

EDUCATION AND OTHER LEGISLATION (STUDENT PROTECTION) AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of Bill

The main policy objectives of the Bill are to amend the *Education (Teacher Registration) Act 1988* and the *Education (General Provisions) Act 1989* to enhance the capacity of the Board of Teacher Registration to screen, monitor and make decisions about the suitability of teachers to work with children thereby providing greater protection for children in schools from sexual abuse and other inappropriate conduct by school-based employees. The Bill also amends the *Commission for Children and Young People Act 2000* (the CCYP Act) to enable the Commissioner to take into account decisions made about a teacher by the Board of Teacher Registration for the purposes of deciding a person's suitability to obtain or continue to hold a blue card. The Bill further amends the CCYP Act to require providers (both employers and employees) of alternative education and flexible arrangements to hold a blue card.

Reason why the proposed legislation is necessary

In May 2003, the Premier announced the establishment of a Ministerial Taskforce, comprising the Minister for Education, the Minister for Police and Corrective Services and the Minister for Families to act on the recommendations of a report of a Board of Inquiry into the past handling of complaints of sexual abuse in the Anglican Diocese of Brisbane. The report highlighted the issue of sexual abuse in schools and weaknesses in existing systems for checking and monitoring the suitability of teaching and non-teaching staff to work with children and for responding to complaints of sexual abuse perpetrated in school settings. There is strong community expectation and support for prompt and effective action to address these deficiencies.

The Taskforce developed a series of proposals designed to improve current arrangements for preventing, detecting and responding to complaints of sexual abuse and other inappropriate conduct by school-based employees to school children. The Bill implements the Taskforce proposals in so far as they relate to teachers, who are currently regulated under the Education (Teacher Registration) Act and also creates a mandatory reporting requirement whereby teaching and non-teaching staff are obliged to report actual or suspected sexual abuse of children by school-based employees to prescribed persons who must then pass the information on to the police. The proposals relating to non-teaching staff will be implemented through separate legislation to be prepared following the statutory review of Part 6 of the CCYP Act.

How the policy objectives will be achieved

The policy objectives of the Bill are achieved in the following ways:

- *clarifying that, in performing its registration functions, the welfare and best interests of children are to be primary considerations of the Board*
- *enhancing the capacity of the Board of Teacher Registration to screen, monitor and make decisions about the suitability of teachers to work with children*

The Bill specifically directs the Board, when making registration and disciplinary decisions, to consider whether a person is, or continues to be, suitable to work in a child-related field. The Bill improves the Board's access to information relevant to this consideration including a person's full criminal history, certain police investigative information, information about a person's teacher registration status in other jurisdictions and information from school employing authorities regarding a person's dismissal or resignation from teacher employment as the result of an investigation of allegations of harm caused or likely to be caused to a child. This information is obtained from the Queensland Police Service (QPS), school employing authorities, applicants for registration and existing registrants. Controls are placed on the Board's use of the information and ability to pass the information on to other entities.

The Bill enhances the Board's ability to respond effectively to imminent risk of harm to children posed by registered teachers by empowering the Board to suspend a teacher's registration whilst

conducting a disciplinary inquiry into the matter. Registrants have a right of appeal to the District Court regarding the exercise of this power of suspension.

The Bill directs the Board to refuse to register, or to cancel a person's registration, where the person is convicted of a serious offence, unless the Board is satisfied that there are exceptional circumstances that indicate it would not harm children for the person to work in a child-related field. 'Serious offence' has the same meaning as under the CCYP Act and includes serious violent offences prescribed under the *Penalties and Sentences Act 1992*. A person affected by the Board's decision in this regard has a right of appeal to the District Court.

The Bill also enhances the Board's capacity to conduct disciplinary inquiries expeditiously. For example, the Bill requires the assessment of a registrant's good character to be conducted by a committee of inquiry (comprising 4 members) who make recommendations and findings to the board.

- *providing for information sharing between key agencies such as the Board of Teacher Registration, Queensland Police Service and the Commission for Children and Young People*

The Bill enables the Board to request and receive from the Queensland Police Service criminal history reports and certain police investigative information about applicants for registration and existing registrants. This is intended to enable the Board to make a fully informed decision about a person's suitability to work as a teacher.

