

Education and Training Legislation Amendment Bill 2011

Amendments agreed to during Consideration

1 Clause 7 (Amendment of s 364 (Definition for pt 11))

Page 8, line 9, ‘.’—

omit.

2 Clause 7 (Amendment of s 364 (Definition for pt 11))

Page 8, after line 9—

insert—

‘relevant person means a person mentioned in section 365(1)(a) to (c), 365A(1)(a) to (c), 366(1)(a) to (c) or 366A(1)(a) to (c).

sexual abuse, in relation to a relevant person, includes sexual behaviour involving the relevant person and another person in the following circumstances—

- (a) the other person bribes, coerces, exploits, threatens or is violent toward the relevant person;
- (b) the relevant person has less power than the other person;
- (c) there is a significant disparity between the relevant person and the other person in intellectual capacity or maturity.’.

3 Clause 11 (Insertion of new ss 366A and 366B)

Page 13, after line 29—

insert—

- (4A) However, the director or directors must not delegate the function to the principal or any other staff member of the non-State school.’.

4 Clause 15 (Insertion of new ch 2, pt 1A)

Page 15, lines 10 and 11—

omit, insert—

‘person.’.

5 Clause 15 (Insertion of new ch 2, pt 1A)

Page 15, line 18, ‘after the relevant commencement’—

omit, insert—

‘or has been’.

6 Clause 15 (Insertion of new ch 2, pt 1A)

Page 17, lines 4 and 5—

omit.

7 Clause 15 (Insertion of new ch 2, pt 1A)

Page 21, lines 19 to 23—

omit, insert—

‘12M Automatic expiry of eligibility declaration

‘(1) This section applies to an eligibility declaration if—

- (a) the holder of the declaration is not an approved teacher;
and
- (b) after the declaration is issued, the holder—
 - (i) is charged with a serious offence; or
 - (ii) becomes an excluded person.

‘(2) This section also applies to an eligibility declaration if—

- (a) the holder of the declaration is an approved teacher; and
- (b) after the declaration is issued, the holder becomes an excluded person.

‘(3) The eligibility declaration expires on the day the holder is charged with the offence or becomes an excluded person.’.’.

8 Omission of clauses 16–30

Page 21, line 24 to page 31, line 11—

omit.

9 After clause 15

Page 21, after line 23—

insert—

‘16 Amendment of s 14 (Application for registration or permission to teach)

‘Section 14(10), definition *criminal history check fee*—

omit.

‘17 Amendment of s 15 (Obtaining police information about applicant)

‘Section 15(6A)(c) and (6B), ‘disqualification order or’—

omit.

‘18 Amendment of s 44 (Amending or replacing certificate of registration or certificate of permission to teach)

‘Section 44(4)—

omit, insert—

‘(4) In this section—

relevant notice means a notice under section 41(3), 42(2) or 43(3).’.

‘19 Amendment of s 48 (Effect of charge for disqualifying offence, temporary offender prohibition order or interim sexual offender order)

‘(1) Section 48, heading, ‘disqualifying’—

omit, insert—

‘serious’.

‘(2) Section 48(1)—

omit, insert—

‘(1) This section applies if, after the relevant commencement, an approved teacher is charged with a serious offence.

Note—

See also section 343 (Effect of serious offence charge before relevant commencement).’.

‘20 Amendment of s 50 (Requirement to give notice of suspension)

‘Section 50(2)(b)—

omit, insert—

‘(b) the reasons for the suspension and the evidence or other material on which the suspension was based;’.

‘21 Amendment of s 52 (When suspension ends)

‘Section 52(a), ‘102,’—

omit.

‘22 Replacement of ss 56 and 57

‘Sections 56 and 57—

omit, insert—

‘56 Cancellation in particular circumstances

‘(1) This section applies if, after the relevant commencement, an approved teacher—

(a) is convicted of a serious offence; or

(b) becomes a relevant excluded person.

Note—

See also section 344 (Effect of serious offence conviction before relevant commencement).

