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

**TENTH ASSEMBLY**

**EDUCATION AMENDMENT BILL 2024  
REVISED EXPLANATORY STATEMENT**

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# EDUCATION AMENDMENT BILL 2024

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*.

## INTRODUCTION

This explanatory statement relates to the *Education Amendment Bill 2024* (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 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 Education Act) and the *Education Regulation 2005* (the Regulation).

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 Education Act to strengthen equity, student agency, access and inclusion.

A phased approach is being applied to this process of amending the Act. The first phase 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 was passed in June 2022 through the *Education Amendment Bill 2022*. A fourth phase of amendments was passed in November 2023 through the *Education (Early Childhood) Legislation Amendment Bill 2023*.

The fifth phase of amendments, to which this explanatory statement relates, focuses on enrolments, attendance, participation and distance education. The Bill will ensure that the Act remains up to date with the requirements of a modern educational environment, whilst also ensuring that parents and carers, and school staff, have greater clarity around their obligations.

The Bill will focus on matters relating to attendance and participation at school, with many of the proposed amendments seeking to modernise the Act to reflect a contemporary school environment and promote flexibility in terms of how learning

can be delivered to support individual students, as well as the broader school community. The Bill also proposes to include provisions for the delivery of distance education.

The majority of amendments in the Bill will affect all sectors (both government and non-government) with a small number impacting either government or non-government schools only.

The amendments to the Education Act have been arranged in the following core areas:

1. modernising participation and attendance requirements, to enable different methods of delivery of education and attendance at educational programs;
2. strengthening provisions to minimise risk of children and young people disappearing from the education system;
3. outlining the requirements to provide distance education, and;
4. making a series of minor and technical amendments to improve clarity in the Act and reduce administrative burden.

Extensive consultation with affected stakeholders occurred prior to the policy approval stage, as well as throughout the development of the Bill. Consultation will continue in relation to implementation of the reforms proposed in the Bill.

### **Modernising participation and attendance requirements (applies to all schooling sectors)**

#### *Attendance requirements*

School attendance requirements currently outlined in the Act are inflexible and do not reflect a modern learning environment. For example, a child is required to attend school every day the school is open for attendance and during all the times of the day the school is open. However, there are circumstances where attendance looks different for students and does not require attendance at a physical school, for example camps or excursions. The Bill recognises that there is a need to introduce more flexibility in relation to attendance and participation requirements and proposes these through updates to section 10, to reflect the broader range of attendance options available in a contemporary learning environment.

Section 10A(2)(a) has been updated to include students participating in an approved educational course being delivered by an education provider, such as the Hospital School and Muliyan. It also includes a new example to cover students participating in approved school activities such as camps and excursions, through section 10A(2). These updates will ensure student participation is accurately captured in the variety of settings they are undertaking their educational course and associated activities in.

Section 10 also includes updates referring to distance education attendance requirements. Section 10A(4) outlines attendance, when referring to distance education, includes compliance with the education provider's requirements for attendance. Examples outlined will include, but are not limited to, logging in via an online portal at required times, as well as attending practical, face-to-face examinations. These updates will make clear attendance requirements to students (and their families), who may be eligible to undertake distance education within the ACT.

### *Exemption certificates*

Updates to Exemption Certificates are also covered in section 12 which will allow Exemption Certificates to be issued through consideration of health or educational needs, to allow for reduced attendance requirements where it is in the best interest of the student.

### **Strengthening provisions to minimise risk of children and young people disappearing from the education system (applies to all schooling sectors)**

The Bill includes an update, through section 10, that will expand on recent changes to the Act which seek to keep students connected to the education system, after they are unenrolled from a school (both government and non-government).

The strengthening of these provisions relates to an outstanding element of Recommendation 11 of the Coroner's Report into the death of Bradyn Dillon, which concerns procedures around unenrolment of a child or young person from school. This recommendation was agreed to in principle by the ACT Government and has been in part delivered through the establishment of the Student Movement Register (SMR), introduced via the *Education Amendment Bill 2022*.

The current operation of the SMR requires schools to notify the Directorate of a student's unenrolment within five days of unenrolment occurring. Schools are also required to include information regarding the student's next enrolment destination; however, parents or carers are not currently obliged to provide this information.

Through the addition of new section 10AC, existing provisions will be strengthened by obliging parents or carers to supply this information to the Directorate, not to the school they are unenrolling from. If they do not provide this information, the school will still be able to unenroll that child or young person and the obligation to follow up with the family for this information will now rest with the Directorate, through the existing SMR process. The Directorate will provide advice to families about this obligation at the time the unenrolment is reported through the SMR.

New section 10AA(2)(c) also clarifies that parents or carers must notify the Directorate if their child commences or ceases distance education, even if they remain enrolled at the same school.

## **Outlining the requirements to provide distance education (applies to all schooling sectors with some differentiation)**

The Bill introduces a new Chapter 4B in the Act that outlines the requirements for provision of and access to, distance education, in both the government and non-government sector.

Section 127BA defines the term ‘distance education’ as an education course, that requires remote participation by the child for most of the education course; and participation by the child at a level that is full-time under the requirements for the course. Section 127BA applies to children living in the ACT and any other jurisdiction. Students accessing individual units of study online as part of their usual on-site education course are not considered to be accessing distance education. Section 127BC outlines the requirements for distance education, including that the school must have policies and procedures about ensuring parental supervision of students, course attendance, curriculum and delivery.

### **Government Schools**

Section 127BB outlines when a school can provide distance education. It stipulates that in the government sector, 127BD allows the Director-General to determine if a government school may provide distance education. The Director-General may also determine if a government school in another jurisdiction may provide distance education to students enrolled in an ACT Government school.

