

Queensland



**EDUCATION AND OTHER
LEGISLATION (STUDENT
PROTECTION) AMENDMENT
BILL 2003**

Queensland



**EDUCATION AND OTHER LEGISLATION
(STUDENT PROTECTION) AMENDMENT
BILL 2003**

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SCHEDULE

SERIOUS OFFENCE PROVISIONS OF THE CRIMINAL CODE

2003

A BILL

FOR

**An Act to amend Acts administered by the Minister for Education, and
for other purposes**

*Education and Other Legislation (Student Protection)
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The Parliament of Queensland enacts— 1

PART 1—PRELIMINARY 2

Clause 1 Short title 3

This Act may be cited as the *Education and Other Legislation (Student Protection) Amendment Act 2003*. 4
5

Clause 2 Commencement 6

This Act commences on a day to be fixed by proclamation. 7

**PART 2—AMENDMENT OF COMMISSION FOR
CHILDREN AND YOUNG PEOPLE ACT 2000** 8
9

Clause 3 Act amended in pt 2 10

This part amends the *Commission for Children and Young People Act 2000*. 11
12

Clause 4 Amendment of s 102 (Decision on application) 13

(1) Section 102(2), after ‘offence’— 14

insert— 15

‘or any teacher registration information about the person’. 16

(2) Section 102(3), after ‘an offence’— 17

insert— 18

‘or any teacher registration information about the person’. 19

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Clause 5	Amendment of s 103 (Commissioner to invite submissions from person about criminal history)	1 2
	(1) Section 103, heading, ‘ criminal history ’—	3
	<i>omit, insert—</i>	4
	‘ particular information ’.	5
	(2) Section 103(1)(a)—	6
	<i>omit, insert—</i>	7
	‘(a) stating the following—	8
	(i) information about the person’s criminal history of which the commissioner is aware;	9 10
	(ii) any teacher registration information about the person; and’.	11
 Clause 6	 Amendment of s 119 (Cancellation of notice—wrong or incomplete information)	 12 13
	(1) Section 119, heading, ‘ wrong or incomplete ’—	14
	<i>omit, insert—</i>	15
	‘ wrong, incomplete or new ’.	16
	(2) Section 119—	17
	<i>insert—</i>	18
	‘(1A) Also, the commissioner may cancel a positive notice about a person and substitute a negative notice (also the “ new notice ”), having regard to any of the following information about the person—	19 20 21
	(a) teacher registration information;	22
	(b) information received by the commissioner under section 122A(1).’.	23 24
	(3) Section 119(2), after ‘103’—	25
	<i>insert—</i>	26
	‘, as if—	27
	(a) the reference in section 103(1) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and	28 29 30

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(b) the reference in section 103(3) to deciding the application were a reference to substituting a negative notice for a positive notice.’ 1
2

Clause 7	Insertion of new pt 9, div 5	3
	After section 178—	4
	<i>insert—</i>	5
	<i>‘Division 5—Transitional provisions for Education and Other Legislation (Student Protection) Amendment Act 2003</i>	6 7
	‘179 Definitions for div 5	8
	‘In this division—	9
	“amending Act” means the <i>Education and Other Legislation (Student Protection) Amendment Act 2003</i> .	10 11
	“commencement” means commencement of this section.	12
	‘180 Outstanding applications for suitability notice	13
	‘If an application for a suitability notice was made, but not decided, before the commencement, the application must be decided as if the application had been made after the commencement.	14 15 16
	‘181 Employment mentioned in sch 1, s 6A	17
	‘(1) This section applies if a person (the “employee”), immediately before the commencement, was employed by another person (the “employer”) in employment mentioned in schedule 1, section 6A. ¹	18 19 20
	‘(2) Section 127(2) does not apply to the employment of the employee.	21
	‘(3) Subject to subsections (4) and (5), section 105 ² does not apply to the continued employment of the employee by the employer during the period ending 3 months after the commencement (the “3 months period”).	22 23 24

1 Schedule 1 (Regulated employment and businesses for employment screening), section 6A (Education programs conducted outside of school)

2 Section 105 (Continuing employment of certain regular employees)

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- ‘(4) Subsection (5) applies if the employer, while continuing to employ the employee, applies for a suitability notice about the employee during the 3 months period. 1
2
3
- ‘(5) Section 105 does not apply to the continued employment of the employee by the employer until— 4
5
- (a) if the application is withdrawn—the day of the withdrawal; or 6
- (b) the day the employer receives a suitability notice about the employee, after the application is decided. 7
8
- ‘182 Carrying on business mentioned in sch 1, s 11 9**
- ‘(1) This section applies to a person who, immediately before the commencement, was carrying on a business mentioned in schedule 1, section 11.³ 10
11
12
- ‘(2) Subject to subsections (3) and (4), the person does not commit an offence against section 109⁴ by continuing to carry on the business without a current positive notice during the period ending 3 months after the commencement (the “**3 months period**”). 13
14
15
16
- ‘(3) Subsection (4) applies if the person, while continuing to carry on the business, applies for a suitability notice about the person during the 3 months period. 17
18
19
- ‘(4) The person does not commit an offence against section 109 by continuing to carry on the business without a current positive notice until— 20
21
- (a) if the application is withdrawn—the day of the withdrawal; or 22
- (b) the day the person receives a suitability notice, after the application is decided.’. 23
24