In addition, the Bill enables the Board to inform relevant agencies about the outcome of its disciplinary inquiries. At the conclusion of a disciplinary inquiry, the Board:

- must notify its decision to all Australian and New Zealand teacher registration authorities with which the Board knows the person is registered;
- may notify its decision to other prescribed entities, such as the person's employer and foreign regulatory authorities, where it is satisfied the entity needs to know; and
- may notify its decision to the Commissioner for Children and Young People where it considers that the information is relevant to the Commissioner's consideration whether the person is suitable for child-related employment. In this regard, the Bill makes a consequential amendment to the

CCYP Act to enable the Commissioner to take into account, when dealing with an applicant for a blue card or an existing blue card holder, information provided by the Board.

- *mandating the reporting by school staff of actual or suspected sexual abuse of school children by other school-based employees to specified persons who are required to report the matter to the police*

The mandatory reporting requirement is designed to ensure there is an appropriate response to complaints of sexual abuse of school children by school-based employees. It will be an offence to fail to comply with the reporting requirement. The Bill confers immunity from liability on any person who complies with the reporting requirement.

Estimated cost for Government implementation

The legislation will not have any financial impact on the Government. The cost of the new arrangements for committees of inquiry will be met by a realignment of the operating budget of the Board of Teacher Registration.

Consistency with Fundamental Legislative Principles

Aspects of the Bill that raise possible fundamental legislative principles issues are outlined below:

Power to obtain criminal history reports, police investigative information and other information

The Bill gives the Board power to consider a range of criminal history information in relation to applicants for registration and existing registrants that expressly overrides the *Criminal Law (Rehabilitation of Offenders) Act 1986* (the Rehabilitation Act) – new s.74E. Therefore, the Board is able to access and consider a person's full criminal history i.e. all convictions and charges (which may not have resulted in a conviction) regardless of when they may have occurred. As the Bill overrides the protection afforded to person by the Rehabilitation Act this may affect a person's rights and liberties.

The relevant provisions of the Bill are:

- s.36 is amended to empower the Board to require applicants for registration or restoration to disclose the applicant's full criminal history in the application form for registration;

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- new s.37A(1) requires the Board to obtain criminal history reports;
- new s.37A(2)(b) empowers the Board in certain circumstances to obtain police investigative information about the possible commission of a serious offence;
- new s.42A provides that if there is a change in a registered teacher's criminal history the teacher must immediately disclose to the Board the details of the change; and
- new s.42C empowers the police commissioner to notify the Board that a person who the police commissioner reasonably suspects is a registered teacher, has been charged with an offence.

The provision of this information is designed to assist the Board in deciding whether the applicant is, or continues to be, of good character, particularly, whether the applicant is a suitable person to work in a child-related field. The Board's capacity to access and consider a person's full criminal history and other information is consistent with the objectives of these reforms to protect children from sexual abuse and other inappropriate conduct. A more complete picture of a person's criminal history (including information about 'old' convictions and charges) or other improper conduct may indicate a pattern of behaviour that could compromise the safety of children. This information exchange is vital to ensure that all potential and existing registrants are, and remain, of good character to be registered as a teacher.

Whilst these powers create a tension between the rights of individuals and the competing rights of children, they are considered necessary to recognise the overriding objective of protecting children from harm.

The Bill incorporates a range of protections for potential and existing registrants affected by information provided to and considered by the Board under the proposed amendments. Specifically:

- (a) new s.37A(5) incorporates safeguards to protect the rights of potential and existing registrants in relation to whom police investigative information is provided to the Board. The commissioner must not provide the information if:
 - (i) its release could prejudice an ongoing investigation or endanger a police officer, complainant, informant or other person; or

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- (ii) the investigation has not led, or is not likely to lead to, a reasonable suspicion that the person committed a serious offence.

These protections ensure that ongoing investigations are not compromised and safeguard against the provision of potentially erroneous information or allegations about a person's alleged criminal activities.

- (b) new ss.42D to 42F place controls on the use of criminal history reports and police investigative information obtained under the Act. These controls require the Board to:
 - (i) use the information only for the purpose of determining whether a person is, or continues to be, of good character to be registered – new s.42D(2)
 - (ii) assess the circumstances of each case e.g. when the offence was committed, its relevance to the duties of a teacher, any mitigating circumstances – new s.42D(3);
 - (iii) provide an applicant with an opportunity to respond to the information – new s.42E; and
 - (iv) make guidelines regarding its use of information under the Act and make those guidelines available to applicants for registration and existing registrants, on request – new s.42F.
- (c) in relation to existing registrants, the Board can only use the information to trigger a disciplinary inquiry under Part 5 of the Act. The inquiry process affords natural justice to the registrant e.g. by ensuring the registrant has a right to legal or other representation, to make submissions etc.
- (d) The Act provides a right of appeal to the District Court against a decision of the Board about registration or discipline.