### **Non-Government Schools**

For the non-government sector, updates to Part 4.3 require a non-government school to be registered to provide distance education in the ACT prior to delivering this mode of education. A corporation seeking to offer distance education would first have to meet the conditions required for registration as a non-government school, including complying with the registration standards, as well as demonstrate that they meet the requirements for providing distance education under Section 127BC in Chapter 4B of the Act.

Under the amendment Part 4.3, an existing non-government school intending to offer distance education would need to apply for a registrable change to their registration and meet the distance education requirements outlined in Section 127BC. An existing non-government school intending to stop offering distance education or restarting providing distance education within two years of stopping, would be a notifiable change.

Section 127BB (2) allows for the Registrar of Non-Government Schools, in consultation with the Registration Standards Advisory Board, to determine a regulatory fee for the enrolment of students in registered schools undertaking distance education, who do not live in the ACT. The fees would be payable by the school to the ACT Government to contribute to the cost of regulating distance

education. This fee is intended to cover the cost of any regulatory burden the ACT may be subject to, as the Registrar of Non-Government Schools has a regulatory responsibility for students enrolled in non-government schools registered in the ACT – including students from outside the ACT enrolled at these schools.

It is not intended that a fee would be determined unless the provision of distance education enrolments creates a financial burden that cannot be met through existing resourcing.

Section 104A and 105 (3A) introduce two offences in relation to the provision of distance education. The first creates a strict liability offence if a person provides distance education to a child or young person living in the ACT without being a registered school, to a maximum of 50 penalty units. To remove any doubt, the offence includes conduct of online provision of distance education to children living in the ACT by a school that is registered in another State or Territory but not registered in the ACT. For example, it would be an offence for a school that is registered in South Australia to provide online distance education to children residing in the ACT without also being registered in the ACT. The offence carries a maximum penalty of 50 penalty units.

The second creates a strict liability offence if a school is a registered school but is not registered to provide distance education and therefore is operating outside of the scope of their registration, to a maximum value of 10 penalty units. These offences replicate the existing offences in the Act in relation to operating an unregistered government school and operating a registered school other than within the scope of registration.

Consideration has been given to the nature and size of these offences.

It is understood from the Guide to Framing Offences that strict liability offences should only be made in the context where a person knows or ought to know the obligation placed on them. To be registered to offer distance education, an entity must first (or simultaneously) become a registered school. Once they are engaged in this process, including if they apply and are not approved, it is reasonable to expect they must understand the requirements to become a registered school and in particular, to provide distance education.

It is recognised that if an entity is providing distance education without having engaged in the registration process, they may not be aware of their legal obligations. Public communications will accompany the implementation of the Bill to help spread awareness of the new laws.

These offences need to be commensurate to the potential risk of harm to a child if they are receiving education from an unregistered provider. In these circumstances, it is a risk to their education as the government has no oversight of the quality of education they are receiving. It is also a risk to their safety, as the government has

no record of their enrolment anywhere in the education system so cannot oversee their welfare. Without registration, there are also no safeguards in place to ensure those delivering distance education have appropriate qualifications, professional registration, and working with vulnerable people checks.

It was deemed important that in scenarios where a child is receiving distance education from an unregistered school, that parents or carers of the child should not be punished, as they may reasonably believe that they are accessing an approved educational course. Instead, it is more appropriate that these offences fall to the entity that is providing the distance education. In these cases, the Directorate would support the family to access alternative means of education – through enrolling in their local ACT Government school, enrolling in a registered non-government school or registering for home education.

It is noted that if a family does not enrol in an ACT Government school, a registered non-government school or register for home education, they are not meeting their compulsory education requirements under the Education Act and would be supported to do so by the Directorate before compliance action may be taken.

The Bill includes a two-year transition period for the commencement of the distance education provisions. This will mean that an unregistered school is not able to accept new enrolments for distance education after the Bill passes, but that any existing students can remain enrolled for two years. During this time, the Directorate may support the school to become registered to provide distance education and if this cannot occur, the Directorate will support enrolled students to find another way of meeting their compulsory education requirements, which could include enrolling at an ACT Government school, at a registered non-government school or registering for home education.

### **Making a series of minor and technical amendments to improve clarity in the Act and reduce administrative burden (applies to all schooling sectors with some differentiation)**

#### **All schooling sectors**

The Bill also makes a series of minor and technical amendments to the Act, specifically to definitions and processes, and to elevate existing policy positions to law, to reduce confusion for families and strengthen existing processes while reducing administrative burden for Directorate staff.

The Bill introduces a new definition to the dictionary of the term ‘student’, to refer to a person enrolled at an education provider for the purpose of the provider’s education course, to achieve consistency in use across the Act.

New Section 10AAA outlines that ‘enrolment’ commences (after an application for enrolment has been accepted by the education provider) on the day the education course starts or on the day agreed between the education provider and the child’s



parents or carers for the child to start the course, to clarify duty of care requirements. This does not limit the parent's responsibility to ensure their child meets compulsory enrolment requirements but rather acknowledges that for some families that move into the Territory, enrolment may commence after the course starts.

The Bill also updates Section 7 General principles of the Act, to clarify that parents or carers have the right to enrol their child in a government school in which the child is eligible to be enrolled, elevating the current enrolment policy to law.

New Section 33 (1) (b) requires attendance records to be kept by approved providers during activities that are held off school grounds.

The Bill removes the obligation of the 'Authorised Person' (a regulatory role) to be responsible for encouraging attendance in both government and non-government school settings. Instead, in government schools, Section 35 (2) requires the Directorate to have policies that encourage attendance including through taking steps to support a student's attendance (for example, through referral to support services).