3 Schedule 1 (Regulated employment and businesses for employment screening), section 11 (Education programs conducted outside of school)

4 Section 109 (Carrying on regulated business)

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Clause 8	Amendment of sch 1 (Regulated employment and businesses for employment screening)	1 2
	(1) Schedule 1—	3
	<i>insert—</i>	4
	‘6A Education programs conducted outside of school	5
	‘Employment is regulated employment if—	6
	(a) the usual functions of the employment include, or are likely to include, providing services or conducting activities for—	7 8
	(i) an education program under the <i>Education (General Provisions) Act 1989</i> , section 30; ⁵ or	9 10
	(ii) a program, provided by an entity, under arrangements approved under the <i>Education (General Provisions) Act 1989</i> , section 114A(1) or 114B(1); ⁶ and	11 12 13
	(b) the employee is not a registered teacher; and	14
	(c) the employer is not a provider under the <i>Youth Participation in Education and Training Act 2003</i> , section 12.’.	15 16
	(2) Schedule 1—	17
	<i>insert—</i>	18
	‘11 Education programs conducted outside of school	19
	‘A business is a regulated business if—	20
	(a) the usual activities of the business include, or are likely to include, providing services or conducting activities for—	21 22
	(i) an education program under the <i>Education (General Provisions) Act 1989</i> , section 30; or	23 24
	(ii) a program provided, by the entity carrying on the business, under arrangements approved under the <i>Education (General Provisions) Act 1989</i> , section 114A(1) or 114B(1); and	25 26 27

5 *Education (General Provisions) Act 1989*, section 30 (Placement of certain students in alternative education program)

6 *Education (General Provisions) Act 1989*, section 114A (Flexible arrangements—non-State school) or 114B (Flexible arrangements—State educational institution)

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(b) the entity carrying on the business is not a provider under the *Youth Participation in Education and Training Act 2003*, section 12.’. 1
2
3

Clause 9 Amendment of sch 4 (Dictionary) 4

Schedule 4— 5

insert— 6

‘**“teacher registration information”**, about a person, means information 7
about the person received by the commissioner under the *Education* 8
(*Teacher Registration*) Act 1988, section 71B.’. 9

PART 3—AMENDMENT OF CRIMINAL LAW 10
(REHABILITATION OF OFFENDERS) ACT 1986 11

Clause 10 Act amended in pt 3 12

This part amends the *Criminal Law (Rehabilitation of Offenders) Act* 13
1986. 14

Clause 11 Amendment of s 9A (Disclosure of particulars in special cases) 15

(1) Section 9A(1), table, column 1, item 5(1)— 16

omit. 17

(2) Section 9A(1), table, column 1, item 5(2), ‘(2)’— 18

omit. 19

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

		1
		2
Clause 12	Act amended in pt 4	3
	This part amends the <i>Education (General Provisions) Act 1989</i> .	4
Clause 13	Amendment of s 2 (Interpretation)	5
	(1) Section 2(1), definition “principal”—	6
	<i>omit.</i>	7
	(2) Section 2(1)—	8
	<i>insert—</i>	9
	‘ “employee” , of a non-State school or State school, means a person engaged to carry out work at the school for financial reward.	10 11
	“principal” , of a non-State school with no position by that name, means the person responsible for the school’s day-to-day management.	12 13
	“reasonably suspects” means suspects on grounds that are reasonable in the circumstances.’.	14 15
Clause 14	Insertion of new ss 146A and 146B	16
	Part 9, after section 146—	17
	<i>insert—</i>	18
	‘146A Obligation to report sexual abuse of student under 18 years attending State school	19 20
	‘(1) Subsection (2) applies if a staff member of a State school (the “first person”) becomes aware, or reasonably suspects, that a student under 18 years attending the school has been sexually abused by someone else who is an employee of the school.	21 22 23 24
	‘(2) The first person must give a written report about the abuse, or suspected abuse, to the school’s principal or the principal’s supervisor—	25 26
	(a) immediately; and	27

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(b) if a regulation is in force under subsection (3), as provided under the regulation.	1 2
Maximum penalty—20 penalty units.	3
‘(3) A regulation may prescribe the particulars the report must include.	4
‘(4) A school’s principal or a principal’s supervisor must immediately give a copy of a report given to the principal or supervisor under subsection (2) to the chief executive’s nominee.	5 6 7
Maximum penalty—20 penalty units.	8
‘(5) The chief executive’s nominee must immediately give a copy of a report given to the nominee under subsection (4) to a police officer.	9 10
Maximum penalty—20 penalty units.	11
‘(6) A person who makes a report under subsection (2), or gives a copy of a report under subsection (4) or (5), is not liable, civilly, criminally or under an administrative process, for giving the information contained in the report to someone else.	12 13 14 15
‘(7) Without limiting subsection (6)—	16
(a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and	17 18
(b) if the person would otherwise be required to maintain confidentiality about the given information under an Act, oath, rule of law or practice—the person does not contravene the requirement by giving the information.	19 20 21 22
‘146B Obligation to report sexual abuse of student under 18 years attending non-State school	23 24
‘(1) Subsection (2) applies if a staff member of a non-State school (the “ first person ”) becomes aware, or reasonably suspects, that a student under 18 years attending the school has been sexually abused by someone else who is an employee of the school.	25 26 27 28
‘(2) The first person must give a written report about the abuse, or suspected abuse, to the school’s principal or a director of the school’s governing body—	29 30 31
(a) immediately; and	32

