



New South Wales

# Teacher Accreditation Amendment Act 2021 No 41

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New South Wales

# Teacher Accreditation Amendment Act 2021 No 41

Act No 41, 2021

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An Act to amend the *Teacher Accreditation Act 2004* to strengthen child protection requirements for teacher accreditation and improve the effectiveness of the teacher accreditation scheme; and for related purposes. [Assented to 29 November 2021]

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Teacher Accreditation Amendment Act 2021*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## Schedule 1 Amendment of Teacher Accreditation Act 2004 No 65

### [1] Section 3 Definitions

Omit the definition of *early childhood education centre* from section 3(1). Insert instead—  
*early childhood education centre* or *centre* means the following, but does not include a family day care service or an out-of-school hours or vacation care service—

- (a) an approved education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*,
- (b) a service or facility of a class declared by the regulations to be an early childhood education centre.

### [2] Section 3(1), definitions of “ECEC executive”, “non-teaching ECEC executive”, “non-teaching school executive”, “QTC”, “school executive” and “teacher accreditation authority”

Omit the definitions.

### [3] Section 3(1)

Insert in alphabetical order—

*Children’s Guardian* means the Children’s Guardian appointed under the *Children’s Guardian Act 2019*, section 115.

*relevant complaint* about a person means an allegation that—

- (a) the person has engaged in misconduct, or
- (b) the person is incompetent in performing the work of a teacher, or
- (c) the person has failed to comply with the professional teaching standards.

*working with children check clearance* has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

### [4] Section 3A Meaning of “teach”

Insert after section 3A(1)(a)(ii)—

- (iii) supporting and leading the development and implementation of the delivery and assessment of the courses, and

### [5] Section 3A(1)(b)(iii)

Insert at the end of section 3A(1)(b)(ii)—

, and

- (iii) supporting and leading the development and implementation of the delivery and assessment of the educational program.

### [6] Section 3A(1)

Omit “whether or not the person who is undertaking any such duties undertakes other duties in the school or centre (such as those of a school executive, school counsellor or ECEC executive).”.

**[7] Section 4**

Omit the section. Insert instead—

**4 Protection of children paramount**

This Act must be administered by applying the principle that, in an action or decision concerning a child or young person, the safety, welfare and wellbeing of the child or young person are paramount.

**[8] Part 2**

Omit the Part. Insert instead—

**Part 2 Authority's functions**

**6 Functions of Authority**

- (1) The functions of the Authority under this Act include the following—
  - (a) to provide advice to the Minister on the development, content and application of the professional teaching standards,
  - (b) to provide advice to the Minister on the Minister's other functions under this Act,
  - (c) to monitor the accreditation process across all schools,
  - (d) to ensure professional teaching standards are applied fairly and consistently,
  - (e) to monitor, evaluate and report on the quality of initial and continuing teacher education courses and programs approved under the professional teaching standards,
  - (f) to assess a person's suitability to teach,
  - (g) to accredit teachers at all levels, including the voluntary accreditation of teachers at higher levels and non-practising teachers,
  - (h) to suspend, revoke and impose conditions on accreditation,
  - (i) other functions imposed by or under this Act or another Act.
- (2) The functions of the Authority under this Act also include making decisions about whether or not to approve—
  - (a) a teacher education course or program for the purposes of this Act, or
  - (b) a person or body to provide professional development in accordance with the requirements of the professional teaching standards.
- (3) The functions of the Authority under this Act do not extend to industrial matters concerning teachers, for example, the salaries of teachers or the conditions of employment of teachers.

**7 Obtaining and sharing information**

- (1) The Authority may obtain relevant information from, and disclose relevant information to, the following *relevant entities*, for an authorised purpose—
  - (a) the Children's Guardian,
  - (b) the Commissioner of Police,
  - (c) a school or early childhood education centre, or an equivalent entity in another jurisdiction, including outside Australia,

- (d) an organisation to which a matter relevant to an assessment of suitability has been referred under section 38.