Section 10A (4) of the Education Act, supported by Section 2AAA of the Regulation, provides examples of what is meant by a 'reasonable excuse' as it relates to failing to meet attendance and participation requirements and the decision-maker in this section has been changed from the Director-General to the principal of the school. A list of reasonable excuses is prescribed in the Regulation to support principals in determining if an excuse is reasonable.

### Government schools

In Chapter 3 Government schools, new Section 21 (8) defines the term 'local government school' as the government school whose priority enrolment area includes the child's place of residence (if a child has two places of residence, they will have two local government schools). Importantly, the Bill legislates existing policy to ensure all children have the right to access their local school, delivering on a Disability Royal Commission recommendation.

Section 21A gives greater clarity around the concept of priority enrolment areas. Subsection (1) defines the term 'priority enrolment area' as the area from which the Director-General determines a government school must accept enrolments and requires the Director-General to make the determination of a priority enrolment area public.

## **CONSULTATION ON THE PROPOSED APPROACH**

A proactive and intensive approach was undertaken when consulting on the Bill. A significant amount of internal, community and stakeholder consultation had been conducted in the early stages of the Bill in early to mid-2023 to inform the development of its policy position, and during the finalisation of the Bill from January 2024, leading up to its introduction in April 2024.

### **External stakeholders**

Key external partners, stakeholders and the community have been engaged throughout the development of this Bill, from conversations during policy development through to the final consultation on the Bill.

The Directorate has engaged with the community through consultation conducted in YourSay, which was open for six weeks and received over 100 submissions, some of which were received from organisations such as the ACT Council of Social Services, Carers ACT, Advocacy for Inclusion, ACT Alliance for Evidence Based Education, Brindabella Christian College and Yarralumla Primary School Parents and Citizens Association.

The Education Directorate has engaged with a wide range of external partners and stakeholders, such as the non-government school sector (Association of Independent Schools and Catholic Education), ACT Council of Parents and Citizens Associations, Association of Parents and Friends of ACT Schools, ACT Principals Association, Australian Education Union, Independent Education Union, Community and Public Sector Union, ACT Youth Advisory Council, the ACT LGBTIQ+ Ministerial Advisory Council, the Disability Education Reference Group and other disability advocates (ACT Down Syndrome Association, Carers ACT, Imagine More, Women with Disabilities ACT), the Aboriginal and Torres Strait Islander Elected Body, and other relevant bodies.

These external partners and stakeholders have taken part in various forms of consultation, including a formal roundtable held in June 2023, consultation workshops, group and individual meetings and the provision of written feedback, to help develop the scope of the Bill. Key stakeholders had also been provided with consultation copies of the Bill (January 2024) and have provided feedback for the Directorate to consider. All feedback has been considered and most has been incorporated.

The Education Directorate has also engaged heavily with the Human Rights Commission throughout the development of the Bill to ensure that the proposed amendments are human rights compliant. Feedback from the Human Rights Commission has informed the development of the final Bill.

## **ACT Government agencies**

Extensive consultation on the Bill has occurred both internally within the Education Directorate and across other areas of the ACT Government. Internal consultation within the Directorate had been carried out through regular working groups and a workshop held with executive staff to ensure alignment between the amendments and the internal policy environment.

Consultation occurred with other areas of the ACT Government, such as Policy and Cabinet within the Chief Minister, Treasury and Economic Development Directorate, Treasury, the Office for Disability within the Community Services Directorate, the Office of the Senior Practitioner, and the Justice and Community Safety Directorate, including the Human Rights Unit and Criminal Law within the Legal Policy and Programs branch.

## **CONSISTENCY WITH HUMAN RIGHTS**

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

Section 27A of the Human Rights Act outlines the child's right to access free school education. A large number of the amendments proposed in the Bill will have a positive impact on this right by introducing more flexibility in law to support how education can be delivered to children and young people.

## **Rights engaged**

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

- section 11 - right to protection of the family and children (promoted)
- section 27A – right to education (promoted)
- section 12 - right to privacy and reputation (limited)
- section 22 – rights in criminal proceedings (limited)

## **Rights promoted**

### **Section 11 – right to protection of the family and children**

Under section 11 of the *Human Rights Act 2004* the family is the natural and basic group unit of society and is entitled to be protected by society, and every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

The right to protection of the family and children is promoted through the introduction of Chapter 4B and amendments to Part 4.3, which outline the requirements for

provision of and access to, distance education, in both the government and non-government sector.

Currently, the Education Act does not offer any legislative framework for the provision of distance education. This means that entities wishing to offer distance education are able to do so informally, without the government having any oversight of the quality of education provided or the considerations that have been given to support the safety and wellbeing of the child. This also poses a child safety risk as the directorate has no oversight of these children.

### Section 27A – right to education

Under section 27A of the *Human Rights Act 2004* every child has the right to have access to free, school education appropriate to his or her needs.

The right to education is promoted extensively throughout the Bill, particularly by the amendments that introduce more flexibility in attendance requirements. Currently, the school attendance requirements in the Act are very rigid. For example, a child is required to attend school every day the school is open for attendance and during all the times of the day the school is open.

However, there are circumstances where attendance looks different for students and does not require attendance at a physical school. The Bill proposes to introduce more flexibility in the school attendance requirements in the Act, to reflect the broader range of attendance options available in a contemporary learning environment.

These circumstances include students participating in an approved educational course being delivered by an education provider such as the Hospital School, Muliyan, The Cottage and Murrumbidgee School. It also includes students participating in approved school activities such as camps, excursions, work experience, etc.