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(b) if a regulation is in force under subsection (3), as provided under the regulation.	1 2
Maximum penalty—20 penalty units.	3
‘(3) A regulation may prescribe the particulars the report must include.	4
‘(4) A non-State school’s principal or a director of a non-State school’s governing body must immediately give a copy of a report given to the principal or director under subsection (2) to a police officer.	5 6 7
Maximum penalty—20 penalty units.	8
‘(5) A person who makes a report under subsection (2), or gives a copy of a report under subsection (4), is not liable, civilly, criminally or under an administrative process, for giving the information contained in the report to someone else.	9 10 11 12
‘(6) Without limiting subsection (5)—	13
(a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and	14 15
(b) if the person would otherwise be required to maintain confidentiality about the given information under an Act, oath, rule of law or practice—the person does not contravene the requirement by giving the information.	16 17 18 19
‘(7) In this section—	20
“ director ”, of a non-State school’s governing body, means—	21
(a) if the governing body is a company under the Corporations Act—a person appointed as a director of the governing body; or	22 23
(b) otherwise—a person who is, or is a member of, the executive or management entity, by whatever name called, of the governing body.’.	24 25 26

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**PART 5—AMENDMENT OF EDUCATION (TEACHER
REGISTRATION) ACT 1988** 1
2

- Clause 15 Act amended in pt 5** 3
- This part amends the *Education (Teacher Registration) Act 1988*. 4
- Clause 16 Amendment of s 2 (Definitions)** 5
- Section 2— 6
- insert—* 7
- ‘ **“charge”**, in relation to a charge made outside Queensland, means any 8
allegation of an offence made in a way that is the same as, or 9
substantially the same as, a charge under the law of the State. 10
- “criminal history”**, of a person, means all the following— 11
- (a) every conviction of the person for an offence, in Queensland or 12
elsewhere, at any time and whether before or after the 13
commencement of this Act as passed or any amendment of this 14
Act; 15
- (b) every charge made against the person for an offence, in 16
Queensland or elsewhere, at any time and whether before or after 17
the commencement of this Act as passed or any amendment of 18
this Act and whatever the outcome of the charge. 19
- “foreign regulatory authority”** means— 20
- (a) an interstate regulatory authority; or 21
- (b) an entity established under a law applying in a foreign country, 22
other than New Zealand, having functions similar to the board’s 23
functions under this Act. 24

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- “harm”**, to a child, see the *Child Protection Act 1999*, section 9.⁷ 1
- “indictable offence”** includes an indictable offence dealt with summarily, 2
whether or not the Criminal Code, section 659,⁸ applies to the 3
indictable offence. 4
- “interstate regulatory authority”** means an entity established under the 5
law of another State or New Zealand having functions similar to the 6
functions of the board under this Act. 7
- “serious offence”** means— 8
- (a) an offence against a provision mentioned in the schedule to the 9
Penalties and Sentences Act 1992;⁹ or 10
 - (b) an offence against a provision of the Criminal Code mentioned in 11
the schedule; or 12
 - (c) an offence of counselling or procuring the commission of, or 13
attempting or conspiring to commit, an offence mentioned in 14
paragraph (a) or (b); or 15
 - (d) an offence against a law of another jurisdiction that substantially 16
corresponds to an offence mentioned in paragraphs (a) to (c).⁷ 17

7 *Child Protection Act 1999*, section 9—

9 What is “harm”

(1) **“Harm”**, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.

(2) It is immaterial how the harm is caused.

(3) Harm can be caused by—

- (a) physical, psychological or emotional abuse or neglect; or
- (b) sexual abuse or exploitation.

8 Criminal Code, section 659 (Effect of summary conviction for indictable offences)

9 *Penalties and Sentences Act 1992*, schedule (Serious violent offences)

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Clause 17	Insertion of new s 5A	1
	After section 5—	2
	<i>insert—</i>	3
	‘5A Primary considerations of board in registration of teachers	4
	‘In performing its functions relating to the registration of persons as teachers, the welfare and best interests of children are to be primary considerations of the board.’	5 6 7
Clause 18	Amendment of s 10 (Disqualification from office)	8
	Section 10(b), ‘whether on indictment or summarily,’—	9
	<i>omit.</i>	10
Clause 19	Amendment of s 17 (Quorum and business of the board)	11
	Section 17—	12
	<i>insert—</i>	13
	‘(3A) A resolution is validly made by the board, even if it is not passed at a board meeting, if—	14 15
	(a) a majority of the board members gives written agreement to the resolution; and	16 17
	(b) written notice of the resolution is given under procedures approved by the board.’	18 19
Clause 20	Amendment of s 36 (Two types of applications may be made to board)	20 21
	Section 36—	22
	<i>insert—</i>	23
	‘(3) The approved form may require the disclosure of the applicant’s criminal history.	24 25
	‘(4) If the approved form requires the disclosure of the applicant’s criminal history, the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> does not apply to the disclosure.’	26 27 28