Power to refuse application for registration and to cancel registration where person convicted of a serious offence

Amended s.37 and the new s.70A respectively direct the Board not to register an applicant for registration, or to cancel the registration of an existing registrant following a disciplinary inquiry under Part 5 of the Act, in circumstances where the person has been convicted of a serious offence. The direction is not absolute, as the proposed amendments give the Board discretion to register the applicant, or not to cancel the registrant's registration, if it is satisfied it is an exceptional case in which it would not

harm the interests of children for the person to be, or remain, registered as a teacher.

Whilst the proposed amendments have a potentially adverse impact on the livelihood of a person seeking registration as a teacher, or a person who has registration as a teacher (in that without registration the person cannot teach), the provisions are considered necessary to ensure the safety and wellbeing of children.

Section 42E of the Bill provides an applicant with an opportunity to make representations to the Board.

In the case of existing registrants, the Board can only act to cancel the registrant's registration following a disciplinary inquiry conducted under Part 5 of the Act. The disciplinary inquiry process affords natural justice to the registrant e.g. by ensuring the registrant's right to legal or other representation, to make submission etc.

The Act currently provides a right of appeal to the District Court against the Board's registration or disciplinary decisions.

Power to immediately suspend registration

New s.49A confers on the Board the power to suspend the registration of a teacher where it reasonably believes the registrant poses an imminent risk of harm to a child or children and immediate action to suspend the registration is necessary to protect the child or children.

In view of the need for action to be taken immediately, the Board is not required to provide the registrant with an opportunity to be heard before making its decision to suspend under this section. This power of the Board arguably breaches the principles of natural justice. It is defensible on the ground that action may only be taken if there is an imminent risk of harm to a child or children. In these circumstances, seeking submissions from the registrant will result in an unreasonable delay and thereby increase the risk of harm. The Board must immediately notify the registrant of its decision under this section and commence a disciplinary inquiry under Part 5 of the Act into the matter as soon as practicable. The registrant has a right of appeal to the District Court against the Board's decision to immediately suspend. A registrant is able file an appeal immediately after being issued with a notice under the new s.49A.

Also, this power has the potential to impact significantly on the livelihood of a registrant, who if suspended, is effectively prohibited from teaching. However, the circumstances under which the Board may exercise

this power are tightly defined and the power is essential to ensure that children are protected from dangerous registrants.

Immunity from Liability for Reporting to the Board

New ss.146A and 146B of the Education (General Provisions) Act require school staff to report to specified persons information about the actual or suspected sexual abuse by a school employee of a child attending the school. The Bill amends s.44A to require a school employing authority to inform the Board when it has investigated an allegation of harm caused or likely to be caused to a child involving a registrant and the registrant has either been dismissed or has resigned, whether during or after the investigation.

The relevant provisions confer immunity from liability on any person who makes a report under the provisions. However it is considered that the immunity from liability is justifiable.

Given the serious nature and consequences of the conduct to be reported under these provisions, it is essential to remove any significant deterrents to the making of complaints or reports about this conduct to the appropriate authorities or to the Board. The protection from liability is defensible on the grounds that if complainants or employers could be sued for defamation or breach of confidence it is unlikely that complaints or reports would be made and, consequently, the child protection objectives of these reforms would be frustrated.

Protection from Liability for Board Members

The new s.74B specifies that a Board member is not civilly liable for an act or omission, made honestly and without negligence other than when the board member is performing the member's duties as a member of the inquiry body. (The Act currently defines inquiry body to mean a committee of inquiry established by the Board or the Board.) Section 64 of the Act currently provides protection from liability for board members when undertaking an inquiry. The new s.74B is necessary to provide protection for the Board's decision after an inquiry.

It is not considered appropriate for an individual to be made personally liable as a consequence of carrying out his or her responsibilities under the legislation in good faith. As such, s.74B prevents civil liability from being attached to an individual. Instead, such liability attaches to the State. The proposed immunity under this clause does not extend to a Board member who has been negligent, even though the Board member may have acted in good faith.

Consultation

The following key stakeholders were closely consulted during the development of the Bill:

- Board of Teacher Registration
- Non-State Schools Accreditation Board
- Queensland Teachers' Union
- Queensland Independent Education Union
- Queensland Public Sector Union
- Queensland Catholic Education Commission
- Christian Schools Australia Ltd
- Lutheran Education Queensland
- The Grammar Schools of Queensland Association
- Association of Independent Schools Queensland
- Queensland Council of Parents & Citizens Associations
- Queensland Independent Schools Parents Council
- Federation of Parents & Friends Association
- Heads of Churches
- Deans of Queensland Universities.