- ‘(2) The college must, as soon as practicable after it becomes aware of a matter mentioned in subsection (1), cancel the teacher’s registration or permission to teach.
- ‘(3) The college must immediately give notice to the teacher of the cancellation.
- ‘(4) The notice must state that—
- (a) there is no appeal under this Act or the QCAT Act in relation to the cancellation of the teacher’s registration or permission to teach; and
 - (b) unless subsection (c) applies, the teacher can never be granted registration or permission to teach; and
 - (c) the teacher can apply for registration or permission to teach if the cancellation of the teacher’s registration or permission to teach was under this section and any of the following apply in relation to the teacher—
 - (i) the conviction of the teacher for the serious offence is overturned on appeal;
 - (ii) the decision or order of the court resulting in the teacher becoming a relevant excluded person—
 - (A) is overturned on appeal; and
 - (B) was not made in relation to a conviction for a serious offence;
 - (iii) an eligibility declaration is issued to the teacher under part 1A.
- ‘(5) A copy of the notice must be given to the employing authority for, and the principal of, each school at which the teacher is employed.
- ‘(6) There is no appeal under this Act or the QCAT Act against the cancellation under this section of the teacher’s registration or permission to teach.
- ‘(7) In this section—
- appeal* includes review.

‘57 Effect of appeal on cancellation

- ‘(1) This section applies if—
- (a) the registration or permission to teach of an approved teacher is cancelled by the college under section 56; and
 - (b) any of the following is appealed—
 - (i) the conviction of the teacher for the serious offence;
 - (ii) the decision or order of the court resulting in the teacher becoming a relevant excluded person.
- ‘(2) The cancellation remains in effect during the appeal.
- ‘(3) The person is no longer an excluded person in relation to the cancellation if—
- (a) the conviction is overturned on appeal; or
 - (b) the decision or order—
 - (i) is overturned on appeal; and
 - (ii) was not made in relation to a conviction for a serious offence.’.

‘23 Omission of ch 2, pt 6, div 4 (Disqualification order)

‘Chapter 2, part 6, division 4—
omit.

‘24 Amendment of s 69 (Requirements for disclosure of changes in police information)

‘Section 69(3)(c) and (4), ‘disqualification order or’—
omit.

‘25 Amendment of s 75 (Commissioner of police must notify changes in police information)

‘Section 75(1)(a)(iv), (3)(c)(iii) and (d), ‘disqualification order or’—

omit.

‘26 Amendment of s 80 (Requirement for prosecuting authority to notify college about committal, conviction etc.)

‘Section 80(7)—

omit.

‘27 Amendment of s 92 (Grounds for disciplinary action)

‘(1) Section 92(1)(a)—

omit.

‘(2) Section 92(1)(b), from ‘because’ to ‘offender order’—

omit.

‘(3) Section 92(1)(b), note, ‘as mentioned in this paragraph’—

omit.

‘(4) Section 92(2)(a)(i) and (ii), ‘disqualifying’—

omit, insert—

‘serious’.

‘(5) Section 92(5), definition *dealt with*, ‘in relation to a charge of a disqualifying offence,’—

omit, insert—

‘in relation to a charge against a relevant teacher for a serious offence,’.

‘28 Amendment of s 93 (Disciplinary matters)

‘(1) Section 93(a)—

omit.

‘(2) Section 93(b) and (c)—

renumber as section 93(a) and (b).

‘29 Omission of s 94 (Show cause matters)

‘Section 94—

omit.

‘30 Amendment of s 95 (PP&C matters)

‘Section 95(1)(a)(ii), ‘section 92(2)(a), (b) or (c)’—

omit, insert—

‘section 92(2)(a) or (b)’.

‘30A Amendment of s 97 (Requirement for college to start disciplinary proceedings)

‘Section 97(2)(a), ‘show cause matter or’—

omit.

‘30B Omission of ch 5, pt 2 (Show cause matters dealt with by QCAT)

‘Chapter 5, part 2—

omit.