While it is intended that this provision could allow for the flexible delivery of education, including through self-directed and online modes, this would only be implemented through a planned and intentional approach to support the needs of students. It is not intended to be implemented in an ad hoc or reactive manner. For example, this may allow for specialised subjects to be offered online where appropriate so that students can access a wider range of electives than may be available at their local school. Where a flexible learning provision includes the ability for students to learn from home, this would require parental consent.

The right to education is also promoted through the establishment of requirements for provision of and access to, distance education, in both the government and non-government sector. This offers a new way of accessing education and ensures that

appropriate regulation and oversight of the quality of education, as well as student safety and wellbeing, can be provided.

## **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 nature and extent of the limitation;
- c) the relationship between the limitation and its purposes; and
- d) 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 12 - right to privacy and reputation

#### *1. Nature of the right and the limitation (s 28 2(a) and s 28 2(c))*

The right to privacy and reputation may be limited under Section 35, through making provision for the Directorate to support attendance at government schools.

This provision shifts away from the previous compliance-based approach to monitoring attendance, where an 'Authorised Person' (a regulatory role) would be responsible for ensuring students met their attendance requirements. Under the new Section 35, the Director-General must establish procedures that states the compulsory nature of school attendance and the benefits of attending school regularly, as well as outline steps that can be taken to support a student's attendance.

Taking steps to support a child's attendance at the program could include connecting the child's parents to a support service. This would require understanding what the barriers were to the child attending and then connecting them with an appropriate service. For example, if the child was not attending school due to a parent having a mental health condition, the parent could be connected to a mental health support service. This would only occur with the parent's consent unless otherwise required by law (such as when child safety concerns are identified) and therefore, the limitation is the least restrictive means available to achieve the purpose of the proposed amendment.

The right to privacy and reputation may also be limited under Section 10AC, through requiring a child or young person's parents to notify the Directorate, within 28 days, if their child's enrolment ends, and provide the details of their new enrolment. This includes if a child unenrolls from one school to move to another, if they unenroll from a school to register for home education, if they deregister from home education to enrol at a school, or if they remain enrolled at the same school but shift the mode of delivery of their education between distance education and regular attendance.

Subsequently, Section 2AB in the *Education Regulation 2005*, which is related to Section 10AC, may also limit the right to privacy and reputation. This regulation prescribes the information which must be provided under s 10AC, including personal information about the child, the child's parents and their enrolment or registration information at their previous setting and their new setting.

This section would not apply if parents or carers have a reasonable excuse, for example, if they are escaping a domestic violence situation.

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

The purpose of the limitation on the right to privacy and reputation through the establishment of procedures encouraging attendance is to promote the right to education. This amendment does so by supporting attendance at school so that children can get the benefit of attending the program they are enrolled in.

These provisions also acknowledge that failure to attend school regularly may be symptomatic of other issues a family may be facing and could benefit from support for.

The purpose of the potential limitation on the right to privacy and reputation in Section 10AC, and subsequently Section 2AB in the *Education Regulation 2005*, requiring a child or young person's parents to notify the directorate when their enrolment changes is to promote the right to the protection of the family and children. This amendment seeks to ensure children do not disappear from the system and meets an outstanding recommendation from a coronial inquiry.

## 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 privacy and the promotion of the right to education in that connecting a family to support services, where appropriate, can encourage attendance at school which ensures the student is able to receive the benefit from the educational program they are enrolled in.

There is a rational connection between the potential limitation on the right to privacy and the promotion of the right to the protection of the family and children by ensuring the government can maintain oversight of children, so they do not disappear from the system.

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

The limitation on the right to privacy and reputation that may occur through the establishment of a provision for the Directorate to encourage attendance at school through connecting their family to a support service would also only serve to encourage the child's attendance at school and would only occur with the consent of the family. Therefore, the limitation is the least restrictive means available to achieve the purpose of the proposed amendment.

The limitation on the right to privacy and reputation that may occur through the requirement for parents or carers to notify the directorate if their child's enrolment changes is intended only to ensure that vulnerable children do not disappear from the system. The parent or carer is required to provide their new enrolment information to the directorate, not to the school they are unenrolling from, so their information remains secure. They would be required to provide this information via an online form, before it is automatically entered into the Student Movement Register, so there is a reduced risk of a data leak as a result of human error. The Bill includes a provision that means parents or carers would not be required to provide this information if they had a reasonable excuse, for example, if they were escaping a domestic violence situation. Therefore, the limitation is the least restrictive means available to achieve the purpose of the proposed amendment.

### Section 22 – rights in criminal proceedings

#### *1. Nature of the right and the limitation (s 28 2(a) and s 28 2(c))*

The right to be presumed innocent until proven guilty according to law may be limited under Sections 104A and 105 (3A). Through Section 104A, a maximum of 50 penalty units applies if a person provides distance education without being registered school. This is a strict liability offence. In Section 105A (3A) a maximum value of 10 penalty units applies if a proprietor of a registered school provides distance education which is outside the school's scope of registration. This is also a strict liability offence.

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

The purpose of the offences in section 104A and 105 (3A) is to establish an effective

enforcement mechanism for the regulatory framework relating to the provision of and access to, distance education, in both the government and non-government sector. There are risks associated with entities offering distance education without government oversight of the quality of education provided or the considerations that have been given to support the safety and wellbeing of the child.

### *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 be presumed innocent until proven guilty according to law and the penalty units associated with Sections 104A and 105A (3A), due to the potential risk of harm to a child if they are receiving education from an unregistered provider.

The relevant provisions replicate the existing offences in the Act in relation to operating an unregistered government school and operating a registered school other than within the scope of registration.

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

Consideration has been given to the nature and size of these offences.