The following government departments and agencies were consulted in relation to the Bill:

- Department of the Premier and Cabinet
- Queensland Treasury
- Department of Industrial Relations
- Department of Families
- Queensland Police Service
- Department of Employment and Training
- Department of Justice and Attorney-General
- Department of Primary Industries
- Commission for Children and Young People.

An exposure draft of the Bill was made available for public consultation over the period 1-19 September 2003.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act commences on a date to be fixed by proclamation.

PART 2—AMENDMENT OF COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000

Clause 3 states that Part 2 of the Bill amends the *Commission for Children and Young People Act 2000* ('the CCYP Act').

Clause 4 amends section 102(2) and 102(3) to insert the words "or any teacher registration information about the person" to allow the Commissioner for Children and Young People (the commissioner) to take into account information provided by the Board of Teacher Registration when making a decision about an application.

Clause 5 amends the heading of section 103 by replacing "criminal history" with "particular information" and amends section 103(1)(a) to provide that, if the commissioner proposes to decide an application by issuing a negative notice, the commissioner must give written notice to the person stating any teacher registration information about the person. The amendment will ensure that the natural justice processes currently available to an applicant with a criminal history are also afforded to an applicant with teacher registration information if the commissioner proposes issuing a negative notice on the basis of that information.

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Clause 6 amends the heading of section 119 by replacing “wrong or incomplete” with “wrong, incomplete or new” and inserts a new section 119 (1A) to provide that the commissioner may cancel a positive notice about a person and issue a negative notice having regard to teacher registration information about the person or information about a change in the person’s criminal history received by the commissioner under section 122A (1). This empowers the commissioner to reassess a person’s suitability to work with children on the basis of fresh information from the police or the Board of Teacher Registration.

Section 119 (2) is also amended to provide that, the reference in 103(1) to deciding the application by issuing a negative notice should be read as a reference to substituting a negative notice for a positive notice and the reference in 103(3) to deciding the application should be read as a reference to substituting a negative notice for a positive notice. The intention of the amendment to section 119(2) is to clarify that the provisions of section 103 (1) and (3) apply to an exercise of the commissioner’s powers under section 119.

Clause 7 inserts transitional provisions for persons employed immediately before the commencement of the provisions in a regulated business or carrying on a regulated business included in Schedule 1 of the CCYP Act by clause 8 of the Bill. The effect of the amendment is that alternative education providers do not commit an offence if they continue to employ a person, or continue to carry on a business involved in alternative education, without applying for a suitability notice within three months from the commencement of the proposed amendments.

Clause 8 amends schedule 1 (Regulated employment and businesses for employment screening) by inserting a new section 6A. The amendment provides that employment is regulated employment if an employee’s usual functions include or are likely to include providing services or conducting activities for an education program under section 30 of the *Education (General Provisions) Act 1989* (General Provisions Act) or a program provided by entity under arrangements approved under section 114A(1) or 114B(1) of the General Provisions Act, where the employee is not a registered teacher and the employer is not a provider under section 12 of the *Youth Participation in Education and Training Act 2003* (YPET Act).

A new section 11 is also inserted in Schedule 1 to provide that a business is a regulated business if its usual activities include or are likely to include providing services or conducting activities for an education program under section 30 of the General Provisions Act or a program provided by entity under arrangements approved under section 114A(1) or 114B(1) of the

General Provisions Act and the entity is not a provider under section 12 of the YPET Act.

The effect of clause 8 is to impose a requirement that providers of alternative education services as defined under the new section 6A or section 11 of schedule 1 must apply for a suitability notice pursuant to the employment screening provisions of the CCYP Act.

Clause 9 amends schedule 4 to include a definition of “teacher registration information” to mean information about a person received by the commissioner under section 71B of the *Education (Teacher Registration) Act 1988* (the Act). Section s.71B enables the Board of Teacher Registration to provide information to the commissioner when the Board makes a decision or an order about a teacher (see discussion of clause 38 below).

PART 3—AMENDMENT OF CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

Clause 10 states that Part 3 amends the *Criminal Law (Rehabilitation of Offenders) Act 1986* (the Rehabilitation Act).