‘30C Amendment of s 111A (PP&C committee may refer matter to QCAT)

‘(1) Section 111A(1)(a), ‘a teacher’—

omit, insert—

‘a relevant teacher’.

‘(2) Section 111A(1)(b)—

omit, insert—

‘(b) if the ground is established—

- (i) for an approved teacher—disciplinary action mentioned in section 160(2)(d) to (h) or (j) should be taken against the teacher; or

- (ii) for a former approved teacher—disciplinary action mentioned in section 161(2)(b) or (c) should be taken against the teacher.’

‘30D Amendment of s 123 (Disciplinary action by PP&C committee)

‘Section 123(2)(b)—

omit, insert—

‘(b) refer the matter to QCAT if the committee believes—

- (i) for an approved teacher—disciplinary action mentioned in section 160(2)(d) to (h) or (j) should be taken against the teacher; or
- (ii) for a former approved teacher—disciplinary action mentioned in section 161(2)(b) or (c) should be taken against the teacher;’.

‘30E Amendment of s 160 (Decision about disciplinary action against approved teacher)

‘Section 160(2)(j), from ‘teach for’—

omit, insert—

‘teach for a stated period from the day the order is made or indefinitely;

Note—

See also section 350 (Decision about disciplinary action against approved teacher).’.

‘30F Amendment of s 161 (Decision about disciplinary action against former approved teacher)

‘Section 161(2)(c), from ‘teach for’—

omit, insert—

‘teach for a stated period from the day the order is made or indefinitely;

Note—

See also section 352 (Decision about disciplinary action against former approved teacher).’

‘30G Amendment of s 288 (Register of approved teachers to be kept)

‘Section 288(5)(e)—

omit.

‘30H Insertion of new ch 12, pt 13

‘Chapter 12—

insert—

**‘Part 13 Transitional provisions for
Education and Training
Legislation Amendment Act
2011**

‘342 Existing applications by new excluded persons

‘(1) This section applies if—

- (a) before the relevant commencement, a person applied to the college for—
 - (i) full or provisional registration or permission to teach; or
 - (ii) the renewal of full registration or permission to teach; or
 - (iii) the restoration of the person’s full registration that has ended; and
- (b) on the relevant commencement, the application has not been decided or withdrawn; and
- (c) the person is a new excluded person.

- ‘(2) However, this section does not apply to an approved teacher mentioned in section 344(5).
- ‘(3) The application is taken to be withdrawn.
- ‘(4) The college must—
 - (a) immediately give notice to the person of the withdrawal; and
 - (b) refund each fee accompanying the application; and
 - (c) if the application is an application mentioned in subsection (1)(a)(ii) or (iii)—give a copy of the notice to the employing authority for, and the principal of, each school at which the teacher is employed.
- ‘(5) The notice must state that—
 - (a) the application is withdrawn; and
 - (b) if the person is an eligibility applicant—the person may apply for an eligibility declaration under chapter 2, part 1A.
- ‘(6) In this section—

new excluded person means a person who was not an excluded person immediately before the relevant commencement but is an excluded person on the relevant commencement.

‘343 Effect of serious offence charge before relevant commencement

- ‘(1) This section applies if—
 - (a) before the relevant commencement, an approved teacher was charged with a serious offence; and
 - (b) on the relevant commencement—
 - (i) the charge has not been dealt with; and
 - (ii) the teacher’s registration or permission to teach has not been suspended under section 48.
- ‘(2) The provisions of this Act as in force from the relevant commencement apply in relation to the teacher.

‘(3) In this section—

dealt with, in relation to a charge against an approved teacher for a serious offence, means any of the following—

- (a) the teacher has been acquitted of the charge;
- (b) the charge has been withdrawn or dismissed;
- (c) a nolle prosequi or no true bill has been presented in relation to the charge.

‘344 Effect of serious offence conviction before relevant commencement

‘(1) Subsection (2) applies if—

- (a) before the relevant commencement—
 - (i) an approved teacher was convicted of a serious offence; and
 - (ii) the college was not aware of the conviction; and
- (b) on the relevant commencement, the conviction has not been overturned on appeal.