It is understood from the Guide to Framing Offences that strict liability offences should only be made in the context where a person knows or ought to know the obligation placed on them. To be registered to offer distance education, an entity must first (or simultaneously) become a registered school. Once they are engaged in this process, including if they apply and are not approved, it is reasonable to expect they must understand the requirements to become a registered school and in particular, to provide distance education.

These offences need to be commensurate to the potential risk of harm to a child if they are receiving education from an unregistered provider. In these circumstances, it is a risk to their education as the government has no oversight of the quality of education they are receiving. It is also a risk to their safety, as the government has no record of their enrolment anywhere in the education system so cannot oversee their welfare. Without registration, there's also no safeguards in place to ensure those delivering distance education have appropriate qualifications, professional registration, and working with vulnerable people checks.

Public communications will accompany the implementation of the Bill to help spread awareness of the new laws including obligations for distance education providers to be registered. Following this implementation period, it is reasonable that individuals or entities wishing to provide distance education would be aware that they must operate within a regulatory framework and be subject to legal obligations as community members are aware that the government regulates provision of education to children.





## CLAUSE NOTES

### PART 1 PRELIMINARY

#### Clause 1 Name of Act

The clause provides that the name of the Act is the *Education Amendment Act 2024*.

#### Clause 2 Commencement

This clause provides for the commencement of the Act, and it commences on 1 January 2025. This fixed commencement date is intended to ensure commencement occurs prior to the start of the new 2025 school year. A fixed date is also intended to give certainty to schools about their proposed requirements for 2025.

#### Clause 3 Legislation amended

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

### PART 2 EDUCATION ACT 2004

#### Clause 4 General principles of Act Section 7 (2) (c) (iii)

This clause substitutes wording in the General principles to clarify the right of parents to take part in the education of their children. For government schools this enshrines in law the right to enrol a child in a government school that the child is eligible to be enrolled in, for non-government schools this includes the right to apply to enrol, and for home education this includes the right to register for home education.

#### Clause 5 Guidelines —certain director-general functions, Section 9D (1), 2<sup>nd</sup> dot point

This clause removes a reference to section 10A (3) (Child of compulsory education age – school attendance requirement) and substitutes it with a reference to section 10AC (3) (Student movement register – parental notice).

Removing reference to section 10A (3) is consequential to amendments to section 10 A (2) and (3) proposed under clause 7 and clarifies that the director-general does not need to make guidelines in relation to determining a reasonable excuse for not complying with the school attendance requirement, as it is up to the principal of the school to determine this.

This amendment also outlines that the director-general may make guidelines in relation to the student movement register- parental notice.

#### Clause 6 New section 10AAA

This new section clarifies that the enrolment of a child of compulsory education age begins on the day the education course starts for the child; or if the education course starts for the child before the application for enrolment is made—the day agreed between the child’s parents and the education provider for the child to start the course.

**Clause 7 Child of compulsory education age – school attendance requirement, Section 10A (2) and (3)**

This clause substitutes wording to update and clarify the parents’ obligation to ensure their child attends their school education course and required activity.

It removes the requirement to attend the school on every day, and during the times on every day, when the school is open for attendance and instead requires attendance in the way, and during the times, the school requires the child to attend to complete the education course for which the child is enrolled.

It also includes new examples of activities of the school, such as a school concert, sporting day or swimming carnival. The intent of this amendment is to recognise that education occurs through a variety of settings and modes, not all of which are delivered onsite during a regular school day.

It also provides examples and definitions of *attendance* and *reasonable excuse*, to assist the reader.

**Clause 8 Student movement register, New section 10AA (1) (c)**

This clause inserts point (c) which requires the director-general to keep a register of changes in students participation in distance education in accordance with this Act.

**Clause 9 Student movement register, New section 10AA (2) (c)**

This clause inserts point (c) which outlines that the principal of a school must record information in the student movement register when a student starts or stops distance education.

**Clause 10 New section 10AA (3) (c) and (d)**

This clause inserts point (c) which covers that the director-general must record when a student starts or stops distance education, and point (d) which outlines that the director-general must record information about a student movement event given to them under section 10AC (2) (Student movement register—parental notice).

**Clause 11 New section 10AC**

In division 2.2.1, this clause inserts a new section which requires the parent of a child who is of compulsory education age, enrolled at an education provider or

registered for home education to provide information prescribed by regulation in writing, to the director-general within 28 days after their child's enrolment or registration ends.

#### **Clause 12 Division 2.2.3 heading**

This clause updates the heading within this section to 'Information notices' to reflect its content more accurately.

#### **Clause 13 Section 11C**

This clause substitutes current wording with updated wording regarding the director-general giving information notices to a child's parents for matters related to:

- section 10 (Child of compulsory education age—enrolment and registration requirement);
- section 10A (Child of compulsory education age—school attendance requirement);
- section 10D (Child of compulsory education age—participation requirement);
- section 14D (Approval statement—compliance requirement).

It also outlines that in the case of compulsory enrolment requirements (section 10), the director-general can only do so if the child lives in the ACT. This is to clarify that the ACT cannot issue information notices to parents for failure to enrol a non-ACT resident child in education in the ACT.

#### **Clause 14 Sections 11C, 11D, 11E and 11F**

This clause renumbers the sections as 16AA, 16AB, 16AC and 16AD.

#### **Clause 15 Division 2.2.3 (as amended)**

This clause relocates the section relating to information requirements to part 2.4A.

#### **Clause 16 Exemption certificate – issue, Section 12A (2) (c) and (d)**

This clause omits points (c) and (d) relating to the issue of an exemption certificate on the grounds of the child's sense of racial, ethnic, religious or cultural identity or the child's development. This is to ensure these factors are not used to exempt a child or young person from their right to access education.

