

Statement of compatibility with human rights

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

Teacher Registration (Northern Territory) Legislation Amendment Bill 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the bill

The Bill will strengthen and contemporise the legislation for the registration of teachers and regulation of the teaching profession.

The key proposals for reform aim to:

- streamline administrative processes or operations of the Teacher Registration Board of the Northern Territory (the board)
- strengthen the board's powers for disciplinary proceedings and decision making
- increase openness and transparency, and availability of information, regarding the board's operations and decision making
- clarify the information that the board must be notified of by individuals, employers and other government agencies, and when information can be shared by the board
- confirm the board's responsibility to support and recognise quality teaching and educational leadership, including the promotion and advancement of people in the teaching profession
- provide efficient and cost effective recourse for decisions made by the board, and
- contemporise the legislation to align with community needs and expectations, and better enable the board to respond to changing needs.

The Bill provides that only persons who are fit and proper, have currency of practice and are appropriately qualified should be entrusted with the daily supervision and education of our children and young people.

Human rights implications

This Bill does engage some of the applicable rights or freedoms. In particular, the Bill engages rights or freedoms relative to the:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR) , and
- Convention of the Rights of the Child (CRC).

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Right to privacy and reputation – Article 17 of the ICCPR

The prohibition on interference with a person's privacy regards the freedom from unwarranted and unreasonable intrusions into activities that are recognised as falling within the sphere of individual autonomy.

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence, nor to unlawful attacks on the person's honour and reputation. Further to this, everyone has the right to the protection of the law against interference or attacks of this kind.

The Bill engages the right to privacy and reputation as it regards the:

- collection, use, disclosure and publication of personal information about people who are, or were, teachers
- sharing of a teacher's personal information between the board and teachers' employers, related agencies and other teacher registration authorities
- information that is made available on a public register for teachers
- persons or authorities who are notified when an inquiry committee is appointed or of the outcome of the inquiry, and
- information that is published and made publicly available regarding an inquiry.

Some of the proposals in the Bill may be perceived to limit a teacher's right to privacy and reputation. Section 67B provides that a teacher must notify the board upon charge of sexual offence or notifiable offence, with the existing section 53 providing a corresponding discretion for the board to suspend the teacher where an inquiry committee has been appointed. This may raise concerns as to the privacy and reputation of an innocent teacher falsely accused. Similarly, the ability for employers (section 67A), police (section 66D) and a prosecuting authority (section 66E) to notify the board of information regarding a teacher (including any criminal involvement prior to a finding of guilt being made), and the requirement for the board to notify other teacher registration authorities in Australia and New Zealand if an inquiry committee has been appointed (section 61A), may present similar concerns.

However, any limitation on the right to privacy and reputation pursues the legitimate objective of preventing persons involved in matters which present a risk to the safety and wellbeing of children (including criminal offending), from being a teacher. These provisions are also reasonable and necessary to achieving this objective, particularly relative to the board's discretionary power to suspend a teacher, given the board can only hold an inquiry if satisfied that it is in the public interest.

Section 75B provides that if a person gives information, a document or other thing to the board, an investigator or inquiry committee (i.e. because the person is requested or otherwise obliged to do so), the board may use the information, document or other thing when exercising any power or performing any function under the Act. In practice, this may be a limitation on the right to privacy and reputation as information that the board is given during a disciplinary proceeding about a person's competence may, for example, also be used in assessing the person's application for 'HALT' certification (i.e. whether the person should be accredited as a highly accomplished or lead teacher). The provision is, however, reasonable and necessary to achieving the objective of ensuring the board is appropriately informed in its decision making about whether a person should commence, remain and progress as a teacher.