‘(2) The college must, as soon as practicable after it becomes aware of the conviction—

- (a) cancel the teacher’s registration or permission to teach; and
- (b) comply with section 56(3) to (5) in relation to the cancellation.

‘(3) Subsection (4) applies if—

- (a) before the relevant commencement—
 - (i) an approved teacher was convicted of a serious offence for which an imprisonment order was made; and
 - (ii) the college was aware of the conviction; and
- (b) on the relevant commencement, neither of the following has been overturned on appeal—
 - (i) the conviction;

- (ii) the imprisonment order.
- ‘(4) The college must, as soon as practicable after the relevant commencement—
 - (a) cancel the teacher’s registration or permission to teach; and
 - (b) comply with section 56(3) to (5) in relation to the cancellation.
- ‘(5) Subsection (6) applies if—
 - (a) before the relevant commencement—
 - (i) an approved teacher was convicted of a serious offence for which no imprisonment order was made; and
 - (ii) the college was aware of the conviction; and
 - (b) on the relevant commencement, the conviction has not been overturned on appeal.
- ‘(6) The college must, as soon as practicable after the relevant commencement, comply with section 345.

‘345 Show cause notice

- ‘(1) If section 344(5) applies in relation to an approved teacher, the college must give the approved teacher a notice under this section (a *show cause notice*).
- ‘(2) The show cause notice must state the following—
 - (a) that the college proposes to cancel the registration or permission to teach (the *proposed action*);
 - (b) that the college is required under this section to give the show cause notice;
 - (c) an outline of the facts and circumstances forming the basis for giving the notice;
 - (d) an invitation to the teacher to show within a stated period (the *show cause period*) why the proposed action should not be taken;

- (e) that, until the college issues an eligibility notice under section 347(2) or gives the teacher an information notice under section 347(3)—
 - (i) the teacher’s registration or permission to teach continues; and
 - (ii) the teacher is not an excluded person.
- ‘(3) The show cause period must be a period ending at least 30 days after the show cause notice is given to the teacher.
- ‘(4) Until the college issues an eligibility notice under section 347(2) or gives the teacher an information notice under section 347(3)—
 - (a) the teacher’s registration or permission to teach continues; and
 - (b) the teacher is not an excluded person.

‘346 Representations about show cause notice

- ‘(1) The approved teacher may make written representations about the show cause notice to the college during the show cause period.
- ‘(2) The college must consider all written representations (the *accepted representations*) made under subsection (1).

‘347 Decision after considering accepted representations

- ‘(1) The college must cancel the approved teacher’s registration unless, after considering the accepted representations for the show cause notice and the matters mentioned in section 12F(2) to (4), the college is satisfied it is an exceptional case in which it would not harm the best interests of children for the proposed action not to be taken.
- ‘(2) If college decides not to take the proposed action, the college must issue an eligibility declaration to the approved teacher.
- ‘(3) If the college decides to take the proposed action, the college must give the approved teacher an information notice.

‘348 Grounds for disciplinary action

- ‘(1) This section applies if, before the relevant commencement—
- (a) a relevant teacher’s registration or permission to teach was suspended under section 48 because the teacher was charged with a disqualifying offence; and
 - (b) either—
 - (i) the charge was dealt with; or
 - (ii) the teacher was convicted of an offence other than an indictable offence.

‘(2) Section 92 as in force immediately before the relevant commencement continues to apply in relation to the teacher.

‘(3) In this section—

dealt with, in relation to a charge against a relevant teacher for a serious offence, means any of the following—

- (a) the teacher has been acquitted of the charge;
- (b) the charge has been withdrawn or dismissed;
- (c) a nolle prosequi or no true bill has been presented in relation to the charge.

disqualifying offence see the Commissioner’s Act, section 168.