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Clause 21	Amendment of s 37 (Good character of each applicant to be assessed)	1 2
	(1) Section 37(2), ‘registration’—	3
	<i>omit, insert—</i>	4
	‘the purpose of registration as a teacher’.	5
	(2) Section 37(2)(a), ‘the applicant’s criminal history’—	6
	<i>omit, insert—</i>	7
	‘the applicant’s criminal history, and any information about the applicant received by the board under section 37A(3)’.	8 9
	(3) Section 37(2)(b)—	10
	<i>renumber</i> as section 37(2)(d).	11
	(4) Section 37(2)—	12
	<i>insert—</i>	13
	(b) must consider whether the applicant is a suitable person to work in a child-related field; and	14 15
	(c) if the applicant has been registered under this Act or a former Act or is, or has been, registered under a corresponding law and the registration was affected—	16 17 18
	(i) by the imposition of a condition—may have regard to the nature of the condition and the reason for its imposition; or	19 20
	(ii) by its suspension or cancellation—may have regard to the reason for its suspension or cancellation; or	21 22
	(iii) in another way—may have regard to the way it was affected and the reason for it being affected; and’.	23 24
	(5) Section 37(3) to (7)—	25
	<i>omit, insert—</i>	26
	‘(3) Without limiting subsection (2), the applicant is not of good character for the purpose of registration as a teacher if the applicant—	27 28
	(a) behaves in a way that does not satisfy a standard of behaviour generally expected of a teacher; or	29 30
	(b) otherwise behaves in a disgraceful or improper way that shows the applicant is unfit to be registered as a teacher.	31 32

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‘(4) If the board is aware that the applicant’s criminal history includes a conviction for a serious offence, the board must decide that the applicant is not a suitable person to work in a child-related field, unless the board is satisfied it is an exceptional case in which it would not harm the best interests of children for the applicant to work in a child-related field.

‘(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply in relation to the board’s decision under subsection (4).

‘(6) Subsections (2) and (3) and, subject to subsection (7), section 37A apply as if—

(a) an applicant for registration or restoration were a registered teacher; and

(b) the reference to good character for the purpose of registration as a teacher were a reference to good character for the purpose of continuing registration as a teacher.

‘(7) For subsection (6), in applying section 37A(1), section 37A(1) is taken to confer on the board a discretion, as opposed to a requirement, to ask the commissioner of the police service to give the board a written report about the criminal history of a registered teacher.

‘(8) In this section—

“**corresponding law**” means a law applying, or that applied, in another State, the Commonwealth or a foreign country that provides, or provided, for the same matter as this Act or a provision of this Act.

“**former Act**” means a repealed Act, or repealed provisions of an Act, that provided for the same matter as this Act or a provision of this Act.’.

Clause 22 Insertion of new s 37A

After section 37—

insert—

‘37A Criminal history check etc.

‘(1) The board must ask the commissioner of the police service to give the board a written report about the criminal history of an applicant for registration or restoration.

‘(2) Also, the board may ask the commissioner of the police service to give the board the following information about the applicant—

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- (a) a brief description of the circumstances of a conviction or charge, for an offence, mentioned in the applicant’s criminal history; 1
2
- (b) if the board has information suggesting the applicant may not be a suitable person to work in a child-related field—information about any investigation relating to the possible commission of a serious offence by the applicant. 3
4
5
6
- ‘(3) Subject to subsections (4) and (5), the commissioner of the police service must comply with a request under subsection (1) or (2). 7
8
- ‘(4) The duty imposed on the commissioner of the police service to comply with the request— 9
10
- (a) applies only to information in the possession of the commissioner or to which the commissioner has access; and 11
12
- (b) in relation to information mentioned in subsection (2)(b)—applies only to information recorded on a central electronic database kept by the commissioner. 13
14
15
- ‘(5) The commissioner of the police service must not give information about an investigation relating to the possible commission of a serious offence by the applicant if— 16
17
18
- (a) the commissioner is reasonably satisfied that giving the information— 19
20
- (i) may prejudice or otherwise hinder an investigation to which the information may be relevant; or 21
22
- (ii) may lead to the identification of an informant; or 23
- (iii) may affect the safety of a police officer, complainant or other person; or 24
25
- (b) for an investigation that has been completed—the investigation has not led, and the commissioner is reasonably satisfied it is unlikely to lead, to a reasonable suspicion that the applicant committed a serious offence; or 26
27
28
29
- (c) for an investigation that has not been completed—the commissioner is reasonably satisfied the investigation is unlikely to lead to a reasonable suspicion that the applicant committed a serious offence. 30
31
32
33

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‘(6) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, the information mentioned in subsection (1) or (2)?’.

Clause 23	Amendment of s 41 (Board can not be satisfied about application if its request not met)	4 5 6 7 8
	Section 41(1)(a), ‘to be’— <i>omit, insert</i> — ‘for the purpose of being’.	6 7 8
Clause 24	Insertion of new pt 4, divs 3A and 3B	9 10 11 12
	After section 42— <i>insert</i> — ‘Division 3A—Disclosure about change in criminal history	10 11 12
	‘42A Registered teacher must disclose changes in criminal history	13
	‘(1) 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.	14 15
	Maximum penalty—20 penalty units.	16
	‘(2) For a registered teacher who does not have a criminal history, there is taken to be a change in the teacher’s criminal history if the teacher acquires a criminal history.	17 18 19
	‘(3) The <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> does not apply to the giving of a disclosure under subsection (1).	20 21
	‘42B Requirements for disclosure	22
	‘(1) To comply with section 42A(1), a person must give the board a disclosure in the approved form.	23 24
	‘(2) The information disclosed by a person about a conviction or charge for an offence in the person’s criminal history must include—	25 26
	(a) the existence of the conviction or charge; and	27

