

**SCHOOL CURRICULUM AND STANDARDS AUTHORITY
AMENDMENT BILL 2017**

**EXPLANATORY MEMORANDUM
AND
CLAUSE NOTES**

Amendments to the
School Curriculum and Standards Act 1997 (WA)

SCHOOL CURRICULUM AND STANDARDS AUTHORITY AMENDMENT BILL 2017

OVERVIEW OF THE BILL

The *School Curriculum and Standards Authority Amendment Bill 2017* (the “Bill”) aims to:

National Assessment Program

- Permit disclosure of identified student data held by the School Curriculum and Standards Authority (the “Authority”) for the purposes of participation in the National Assessment Program – Literacy and Numeracy (NAPLAN) Online testing commencing in 2018. The amendments in the Bill also extend to other National Assessment Program (NAP) testing requiring identified data for the purposes of development and participation. The Bill aims to achieve this through clarifying the role of the Authority as the Test Administration Authority (TAA) for Western Australia (WA) within the statutory functions detailed in *the School Curriculum and Standards Authority Act 1997* (“the Act”).

Research involving students

- Permit the Authority to disclose data which includes identified student information for the purposes of research involving students, with such research including:
 - to promote student achievement or wellbeing; and/or
 - to understand outcomes connected with student achievement or wellbeing.
- Ensure that student data disclosed for the purposes of research involving students, which includes personal information that could reasonably identify a student, is protected by requiring the Board of the Authority (the “Board”) to be satisfied that:
 - the disclosure is reasonably necessary;
 - the disclosure requires personal information; and
 - it is impracticable to obtain consent from individuals about whom the information relates.
- Ensure that student data disclosed for the purposes of research which includes personal information, can be protected by enabling the Board to impose conditions on recipients of such data.

- Ensure transparency and accountability in the Authority's disclosure of student data for the purposes of research, which includes personal information, by requiring the Board to develop procedures for disclosure approved by the Minister of Education.

The Bill's proposed amendments to the *School Curriculum and Standards Authority Act 1997* (the "Act") are summarised in the following clause notes.

CLAUSE NOTES

PART 1 – PRELIMINARY

Clause 1 – Short title

This clause provides that when the Bill is passed, it will be known as the *School Curriculum and Standards Authority Amendment Act 2017*.

Clause 2 – Commencement

This clause details when the provisions of the Bill will commence operation.

Paragraph (a) provides that the operative provisions of sections 1 and 2 of the *School Curriculum and Standards Authority Amendment Act 2017* will commence on the day on which this Act receives Royal Assent.

Paragraph (b) provides that the rest of the amendment Act will come into operation on a day fixed by proclamation and different days may be fixed for different provisions.

Clause 3 – Act amended

This clause provides that all the provisions contained in the Bill will amend the Act.

Clause 4 – Section 3 amended

Research involving students

The first paragraph of this clause inserts the definition of the term "research involving students" to the s9 definitions of the Act. Research involving students means research for either or both of the following purposes:

- a) promoting student achievement or student wellbeing; and
- b) to understand the outcomes connected with student achievement or wellbeing.

It is anticipated that such research would seek to understand and improve outcomes in education achievement and related areas such as health and the criminal justice system.

The term student achievement is addressed in sections of the existing Act including:

- the Objects of the Act under s4 in the context of establishing education standards;
- the Authority's functions under s9 in connection with courses and assessment developed or recognised by the Authority; and
- the reporting of students results under section 19G.

Wellbeing

The next paragraph in this clause inserts the definition of the term "wellbeing, of a student" to the s9 definitions of the Act, which includes the following:

- a) the care of a student;
- b) the physical, emotional, psychological and education development of the student;
- c) the physical, emotional, psychological and health of the student; or
- d) the safety of the student.

The definition of wellbeing of a student is inserted to focus research involving students to those matters which have reasonable connection with education achievement. The above definition is taken from the corresponding definition found in s3 of the *Children and Community Services Act 2004* (WA) to use terminology consistent with existing Western Australian legislation.