‘349 QCAT show cause notice given but not dealt with

- ‘(1) Subsection (2) applies if—
- (a) before the relevant commencement, QCAT gave a notice under section 101 to a relevant teacher; and
 - (b) on the relevant commencement, QCAT has not made a decision under section 102 or 103.
- ‘(2) On the relevant commencement—
- (a) the notice is taken to be withdrawn; and
 - (b) any disciplinary action started under chapter 5, part 2 is taken to be discontinued.

Note—

See section 344 (Effect of serious offence conviction before relevant commencement).

‘350 Decision about disciplinary action against approved teacher

- ‘(1) Subsection (2) applies if—
- (a) before the relevant commencement—
 - (i) a general matter in relation to an approved teacher was referred to QCAT under section 97(2); or
 - (ii) a PP&C matter in relation to an approved teacher was referred to QCAT under section 111A(2) or 123(2)(b); and
 - (b) on the relevant commencement, QCAT has not made a decision under section 160.
- ‘(2) Section 160 as in force immediately before the relevant commencement continues to apply in relation to the approved teacher.

‘351 Referral to QCAT under ss 111A and 123

- ‘(1) This section applies if, before the relevant commencement, a PP&C matter in relation to a former approved teacher was referred to QCAT under section 111A(2) or 123(2)(b).
- ‘(2) Sections 111A(1)(b) and 123(2)(b) are taken always to have referred to disciplinary action mentioned in section 161(2)(b) or (c).

‘352 Decision about disciplinary action against former approved teacher

- ‘(1) Subsection (2) applies if—
- (a) before the relevant commencement—
 - (i) a general matter in relation to a former approved teacher was referred to QCAT under section 97(2); or

- (ii) a PP&C matter in relation to a former approved teacher was referred to QCAT under section 111A(2) or 123(2)(b); and
 - (b) on the relevant commencement, QCAT has not made a decision under section 161.
- ‘(2) Section 161 as in force immediately before the relevant commencement continues to apply in relation to the former approved teacher.’.

‘30I Amendment of sch 1 (Decisions for which information notice must be given)

‘Schedule 1—

insert—

- ‘347(3) college’s decision to cancel registration or permission to teach for a conviction for a serious offence’.

‘30J Amendment of sch 3 (Dictionary)

- ‘(1) Schedule 3, definitions *disqualification order, disqualifying offence, excluded person, relevant excluded person, review notice* and *show cause matter—*

omit.

- ‘(2) Schedule 3—

insert—

‘accepted representations see section 346(2).

criminal history check fee means the criminal history check fee prescribed under a regulation.

eligibility applicant see section 12D.

eligibility application, for chapter 2, part 1A, see section 12E(1).

eligibility declaration see section 12B.

excluded person means a person—

- (a) who is a relevant excluded person, other than a person mentioned in section 57(3); or
- (b) who is, or has been, convicted of a serious offence other than—
 - (i) a person to whom an eligibility declaration is issued, and not revoked, under chapter 2, part 1A; or
 - (ii) a person mentioned in section 57(3)(a); or
- (c) who is prohibited from reapplying for registration or permission to teach by a disciplinary order.

proposed action see section 345(2)(a).

relevant commencement means the commencement of the *Education and Training Legislation Amendment Act 2011*, part 4.

relevant excluded person means a person who is subject to—

- (a) offender reporting obligations; or
- (b) an offender prohibition order; or
- (c) a CPOPOA disqualification order; or
- (d) a sexual offender order.

show cause notice see section 345(1).

show cause period see section 345(2)(d).’.

- ‘(3) Schedule 3, definition *disciplinary action*, ‘2 or’—
omit.
- ‘(4) Schedule 3, definition *disciplinary order*, ‘2 or’—
omit.
- ‘(5) Schedule 3, definition *police information*, paragraph (b)(iii), ‘disqualification order or’—
omit.
- ‘(6) Schedule 3, definition *serious offence*, ‘*Commission for Children and Young People and Child Guardian Act 2000*’—

omit, insert—

‘Commissioner’s Act’.’.

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