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(b) when the offence was committed or alleged to have been committed; and	1 2
(c) details sufficient to identify the offence or alleged offence; and	3
(d) for a conviction, whether or not a conviction was recorded and the sentence imposed on the person.	4 5
‘42C Notice of change in criminal history	6
‘(1) If the commissioner of the police service reasonably suspects that a person who is charged with an offence is a registered teacher, the commissioner may notify the board about the change in the person’s criminal history.	7 8 9 10
‘(2) The notice must state the following—	11
(a) the person’s name and address;	12
(b) the person’s date of birth;	13
(c) the offence the person is charged with;	14
(d) particulars of the offence;	15
(e) the date of the charge.	16
‘(3) The board may confirm the suspicions of the commissioner of the police service under subsection (1).	17 18
‘(4) If the person is a registered teacher, the board, on receiving a notice under subsection (1) about the person, may write to the person to inform the person of the person’s obligation under section 42A(1).	19 20 21
‘(5) The <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> does not apply to the giving of a notification under subsection (1).	22 23
<i>‘Division 3B—Controls on use of information about criminal history and particular investigations</i>	24 25
‘42D Use of information received	26
‘(1) This section applies to the board in considering information about a person received by the board under section 37A(3), 37A(3) as applied by section 37(6), 42A(1) or 42C(1).	27 28 29

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‘(2) The information must not be used for any purpose other than—	1
(a) deciding whether the person is of good character for the purpose of being, or continuing to be, registered as a teacher; or	2 3
(b) if at the time the information was received the person was a registered teacher, but later stopped being a registered teacher—deciding whether to make an order, about the person, under section 70(2)(b).	4 5 6 7
‘(3) When making the decision, the board must have regard to the following matters relating to information about the commission, or alleged or possible commission, of an offence by the person—	8 9 10
(a) when the offence was committed, is alleged to have been committed or may possibly have been committed;	11 12
(b) the nature of the offence and its relevance to the duties of a teacher;	13 14
(c) anything else the board considers relevant to the decision.	15
‘42E Person to be advised of information received	16
‘(1) This section applies to information received by the board about a person under section 37A(3).	17 18
‘(2) Before using the information in deciding whether the person is of good character for the purpose of being registered as a teacher, the board must—	19 20 21
(a) disclose the information to the person; and	22
(b) allow the person a reasonable opportunity to make representations to the board about the information. ¹⁰	23 24
‘42F Guidelines for dealing with information	25
‘(1) The board must make guidelines, consistent with this Act, for dealing with information received by the board under section 37A(3), 37A(3) as applied by section 37(6), 42A(1) or 42C(1).	26 27 28
‘(2) The purpose of the guidelines is to ensure—	29

10 See section 56(2)(b) in relation to an inquiry about whether a person is of good character for the purpose of continuing to be registered as a teacher.

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- (a) natural justice is afforded to a person about whom the information is received; and 1
2
- (b) only relevant information is used in deciding whether a person is of good character for the purpose of being, or continuing to be, registered as a teacher; and 3
4
5
- (c) decisions about whether a person is of good character for the purpose of being, or continuing to be, registered as a teacher, based on the information, are made consistently. 6
7
8

‘(3) The board must give a copy of the guidelines, on request, to a person seeking to be, or continue to be, registered as a teacher.’ 9
10

Clause 25 Amendment of s 44 (Duty of registered teacher convicted of indictable offence etc.) 11
12

- (1) Section 44, heading, ‘**convicted of indictable offence etc.**’— 13
omit, insert— 14
‘to notify board of particular events’. 15
- (2) Section 44(1)(a)— 16
omit. 17
- (3) Section 44(1)(b) and (c)— 18
renumber as section 44(1)(a) and (b). 19
- (3) Section 44(2), ‘conviction,’— 20
omit. 21

Clause 26 Amendment of s 44A (Employing authority to notify board about sexual allegation in certain circumstances) 22
23

- (1) Section 44A, heading, ‘**sexual allegation**’— 24
omit, insert— 25
‘allegation of harm’. 26
- (2) Section 44A(1), from ‘if’ to ‘the notice’— 27
omit, insert— 28

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<p>‘if after the employing authority for a school investigated an allegation of harm caused, or likely to be caused, to a child because of the conduct of a relevant teacher of the school’.</p> <p>(3) Section 44A—</p> <p><i>insert—</i></p> <p>‘(1A) This section also applies if during the investigation by the employing authority for a school of an allegation of harm caused, or likely to be caused, to a child because of the conduct of a relevant teacher of the school, the teacher resigns from the educational staff of the school.’.</p> <p>(4) Section 44A(3)(d)—</p> <p><i>omit, insert—</i></p> <p>‘(d) the allegation, particulars of the allegation and any other relevant information;’.</p> <p>(5) Section 44A—</p> <p><i>insert—</i></p> <p>‘(4A) An employing authority for a school that gives a notice under subsection (2) is not liable, civilly, criminally or under an administrative process, for disclosing information contained in the notice.</p> <p>‘(4B) Without limiting subsection (4A)—</p> <p style="padding-left: 20px;">(a) in a proceeding for defamation, the employing authority has a defence of absolute privilege for publishing the disclosed information; and</p> <p style="padding-left: 20px;">(b) if the employing authority would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice—the employing authority does not contravene the requirement by disclosing the information.’.</p> <p>(6) Section 44A(5), definition “sexual allegation”—</p> <p><i>omit.</i></p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>
<p>Clause 27 Amendment of s 44B (Prosecuting authority to notify board about committal, conviction etc.)</p> <p>Section 44B(3), ‘whether on indictment or summarily,’—</p> <p><i>omit.</i></p>	<p>29</p> <p>30</p> <p>31</p> <p>32</p>