#### **Clause 17 Exemption certificate – form, Section 12B (d)**

This clause outlines that for exemption from the full-time participation requirement, the details of the exemption must be stated.

#### **Clause 18 Approval statement – issue, Section 14A (2) (a)**

For the issue of an approval statement for participation in training and employment alternatives, this clause omits the word health, and substitutes wording with mental or physical health and wellbeing. This is to ensure a broader view of the best interests of a young person when approving training or employment alternatives.

**Clause 19 Section 14A (2) (c) and (d)**

This clause omits sections (c) and (d) relating to the issue of an approval statement on the grounds of the child's sense of racial, ethnic, religious or cultural identity or the child's development. This is to ensure these factors are not used to discourage a young person from accessing their right to education.

**Clause 20 Giving compliance notice, New section 16B (ba)**

This clause inserts a reference to section 10A (Student movement register—parental notice) in relation to the giving of a compliance notice.

**Clause 21 New section 16B (2)**

After the note, this clause inserts a new section that states the director-general can only give a compliance notice in relation to contravention of section 10 if the child lives in the ACT. This is to clarify that the ACT cannot issue compliance notices to parents for failure to enrol a non-ACT resident child in education in the ACT.

**Clause 22 Operation of government schools, Section 21 (4)**

This clause omits the wording '*children in the government school in their neighbourhood*', and substitutes with '*children in their local government school*' to reflect new language used throughout the Act to improve clarity.

**Clause 23 New section 21 (7) and (8)**

This clause inserts new sections that outline that the director-general may establish procedures for the operation of school-related institutions, for example Murrumbidgee Education and Training Centre. It also provides a definition for *local government school*, to assist the reader.

**Clause 24 New section 21A**

This clause inserts a new section clarifying requirements relating to priority enrolment areas, outlining that a government school must accept enrolment of any child living in the area. Along with clause 4, this amendment enshrines in law the rights for parents to enrol their child in their local government school as determined through their priority enrolment area.

This clause also notes that the term *government school* does not include delivery of a preschool program at the school, since preschools do not have priority enrolment areas.

**Clause 25 Approved educational courses for students at government schools, New section 31 (3) (d)**

This clause inserts a new section which outlines that for government schools, each person carrying out a regulated activity for the provider of an approved educational course must comply with the requirements of the *Working with Vulnerable People (Background Checking) Act 2011*.

**Clause 26 Keeping records of enrolment and attendances for government schools, Section 33 (1) (b)**

This clause substitutes wording to clarify the requirement to keep a record of the student's compliance with required school or course attendance.

**Clause 27 Procedures to encourage school attendance at government schools, Section 35 (2) and (3)**

This clause removes the requirement for the principal of a government school to refer parents and children to support services or an authorised officer for failing to attend school regularly. It substitutes these sections with wording that clarifies that schools must have procedures to encourage school attendance, including steps that may be taken to support a student's attendance. This may include referring to a support service. The intent of this amendment is to take a supportive approach to non-attendance, rather than a compliance-based approach.

**Clause 28 Definitions for pt 3.4, Section 37, definition of *student***

This clause omits the definition of *student* in the section relating to school boards of government schools to remove duplication of the definition in the Act.

**Clause 29 In-principle approval – application, New section 86 (2) (a) (vi) and (vii)**

New sections (vi) and (vii) are inserted in this section relating to the required inclusions for an application for in-principle approval of a non-government school. The new sections state that the application must include whether the proprietor proposes to provide distance education from the campus and if so, the day distance education is to commence. This amendment reflects the campus delivering the distance education program, not the physical location from where students will undertake their learning.

**Clause 30 In-principle approval – decision on application, New section 88 (3) (ea) and (eb)**

New points (ea) and (eb) are inserted in this section which relate to the inclusions required for in-principle approval for registration of the non-government school for each proposed campus. The sections state that the approval must include whether the distance education will be provided from the campus and if so, the day distance education is to commence. This amendment reflects the campus delivering the distance education program, not the physical location from where students will undertake their learning.

**Clause 31 Registration – referral to registration standards advisory board, New section 91 (2) (c)**

This clause inserts wording to clarify the considerations of the registration standard advisory board in relation to an application for registration, stating that if the application includes a proposal to provide distance education from a campus, they must assess whether the proposed school has a distance education policy.

**Clause 32 Registration – conditions, New section 93 (ba)**

This clause inserts new registration conditions to clarify the obligations on a school providing distance education. If a school provides distance education, they must have a distance education policy.

**Clause 33 Registration – register and registration certificate, New section 95 (2) (c) (iv)**

A new section (iv) is inserted through this clause that covers if distance education is to be provided from a campus by a non-government school, this must be included in the registration certificate for the school.

**Clause 34 Proprietor must tell registrar about notifiable changes, New section 96 (1) (ca)**

A new point (ca) is added through this clause to cover when a registered campus stops providing distance education. If this is the case, the proprietor of the registered school must tell the registrar about the change, as it is considered a notifiable change.

**Clause 35 New section 96 (1) (g)**

A new point (g) is added through this clause to cover when a registered campus chooses to restart distance education within 2 years after it initially stopped providing distance education. In this case, the proprietor of the registered school must tell the registrar about the change, as it is considered a notifiable change.

**Clause 36 Proprietor must apply for registrable changes, New section 97 (1) (ca)**

This clause inserts a new point (ca) to include that a proprietor of a registered school must apply to make a change to start providing distance education from a registered campus, as it is considered a registerable change.