Clause 11 omits section 9A(1), table, column 1, items 5(1) and 5(2) which require a person who is applying to be a teacher to disclose spent convictions (as defined in the Rehabilitation Act) for certain offences. The Bill goes further than the Rehabilitation Act by providing that for criminal histories obtained or disclosed under the Education (Teacher Registration) Act the Rehabilitation Act does not apply. The effect of this is that all convictions and charges for any offence may be disclosed or obtained regardless of when they may have occurred. As a consequence, s.9A(1) of the Rehabilitation Act is redundant.

PART 4—AMENDMENT OF EDUCATION (GENERAL PROVISIONS) ACT 1989

Clause 12 states that Part 4 of the Bill amends the *Education (General Provisions) Act 1989* (‘the General Provisions Act’).

Clause 13 replaces the definition of “principal” and inserts definitions of the terms “employee” and “reasonably suspects” in section 2 of the General Provisions Act.

The current definition of “principal” in the Act refers to the person in charge of a State education institution. As each State school has a person by the name of ‘principal’ is considered unnecessary to have a definition in the Act. However, in relation to non-State schools there is not always a person by the name of principal. For example, some non-State schools have a title of ‘headmaster’ for the person in charge of the school. Therefore, a definition of principal for a non-State school has been inserted in the Act to clarify that where there is no person by that title, the principal means the person responsible for the school’s day-to-day management.

A definition of “employee” is inserted in the Act to mean a person engaged to carry out work at the school for financial reward. This does not include volunteers at the school but does include persons who are at the school for financial reward on a short-term basis e.g. a supply teacher or a contractor providing services at the school.

Clause 14 inserts new sections 146A & 146B in the General Provisions Act. These provisions create a mandatory reporting requirement for school staff (teaching and non-teaching) who become aware of, or reasonably suspect that another school employee of the school has sexually abused a child attending the school. The reporting arrangements differ between the State and non-State school sectors.

Section 146A sets out the reporting arrangements for the State school sector. This section requires school staff to report the matter immediately to the school principal or the principal’s supervisor, who must then immediately report the matter to the chief executive’s nominee, who must then immediately report the matter to the QPS. Failure to comply with the reporting requirements is an offence punishable by a maximum penalty of \$1500.

Section 146B sets out the reporting arrangements for the non-State school sector. This section requires school staff to report the matter immediately to the school principal or a director of the school’s governing

body, who must then immediately report the matter to the QPS. Failure to comply with the reporting requirements is an offence punishable by a maximum penalty of \$1500.

New subsections 146A(6) & (7) and 146B(5) & (6) confer immunity from liability (including civil liability for defamation or breach of confidentiality) on a person who makes a report or provides a copy of it under these provisions.

PART 5—AMENDMENT OF EDUCATION (TEACHER REGISTRATION) ACT 1988

Clause 15 states that Part 5 of the Bill amends the *Education (Teacher Registration) Act 1988* ('the Act').

Clause 16 inserts new definitions of "charge", "criminal history", "foreign regulatory authority", "harm", "indictable offence", "interstate regulatory authority" and "serious offence" in the Act.

Clause 17 inserts a new section 5A in the Act requiring the Board of Teacher Registration ('the Board') to perform its registration functions, including its disciplinary functions under Part 5 of the Act, with the welfare and best interests of children as its primary considerations.

Clause 18 omits from section 10(b) of the Act a reference made redundant by clause 16 which inserts a definition of 'indictable offence' in the Act.

Clause 19 amends section 17 of the Act, which stipulates certain procedural requirements regarding the conduct of Board business. New subsection (3A) enables the Board to make its decisions, e.g. to appoint a committee of inquiry, by flying minute. The purpose of this section is to enhance the Board's capacity to make decisions expeditiously.

Clause 20 amends section 36 of the Act, which sets out the types of applications that may be made to the Board. New subsection 36(3) clarifies that the application form for initial registration or restoration of registration may require the applicant to disclose his or her criminal history. 'Criminal history' is defined to mean all convictions and charges, regardless of when or where they occurred. New subsection 36(4) clarifies that the protection otherwise provided by the Rehabilitation Act does not apply to the

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disclosure of the applicant's criminal history on application for initial registration or restoration of registration.

Clause 21 amends section 37 of the Act, which sets out the matters the Board takes into account when deciding whether an applicant is of 'good character' for registration, or restoration of registration, as a teacher. *Clause 22* inserts a new s.37A which enables the Board to obtain and consider criminal history reports and investigative information from the QPS.