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Clause 28	Amendment of s 44C (Board must consider notices under ss 44A and 44B and decide if inquiry necessary)	1 2
	(1) Section 44C, heading, ‘notices under ss 44A and 44B’—	3
	<i>omit, insert—</i>	4
	‘information received under s 42A(1), 42C(1), 44A or 44B’.	5
	(2) Section 44C, from ‘is given’ to ‘the notice’—	6
	<i>omit, insert—</i>	7
	‘receives information under section 42A(1), 42C(1), 44A or 44B, the board must consider the information’.	8 9
Clause 29	Insertion of new pt 4, div 7	10
	After section 49—	11
	<i>insert—</i>	12
	<i>‘Division 7—Immediate suspension of registration</i>	13
	‘49A Immediate suspension	14
	‘(1) This section applies if the board reasonably believes, at any time, that—	15 16
	(a) a registered teacher poses an imminent risk of harm to children;	17
	and	18
	(b) immediate action to suspend the teacher’s registration is necessary to protect children.	19 20
	‘(2) The board may decide to suspend the teacher’s registration.	21
	‘(3) Immediately after deciding to suspend the teacher’s registration, the board must give written notice of the suspension to the teacher.	22 23
	‘(4) The notice must state—	24
	(a) the board’s decision; and	25
	(b) the reasons for the decision; and	26
	(c) an inquiry about the teacher will be conducted to decide whether the teacher is of good character for the purpose of continuing to be registered as a teacher; and	27 28 29

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- (d) that the teacher may appeal against the decision to the District Court; and 1
2
- (e) the time within which the teacher must make the appeal. 3
- ‘(5) The decision takes effect on the day the notice is given to the teacher. 4
5
- ‘(6) The decision continues to have effect until the first of the following happens— 6
7
- (a) the decision is set aside by the District Court on appeal; 8
- (b) if, after the inquiry, the board makes an order under section 70(2A)—the order takes effect; 9
10
- (c) after the inquiry, the board decides to end the suspension.’. 11

Clause 30 Amendment of s 50 (Board may conduct inquiry about certain persons) 12
13

- (1) Section 50(2)(a), ‘(whether on indictment or summarily)’— 14
omit. 15
- (2) Section 50(2)(f)— 16
omit, insert— 17
- ‘(f) the teacher is not of good character for the purpose of being, or continuing to be, registered as a teacher.¹¹’. 18
19

Clause 31 Insertion of new s 50A 20

After section 50— 21
insert— 22

‘50A When board must conduct inquiry 23

- ‘(1) The board must conduct an inquiry about a person whose registration as a registered teacher is suspended under section 49A(2). 24
25
- ‘(2) The board must ensure the inquiry is held as soon as practicable after the person is given notice of the suspension under section 49A(3).’. 26
27

11 See section 37 (Good character of each applicant to be assessed).

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Clause 32	Amendment of s 51 (Board may conduct inquiry itself or appoint a committee of inquiry)	1 2
	(1) Section 51(1), ‘The’—	3
	<i>omit, insert—</i>	4
	‘Subject to subsection (1A), the’.	5
	(2) Section 51—	6
	<i>insert—</i>	7
	‘(1A) The board must appoint a committee of inquiry to conduct the inquiry if the matter involves the consideration by the board of whether a person is of good character for the purpose of being, or continuing to be, registered as a teacher.’.	8 9 10 11
Clause 33	Replacement of s 52 (Constitution of committee for inquiry)	12
	Section 52—	13
	<i>omit, insert—</i>	14
	‘52 Membership of committee of inquiry	15
	‘(1) If the board appoints a committee of inquiry to conduct the inquiry, the committee must consist of—	16 17
	(a) 1 lawyer of at least 5 years standing; and	18
	(b) 2 practising teachers; and	19
	(c) a person who is not a lawyer or registered teacher.	20
	‘(2) Before choosing a person to be a member of the committee, the board must be satisfied the person does not have a personal or professional connection with the person who is the subject of the inquiry.	21 22 23
	‘(3) A person can not become, or continue as, a member of the committee—	24 25
	(a) if the person is, or becomes, a board member; or	26
	(b) if the person is, or has been, convicted of an indictable offence.	27
	‘(4) The person mentioned in subsection (1)(a) is the chairperson of the committee.’.	28 29