Section 79 provides that the board may include information in the Annual Report, by way of case studies or case histories, regarding the subject of an inquiry and the board's decision in relation to the inquiry. This provision seeks to achieve openness and transparency, and availability of

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information, regarding the board's decision making in disciplinary proceedings. The right to privacy or reputation is safeguarded by the board being prohibited from publishing any information that may identify the teacher the subject of the inquiry, persons involved in, or affected by, the conduct the subject of the inquiry, a witness who participated in the inquiry, a complainant, and the employer, school or location of the events the subject of the inquiry. This also supports Article 16 of the CRC and the specific rights of a child to privacy and reputation, relative to children and young people who participate in disciplinary proceedings conducted by the board.

Sections 26 and 29 confirm that while a person's criminal history, personal details (i.e. details of any physical or mental impairment, disability, condition or disorder that may affect the person's eligibility for registration or authorisation), and any conditions imposed on registration are to be recorded on the Register of Teachers, the provisions positively engage the right to privacy and reputation, as it remains that the only details that can be made available to the public are the teacher's name, registration number, category of registration and date to which their fees have been paid.

Fair trial and fair hearing rights – Article 14(1) of the ICCPR

The right to a fair trial and a fair hearing applies to both criminal and civil proceedings and is but one of the guarantees in relation to legal proceedings, and the rule of law. Such rights are concerned with procedural fairness, rather than with the substantive decision of the court or tribunal.

Article 14(1) of the ICCPR provides that all persons shall be equal before the courts and tribunals. Further to this, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The board is taken to perform a quasi-judicial function relative to disciplinary proceedings and related matters. The board is responsible for dealing with complaints about teachers, conducting preliminary investigations and inquiries in relation to teachers, and taking disciplinary action, where necessary.

For this reason, the Bill has been considered with respect to procedural fairness, and positively engages this right as follows:

- section 18A provides that the board may pass a resolution without a meeting being formally convened (i.e. out of session). This provision sets out how a member can respond to the proposed resolution, and confirms that a member's vote cannot be counted as part of the majority if that member has an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's function in relation to the proposed resolution. It continues to be an offence for the member not to disclose such an interest. The board is also required to keep minutes of any resolutions passed to ensure appropriate record keeping
- section 32 provides that if the board is not satisfied a person is a fit and proper person to teach, the board must invite the person to make an oral or written submission to the board within a reasonable period. The board must not decide the person's fitness and propriety until the person has made a submission or the period has lapsed. This provides the person with a right to participate in, and respond during, an inquiry in a manner that does not result in further trauma to the person (i.e. by strictly requiring the person to appear before the board)
- section 65A provides that if a person ceases to hold a clearance notice that is in force (i.e. the person's clearance notice has been revoked by the Screening Authority), the board may only cancel the person's registration or authorisation after giving the person notice that the board considers reasonable in the circumstances, and considering any response the teacher or authorised person makes in the notice period, and

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- section 73C vests the Northern Territory Civil Administrative Tribunal (NTCAT) with jurisdiction to review certain decisions made by the board. Although persons can currently appeal decisions of the board to the Local Court, review to NTCAT ensures a more accessible, efficient and affordable avenue of recourse, and aligns with Articles 2 and 16 of the ICCPR. Articles 2 and 16 regard the right to equality and non-discrimination and encompass a positive obligation to protect and advance the fulfilment and enjoyment of these rights for all people, including provision of an effective remedy if such rights are violated.

Furthermore, section 57 has been amended to mirror section 62, in providing that if criminal proceedings have been or are likely to be started, in relation to matter that is also subject to a preliminary investigation, the investigator may suspend the preliminary investigation until the outcome of the criminal proceedings is known. It follows that persons appointed by the board to undertake disciplinary proceedings should be able to await the outcome of criminal proceedings before making a recommendation to the board – irrespective of whether a preliminary investigation or inquiry is being conducted. Given the board's quasi-judicial status, the provision does not represent a limitation on procedural fairness (i.e. through an infringement upon the right to be tried without undue delay in Article 14(3)(c) of the ICCPR), as it merely ensures that criminal proceedings take precedence over any disciplinary proceedings of the board.

Right to the presumption of innocence - Article 14(2) of the ICCPR

The presumption of innocence guarantees that no guilt can be presumed until a charge has been proved beyond reasonable doubt.