The combined effect of clauses 21 and 22 is to:

- (a) require the Board to consider whether the applicant is suitable to work in a child-related field – new s.37(2)(b);
- (b) require the Board to request and receive from the Queensland Police Service (QPS) a criminal history report about every applicant – new s.37A(1);
- (c) give the Board discretion to request and receive additional information from the QPS about the convictions or charges appearing in an applicant's criminal history – new s.37A(2)(a);
- (d) give the Board discretion to request and receive information from the QPS about past or current criminal investigations into the possible commission of a serious offence by the applicant. The police investigation need not have led to a charge or a conviction for the alleged offence. The Board can only request this information from the QPS where it possesses information suggesting that the applicant is not suitable to work in a child-related field – new s.37A(2)(b)

Clause 16 inserts a definition of 'serious offence' in section 2 of the Act, for the purpose of this provision. 'Serious offence' is defined to include serious violent offences prescribed under the *Penalties and Sentences Act 1992* and certain serious offence provisions of the Criminal Code prescribed in the Schedule to be inserted in the Act under clause 41 (discussed below).

- (e) enable the Board to request and receive criminal history and investigative information from the QPS in relation to existing registrants. The Board may only deal with information obtained in this way in relation to an existing registrant, by way of a disciplinary inquiry under Part 5 of the Act - new s.37(6);

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- (f) incorporate safeguards to protect the rights of applicants and existing registrants in respect of whom police investigative information is provided to the Board. The QPS must not provide the information if:
 - (i) its release could prejudice an ongoing investigation, lead to the identification of an informant, or endanger a police officer, complainant, or other person;
 - (ii) the investigation has not led, or is not likely to lead to, a reasonable suspicion that the person committed a serious offence.

These protections ensure that ongoing investigations are not compromised and safeguard against the provision of potentially erroneous information or allegations about a person's alleged criminal activities - new ss.37A (4) & (5);

- (g) require the Board to consider criminal history information and other information received from the QPS when assessing the applicant's good character – new s.37(2)(a);
- (h) clarify that the protection otherwise provided by the Rehabilitation Act does not apply to request or provision of criminal history and investigative information under new s.37A – new s.37A(6);
- (i) give the Board discretion to have regard to the registration of an applicant who is or was previously registered as a teacher in any jurisdiction (including previous registration in Queensland) and whether the registration is or was subject to conditions, suspended or cancelled and the reasons why – new s.37(2)(c);
- (j) direct the Board not to register an applicant who has been convicted of a serious offence unless the Board is satisfied it is an exceptional case in which it would not harm the best interests of children for the person to work in a child-related field – new s.37(4).

If the Board obtains criminal history and/or police investigative information about an applicant for registration or restoration of registration, the Board must, under new section 42E, before making its decision, disclose the information to the person and give the person a reasonable opportunity to make submissions to the Board about the information (see clause 24).

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Clause 23 amends section 41 of the Act to provide for consistency of language in the Act.

Clause 24 inserts new divisions 3A & 3B in Part 4 of the Act.

New division 3A contains provisions that require and enable the provision of information to the Board about a change in a registrant's criminal history. The effect of this new division is to:

- (a) require a registrant to inform the Board immediately of prescribed particulars of any change to the registrant's criminal history. For example, if the registrant does not have a criminal history and is charged with, or convicted of, an offence for the first time – new sections 42A & 42B;
- (b) make it an offence for a person to fail to disclose a change in their criminal history. This offence is punishable by a maximum penalty of \$1500 – new subparagraph 42A(1). It should also be noted that it is an offence against section 74 of the Act to make a false or misleading disclosure under this provision;
- (c) give the QPS discretion to provide the Board with prescribed information when a person (who is suspected to be a registered teacher) is charged with an offence – new section 42C;
- (d) clarify that the protection provided by the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to disclosures made under the division – new subsections 42A(3) & 42C(5).

New division 3B contains provisions setting out controls on the use of criminal history and police investigative information obtained by the Board in relation to applicants for registration or restoration and existing registrants. These controls make it clear that the Board must:

- (a) only use the information for the purpose of determining whether a person is, or continues to be, of good character for the purpose of registration – new subsection 42D(2);
- (b) assess the circumstances of each case e.g. when the offence was, or was alleged to have been, committed, its relevance to the duties of a teacher, and any mitigating circumstances – new subsection 42D(3);
- (c) provide an applicant with an opportunity to respond to the information, before the Board uses the information to make its decision – new subsection 42E; and

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- (d) make guidelines regarding its use of criminal history and police investigative information under the Act and make those guidelines available to applicants for registration and existing registrants, on request – new subsection 42F.