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Clause 34	Amendment of s 53 (Notice of inquiry)	1
	Section 53, ‘28’—	2
	<i>omit, insert—</i>	3
	‘14’.	4
Clause 35	Amendment of s 70 (Board may order cancellation of registration etc.)	5
	(1) Section 70—	6
	<i>insert—</i>	7
	‘(1A) Subsection (1) applies subject to section 70A.’.	8
	(2) Section 70—	9
	<i>insert—</i>	10
	‘(2A) After an inquiry about a person whose registration as a registered teacher is suspended under section 49A(2), if the board is satisfied on the balance of probabilities that the person no longer is of good character for the purpose of continuing to be registered as a teacher, the board may make 1 or more of the orders mentioned in subsection (1).’.	11
		12
		13
		14
		15
		16
Clause 36	Insertion of new s 70A	17
	After section 70—	18
	<i>insert—</i>	19
	‘70A Board must order cancellation of registration in particular circumstances	20
		21
	‘(1) Subsection (2) applies if the board, after becoming aware that a registered teacher has been convicted of a serious offence, conducts an inquiry about the teacher on a ground mentioned in section 50(2)(a) or (f).	22
		23
		24
	‘(2) The board must order the cancellation of the teacher’s registration, after the inquiry, unless the board is satisfied it is an exceptional case in which it would not harm the best interests of children for the teacher to work in a child-related field.	25
		26
		27
		28
	‘(3) To remove any doubt, it is declared that even though the board does not make an order under subsection (2), it may after the inquiry make 1 or more of the orders mentioned in section 70(1)(b) to (f).’.	29
		30
		31

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Clause 37	Amendment of s 71 (Notice of board’s order)	1
	Section 71(1), after ‘70’—	2
	<i>insert—</i>	3
	‘or 70A(2)’.	4
 Clause 38	 Insertion of new ss 71A and 71B	 5
	Part 5, after section 71—	6
	<i>insert—</i>	7
	‘71A Board may notify other entities about decision or order	8
	‘(1) This section applies if the board makes a decision or order about a person under section 49A(2), 70(1), (2) or (2A) or 70A(2).	9 10
	‘(2) The board must, as soon as practicable after making the decision or order, give written notice of it to interstate regulatory authorities with which the board is aware the person is registered.	11 12 13
	‘(3) Also, the board may give written notice of the decision or order to any of the following—	14 15
	(a) the chief executive;	16
	(b) foreign regulatory authorities;	17
	(c) an employer of the person;	18
	(d) the Minister;	19
	(e) any other entity relevant to the person’s practice of the teaching profession.	20 21
	‘(4) However, the board must not give a notice about the decision or order to an entity under subsection (3) unless the board reasonably believes the entity needs to know about the decision or order.	22 23 24
	‘(5) A notice under this section may include the information the board reasonably believes is appropriate in the circumstances.	25 26

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‘71B Board may notify commissioner for children and young people about particular information	1
	2
‘(1) Subsection (3) applies if—	3
(a) the board conducts an inquiry into a matter concerning the conduct of a person; and	4
	5
(b) after the inquiry, the board makes an order about the person under section 70(1), (2) or (2A) or 70A(2).	6
	7
‘(2) Subsection (3) also applies if the board decides, under section 49A(2), to suspend a person’s registration as a registered teacher because of the conduct of the person.	8
	9
	10
‘(3) The board may give written notice of the decision or order to the commissioner for children and young people if the board reasonably believes the decision or order is relevant to a consideration by the commissioner, under the <i>Commission for Children and Young People Act 2000</i> , part 6, ¹² of whether the person is a suitable person for child-related employment.	11
	12
	13
	14
	15
	16
‘(4) A notice under subsection (3) must state the following—	17
(a) the person’s name and address;	18
(b) the person’s date of birth;	19
(c) the decision or order;	20
(d) when the conduct happened;	21
(e) the nature of the conduct.	22
‘(5) However, if the conduct relates to a particular child, the notice must not contain information that identifies, or is likely to identify, the child.’.	23
	24
 Clause 39 Amendment of s 72 (Appeals)	 25
(1) Section 72(1)—	26
insert—	27
‘(d) the board’s decision, under section 49A(2), to suspend the person’s registration as a teacher;	28
	29

12 *Commission for Children and Young People Act 2000*, part 6 (Employment screening for child-related employment)

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- (e) the board’s order about the person under section 70A(2).’ 1
- (2) Section 72(6)(b), from ‘any’ to ‘70’— 2
- omit, insert—* 3
- ‘1 or more of the orders mentioned in section 70(1)’ 4
- (3) Section 72— 5
- insert—* 6
- ‘(6A) If the appeal is made under subsection (1)(d), the court may— 7
- (a) allow the appeal and order the board to end the suspension; or 8
- (b) dismiss the appeal. 9
- ‘(6B) If the appeal is made under subsection (1)(e), the court may— 10
- (a) allow the appeal; or 11
- (b) allow the appeal and make 1 or more of the orders mentioned in 12
section 70(1)(b) to (f); or 13
- (c) dismiss the appeal.’ 14
- (4) Section 72(7), ‘a judge’— 15
- omit, insert—* 16
- ‘the court’. 17

- Clause 40 Insertion of new ss 74A–74E** 18
- After section 74— 19
- insert—* 20
- ‘74A Confidentiality of information** 21
- ‘(1) This section applies to a person (the “**relevant person**”) who is or 22
was— 23
- (a) a board member; or 24
- (b) a member of a board committee; or 25
- (c) a member of a committee of inquiry; or 26
- (d) the director or a member of the office’s staff; or 27
- (e) otherwise involved in the administration of this Act. 28

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- ‘(2) The relevant person must not disclose protected information to anyone else. 1
2
- Maximum penalty—20 penalty units. 3
- ‘(3) However, the relevant person may disclose the information to someone else— 4
5
- (a) to the extent necessary to perform the relevant person’s functions under or relating to this Act; or 6
7
 - (b) if the disclosure is authorised under this or another Act; or 8
 - (c) if the disclosure is otherwise required or permitted by law; or 9
 - (d) if the person to whom the information relates agrees to the disclosure; or 10
11
 - (e) if the disclosure is in a form that does not disclose the identity of a person; or 12
13
 - (f) if the information is, or has been, accessible to the public, including, for example, because it is or was recorded in the register; or 14
15
16
 - (g) if the disclosure is to a foreign regulatory authority and the disclosure is necessary for the authority to perform its functions; or 17
18
19
 - (h) if the disclosure is to the Minister to allow the Minister to act under paragraph (i); or 20
21
 - (i) if the Minister considers the disclosure is in the public interest and authorises the relevant person to disclose the information. 22
23
- ‘(4) If the Minister authorises information to be disclosed under subsection (3)(i) about a matter concerning a registered teacher, the Minister must inform the board of the authorisation and its purpose. 24
25
26
- ‘(5) In this section— 27
- “**information**” includes a document. 28
- “**protected information**” means information about a person disclosed to, or obtained by, a relevant person in the course of performing, or because of, the relevant person’s functions under this Act. 29
30
31

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‘74B Protection of board members from liability	1
‘(1) A board member is not civilly liable for an act done or omission made, honestly and without negligence under this Act, other than when the board member is performing the board member’s duties as a member of an inquiry body.	2 3 4 5
‘(2) If subsection (1) prevents a civil liability attaching to a board member, the liability attaches instead to the State.	6 7
‘74C Effect of suspension	8
‘(1) If a person’s registration as a teacher is suspended under this Act, the person is, during the period of the suspension, taken not to be a registered teacher.	9 10 11
‘(2) Despite subsection (1), the board may conduct an inquiry about the person and for that purpose the person continues to be a registered teacher.	12 13
‘(3) Subject to any other order of the board under section 70 or 70A(2) or other decision of the District Court, at the end of the period of suspension, the person is registered as a teacher on the same conditions, and in the same type of registration, that applied to the person immediately before the suspension.	14 15 16 17 18
‘(4) Subsection (3) is subject to the person paying any fee, payable under this Act, for the retention of the person’s name in the register.	19 20
‘74D Recording of suspension in register	21
‘(1) This section applies if a person’s registration as a teacher is suspended under this Act.	22 23
‘(2) As soon as practicable after the suspension, the board must record in the register, for the period of the suspension, that the registration is suspended.	24 25 26
‘74E Application of Criminal Law (Rehabilitation of Offenders) Act 1986	27 28
‘The <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> does not apply in relation to the definition “criminal history” in section 2.’	29 30

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Clause 41	Insertion of new pt 8, div 4 and schedule	1
	After section 95—	2
	<i>insert—</i>	3
	<i>‘Division 4—Transitional provisions for Education and Other Legislation (Student Protection) Amendment Act 2003</i>	4 5
	‘96 Definition for div 4	6
	‘In this division—	7
	“amending Act” means the <i>Education and Other Legislation (Student Protection) Amendment Act 2003</i> .	8 9
	‘97 Outstanding applications for registration or applications for restoration	10 11
	‘(1) If an application for registration or application for restoration was made, but not decided, before the commencement, the application must be decided as if the application had been made after the commencement.	12 13 14
	‘(2) In this section—	15
	“commencement” means commencement of this section.	16
	‘98 Incomplete inquiries	17
	‘(1) Subsection (2) applies if an inquiry was commenced, but not completed, before the commencement of sections 32 and 33 of the amending Act.	18 19 20
	‘(2) The inquiry may be completed as if sections 32 and 33 of the amending Act had not commenced.	21 22

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‘SCHEDULE	1
‘SERIOUS OFFENCE PROVISIONS OF THE CRIMINAL CODE	2 3
section 2, definition “serious offence”, paragraph (b)	4
1. Section 211 (Bestiality)	5
2. Section 219 (Taking child for immoral purposes)	6
3. Section 221 (Conspiracy to defile)	7
4. Section 228 (Obscene publications and exhibitions)	8
5. Section 238 (Contamination of goods)	9
6. Section 239 (Hoax contamination of goods)	10
7. Section 240 (Dealing in contaminated goods)	11
8. Section 300 (Unlawful homicide)	12
9. Section 307 (Accessory after the fact to murder)	13
10. Section 308 (Threats to murder in document)	14
11. Section 309 (Conspiring to murder)	15
12. Section 311 (Aiding suicide)	16
13. Section 314 (Concealing the birth of children)	17
14. Section 324 (Failure to supply necessities)	18
15. Section 327 (Setting mantraps)	19
16. Section 355 (Deprivation of liberty)	20
17. Section 359 (Threats)	21
18. Section 359E (Punishment of unlawful stalking)	22
19. Section 363 (Child-stealing)	23
20. Section 363A (Abduction of child under 16)	24
21. Section 364 (Cruelty to children under 16)	25

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22.	Section 415 (Demanding property, benefit or performance of services with threats)	1 2
23.	Section 416 (Attempts at extortion by threats)	3
24.	Section 417 (Procuring execution of deeds etc. by threats)	4
25.	Section 417A (Taking control of aircraft)'.	5