**Clause 37 Registration amendment – application, New section 98 (1) (d) (iiia)**

A new point (iiia) is added to outline that if a proprietor proposes to provide distance education from a new campus, the application for amendment of a school registration must include whether the proprietor proposes to provide distance education from the new campus.

**Clause 38 New section 98 (1) (fa)**

This clause inserts a new point (fa) to cover when an already registered campus is applying to provide distance education. In this case, the already registered campus must apply for a registration amendment, which states the campus from where the education will be provided. This amendment reflects the campus delivering the distance education program, not the physical location from where students will undertake their learning.

**Clause 39 Registration amendment – referral to registration standards advisory board, New section 100 (2) (c)**

The insertion of (c) through this clause requires that if an application for a registerable change has been made that includes a proposal to provide distance education from a campus, the registration standards advisory board must assess whether the school has a distance education policy.

**Clause 40 Registration amendment – decision on application, New section 101 (1) (aa)**

This clause inserts additional wording to state that for a registration amendment seeking to provide distance education from a campus, the Minister must approve an application to amend a school's registration if the Minister is satisfied that in addition to the requirements set out at sections 101(1)(a) and 101(1)(b), the school has a distance education policy.

**Clause 41 New section 104A**

This clause inserts a section on how a person commits an offence if they provide distance education without being a registered school. It outlines that a person commits an offence if the person provides distance education to a child in the ACT and does not provide the distance education from the campus of a school registered



to provide distance education. This amendment reflects the campus delivering the distance education program, not the physical location from where students will undertake their learning. It carries a strict liability offence of 50 penalty units.

**Clause 42 Offence – operate registered school other than within scope of registration, New section 105 (3A)**

This clause inserts a new offence under the section relating to operating a school other than within the scope of registration. It is an offence for a proprietor of a registered school to provide distance education from a campus unless the school is registered to provide distance education from the campus. This amendment reflects the campus delivering the distance education program, not the physical location from where students will undertake their learning. It carries a maximum penalty of 10 penalty units.

**Clause 43 Register of registered non-government schools, New section 106 (2) (d) (iv)**

This clause includes an addition to the requirements of the register of registered schools kept by the registrar. For each registered school, the register must now include whether distance education is provided from the campus.

**Clause 44 Approved educational courses – registered schools, New section 125D (3) (d)**

This clause inserts a new section which outlines that for registered schools, each person carrying out a regulated activity for the provider of an approved educational course must comply with the requirements of the *Working with Vulnerable People (Background Checking) Act 2011*.

**Clause 45 Meaning of *register of enrolments and attendances* – pt4.5, Section 125E, definition of *register of enrolments and attendances*, paragraph (a) (ii)**

For non-government schools, this clause updates wording at point (ii) to cover the student's compliance with required school attendance, including any activity of the school.

**Clause 46 Section 125E, definition of register of enrolments and attendance, paragraph (b) (ii)**

For an approved educational course (non-government), this clause updates wording at point (ii) to require a record of the attendance of each student at the course on each day the student is required to attend.

**Clause 47 Nonattendance at registered schools, Section 125J**

This clause omits this section which formerly stated that if a student at a registered school had not been attending regularly, the principal of the school may refer the student's parents and the child to meet with an authorised person. The Non-government Schools Registration Standards require non-government schools to have procedures in place to support attendance. The intent of this amendment is to take a supportive approach to non-attendance, rather than a compliance-based approach.

#### **Clause 48    New Chapter 4B**

This clause inserts a new chapter covering Distance Education in detail.

It starts by introducing section 127BA which outlines the meaning of distance education, clarifying that it refers to an education course for a child that requires remote participation by the child for most of the education course and participation by the child at a level that is full-time under the requirements for the course.

Section 127BB outlines the requirements for the provision of distance education. It states that for a registered school, they may only provide distance education if they are registered to provide distance education. In any other cases, the director-general must have determined under section 127BD that the school is eligible to provide distance education.

It also states that the registrar may determine a fee for the enrolment of students in registered schools who do not live in the ACT, but before deciding on the fees, the registrar must consult the registration standards advisory board. It also notes that a determination is a disallowable instrument. For clarity, this is a regulatory fee for non-government schools, not an enrolment fee for students.

Section 127BC refers to a distance education policy and states that a school that provides distance education must have written policies and procedures (a distance education policy) about:

- (a) the responsibilities of parents in relation to supervision of their children undertaking distance education
- (b) the attendance requirements of students undertaking distance education;
- (c) the curriculum requirements for an education course provided by distance education;
- (d) delivery of the education course, including how practical components are to be completed;
- (e) support that will be provided for personal and social development of students who undertake distance education, including students with diverse needs;
- (f) anything else prescribed by regulation.

Section 127BD outlines a distance education determination. It states that the director-general may determine whether a government school may provide distance

education or if a school in another State may provide distance education for students enrolled in a government school. It notes that a determination is a notifiable instrument.

Section 127BE provides the eligibility for distance education. It states that a child living in the ACT may only participate in distance education if the child is enrolled at a government school or registered non-government school that provides distance education under the Act. They must also meet any criteria required by the school or prescribed by regulation.

### **Clause 49 Regulation-making power, Section 155 (3)**

This clause omits the wording *'incorporate an'* to substitute with the wording *'incorporate a law or'*.

### **Clause 50 – New Chapter 11**

This clause inserts a new chapter 11 covering transitional arrangements relating to the *Education Amendment Act 2024*.

Section 314 outlines definitions, stating that for this chapter the term disapplication period means the period beginning on 1 January 2025 and ending on 1 January 2027 and the term distance education provisions means the provisions outlined at section 104A (Provide distance education without being registered school) and sections 127BB to 127BD.