Vocational education and training

A semicolon is inserted after the existing definition of vocational education and training in the s9 definitions of the Act given the addition and alphabetical placement of the definition of the term wellbeing under the Bill.

PART 3 – FUNCTION AND POWERS

Clause 5 – Section 9 amended

Administration of national assessment of student achievement

The first paragraph of this clause inserts new function s9(1)(ea) to clarify the role of the Authority as the TAA for WA with respect to national assessment of student achievement that is the subject of State and Commonwealth agreements. The example of the NAP is provided in this amendment.

Clarification of the Authority's role with respect to national assessment in section 9 functions of the Act enables the Authority to disclose identified student data for the purposes of NAP testing.

NAP testing includes, but is not limited to NAPLAN, NAPLAN Online national sample testing and the Programme for International Student Assessment. As the TAA, the Authority is responsible for the administration of NAP testing in the State.

NAPLAN Online testing is conducted through a platform administered by the Commonwealth government owned company Education Services Australia on behalf of all state and territory education ministers. The testing platform requires identified student data for the purposes of registration and to apply adjustments for those students with disabilities. Western Australia will commence transitioning to NAPLAN Online testing in 2018.

Insertion of semicolon and conjunction at s9(1)(q)

The next paragraph in this clause 5 inserts a semicolon and the word "and" at the end of existing s(9)(1)(q) given the insertion of the following two new subsections.

Development of national school curriculum and assessment

The last paragraph in this clause inserts new function s9(1)(r) which clarifies the role of the Authority with respect to the development of national curriculum and assessment. These activities are connected with the administration of NAP testing as the Authority contributes to the development of national curriculum and connected test items. This development may require the disclosure of identified student information for the purposes of test item trialling or feedback from time to time.

The last paragraph of this clause also inserts new function s9(1)(s) to enable the Authority to conduct and promote, or participate in research involving students.

Clause 6 – section 15 amended

The Authority's power under s15(2)(a) to conduct and promote relevant research is deleted as this is addressed in clause 5 of the Bill as detailed above.

PART 6 – MISCELLANEOUS

Clause 7 – section 32 amended

Deletion of existing s32(1) and insertion of replacement section

The first paragraph of this clause deletes existing s32(1)(a)-(d) of the Act and inserts new s32(1)(a) and (b). The wording of existing s32(1)(a)-(d) is reformulated in the wording proposed for new s32A(1) under clause 8 of the Bill.

The term “collect” is included in new s32(1) under this clause of the Bill given that the process of obtaining data under existing Part 3A of the Act is a data collection process.

New s32(1)(a) and (b) proposed under this clause prohibits a person from directly or indirectly collecting, using or disclosing any information obtained by the person due to their office, position, employment or engagement under, or for the purposes of the Act, or by way of a disclosure made to the person for the purposes of the Act.

Non-compliance with new s32(1)(a) and (b) may lead to a statutory penalty of \$10,000 or imprisonment for 12 months included in the drafting of this section. This penalty is carried over from existing s32(1)(a)-(d) and may be applied unless proposed s32(4) under this clause applies.

Insertion of s32(4)

The second paragraph of this clause inserts new s32(4) following existing s32(3) and provides an exemption to new s32(1)(a) and (b) where collection, use or disclosure is authorised under s32A inserted under clause 8 of the Bill.

Clause 8 – section 32A and 32B inserted

The first paragraph of clause 8 inserts s32A(1)(a) which is comprised of a reformulation of existing s32(1) of the Act. New s32A(1)(a) authorises the collection, use or disclose in good faith of information held by the Authority for the purposes of, or in connection with, performing a function of the Act, or in accordance with another written law.

New s32A(1)(a) enables the Authority to undertake the functions detailed in s9 of the Act, where it is necessary to handle information in a manner conceived by the drafting of this section. Of particular relevance to the objectives of the Bill, new s32(1)(a) enables the Authority to disclose identified student data for the purposes of NAP testing. The statutory function pertaining to research involving students inserted into s9 by the Bill is further addressed under new s32B of clause 8 described below.