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The right to the presumption of innocence is also a fundamental common law principle.

When 'strict liability' applies to an offence, for the defendant to be found guilty, the prosecution is only required to prove the physical elements of an offence, and not the fault elements, beyond reasonable doubt. Strict liability is used in circumstances where there is public interest in ensuring that regulatory schemes are observed and it can reasonably be expected that the person was aware of their duties and obligations. Strict liability offences can be considered a limitation of the presumption of innocence because the defendant can be found guilty without the prosecution being required to prove fault.

However, the inclusion of strict liability offences does not necessarily render it inconsistent with the presumption of innocence, provided removal of the presumption pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective.

The following provisions of the Bill are entirely offences of strict liability elements:

- section 22 provides that a Board member must as soon as practicable disclose the nature of an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's function in relation to a matter being considered by the board. Further to this, the member cannot be present, or take part in any decision, during deliberations regarding the matter, unless otherwise determined by the board
- section 28 provides that a teacher must give the board notice of any change to the teacher's personal details and provide new details within 90 days
- section 46 provides that an employer who has been granted an authorisation must without delay notify the board if the authorised person resigns or otherwise ceases working for the employer

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(other than in circumstances that call into question the authorised person's competence or fitness to teach), or there was a change to the employment details or teaching arrangement

- section 57 provides that a person must comply with a notice given by an investigator (i.e. to appear before, or give, the investigator information, documents or other things)
- section 62 provides that a person must comply with a notice given by an inquiry committee (i.e. to appear before, or give, the inquiry committee information, documents or other things)
- section 67A provides that an employer must notify the board within 28 days of a teacher or authorised person being dismissed, resigning or otherwise ceasing to work for the employer in circumstances that call into question the person's competence or fitness, or an assessment commences (i.e. in relation to serious misconduct or fitness to teach) or concludes (i.e. in relation to serious misconduct or fitness to teach, or competence) regarding a teacher or authorised person
- sections 67B to 67D set out a teacher or authorised person's obligation to notify the board within 14 days, if the teacher or authorised person:
 - has been charged with, or found guilty of, a sexual offence or another notifiable offence
 - has been ordered to pay damages or compensation as a result of civil proceedings arising out of the person's teaching practice, or arising from events that occurred while the person was engaged in teaching
 - has an application for registration or authorisation refused, suspended or cancelled, is disqualified from being registered or authorised, or has conditions imposed on their registration or authorisation by a teacher registration authority outside of the NT
 - has the qualification that enabled the teacher to gain registration withdrawn, or
 - no longer holds a clearance notice that is in force
- section 73 provides that a person cannot teach in a school if the person is not registered or the person's employer has not been granted an authorisation, and
- section 78 provides that, by the end of the first term in each school year, an employer must give the Board a return specifying the name of each person who taught at the employer's school during the period 1 January to 1 March of that year, and must comply with a notice to give the board specified information about the employment of a person as a teacher.

It is a defence to prosecution for all of the above offences if the defendant has a reasonable excuse.

The following provisions of the Bill have some fault elements and some strict liability elements:

- section 72 provides that an employer cannot employ, or continue to employ a person to teach in a school if the person is not registered or under an authorisation
- section 73A provides that a person cannot provide misleading information (including a document that contains misleading information) to the board, an investigator or an inquiry committee, and
- section 77 provides that a person cannot disclose information that is confidential.

The strict liability elements in the Bill are compatible with Article 14(2) of the ICCPR, as they pursue a legitimate objective in obliging people to notify the board, an investigator or inquiry committee of certain information, preventing employers from employing, or persons from working, as a teacher if they are not registered or authorised, and providing that confidential information cannot be

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disclosed. These are necessary offences to ensure that the board is appropriately informed in its decision making, and that only persons who are registered or authorised are able to teach in schools. The penalties for the offences are set at a level that is reasonable and proportionate, and strikes a balance between being strong enough to deter wrongdoing without unduly impacting upon a person's rights and freedoms.