Section 315, relating to transitional arrangements, has been inserted in relation to distance education provided by a school outside of the ACT and outlines that transitional arrangement provisions relating to distance education apply if before 1 April 2024 a child in the ACT is:

- enrolled in an external school;
- participates in distance education provided by the external school; and
- has not ceased participating in that distance education over the period beginning on 1 April 2024 and ending on 1 January 2025 without a reasonable excuse; and
- during disapplication period, the child continues to participate in the distance education provided by the external school; and
- the external school is not registered to provide distance education under this Act; or the subject of a determination under section 127BD.

It also notes that the distance education provisions do not apply in relation to the external school during the disapplication period, for as long as the child participates in the distance education provided by the school.

It also outlines that Section 127BE (Eligibility for distance education) does not apply in relation to the child for as long as the child participates in the distance education

provided by the external school during the disapplication period. The intent of these amendments are to prevent disruption to a child's education during the transition period.

Section 316 enables the Executive to make regulations dealing with transitional matters. The section contains 2 different regulation making powers.

Section 316 (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 316 (2) outlines that a regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with under this chapter. A regulation under section 316 (2) has effect despite anything elsewhere in this Act or another territory law.

A regulation under this section may only modify chapter 11 of the Act which only deals with the transitional arrangements, 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.

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 11 of the Act has no ongoing effect after the expiry of that chapter, 24 months after the day of commencement.

#### **Clause 51 Reviewable decisions, Schedule 1, item 12, column 4**

This clause inserts the words '*student or*' before the word '*parent*' in Schedule 1, item 12, column 4, allowing a student to request a review of decision as well as their parent. This reflects that some students are independent of their parents and should have the right to request a review of decision in their own right.

#### **Clause 52 Dictionary, new definitions**

New definitions of *distance education* and *distance education policy* are added through this clause.

#### **Clause 53 Dictionary, definition of information notice**

This clause updates the section reference for *information notice* in the dictionary.

### **Clause 54 Dictionary, new definitions of priority enrolment area and regulated activity**

New definitions of *priority enrolment area and regulated activity* are added through this clause, as well as the additions of examples of regulated activities.

### **Clause 55 Dictionary, definition of a student**

This clause updates the definition of a *student*, removing the reference to school boards for government schools and applying the definition to the whole Act.

## **PART 3 EDUCATION REGULATION 2005**

### **Clause 56 New section 2AAA**

The new section 2AAA inserts the reasons for which an excuse would be considered a reasonable excuse. This includes:

- medical issues and recovery,
- attending a medical appointment,
- accessing support or assistance in relation to domestic or family violence, bereavement,
- religious or cultural observation,
- family holidays that do not adversely affect the student's ability to meet the requirements of their educational course
- attending a legal proceeding or meeting associated with a proceeding;
- participating in events approved by the principal, including debates, sporting events, musical or theatrical productions or academic events
- or any other circumstance that the principal is satisfied is reasonable to excuse a child's attendance at the child's school or an activity of the school.

### **Clause 57 Student movement register – Act, s10AA, New section 2AA (2A)**

This clause inserts the information required to be added into the student movement register by the principal for when a student begins or stops distance education. This includes the name of the school and student, the day they started distance education and the campus providing the distance education (if applicable) or the day they started distance education and the campus providing the distance education (if applicable) and the names and contact details of the student's parents.

### **Clause 58 New section 2AA (5)**

This clause inserts the information required to be added into the student movement register by the director-general for when a student begins or stops distance education. This includes the name of the school and student, the day they started distance education and the campus providing the distance education (if applicable) or the day they started distance education and the campus providing the distance education (if applicable) and the names and contact details of the student's parents.

#### **Clause 59 New section 2AB**

In Part 1A, this clause inserts 2AB to clarify what information is required to be provided by a parent for student movement information purposes. This includes the name of the child, contact details, information about the changes to the child's enrolment or registration.

#### **Clause 60 Registration application – Act, s 89 (2) (e), New section 6A (f)**

This clause outlines that evidence of the school's distance education policy must be provided for a registration application if an applicant proposes that a non-government school will provide distance education.

#### **Clause 61 Notifiable changes notice – Act, s 96 (4) (d), New section 6B (ba)**

This clause inserts a new section clarifying that for a notifiable change to stop providing distance education at a registered campus, the proprietor must give written notice of campus where distance education is to be stopped to the registrar.

#### **Clause 62 New section 6B (ea)**

This clause inserts a new section clarifying that for a notifiable change to restart providing distance education at a registered campus, the proprietor must give written notice of the campus where distance education is to be provided to the registrar.

#### **Clause 63 Registration amendment application – Act, s 98 (1) (h), New section 6C (ea) and (eb)**

This clause inserts the information required to be provided in writing to the Minister when a registered campus intends to amend their current school registration and start providing distance education. It also states the required information for when a school wishes to provide new residential boarding services and how they will comply with registration standard 2.25.

#### **Clause 64 Encouraging attendance, Schedule 2, standard 2.16 (2)**

This clause updates registration standard 2.16 (encouraging attendance) for non-government schools to outline that procedures to encourage attendance must state that school attendance is compulsory, state the benefits of a student's regular school attendance and include steps that may be taken to support a student's attendance. It also includes an example of these steps, such as referring a student to a support service.

#### **Clause 65 Compliance with Working with Vulnerable People (Background Checking) Act 2011, Schedule 2, standard 2.22 (2)**

This clause omits the details of what a regulated activity means for this section.

**Clause 66 Dictionary, note 3**

This clause inserts new notes in the dictionary relating to distance education (section 127BA), distance education policy (section 127BV) and regulated activity.