Consistent with the drafting of the existing Act, this amendment does not distinguish between information that may reasonably identify an individual and the non-identified information that the Authority holds.

Consistent with the drafting of the existing Act, s32A(1)(b) enables the Authority to disclose information as required elsewhere in the Act i.e. by a section other than s9, or as required or allowed under another law. Therefore, s32A(1)(b) operates to enable the Authority to share information with another agency where the legislation that the agency operates under provides for this.

No liability if disclosure is made in accordance with s32A(1)

The next paragraph of clause 8 inserts s32A(2)(a) clarifies that collection, use or disclosure of information in accordance with proposed s32A(1) is not subject to civil or criminal liability.

Furthermore, s32A(2)(b) clarifies that collection, use or disclosure in accordance with proposed s32A(1) is not regarded as a breach of any duty of confidentiality or secrecy imposed by law, professional ethics, standards or employment conduct requirements. The use of the term “confidentiality” in this section is pertinent to data in which information about a person may reasonably lead to their identification.

Disclosure for research involving students – definition of relevant information

The next paragraph in this clause inserts s32B(1)(a) and (b) which provides a definition of relevant information to identify the type of student data that is the subject of new s32B. Section 32B provides further provisions applicable to disclosure for the purposes of research involving students.

Relevant information is defined under s32B(1)(a) to include the reporting undertaken by the Authority for school governing bodies under s12 of the existing Act. Such governing bodies include the Department of Education for government schools, Catholic Education Office Western Australia for Catholic schools and the Association of Independent Schools of Western Australia for independent non-government schools.

This paragraph also defines relevant information under s32B(1)(b) to include the data collected by the Authority to give effect to existing Part 3A of the Act which includes personal information as described below. Existing Part 3A requires a record to be opened for each student. These records include registration, enrolment, achievement and certification data.

Personal information

The next paragraph in clause 8 inserts a definition of “personal information” within s32B(1) to clarify that this information is information that may reasonably identify a person or enables a person’s identity to be apparent. The definition of personal information is a necessary clarification for the disclosure provisions found within clause 8 of the Bill.

Disclosure for the purposes of research involving students

The next paragraph of clause 8 inserts s32B(2) which reinforces that the Board may disclose to any person or body that the Board sees fit, relevant information as defined in s32B(1) for the purposes of research involving students. Such disclosure is subject to the following provisions within new s32B.

Criteria for disclosure

The next paragraph of clause 8 inserts s32B(3) which places requirements on the Board with respect to disclosure for the purposes of research involving students to ensure that:

- a) the disclosure must be reasonably necessary;
- b) the disclosure requires personal information; and
- c) it is impracticable to obtain consent from individuals about whom the information relates.

The inclusion of s32B(3) clarifies that disclosure of identified student data should only be provided where it is absolutely necessary and where it is impracticable to obtain consent for the disclosure. In this way, the amendment does not enable research bodies to circumvent typical ethics processes that should be employed for research projects wherever possible.

Conditions on recipients of identified data

The next paragraph of this clause inserts s32B(4) which enables the Board to impose conditions on recipients of relevant information which includes personal information for the purposes of research involving students. Section 32B(4)(a)-(d) provides a non-exhaustive list of matters the conditions may address which broadly includes storage, protection and use.

Compliance with conditions for the receipt of identified data

The next paragraph within clause 8 inserts s32B(5) which makes it mandatory for recipients of information disclosed under s32B to comply with the conditions set by the Board, where non-compliance is addressed by a statutory penalty of \$10,000.

Procedures to be approved by the Minister of Education

The final paragraph in clause 8 of the Bill has been amended through Committee in the Legislative Assembly to state that regulations may prescribe procedures relating to disclosure, to which proposed s32B applies. The requirement for regulations provides a level of transparency and accountability on Board decision-making processes with respect to research involving students that utilises identified student data and provides further protection for this data. The Authority intends on developing procedures and processes to support the implementation of the regulations.