As discussed above, section 67B(1)(a) requires a teacher or authorised person to notify the board when the person is charged with a sexual offence or another notifiable offence. However, this provision does not unreasonably encroach upon the presumption of innocence, as at the point of charge the person only has to specify that they have been charged and the offence they were charged with. This differs from the notification requirements when a finding of guilt has been made pursuant to section 67B(1)(b), where the person must specify full details of the event and circumstances involved. For this reason, the Bill also supports the right to be free from self-incrimination in Article 14(3)(g) of the ICCPR.

Right to work and rights of work – Article 6 of the ICESCR

The right to work includes the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted, and regards the enjoyment of just and favourable conditions of work.

Article 6(1) of the ICESCR provides that in recognising the right to work, appropriate steps are to be taken to safeguard this right. This is qualified by Article 6(2) which provides that such steps include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

The object of the Act in section 3 positively engages the right to promotion and advancement at work, by providing that, in addition to registering persons as teachers, the board is established to facilitate the continuing competence of teachers, and quality teaching and educational leadership in the NT. To do so, section 11 confirms the board also has the function of supporting, recognising and certifying quality teaching and educational leadership. Providing teachers and education leaders with recognition for the quality of their teaching will allow them to reflect on their individual practices, in striving for constant improvement and career progression.

Section 11 further provides that the board performs the function of promoting professional development, and approving a framework for the professional development of teachers. In turn, section 75 required the board to approve a professional development framework, with teachers to undertake professional development in accordance with the framework as a condition of their registration (section 36) or authorisation (section 42). The right to promotion and advancement at work is complemented by this legislated framework which enables teachers to feel supported in their training and learning, with professional development key to improving the quality of teaching.

Rights of parents and children – Article 3 of the CRC and Article 24(1) of the ICCPR

In addition to the rights enjoyed by all persons under human rights treaties, parents and children enjoy additional rights, particular to their status. These rights pertain to the best interests of children. The principles regarding the best interests of children apply to all actions concerning children and require that active measures be taken to protect the rights of children and promote their survival, growth, and wellbeing, as well as measures to support and assist parents and others who have day-to-day responsibility for ensuring recognition of children's rights.

Article 3(1) of the CRC provides that in all actions concerning children the best interests of the child shall be a primary consideration. This is complemented by Article 3(3) which provides that all

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institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Section 32 provides that that in deciding whether a person is fit and proper to teach, the board must also take into account whether the person has a valid clearance notice issued by the Screening Authority established under section 196 of the *Care and Protection of Children Act 2007* (i.e. an Ochre Card). This provision positively engages the rights of parents and children by requiring that a person applying to be a teacher (whether registered or under an authorisation) must first pass stringent working with children screening provisions. This is further supported by section 65A which provides that if a person ceases to hold a valid clearance notice, the board may cancel the person's registration or authorisation.

Sexual offence is defined to mean a prescribed offence, with regulation 2A setting out both NT and Commonwealth sexual offences. This strengthens the engagement with the rights and best interests of children as the legislation reflects contemporary sexual offences, and as such, the needs and expectations of society. The board is subsequently afforded powers to prevent a person who engages in sexual offending from being a teacher.

Sections 61A, 65 and 66A engage the rights of children in a positive manner, by ensuring that there are open avenues of communication between the board and agencies who have engagement and responsibility for children and young people. In particular, this includes the Screening Authority who is tasked with preventing people who pose an unacceptable risk of harm or exploitation to children from contacting children through their employment. Under these provisions, the board is able to notify the Screening Authority when an inquiry committee is appointed (if the subject matter of the inquiry indicates that the teacher may not be suitable to work with children), and when the outcome of the inquiry is known (if the Screen Authority had a legitimate interest in the decision), with the board also able to request that the Screening Authority advise the board if a teacher's clearance notice has been revoked.

Conclusion

This Bill is compatible with human rights because it promotes human rights under the ICCPR, ICESCR and the CRC and, to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate.