rather than *may* take action under this section. This amendment is intended to provide clarity of the responsibilities of the registrar as action is required to be taken to bring closure to the registration review process.

311M — Registration of school (See Government Amendments 38 and 39)

A Government Amendment is proposed to section 311M to amend transitional provisions to include schools that have registration under both sections 88 and 97 of the current Act. This is to ensure all non-government schools which have been registered under the pre-amendment Act prior to commencement of the Bill, will transition to ongoing registration and continue to be registered once the Bill commences.

A Government Amendment is also proposed to outline that no action under this Act may be taken against the school for failing to comply with the conditions mentioned

in section 93 (a) and (b) during the first 9 months following the commencement day, to ensure that schools have time to transition to the new regulatory scheme.

47 — Dictionary, new definitions 47 and 58 — Dictionary, definition of school (See Government Amendments 40 and 41)

Government Amendments are proposed to sections 47 and 57 which provide revised dictionary definitions of levels of education provided by a school and the definition of school itself. For the purposes of the Act, school does not include preschool, as this is regulated under the *Education and Care Services National Law Act 2010*, however this was unintentionally captured as a year level and in the description of the definition of a school.

The Bill does not intend for the Registrar to register a school to provide preschool and therefore the definitions and notes at these sections are proposed to be corrected to state school starting at kindergarten, not preschool.

Education Regulation 2005

Schedule 2

2.5 — Policies and procedures (See Government Amendments 42, 43, 45, 46, 47)

Government Amendments are proposed to 2.5 of Schedule 2 to clarify that non-government schools are only required to consult students, parents and staff on the school policies and procedures listed in Schedule 2.

The current wording requires non-government schools to consult with students, parents and staff, on all policies and procedures, however not all operational policies impact on, and therefore require consultation with all of these stakeholder cohorts. The provision has been updated that consultation is only required on policies and procedures listed in Schedule 2. Subsequent amendments have also been made to the notes in standards 2.8 (enrolment policy), 2.9 (complaints management policy) and 2.18 (behaviour management policy) to align with this change.

2.6 — Annual statement (See Government Amendment 44)

A Government Amendment is proposed to the example accompanying 2.6 of Schedule 2 to state that the proprietor of a registered school must ensure that a written statement is prepared annually, describing how the school has complied with the registration standards during the year.

The example is proposed to be updated to state this can be done either through publication on the school's website or in their annual report. This amendment is proposed to prevent the potential duplication of reporting arrangements across multiple settings.

Transitional provisions

Transitional provisions have been inserted into the Bill to clearly establish parameters as to when the provisions commence, to prevent retrospective use of the provisions in the Bill.

In the case of government school suspensions (s 305) and government school immediate suspensions (s 306), if action was taken under the pre-amendment Act, section 36 (3) and section 36 (6) respectively and the suspension had not ended on commencement day, the pre-amendment Act continues to apply. This is to ensure continuity for the student and to not create additional requirements for the student or the school.

For exclusions enacted from government schools (s 307) prior to commencement day under the pre-amendment Act (s 36 (3)), the student is, on the commencement day, taken to be excluded from enrolling at any government school under section 17ZA (Exclusion— government schools). This provision is intended to ensure that any decision made under the pre-amendment Act still stands following commencement of the new provisions.

In the case of non-government school suspensions (s 308) and non-government school immediate suspensions (s 309), if action was taken under section 104 (3) or section 105 (2); or section 104 (6) or section 105 (5) of the pre-amendment Act respectively and the suspension had not ended on commencement day, the pre-amendment Act continues to apply. This is to ensure continuity for the student and to not create additional requirements for the student or the school.

For exclusions (s 310) from a Catholic systemic school, if an exclusion was enacted prior to commencement day under the pre-amendment Act section 104 (3), the student is, on the commencement day, taken to be excluded from enrolling at any Catholic system school under section 17ZF (Exclusion—Catholic system schools). This provision is intended to ensure that any decision made under the pre-amendment Act still stands following commencement of the new provisions.

Section 311 states that the student transfer register kept under the pre-amendment Act, section 146A is, on the commencement day, taken to be the student movement register under section 10AA. This is to ensure that information continuity of record-keeping and oversight of student movement in the ACT.

Section 311B outlines that an appointment of a Registrar of Non-Government Schools under the pre-amendment Act, section 77, that is in force immediately before the commencement day is, on the commencement day, taken to be an appointment of a registrar under section 73. This transitional provision is intended to ensure continuity of oversight of non-government schools by a person appointed by the Minister.

Section 311C states that the register of non-government schools kept under the pre-amendment Act, section 79 is, on the commencement day, taken to be the register of non-government schools under section 106. This is to ensure that information continuity of record-keeping and oversight of non-government schools in the ACT.

Under section 311D, if before the commencement day, a person applied for in-principle approval for provisional registration of a non-government school under the pre-amendment Act, section 83 and immediately before the commencement day, the application had not been withdrawn by the applicant or decided by the Minister, then in-principle application is, on the commencement day, taken to be an application for in-principle approval for registration of a non-government school under section 86. This is intended to reduce the administrative burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 86.

Under section 311E, if before the commencement day, a person applied for in-principle approval for registration of a non-government school at an additional campus under the pre-amendment Act, section 83 and the school had not previously operated at the campus or has operated at the campus, but not for 2 years or more before the date of the application and has not withdrawn the application and the application hasn't been decided by the Minister, then the application is, on the commencement day, taken to be an application to amend the school's registration under section 97. This is intended to reduce the administrative burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 97.

Section 311F states that if before the commencement day, a person applied for in-principle approval for registration of a non-government school at an additional campus under the pre-amendment Act, section 83, the school had previously operated at the campus less than 2 years before the date of the application and immediately before the commencement day, the application had not been withdrawn by the applicant; or decided by the Minister, then the application is, on the commencement day, taken to be notice to the registrar under section 96. This is intended to reduce the administrative burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 96.

Section 311G provides for a transitional provision relating to schools that if before the commencement day, a person applied for in-principle approval for registration of a non-government school at an additional educational level under the pre-amendment Act, section 83 and the school either had not previously provided that level of education or had provided that level of education, but not for 2 years or more before the date of the application and immediately before the commencement day, the application had not been withdrawn by the applicant or decided by the Minister. For these schools, the application is, on the commencement day, taken to be an application to amend the school's registration under section 97. This is

intended to reduce the administrative burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 97.

Under section 311H, if before the commencement day, a person applied for in-principle approval for registration of a non-government school at an additional educational level under the pre-amendment Act, section 83 and the school had previously provided that level of education less than 2 years before the date of the application; and immediately before the commencement day, the application had not been withdrawn by the applicant or decided by the Minister, the application is, on the commencement day, taken to be notice to the registrar under section 96. This is intended to reduce the administrative burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 96.

Section 311I applies if, immediately before the commencement day, a person has in-principle approval for provisional registration of a non-government school under the pre-amendment Act, section 84. The in-principle approval is, on the commencement day, taken to be in-principle approval under section 88, subject to the expiry date of later of either 2 years after the day the old in-principle approval was given or the proposed starting day. The in-principle approval is otherwise subject to the same conditions that applied to the approval before the commencement day. This is intended to reduce the administrative burden on non-government schools and preventing the need for a new application to be made under the new provisions.

Section 311J transitions provisional registration of a school to registration of a school. The amendment Act removes the requirement for provisional registration completely, therefore if before the commencement day, a person applied for provisional registration of a non-government school under the pre-amendment Act, section 85 and immediately before the commencement day, the application had not been withdrawn by the applicant or decided by the Minister, the application is, on the commencement day, taken to be an application for registration of a non-government school under section 89. This provision also reflects acknowledgement of provisional registration being a precursor to registration and prevents the requirement to have to reapply for registration again.

Under section 311K, if, immediately before the commencement day, a non-government school was provisionally registered under the pre-amendment Act, section 86, the school is, on the commencement day, taken to be registered under section 92. This registration is subject to the conditions mentioned in section 93 and to any conditions in the provisional registration that are not inconsistent with the conditions mentioned in section 93. Under section 92, the school's registration does not expire on the day stated in the provisional registration but continues until the registration is cancelled or surrendered. The registrar must enter the school in the register of non-government schools give the proprietor of the school a registration

certificate for the school in accordance with section 95. This provision also reflects acknowledgement of provisional registration being a precursor to registration and prevents the requirement to have to reapply for registration again.

Under 311L, if before the commencement day, a person applied for registration of a non-government school under the pre-amendment Act, section 87 and immediately before the commencement day, the application had not been withdrawn by the applicant or decided by the Minister, then the application is, on the commencement day, taken to be an application for registration of a non-government school under section 89. This is intended to reduce the administrative burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 89.

Section 311M refers if immediately before the commencement day a non-government school was registered under the pre-amendment Act, section 88 (including registration renewed under pre-amendment Act, section 97), the school is, on the commencement day, taken to be registered under section 92. This is subject to the conditions mentioned in section 93 and is otherwise subject to any conditions on the registration that are not inconsistent with the conditions mentioned in section 93. This registration does not expire on the day stated in the old registration but continues until the registration is cancelled or surrendered and the registrar must give the proprietor of the school a revised registration certificate for the school in accordance with section 95. This is intended to reduce the administrative burden on non-government schools and preventing the need for a new application to be made under the new provisions. This section also outlines that no action under this Act may be taken against the school for failing to comply with the conditions mentioned in section 93 (a) and (b) during the first 9 months following the commencement day.

Under section 311N, if before the commencement day, a proprietor of a registered school applied for registration of the school at an additional campus under the pre-amendment Act, section 88A and the school either had not previously operated at the campus or had operated at the campus, but not for 2 years or more before the date of the application and immediately before the commencement day, the application had not been withdrawn by the applicant or decided by the Minister, the application is, on the commencement day, taken to be an application to amend the school's registration under section 97. This is intended to reduce the administrative burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 97.

Section 311O outlines that if before the commencement day, a proprietor of a registered school applied for registration of the school at an additional campus under the pre-amendment Act, section 88A and the school had previously operated at the campus less than 2 years before the date of the application and immediately before the commencement day, the application had not been withdrawn by the applicant or decided by the Minister, the application is, on the commencement day, taken to be notice to the registrar under section 96. This is intended to reduce the administrative

burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 96.

Section 311P applies if before the commencement day, a proprietor of a registered school applied for registration of the school at an additional educational level under the pre-amendment Act, section 89 and the school either had not previously provided that level of education or had provided that level of education, but not for 2 years or more before the date of the application and immediately before the commencement day, the application had not been withdrawn by the applicant or decided by the Minister. If so, the application is, on the commencement day, taken to be an application to amend the school's registration under section 97. This is intended to reduce the administrative burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 97.

Under section 311Q, if before the commencement day, a proprietor of a registered school applied for registration of the school at an additional educational level under the pre-amendment Act, section 89 and the school had previously provided that level of education less than 2 years before the date of the application and immediately before the commencement day, the application had not been withdrawn by the applicant or decided by the Minister, then the application is, on the commencement day, taken to be notice to the registrar under section 96. This is intended to reduce the administrative burden on non-government schools by transitioning their application to apply under the new provisions, rather than requiring a new application under section 96.

Section 311R states that if the Minister is satisfied on reasonable grounds that, within the 12 months immediately before the commencement day, a condition of a school's registration under the pre-amendment Act, section 91 had been contravened; and the Minister had not cancelled the school's registration in relation to the contravention under the pre-amendment Act, section 95. The Minister may take regulatory action against the proprietor of the registered school in relation to the contravention under section 122. This enables action to be taken should an investigation into a school be ongoing at the time of commencement.