(2) In this section—

**authorised purpose** means a purpose for or in connection with the execution or administration of this Act and includes the following purposes—

- (a) the verification of the identity of a person who is an applicant for, or the holder of, an accreditation under this Act,
- (b) the consideration and determination of a person's application under this Act,
- (c) assessing and determining under Part 4, Division 2 whether to suspend or revoke a person's accreditation,
- (d) assessing and determining under Part 4, Division 4 whether a person is suitable to teach.

**clearance history**, of a person, means the history of action taken in relation to an application for a clearance by the person or a clearance held by the person under the *Child Protection (Working with Children) Act 2012*, including the following—

- (a) a risk assessment determination,
- (b) an interim bar,
- (c) a refusal of an application,
- (d) the suspension or cancellation of a clearance.

**relevant information** means the following information about a person—

- (a) information relevant to the verification of the identity of the person,
- (b) information about the person disclosed by the person to a relevant entity,
- (c) information about the person's criminal history in this jurisdiction or another jurisdiction,
- (d) information about disciplinary proceedings against the person in this jurisdiction or another jurisdiction,
- (e) information about the person's clearance history,
- (f) information about whether the person continues to comply with accreditation requirements and teaching standards under the professional teaching standards,
- (g) other information relevant to assessing the person's suitability to teach, including a relevant complaint.

**[9] Section 16 Authority to maintain roll of teachers**

Omit section 16(2)(a). Insert instead—

- (a) the public register of teachers, and

**[10] Section 17**

Omit the section. Insert instead—

**17 Public register of teachers**

- (1) A public register of accredited persons must be published on the Authority's website.

- (2) The public register must contain the following information about an accredited person—
  - (a) the person’s full name,
  - (b) the accreditation number specified on the person’s certificate of accreditation,
  - (c) the type or level of accreditation held by the person.

**[11] Section 18**

Omit the section. Insert instead—

**18 Accreditation list**

- (1) The accreditation list must contain the following particulars in relation to each person who is accredited—
  - (a) the full name and date of birth of the person,
  - (b) the type or level of accreditation held by the person,
  - (c) the date on which the person was accredited,
  - (d) other information required by or under this Act or the regulations to be included on the accreditation list.
- (2) The accreditation list must contain the details of a decision by the Authority—
  - (a) to refuse an application to accredit a person, or
  - (b) to revoke the accreditation of a person, or
  - (c) to suspend the accreditation of a person.
- (3) The Authority may provide information contained in the accreditation list to the following—
  - (a) a school or an early childhood education centre,
  - (b) the person or body responsible for registering or accrediting teachers under the law of another jurisdiction, including outside Australia,
  - (c) another person or body prescribed by the regulations.

**[12] Section 19 Minister may approve professional teaching standards**

Omit “to teacher accreditation authorities and” from section 19(2).

**[13] Section 20 Matters to be dealt with by professional teaching standards**

Omit section 20(1)(c). Insert instead—

- (b1) the conditions and criteria relating to an individual’s suitability to teach,
- (c) the procedures and guidelines to be followed in relation to the accreditation of persons under this Part, including the suspension or revocation of accreditation,

**[14] Section 21 Accreditation of teachers**

Omit section 21(1) and (1A). Insert instead—

- (1) The Authority may, in accordance with this Part—
  - (a) grant accreditation for the purpose of teaching in a school or early childhood education centre, or
  - (b) accredit a non-school based teacher or non-centre based teacher, or
  - (c) grant non-practising accreditation.

**[15] Sections 22 and 23**

Omit the sections. Insert instead—

**22 Applications for accreditation**

- (1) A person may apply to the Authority for accreditation under this Part.
- (2) An application must—
  - (a) be in the form approved by the Authority (the *approved form*), and
  - (b) be accompanied by other information required by the Authority, and
  - (c) specify the type of accreditation applied for.
- (3) The approved form must include provision for the authorisation by the applicant of, and the consent by the applicant to, the following in connection with the application and at any time while the accreditation is in force—
  - (a) the conduct of a criminal record check in relation to the applicant,
  - (b) the disclosure of the applicant's criminal history and disciplinary history,
  - (c) other inquiries about the applicant relevant to—
    - (i) the suitability of the applicant to teach, or
    - (ii) the type of accreditation for which the applicant has applied.
- (4) The regulations may—
  - (a) prescribe the fee payable for an application and the way in which it must be paid, and
  - (b) require proof of identity to be provided by an applicant in the way prescribed by the regulations or approved by the Authority.

**23 Notice of decisions by Authority**

- (1) The Authority must give written notice to the applicant of the following—
  - (a) a decision to grant an accreditation,
  - (b) a decision to refuse to grant an accreditation,
  - (c) an assessment the person is not suitable to teach under Division 4.
- (2) If the Authority grants an accreditation, the Authority must issue a certificate of accreditation to the person in the form approved by the Authority.
- (3) Notice of a decision referred to in subsection (1)(b) or (c) must state the following—
  - (a) the reasons for the decision,
  - (b) that the individual may appeal against the decision,
  - (c) how an application for appeal may be made and the period within which the application must be made.

**[16] Section 24 Revocation of accreditation**

Insert after section 24(1)(g)—

- (h) the Authority has made an assessment the person is not suitable to teach under Division 4.

**[17] Section 24C Notice to be given of intention to suspend or revoke accreditation**

Insert after section 24C(3)—



- (4) This section does not apply to the suspension or revocation of a person's accreditation on the following grounds—
  - (a) the person is subject to an interim bar imposed under the *Child Protection (Working with Children) Act 2012*, section 17,
  - (b) the working with children check clearance for the person is cancelled under the *Child Protection (Working with Children) Act 2012*, section 23.

**[18] Section 24D Placing accreditation on hold during leave of absence from teaching**

Omit section 24D(3). Insert instead—

- (3) A person is taken not to be accredited under this Act during a period in which the person's accreditation is placed on hold.
- (3A) During the period—
  - (a) the person may undertake courses or carry out duties to enable the person to satisfy the requirements of the professional teaching standards relating to professional development and continuing teacher education, and
  - (b) the Authority may suspend or revoke the person's accreditation.

**[19] Section 25A**

Omit the section. Insert instead—

**25A Working with children check clearances**

- (1) A person must not be accredited under this Part unless the person holds a working with children check clearance under the *Child Protection (Working with Children) Act 2012* that authorises the person to engage in paid child-related work.
- (2) It is a condition of the accreditation of a person under this Part that the person holds a working with children check clearance under the *Child Protection (Working with Children) Act 2012* that authorises the person to engage in paid child-related work.

**[20] Section 27 Administrative review of certain decisions**

Omit “a teacher accreditation authority” from section 27(1)(a).

Insert instead “the Authority”.

**[21] Section 28 Requirement for teachers to be accredited**

Omit “on-site” from section 28(2)(b).

**[22] Sections 28(3) and (4), 40A and 41 and Schedule 2**

Omit the provisions.

**[23] Section 30 Provisional accreditation**

Omit “, within the first 12 months of the person's conditional accreditation,” from section 30(4)(a).

**[24] Sections 30(5)(b), 31(4)(c), 32, note, 33(1)(a) and (4)(b), and 40(1)**

Omit “by a teacher accreditation authority” wherever occurring.

**[25] Section 32 Accreditation of teachers at proficient teacher level**

Omit section 32(1)–(3). Insert instead—

- (1) The Authority may, on application by a person who is required to be accredited, accredit the person at proficient teacher level if—
  - (a) the person—
    - (i) is provisionally accredited under section 30, or
    - (ii) is conditionally accredited under section 31 and has completed an approved course, or
    - (iii) satisfies the requirements for accreditation prescribed by the regulations or specified in the rules of the Authority, and
  - (b) the Authority is satisfied the person meets the requirements for accreditation at proficient teacher level.
- (2) The Authority may refuse an application to accredit a person at proficient teacher level.
- (3) A decision by the Authority to accredit a person at proficient teacher level has no effect unless the person has completed an approved course.

**[26] Section 33 Provisional re-accreditation**

Omit section 33(1)(b). Insert instead—

- (b) whose provisional accreditation or provisional re-accreditation has ceased because the person has failed to be accredited at proficient teacher level, or

**[27] Part 4, Division 4**

Insert after Division 3—

**Division 4 Assessment of suitability to teach**

**34 Definition**

In this Division—

*assessment of suitability*—see section 35.

**35 When Authority may assess suitability to teach**

The Authority may carry out an assessment of a person's suitability to teach (an *assessment of suitability*)—

- (a) if the person applies for accreditation under this Part, or
- (b) periodically, as required by the rules of the Authority, or
- (c) if a complainant makes a relevant complaint to the Authority about the person, or
- (d) if the person is the subject of disciplinary proceedings commenced by a school or centre, or
- (e) if the person is the subject of criminal proceedings that, in the Authority's opinion, relate to an act or conduct that reflects adversely on a teacher's—
  - (i) professional standing or integrity, or
  - (ii) suitability or competence to teach, or
- (f) on the basis of a ground on which the Authority may revoke the person's accreditation.

**36 Power to check criminal and disciplinary history**

- (1) In carrying out an assessment of suitability, the Authority must check the individual's criminal and disciplinary history.
- (2) For the purpose of checking an individual's criminal and disciplinary history, the Authority may obtain a written report about the criminal and disciplinary history of the individual from the following—
  - (a) the Commissioner of Police,
  - (b) the Children's Guardian,
  - (c) the employer or a former employer of the individual,
  - (d) another person, body or organisation in the State, another State or Territory or the Commonwealth, or outside Australia, that has access to records about the criminal or disciplinary history of the individual.

**37 Authority's other powers**

- (1) In carrying out an assessment of suitability, the Authority may, by written notice given to the individual, require the individual to do 1 or more of the following within a reasonable time stated in the notice—
  - (a) give the Authority further information or a document the Authority reasonably requires to assess the individual's suitability to teach,
  - (b) if the Authority is unable to obtain the criminal or disciplinary history of the person from another jurisdiction, including outside Australia—make a statutory declaration setting out the individual's criminal or disciplinary history in the jurisdiction,
  - (c) undergo a health assessment at a reasonable place.
- (2) If the individual has applied for accreditation under this Part, the Authority may reject the application if the individual does not comply with the notice.
- (3) Information obtained under this section must not be used as evidence in civil or criminal proceedings against the person.

**38 Authority may refer matter for further investigation**

- (1) The Authority may, at any time, refer a matter relevant to an assessment of suitability to an appropriate entity for further investigation.
- (2) An appropriate entity to whom a matter is referred must provide the Authority with a report setting out the findings of the investigation.
- (3) In this section—

*appropriate entity* includes the following—

  - (a) the Children's Guardian,
  - (b) a law enforcement agency,
  - (c) the employer of the person being assessed,
  - (d) another person, body or organisation empowered by a law of the State or of another State or Territory or the Commonwealth to take investigatory, disciplinary or other action.

**38A Unsuitability to teach**

- (1) The Authority may, after carrying out an assessment, decide an individual is not suitable for teaching if—

- (a) considering the person's criminal and disciplinary history, the individual is not, in the Authority's opinion, a suitable person to teach, or
  - (b) the individual fails to meet a standard in the professional teaching standards in relation to the individual's suitability to teach, or
  - (c) in the Authority's opinion, the individual is for another reason—
    - (i) not a fit and proper person to teach, or
    - (ii) unable to teach competently.
- (2) Despite another provision of this Act, if the Authority decides the individual is not suitable for teaching, the Authority—
- (a) if the individual has applied for accreditation under this Part—must refuse to accredit the individual, or
  - (b) if the individual holds an accreditation granted under this Part—may do 1 or more of the following—
    - (i) impose conditions on the accreditation as considered appropriate by the Authority in the circumstances,
    - (ii) suspend the accreditation,
    - (iii) revoke the accreditation.

**[28] Section 38B**

Insert before section 39—

**38B Non-practising accreditation**

- (1) The Authority may, on application by a person who is not required to be accredited, accredit the person at non-practising level if the person—
- (a) satisfies the requirements for accreditation at non-practising level prescribed by the regulations or specified in the rules of the Authority, and
  - (b) does not intend to undertake the duties of a teacher in a school or early childhood education centre.
- (2) The Authority may refuse an application to accredit a person at non-practising level.

**[29] Section 39(2) and (4), and 40(2) and (3)**

Omit "A teacher accreditation authority" wherever occurring.

Insert instead "The Authority".

**[30] Sections 39(4) and 40(3)**

Omit "the authority" wherever occurring. Insert instead "the Authority".

**[31] Section 42B**

Omit the section. Insert instead—

**42B Mandatory notifications by employers**

- (1) An employer of an accredited person who makes a relevant decision in relation to the person must—
- (a) notify the Authority of the decision, and

- (b) give the Authority all information that is or may be relevant to the decision.  
Maximum penalty—50 penalty units.
- (2) A **relevant decision**, in relation to an accredited person, means a decision to—
  - (a) start or finalise disciplinary proceedings against the person in relation to alleged misconduct while employed as a teacher, or
  - (b) dismiss the person from employment as a teacher for a reason for which the accreditation of a person may be revoked under this Act, or
  - (c) include the person in the list of persons maintained by the Secretary under the *Teaching Service Act 1980*, section 7(1)(e) as a person who is not to be employed in the Teaching Service.
- (3) An employer of an accredited person must notify the Authority, in accordance with subsection (4), if the employer has, or is aware of, information that is or may be relevant to the grounds for which the person’s accreditation may be suspended or revoked by the Authority.  
Maximum penalty—50 penalty units.
- (4) Notification must be given in accordance with the rules of the Authority.

**[32] Schedule 3 Savings and transitional provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering—

**Part Provisions consequent on enactment of Teacher Accreditation Amendment Act 2021**

**Definitions**

In this Part—

**amending Act** means the *Teacher Accreditation Amendment Act 2021*.

**pre-amended Act** means the *Teacher Accreditation Act 2004* as in force immediately before the commencement of the amending Act.

**teacher accreditation authority** has the same meaning as in the pre-amended Act.

**Information sharing**

Section 7, as inserted by the amending Act, extends to information held by the Authority or a relevant entity before the commencement of the section.

**Existing accreditation and decisions by teacher accreditation authorities**

- (1) An accreditation granted by a teacher accreditation authority and in force immediately before the repeal day is taken to be an accreditation granted by the Authority.
- (2) A decision made by a teacher accreditation authority before the repeal day is taken to be a decision made by the Authority.
- (3) In this clause—  
**repeal day** means the day on which section 21(1) is substituted by the amending Act.

**Teacher accreditation authorities—transitional arrangements for accreditation**

- (1) During the relevant period—

- (a) a reference to the Authority in an accreditation provision is taken to include a reference to a person or body who was, immediately before the repeal of section 4 by the amending Act, a teacher accreditation authority, and
  - (b) section 4 of the pre-amended Act continues to apply to a teacher accreditation authority for the purpose of accrediting a person under this Act.
- (2) In this clause—  
*relevant period* means the period of 12 months after the substitution of section 21(1) by the amending Act.

#### **Assessment of suitability**

Part 4, Division 4, as inserted by the amending Act—

- (a) extends to offences committed, and conduct occurring, before the commencement of the Division, and
- (b) applies to a person accredited under this Act, whether or not the accreditation—
  - (i) was granted before the day on which the Division commences, or
  - (ii) is suspended.

#### **Abolition of Quality Teaching Committee**

- (1) The Quality Teaching Committee, as established under Part 2, Division 4 immediately before its repeal by the amending Act, is abolished.
- (2) Each member of the Quality Teaching Committee ceases to hold office as a member and is not entitled to remuneration or compensation because of the loss of the office.

## **Schedule 2      Amendment of Education Standards Authority Act 2013 No 89**

**[1]      Section 14 Inspection of education premises**

Omit section 14(6), definition of *education premises*, paragraph (e).

**[2]      Section 16 Exchange of information**

Omit section 16(5), definition of *relevant agency*, paragraph (b).

[Second reading speech made in—

Legislative Council on 16 November 2021

Legislative Assembly on 24 November 2021]