



New South Wales

Education Amendment (Non-Government Schools Registration) Act 2004 No 15

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Education Amendment (Non-Government Schools Registration) Act 2004 No 15

Act No 15, 2004

An Act to amend the *Education Act 1990* with respect to the registration requirements for non-government schools; and for other purposes. [Assented to 24 March 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Education Amendment (Non-Government Schools Registration) Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Education Act 1990 No 8

The *Education Act 1990* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

distance education means a form of education in which students and teachers are not regularly in the presence of each other but communicate with each other in writing, by print or by electronic or like means.

responsible person for a school means:

- (a) the proprietor of the school and, if the proprietor is a corporation, each director or person concerned in the management of the school, or
- (b) a member of the governing body of the school, or
- (c) the principal of the school.

[2] Section 3 (1), definition of “proprietor”

Omit “person”. Insert instead “legal entity”.

[3] Section 3 (3)

Insert after section 3 (2):

- (3) Notes included in this Act do not form part of this Act.

[4] Section 8 Minimum curriculum for primary education

Omit “may (but need not) be taught in accordance with” from section 8 (1) (f).

Insert instead “are to be based on, and taught in accordance with,”.

[5] Section 8 (3) and (4)

Insert after section 8 (2):

- (3) If requested to do so by the proprietor of a non-government school (or, in the case of a school that is a member of a system of non-government schools, the approved authority for the system), the Board may approve such modifications to the syllabus referred to in subsection (1) (f) as it considers necessary to enable any part of a course of study in a key learning area that appears to the Board to be incompatible with the educational philosophy or religious outlook of the

school to be based on, and taught compatibly with, that educational philosophy or religious outlook. The part of the course of study at that school is to be based on and taught in accordance with the syllabus as modified.

- (4) Any modification approved under subsection (3) must be consistent with the guidelines referred to in subsection (1) (e).

[6] Section 10 Minimum curriculum for secondary education (Years 7 to 10)

Omit “may (but need not) be taught in accordance with” from section 10 (1) (e).

Insert instead “are to be based on, and taught in accordance with,”.

[7] Section 10 (3) and (4)

Insert after section 10 (2):

- (3) If requested to do so by the proprietor of a non-government school (or, in the case of a school that is a member of a system of non-government schools, the approved authority for the system), the Board may approve such modifications to the syllabus referred to in subsection (1) (e) as it considers necessary to enable any part of a course of study in a key learning area that appears to the Board to be incompatible with the educational philosophy or religious outlook of the school to be based on, and taught compatibly with, that educational philosophy or religious outlook. The part of the course of study at that school is to be based on and taught in accordance with the syllabus as modified.
- (4) Any modification approved under subsection (3) must be consistent with the guidelines referred to in subsection (1) (d).

[8] Section 44 Withdrawal of non-government school from system

Insert after section 44 (3):

- (3A) A school that is withdrawn from a system of non-government schools that proposes to apply for registration as an individual non-government school must make an application for renewal of registration within 1 month after ceasing to be a member of the system.

[9] Sections 47 and 47A

Omit section 47. Insert instead:

47 Registration requirements for non-government schools

For the purposes of this Act, the requirements for the registration of a non-government school are as follows:

- (a) if the school is seeking to become registered as an individual school—the school’s proposed proprietor must be a corporation or other form of legal entity approved by the Minister,
- (b) each responsible person for the school, and any other person or body having similar functions in relation to the school as those of such a responsible person, is of good character,
- (c) any refusal to register, or cancellation of registration, of the school or any other school under section 56 or 59 occurring during the period of 5 years immediately before the application for registration is made has not been largely attributable to the actions of a responsible person or proposed responsible person for the school, or any other person or body having similar functions in relation to the management or operation of the school to those of a responsible person,
- (d) teaching staff for the school:
 - (i) have attained the standard of professional teacher competence determined by the Minister, or
 - (ii) are working towards the standard of professional teacher competence determined by the Minister and are under the direct, on-site supervision of teaching staff who have attained the necessary standard of professional teacher competence,
- (e) educational facilities are adequate for the courses of study provided at the school,
- (f) school premises and buildings are satisfactory,
- (g) a safe and supportive environment is provided for students by means that include:
 - (i) school policies and procedures that make provision for the welfare of students, and

- (ii) persons who are employed at the school being employed in accordance with the *Child Protection (Prohibited Employment) Act 1998*, and
- (iii) school policies and procedures that ensure compliance with relevant notification requirements imposed in relation to persons employed at the school by Part 3A of the *Ombudsman Act 1974* and Part 7 of the *Commission for Children and Young People Act 1998*,
- (h) school policies relating to discipline of students attending the school are based on principles of procedural fairness, and do not permit corporal punishment of students,
- (i) if the school provides boarding facilities, whether itself or by contractual arrangement—school policies and procedures that are satisfactory to ensure the safety and welfare of boarders,
- (j) compliance with the requirements set out in Part 3 relating to:
 - (i) in the case of a school providing primary education—the minimum curriculum for a school providing primary education, or
 - (ii) in the case of a school providing secondary education for children during Year 7 to Year 10—the minimum curriculum for a school providing any such secondary education, or
 - (iii) in the case of a school providing secondary education for children during Year 11 and Year 12—the curriculum for students who are candidates for the Higher School Certificate,
- (k) school policies and procedures are appropriate to ensure the personal and social development of students who are undertaking all or a significant part of their courses of study by means of distance education,
- (l) school policies and procedures ensure its participation in annual reporting (of a kind determined by the Minister following consultation with persons recognised by the Minister as having appropriate expertise in accountability matters):

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- (i) to publicly disclose the educational and financial performance measures and policies of the school, and
 - (ii) to provide data to the Minister that is relevant to the Minister's annual report to Parliament on the effectiveness of schooling in the State.

Note. Section 131 enables the Board to make rules setting out guidelines to assist a non-government school to comply with the requirements for registration set out in section 47.

47A Effect of section 47 on certain contracts

The operation of section 47 is not to be regarded as giving rise to any implication that it is a term of any contract (whether or not written) between the proprietor of a registered non-government school and a parent of any child enrolled at the school that the school comply with the requirements imposed by or under this Act for registration of non-government schools or that failure to comply with any such requirement in itself gives rise to any civil cause of action.

Note. Non-government schools are given protection from civil liability in tort for breach of a statutory duty (including liability for damages sought in an action for breach of contract or any other action) under Part 5 of the *Civil Liability Act 2002* by virtue of the *Civil Liability Regulation 2003*.

[10] Section 49 Application for initial registration of a new non-government school or a school joining a system

Insert after section 49 (2):

- (2A) An application for registration of a new non-government school must be made not later than 31 March in the calendar year before the year the proposed proprietor or approved authority intends to commence operating the school.

[11] Section 52 Initial registration provisional for a maximum period of 12 months

Insert "is provisional and (subject to section 57A)" after "non-government school" in section 52 (1).

[12] Section 52 (2)

Omit "2 years". Insert instead "12 months".

[13] Section 52 (4)–(6)

Insert after section 52 (3):

- (4) If, at any time before the expiration of the initial period of registration of a non-government school, the Board is not satisfied that the requirements for its registration are being complied with, it may give a written notice under subsection (5) to the proprietor or principal of the school or, in the case of a school that is a member of a system of non-government schools, the approved authority for the system.
- (5) The notice:
 - (a) is to state that the Board will recommend to the Minister that the period of initial registration be reduced under section 57A unless the matters specified in the notice have been addressed, and
 - (b) may specify the time within which such matters should be addressed.
- (6) A notice may be given under subsection (5) on more than one occasion.

[14] Section 54A

Insert after section 54:

54A Renewal of registration

- (1) The proprietor of a non-government school or, in the case of a school that is a member of a system of non-government schools, the approved authority for the system, may apply in writing to the Minister for the renewal of the registration of the school.
- (2) The application must be made at least 9 months before the school's existing registration is to expire, or a later date decided by the Board by written notice given to the proprietor or approved authority.
- (3) The application must include information demonstrating:
 - (a) whether or not the school continues to satisfy the requirements for registration under section 47, and
 - (b) whether or not since the school's registration was granted or last renewed, the school has complied with the terms of such registration.

[15] Section 57 Duration of renewal of registration

Insert “(subject to section 57A)” after “effect” in section 57 (1).

[16] Section 57 (2)

Omit “6 years”. Insert instead “5 years”.

[17] Section 57 (3) and (4)

Insert after section 57 (2):

- (3) If, at any time before the expiration of the renewal of registration of a non-government school, the Board is not satisfied that the requirements for its registration are being complied with, it may give a written notice under subsection (4) to the proprietor or principal of the school or, in the case of a school that is a member of a system of non-government schools, the approved authority for the system.
- (4) The notice:
 - (a) is to state that the Board will recommend to the Minister that the period of renewal of registration be reduced under section 57A unless the matters specified in the notice have been addressed, and
 - (b) may specify the time within which such matters should be addressed.

[18] Section 57A

Insert after section 57:

57A Reduction of period of initial registration or renewal of registration

- (1) The Minister may, on the recommendation of the Board, reduce the duration of the initial period of registration, or renewal of registration, of a non-government school by issuing a further certificate of registration for the school specifying that the period of registration has been reduced and that the registration is now to have effect on a provisional basis for the period specified in the further certificate.
- (2) The Minister may do so only if the Minister is not satisfied that the requirements for registration are being complied with at the non-government school.

- (3) The Minister may reduce the duration of the initial period of registration, or a renewal of registration, of a non-government school on more than one occasion.
- (4) A person who conducts a non-government school that has the duration of its initial period of registration, or renewal of registration, reduced under this section must, as soon as practicable, notify the parents of students at the school in writing that the period has been reduced and the consequences of the reduction.

Maximum penalty: 5 penalty units.

[19] Section 60 Notice to be given of relocation of school

Insert at the end of section 60 (4) (b):

, or

- (c) the boarding facilities provided for students by the school.

[20] Section 63A

Insert after section 63:

63A Board to be notified of certain matters

- (1) A responsible person for a school, or any other person or body having similar functions in relation to the school to those of such a responsible person, who:
 - (a) is convicted of an offence punishable by imprisonment for 12 months or more, or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (c) if the person is a corporation—is the subject of a winding up order or has had a controller or administrator appointed,

must notify at least one other responsible person or responsible person for the school, and the Board, of the circumstances of the conviction, bankruptcy, insolvency,

winding up order or appointment as soon as practicable after it occurs.

Maximum penalty: 5 penalty units.

- (2) If a responsible person for a school or other person or body having similar functions as a responsible person in relation to the school becomes a mentally incapacitated person, the following persons must cause notice of the incapacity to be given to the Board and at least one other responsible person for the school:
- (a) in the case of a responsible person who is a mentally incapacitated person and becomes a patient at an institution because of that incapacity—the medical superintendent of the institution,
 - (b) in the case of a responsible person who is a mentally incapacitated person because of being a protected person under the *Protected Estates Act 1983*—the Protective Commissioner.

Maximum penalty: 5 penalty units.

- (3) Notice under subsection (2) must be given as soon as practicable after the responsible person or other person or body having similar functions to those of a responsible person is admitted to the institution or becomes a protected person.
- (4) For the purposes of this section, notice given to any person designated by the Board as a designated person for the purposes of this section in an official notice given to schools by the Board is taken to be notice given to the Board.

[21] Section 65 Conducting unregistered schools

Omit the penalty. Insert instead:

Maximum penalty: 5 penalty units and, in the case of a continuing offence, a further penalty not exceeding 5 penalty units for each day the offence continues.

[22] Section 78 Certificate of exemption

Omit “6 years” from section 78 (3) (a). Insert instead “5 years”.

[23] Section 87 Duration of accreditation

Omit “for such period (not exceeding 6 years)” from section 87 (1).

Insert instead “(subject to section 87A) for such period, not exceeding 5 years,”.

[24] Section 87A

Insert after section 87:

87A Reduction of period of accreditation

- (1) If, at any time before the expiration of the accreditation of a non-government school, the Board is not satisfied that the requirements of this Act relating to the courses of study to be undertaken by its candidates for the certificate concerned are being complied with, it may give a written notice under subsection (2) to the proprietor or principal of the school or, in the case of a school that is a member of a system of non-government schools, the approved authority for the system.
- (2) The notice:
 - (a) is to state that the Board will reduce the period of accreditation of the school under subsection (3) unless the matters specified in the notice have been addressed, and
 - (b) may specify the time within which such matters should be addressed.
- (3) If a school that receives a notice under subsection (2) fails to address the matters specified in the notice to the satisfaction of the Board (within the time, if any, specified in the notice), the Board may reduce the duration of the accreditation of the school by issuing a further certificate of accreditation for the school specifying a reduced period of accreditation.
- (4) The Board may reduce the duration of the accreditation of a school on more than one occasion.
- (5) The proprietor or principal of a non-government school that has its period of accreditation reduced under this section or, in the case of a school that is a member of a system of non-government schools, the approved authority for the system must, as soon as practicable after the period is reduced, notify

the parents of students at the school in writing that the period has been reduced and the consequences of the reduction.

Maximum penalty: 5 penalty units.

[25] Section 93 Conducting school that is not accredited

Insert “and of the consequences for candidates for that Certificate of the school not being accredited for that purpose” after “purpose” in section 93 (2).

[26] Section 93

Omit the penalty. Insert instead:

Maximum penalty: 5 penalty units and, in the case of a continuing offence, a further penalty not exceeding 5 penalty units for each day the offence continues.

[27] Section 124A

Insert after section 124:

124A Continuing offences

- (1) A person who is guilty of an offence because the person contravenes a requirement by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
 - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of an offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

[28] Section 131 Rules of Board

Insert after section 131 (1):

- (1A) Without limiting subsection (1), the rules may set out guidelines with respect to the requirements for registration and accreditation set out in Parts 7 and 8.

[29] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Education Amendment (Non-Government Schools Registration) Act 2004

[30] Schedule 3, Part 6

Insert after Part 5:

Part 6 Provisions consequent on enactment of Education Amendment (Non-Government Schools Registration) Act 2004

12 Registration of non-government schools

Sections 8, 10 and 47, as in force immediately before the commencement of Schedule 1 [4], [5], [6], [7] and [9] to the *Education Amendment (Non-Government Schools Registration) Act 2004*, continue to apply to and in respect of a non-government school that was a registered non-government school at that commencement for a period of 1 year after the commencement, or for the balance of its current registration (whichever is the shorter).

13 Certificates of registration or accreditation

An amendment made by Schedule 1 [12], [16], [22] or [23] to the *Education Amendment (Non-Government Schools Registration) Act 2004* does not apply to or in respect of a certificate of registration or accreditation in force immediately before the commencement of the amendment.

[Second reading speech made in—
Legislative Assembly on 18 February 2004
Legislative Council on 10 March 2004]

BY AUTHORITY