In relation to existing registrants, Board must and can only use the information provided under new divisions 3A & 3B of Part 4 of the Act to determine whether the grounds for disciplinary action under section 50 of the Act exist, and if so, whether to conduct a disciplinary inquiry under Part 5 of the Act (see clause 28, discussed below).

Clause 25 amends section 44 of the Act, which currently requires registrants to notify the Board of certain events. Clause 25 omits the requirement for a registrant to notify the Board of a conviction of an indictable offence, as this matter is already dealt with in new section 42A, which requires registrants to notify the Board of any change in their criminal history.

Clause 26 amends section 44A of the Act to require a school employing authority to inform the Board when it has investigated an allegation of harm caused or likely to be caused to a child involving a registrant and the registrant has either:

- (a) been dismissed; or
- (b) has resigned, whether during or after the investigation.

In these circumstances, the school employing authority must provide the Board with information about the registrant, particulars of the allegation investigated and the reasons given for the registrant's dismissal or resignation. Clause 16 inserts a definition of 'harm' in section 2 of the Act, for the purpose of this provision. The definition is taken from the *Child Protection Act 1999* and broadly includes harm caused by physical, psychological, emotional or sexual abuse.

The new s.44A(4A) and (4B) confer immunity from liability on any person who makes a report under the provision.

The Board must and can only use the information obtained under section 44A to determine whether the grounds for disciplinary action under section 50 of the Act exist, and if so, whether to conduct a disciplinary inquiry under Part 5 of the Act (see clause 28, discussed below)

Clause 27 omits from section 44B a phrase made redundant by the insertion of a definition of 'indictable offence' in section 2 of the Act.

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Clause 28 amends section 44C of the Act to require the Board to consider any information obtained from registrants, QPS, school employing authorities or prosecuting authorities under sections 42A, 42C, 44A or 44B respectively in order to determine whether the grounds for disciplinary action under section 50 of the Act exist, and if so, whether to conduct a disciplinary inquiry under Part 5 of the Act.

Clause 29 inserts a new division 7 in Part 4 in the Act. This division gives the Board power to immediately suspend the registration of a registered teacher in order to protect children against imminent risks of harm posed by the teacher. Clause 16 inserts a definition of “harm” in section 2 of the Act. The definition is taken from the *Child Protection Act 1999* and broadly includes harm caused by physical, psychological, emotional or sexual abuse.

New section 49A empowers the Board to immediately suspend a registrant’s registration at any time where it reasonably believes it is necessary to do so to protect children from an imminent risk of harm posed by the registrant. When the Board acts under this provision, it must immediately give notice of its decision to the registrant and then conduct a disciplinary inquiry as soon as practicable under Part 5 of the Act. The Board’s power of immediate suspension may be invoked at any time, eg on receipt of a complaint or in response to other information provided to the Board under the Act.

The registrant has right of appeal to the District Court against the Board’s decision to act under this section. The appeal is limited to the Board’s decision to immediately suspend the registrant’s registration under this section.

Clause 30 amends section 50 of the Act to provide for consistency of language in the Act and also to omit a phrase made redundant by the insertion of a definition of ‘indictable offence’ in section 2 of the Act.

Clause 31 inserts a new section 50A in the Act. This section clarifies that when the Board takes action under the new s.49A to immediately suspend a registrant’s registration, it must conduct a disciplinary inquiry under Part 5 of the Act as soon as practicable. This provision is to be read in conjunction with new subsection 51(1A), which requires the Board to appoint a committee of inquiry to conduct the inquiry required by the new section 50A.

Clause 32 amends section 51 of the Act, which currently gives the Board discretion as to the way in which it can conduct a disciplinary inquiry under Part 5 of the Act. The effect of clause 32 is to require the Board to

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appoint a committee of inquiry to conduct a disciplinary inquiry into matters involving the consideration of the registrant's continuing good character for registration. This includes disciplinary inquiries required by s.50A i.e. an inquiry after the Board decides to immediately suspend a person's registration under s.49A.

It should be noted that the Board will retain discretion as to whether the Board conducts the inquiry itself or appoints a committee of inquiry in relation to other matters e.g. professional competence.

If the matter involves a ground for inquiry under s.50(2)(f) (good character) and another ground, for example, s.50(2)(a) (conviction for an indictable offence), a committee of inquiry must still be established to hear the matter under s.51(1A).