Section 311S states that a register of enrolments and attendances kept by the principal of a registered school under the pre-amendment Act, section 99 is, on the commencement day, taken to be a register of enrolments and attendances under section 125E. A register of enrolments and attendances kept by a person conducting an approved educational course (non-government) under the pre-amendment Act, section 99 is also, on the commencement day, taken to be a register of enrolments and attendances under section 125E, definition of register of enrolments and attendances, paragraph (b). This is to ensure that information continuity of record-keeping and oversight of student enrolments and attendances in non-government schools in the ACT.

Under 311T, an appointment of an authorised person (non-government) under the pre-amendment Act, section 119, that is in force immediately before the commencement day is, on the commencement day, taken to be an appointment of an authorised person (non-government) under section 125M. This transitional provision is intended to ensure continuity of appointment of authorised persons.

Section 313 states that chapter 10 Part 10.1 expires 12 months after the day it commences, and the remainder of this chapter expires 12 months after the day this section commences. This expiry reflects that the transitional provisions will not be required 12 months after the commencement of the relevant sections.

Transitional regulations

The Bill will insert Part 10.2 into the Act providing for transitional regulations. Section 312 enables the Executive to make regulations dealing with transitional matters. The section contains two different regulation making powers. Section 312 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 312 (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify chapter 10 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 312 (3) gives a regulation under section 312 (2) full effect according to its terms. A provision of chapter 10 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation.

The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of chapter 10 of the Act has no ongoing effect after the expiry of that chapter, 12 months after the day of commencement.

Displacement of Section 47(6) of the *Legislation Act 2001*

AS 5725:2015 — Boarding Standard for Australian schools and residences (the Boarding Standard) is incorporated into the regulation. The Legislation Act, s 47 (6) provides that an incorporated document, and any amendment or replacement of such a document, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the

Legislation Act, s 47 (6) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see s 47 (7)). The Legislation Act, s 47 (6) is displaced here because the incorporated standards are subject to copyright and may be purchased over the Internet.

The use of the Boarding Standard will ensure that children are residing in facilities that are kept to a recognised standard, in which the governance; facilities; parent, family and community engagement; staff; and the protection, safety, wellbeing and holistic development of boarders are being met.

The Boarding Standard also provides a common national framework that is intended to provide owners, operators, management and staff of schools who provide boarding facilities with guidance relating to a range of matters to ensure the delivery of a quality boarding facility. Whilst not freely available, the Education Directorate has ensured that all schools who provide residential boarding services have access to a copy and for prospective schools who wish to provide residential boarding services or members of the public who wish to access the Boarding Standards, they are available from the Education Directorate, free of charge, upon request.

The National Principles for Child Safe Organisations (the National Principles) are incorporated into the regulation. The National Principles have been endorsed by members of the Council of Australian Governments and reflect ten child safe standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. They are intended to assist giving effect to recommendations and have a broad scope that covers sexual abuse and other forms of potential harm to children and young people.

The ACT does not currently have territory-wide legislation relating to the National Principles, therefore until ACT legislation is developed, the ACT Government has committed to the COAG-endorsed National Principles to support implementation of the recommendations. The National Principles are freely and publicly available, therefore do not need to be notified on the Legislation Register.

CONSULTATION ON THE GOVERNMENT AMENDMENTS

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

CONSISTENCY WITH HUMAN RIGHTS

The proposed Government Amendments primarily engages with s27A of the *Human Rights Act 2004* — the right to education.

The primary purpose of the amendments to the sections in the Bill relating to suspensions, transfers, expulsions, exclusions is to further 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 and limited)
- section 11 - right to protection of the family and children (promoted)
- section 12 - right to privacy and reputation (limited)
- section 21 - right to a fair trial (promoted and limited)

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 proposed Government Amendments to suspensions, transfers, expulsions (17B (2), 17D, 17H, 17L, 17N, 17M, 17P (1) (d), 17P (3), 17U (1) (d), 17ZA (1) (d), 17ZA (3), s 17ZF (1) (d) and 17ZF (3)), 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 student's 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 limitation on the right to education 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. The proposed government amendments are also proportionate as they are directed at balancing the objective of ensuring safety of people at the school in light of immediate risk of harm and would be the least restrictive means of ensuring worker and student safety.

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 Government Amendments through the ability to take action under 17B (2) 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.

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

The intent of the provision under 17B (2) 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.

Action taken in relation to behaviour which does not happen on school premises or during school hours is intended to be limited to when the behaviour reduces the safety or effectiveness of the learning environment at the school.

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.

A government amendment is proposed to update the example for section 17B (2) to further clarify when action may be taken if the behaviour does not happen on school premises or during school hours. Examples of enacting this provision would be when a student is using social media outside school hours to encourage violence against a student at school the next day. This behaviour has an impact on the effectiveness of the victim's learning environment whilst at school.

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.

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 on 20 December 2022. This fixed commencement date is intended to coincide with the commencement of the new 2023 school year but prior to the end of the previous registration cycle for non-government schools, ensuring that those schools who are registered in 2022 can transition to ongoing registration in 2023. A fixed date is also intended to give certainty to non-government schools about the proposed registration requirements for 2023, as they start preparing for the process towards the end of the year prior.

Clause 3 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 which reflect the new provisions relating to suspensions, exclusions, transfers and expulsions and the registration of non-government schools.

Clause 5 Section 9 heading

This clause provides for the substitution of the heading of section 9 to remove the link to chapter 2.

Clause 6 Section 9

This clause omits the word *chapter* and substitutes it with *Act*, as the provisions relate to the whole Act, not just the chapter.

Clause 7 New sections 10AA and 10AB

This clause inserts a new section which outlines the requirements for reporting through the student movement register. This includes the recording of information for students who are unenrolled, enrolled at a different education provider, registered for home education and students whose enrolment contract has been terminated or who are transferred, expelled or excluded from a school. This information is to be recorded within 5 days after the event happens.

The clause 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.

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.

Information in this clause includes the meaning of *unsafe or noncompliant* behaviour, clarifying that behaviour must reduce the safety or effectiveness of the learning environment at the school, relevant definitions, the requirements to exhaust all reasonable alternatives and communicate with students and parents and the occasions when notification is not required. It also provides a revised example of when behaviour may be *unsafe or noncompliant* even if the behaviour does not happen on school premises or during school hours. The example refers to using social media outside school hours to encourage violence against a student at school the next day.

Suspensions

Part 2A.2 revises the provisions relating to suspension, including the notice to be given, limits the length of a suspension to no more than 20 days and prevents the ability to enact concurrent suspensions.

The process for enacting a suspension in a government or Catholic system school is clearly outlined, 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. The clause also 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. Should the behaviours present an immediate or imminent risk of harm to a person, the provisions also outline that the principal may take the proposed action before giving the parents written notice.

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.

It clearly outlines, reasonable adjustments in place for the student must be reviewed, including reviewing the way an adjustment is implemented, and that any reasonable

adjustments that would support the student to return to school safely must be put in place. It also outlines that for government and Catholic system schools, the decision-maker may delegate the decision-maker's power to suspend a student at a school to the principal of the school.

Transfers

Part 2A.3 revises the provisions relating to transfers of students between government schools. This includes outlining 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 to transfer the student considering all the circumstances, including any views of the student and their parents about the proposed transfer.

The proposed amendments also outline the notice required to be given and the information requirements a principal must provide to the decision-maker, for a decision to be made. 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 and the requirement to make available access to counselling for the student are also outlined.

Expulsion (Catholic system and independent schools)

Part 2A.4 includes provisions for expulsion from a Catholic system school or independent school with the requirements and process for enacting an expulsion outlined in the legislation. This includes the reasons for which a expulsion can be enacted and that 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 to expel the student considering all the circumstances, including any views of the student and their parents about the proposed expulsion.

The proposed amendments also outline 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. It also clearly articulates how students and parents should be involved in the process and the requirements to make available access to counselling for the student.

Exclusion (government and Catholic system schools only)

Division 2A.5.1 outlines the provision of exclusion from all government schools, including that this can only be enacted if the student is not of compulsory education

age and has engaged in unsafe or noncompliant behaviour. The school at which the student is enrolled must have exhausted all reasonable alternatives to excluding the student and it must not be in the best interests of the student, another student or a member of staff for the student to remain enrolled at any government school. It must also be reasonable to exclude the student considering all the circumstances, including any views of the student and their parents about the proposed exclusion.

The proposed amendments also outline the notice required to be given and the information requirements a principal must provide to the decision-maker, for a decision to be made. Consideration must also be given to the student's history across the whole school system when deciding to exclude a student from the system and how students and parents should be involved in the process is outlined clearly. The requirements to make available access to counselling for the student is also articulated as well as a requirement 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.

Division 2A.5.2 clarifies 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 to exclude the student considering all the circumstances, including any views of the student and their parents about the proposed exclusion.

The division also outlines the notice required to be given, the information requirements a principal must provide to the decision-maker, for a decision to be made and outlines that consideration must also be given to the student's history across the whole school system when deciding to exclude a student from the system.

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

This clause omits the previous section 36 relating to suspension, exclusion or transfer of student by director-general which is replaced by chapter 2A.

Clause 10 Sections 104 and 105

This clause omits the previous sections 104 and 105 relating to suspension, exclusion or transfer of student by director-general which is replaced by chapter 2A.

Clause 11 *Student transfer register* Section 146A

This clause omits the previous section 146A which is now replaced by sections 10AA and 10AB

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* relating to suspensions, transfers and exclusions. This refers to all suspensions, transfers and exclusions under the pre-amendment Act applying under the new Act.

Clause 13 *Reviewable decisions* Schedule 1, item 12

This clause replaces the old section numbers for 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*

This clause omits the previous definition of *exclusion* which has been updated.

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 relating to registration of non-government schools to reflect the new provisions.

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* to clearly articulate these provisions relate to all schools.

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* to clearly articulate these provisions relate to all schools.

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* to clearly articulate these provisions relate to all schools.

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

This clause omits the word *school* and substitutes with *government or non-government school* to clearly articulate these provisions relate to all schools.

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

This clause omits the word *school* and substitutes with *government or non-government school* to clearly articulate these provisions relate to all schools.

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

This clause updates the wording to ensure consistency across the chapters relating to government and non-government schools.

Clause 27 *Section 20B heading*

This clause updates the wording to clearly state this only applies to government schools.

Clause 28 *Section 20B (1)*

This clause omits the word *school* and substitutes with *a government school* to clearly state this only applies to government schools.

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

This clause omits the word *boarding facilities* and substitutes with *residential boarding services* which is the preferred terminology.

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

This clause omits the word *course money* and substitutes with *tuition fees* which is the preferred terminology and aligns with terminology in Commonwealth legislation.

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

This clause substitutes the definition of *tuition fees*—see the *Education Services for Overseas Students Act 2000 (Cwlth)*, section 7 which is the preferred terminology and aligns with terminology in Commonwealth legislation.

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

This clause after *the school* inserts (*an approved educational course (government)*) to clarify the course must be approved.

Clause 33 Chapter 4

This clause substitutes chapter 4 relating to non-government schools.

It updates the principles of the chapter in line with the proposed amendments and the administration of non-government schools, which includes the appointment and functions of the registrar. It inserts provisions for the establishment, functions, role, membership, term of appointments of the registration standards advisory board. This is as well as outlining the facilities that must be made available to the registration standards advisory board, the conduct of meetings and the disclosure of interest requirements.

The clause also outlines the new non-government schools registration standards and guidelines to support the standards must be made in consultation with key stakeholders.

It outlines the application, requirement for further information and decision provisions for in-principle approvals. It also outlines the application, requirement for further information, requirement to refer to the registration standards advisory board and decision, conditions, duration and register and registration certificate requirements for registration.

The clause provides detail on the requirements for amending registration, registration offences, register of non-government schools and the requirement for the proprietor to update details.

The clause also outlines non-government registration reviews and how they can be a result of an annual review program or after a concern is raised. If a concern is raised, the registrar must give the registration standards advisory board a de-identified report about concerns raised. The provisions also include reasons to carry out reviews and reasons not to, as well as how a registration review should be carried out and compliance directions that may be a result of the review.

It also outlines the meaning of regulatory action, the grounds for which it that may be taken, the requirement to refer to the registration standards advisory board, notification requirements the procedure for taking action, the effect of cancellation and the requirements if regulatory action is not taken.

The clause provides updates to the approved educational courses and registers of enrolments and attendances in line with the aforementioned amendments.

It also outlines the meaning of an *authorised person (non-government)*, their appointment, functions, identity card requirements and powers.

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* to clearly articulate these provisions relate to all schools.

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

This clause separates out the provisions relating to principal of a government or non-government school from the person conducting an approved educational course under *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 which have changed as a result of the Bill.

Clause 37 *New section 153C*

This clause inserts provisions to update *Extending in-principle approval—COVID-19 emergency* to support management of the COVID-19 emergency.

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

This clause substitutes regulation making powers to allow for the apply, adopt or incorporate an instrument as in force from time to time, in reference to AS 5725:2015 (Boarding Standard for Australian schools and residences) and the National Principles for Child Safe Organisations referred to in the Bill.

Clause 39 *New part 10.1A*

This clause inserts transitional provisions in relation the part 3 of the *Education Amendment Act 2022* to enable the continued appointment of the registrar and authorised persons (non-government), as well as previous register of non-government schools being transitioned to the new register to ensure continuity of information.

The provisions also outline that all applications made under the pre-amendment Act that have not been withdrawn or decided by the Minister are considered to be applications under the new Act.

The provisions also state all schools with provisional registration and registration under the pre amendment Act are considered to be registered under the new Act, subject to any conditions imposed, so long as they are not inconsistent with the new Act.

The provisions also outline that if the Minister is satisfied that within 12 months of commencement, a condition of a school's registration under the pre-amendment Act, section 91 had been contravened and the Minister had not cancelled the school's registration, the Minister may take regulatory action against the proprietor of the registered school. This enables action to be taken should an investigation into a school be ongoing at the time of commencement.

The provisions also state that a register of enrolments and attendances kept by the principal of a registered school or a person conducting an approved educational course under the pre-amendment is taken to be a register of enrolments and attendances. This is to ensure that information continuity of record-keeping and oversight of student enrolments and attendances in non-government schools in the ACT.

Clause 40 Section 313

This clause outlines the expiry date of chapter 10, which is 12 months after the date of commencement. This is because transitional provisions will no longer be required after this time.

Clause 41 *Reviewable decisions* Schedule 1, items 13 to 21

This clause updates the section numbers and revises the titles of reviewable decisions relating to the registration of non-government school and non-compliance with the Act by non-government schools in line with the amendments.

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 updates definitions to explicitly state an *approved education course means both an approved education course (government) and approved education course (non-government)* and links to the relevant new sections.

The definition of *authorised person (non-government)* has also been updated to link to the relevant new section.

Clause 44 Dictionary, definition of boarding facilities

This clause has been omitted and replaced earlier in the Bill with the preferred terminology.

Clause 45 Dictionary, new definitions

This clause inserts new definitions for *compliance direction*, *connected*, *contact details*, *governing body*, *government or non-government school* in line with the updated wording in the Bill.

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

This clause updates the definition of *in-principle approval* and links it to the relevant new section.

Clause 47 Dictionary, new definitions

This clause inserts new definitions for *key individuals* and links it to the relevant Commonwealth legislation.

The clause also updates the definition of *levels of education* in line with the amendments.

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

This clause clarifies the definition of *non-government school* to mean a school that is not a government school.

Clause 49 Dictionary, new definitions

This clause inserts links to the new sections for *notice of regulatory action*, *notifiable change*, *occupier*, *offence*, *premises*, *proposed campus*, *proposed change day*.

The clause also inserts a definition of permanent resident, linking it to the relevant Commonwealth legislation.

Clause 50 Dictionary, definition of *proposed opening day*

This clause omits the definition of *proposed opening day* which is renamed and reflected later in the Bill.

Clause 51 Dictionary, new definitions

This clause inserts new definitions of *proposed starting day*, *proprietor* and *registered campus* in line with the terminology of the new amendments.

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

This clause substitutes the definition of *registered non-government school*, linking to the relevant new section.

Clause 53 Dictionary, new definition of *registered school*

This clause inserts a new definition of registered school and links to the relevant new section.

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

This clause updates the definitions of *register of enrolments and attendances* and *register of nongovernment schools* and links to the relevant new section.

Clause 55 Dictionary, new definition of *registrable change*

This clause inserts a new definition of *registrable change* in line with the amendments and links to the relevant new section.

Clause 56 Dictionary, definition of *registrar*

This clause substitutes the definition of *registrar* and links to the relevant new section.

Clause 57 Dictionary, new definitions

This clause inserts new definitions of *registration condition*, *registration review*, *registration standards*, *registration standards advisory board* and *regulatory action* in line with the amendments and links to the relevant new section.

Clause 58 Dictionary, definition of *school*

This clause substitutes the definition of school, providing more detail on what constitutes a school.

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

This clause inserts a new definition of *show cause notice* in line with the amendments and links to the relevant new section.

Clause 60 Dictionary, definition of *student member*

This clause omits the definition of *student member* which is no longer mentioned in the Act.

Education Regulation 2005

Clause 61 New part 1A

This clause inserts a new part 1A into the *Education Regulation 2005* in relation to the particular information prescribed when entering information into the student movement register to ensure oversight of student movement.

Clause 62 Section 2B

This clause substitutes the *requirements for provision of residential boarding services for government schools*, as non-government schools who provide residential boarding services are regulated through the amendments.

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 specific information required for an application for in-principle approval, registration applications, notifiable changes, registration amendment applications and requirements should an application require amendments.

Clause 64 New schedule 2

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

The first standard relates to governance, which includes that the proprietor of a registered school must be a corporation, the proprietor of a registered school must be registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth), 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 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.

It also outlines requirements for financial viability, the requirements for policies and procedures to ensure compliance with the standards and that the policies listed in the standards require consultation with students, parents and staff. The reporting requirements to make an annual statement of compliance with the registration standards are clearly articulated, as are the requirements to ensure continuous improvement in the operation of the school.

The requirements for non-government school enrolment policies, procedures and contracts are also outlined, including the requirement to have clear enrolment policies and to apply natural justice and procedural fairness when making decisions to end an enrolment as well as the requirements for complaints policies and procedures.

The second standard relates to educational programs and educational courses, including the curriculum requirements for non-government schools, that information about a school's educational programs must be available to students, parents and staff, the requirements for monitoring and reporting a student's educational performance, and 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.

The third standard is related to safety and welfare and details the requirements for protection from harm for students, members of staff at the school and other people in the school's operation and outlines that schools must comply with the National Principles for Child Safe Organisations.

The standard also requires schools to have procedures in place to encourage attendance, 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 and details that the proprietor of a registered school must ensure that the school has behaviour management policy and procedures.

The fourth standard relates to other operational requirements, such as the requirements for compliance with territory and Commonwealth laws and the suitability requirements of key individuals for the proprietor.

It articulates each person employed to teach at the school is an approved teacher under the *ACT Teacher Quality Institute Act 2010* and 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*.

It 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 and 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.

The standard also 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 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.

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* and refers to the relevant Commonwealth legislation.

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* in line with the amendments.

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* in line with the amendments.

[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* in line with the amendments.

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* in line with the amendments.

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* in line with the amendments.

[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* in line with the amendments.

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* in line with the amendments.

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

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