Clause 33 replaces section 52, which sets out the composition of a committee of inquiry. New section 52 specifies that a committee of inquiry appointed by the Board must comprise the following 4 members:

- (a) a legal practitioner, who is to chair the committee;
- (b) 2 practising teachers; and
- (c) one person who is neither a legal practitioner nor a registered teacher. This member is intended to represent the interests of the community.

It should be noted that a person cannot be a member of a committee of inquiry if they:

- (a) have a personal or professional connection with the registrant who is the subject of the inquiry;
- (b) are, or become, a member of the Board; or
- (c) have been or are convicted of an indictable offence.

Clause 34 amends the period of notice about an inquiry to at least 14 days.

Clause 35 amends section 70 of the Act to clarify that the Board may make any of the orders mentioned in subsection 70(1) in relation to a registrant who is the subject of a disciplinary inquiry conducted as a result of the immediate suspension of their registration under the new s.49A.

Clause 36 inserts the new section 70A in the Act, which directs the Board to order the cancellation of a registrant's registration following a disciplinary inquiry into conduct that resulted in the conviction of the registrant for a serious offence. However, if the Board is satisfied that it is

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an exceptional case in which it would not harm the best interests of children for the teacher to work in a child-related field, the Board is not required to cancel the teacher's registration. In these circumstances, subsection (3) provides that the Board may decide to make a disciplinary order other than cancellation (e.g. suspension of registration).

Clause 37 amends section 71 to include a reference to new section 70A(2). The effect of the amendment is to require the board to give written notice of a decision under s.70A(2) to cancel a person's registration.

Clause 38 inserts new sections 71A & 71B in the Act, which apply when the Board makes a decision about a person under the new s.49A (Immediate Suspension) or Part 5 (Disciplinary Inquiries). In these circumstances, the Board:

- (a) must notify the Board's decision to all Australian and New Zealand teacher registration authorities with which the Board knows the person is also registered— new subsection 71A(2);
- (b) may notify other entities, e.g. overseas teacher registration authorities and the person's employer, of the Board's decision. However, it should be noted that the Board may only exercise this discretion if it believes the entity needs to know about the Board's decision – new subsections 71A(3) & (4); and
- (c) may provide the Commissioner for Children and Young People with prescribed information regarding the Board's decision. It should be noted that the Board may only exercise this discretion if it reasonably believes that its decision is relevant to the Commissioner's determination, under the CCYP Act whether the person is suitable for child-related employment – new subsections 71B(3) & (4). The Board may make other decisions about registration that are not related to the issue of suitability to work with children e.g. about qualifications and these decisions are not to be passed on to the Children's Commission as they are not relevant to the issue of whether a person is suitable to work with children.

Clause 39 amends section 72 of the Act to include a reference to new section 70A and to recognise a right of appeal to the District Court against the Board's decision to immediately suspend registration under new 49A(2).

Clause 40 inserts a new sections 74A, 74B, 74C, 74D and 74E in the Act.

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Section 74A makes it an offence for persons specified in subsection 74A(1) to disclose information obtained in the course of administering the Act, unless the disclosure is expressly authorised under subsection 74A(3).

Section 74B provides that a board member is not liable civilly for an act done or omission made, honestly and without negligence, in the performance of the member's duties under the Act, other than when performing duties as a member of an inquiry body. This supplements the protection currently provided under s.64 of the Act for Board members when conducting inquiries.

Section 74C specifies the effect of a suspension of a registrant's registration under this Act. The provision also specifies that, at the conclusion of the suspension a person is registered on the same conditions and in the same type of registration that applied before the person's registration was suspended. This is subject to certain qualifications spelt out in the provision.

Section 74D requires the Board to record a suspension under s.49A or after an inquiry under Part 5 on the register for the duration of the suspension.

Section 74E provides that the Rehabilitation Act does not apply to the definition of criminal history in section 2.

Clause 41 inserts a new division 4 into Part 8 of the Act and a schedule. The new division inserts transitional provisions in Part 8 of the Act.

Section 96 provides a definition of 'amending Act' for the purpose of section 98.

Section 97 applies to applications for registration and restoration made, but not decided by the Board, before the commencement of the section. The Board must decide the application as if it had been made after the commencement of the section.

Section 98 provides for the continuation and completion of disciplinary inquiries involving a committee of inquiry commenced, but not concluded, before the commencement of clauses 32 and 33 of the amending Bill, as if that section had not commenced. The effect of this provision is that a committee of inquiry is able to complete its inquiry without being affected by the amendments to ss.51 and 52 of the Act.

The new schedule lists the other serious offence provisions of the Criminal Code for the purpose of paragraph (b) of the new definition of "serious offence".

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