



New South Wales

# Education Legislation Amendment Act 2006 No 114

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Education Act 1990 No 8	2
4 Amendment of Education Regulation 2001	2
5 Amendment of Education (School Administrative and Support Staff) Act 1987 No 240	2
6 Amendment of Teaching Service Act 1980 No 23	2
7 Amendment of Freedom of Information Act 1989 No 5	2
8 Repeal of Act	2
Schedule 1 Amendment of Education Act 1990	3
Schedule 2 Amendment of Education Regulation 2001	12
Schedule 3 Amendment of Education (School Administrative and Support Staff) Act 1987	13
Schedule 4 Amendment of Teaching Service Act 1980	14
Schedule 5 Amendment of Freedom of Information Act 1989	16

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New South Wales

## **Education Legislation Amendment Act 2006 No 114**

Act No 114, 2006

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An Act to amend the *Education Act 1990* with respect to students, with respect to compulsory schooling and with respect to reports; to amend the *Education (School Administrative and Support Staff) Act 1987* with respect to delegations; to amend the *Teaching Service Act 1980* with respect to the making of regulations under that Act; to amend the *Freedom of Information Act 1989* in relation to information about students; and for other purposes. [Assented to 4 December 2006]

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

**1 Name of Act**

This Act is the *Education Legislation Amendment Act 2006*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Section 7 and Schedules 1 [5] and 5 commence 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.

**4 Amendment of Education Regulation 2001**

The *Education Regulation 2001* is amended as set out in Schedule 2.

**5 Amendment of Education (School Administrative and Support Staff) Act 1987 No 240**

The *Education (School Administrative and Support Staff) Act 1987* is amended as set out in Schedule 3.

**6 Amendment of Teaching Service Act 1980 No 23**

The *Teaching Service Act 1980* is amended as set out in Schedule 4.

**7 Amendment of Freedom of Information Act 1989 No 5**

The *Freedom of Information Act 1989* is amended as set out in Schedule 5.

**8 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      Amendment of Education Act 1990

(Section 3)

### [1]    Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*Director-General* means the Director-General of the Department of Education and Training.

*TAFE establishment* has the same meaning as it has in the *Technical and Further Education Commission Act 1990*.

### [2]    Section 18A Publication of results of certain tests and other matters

Omit “or other assessments” from section 18A (1) (b).

Insert instead “and related assessments”.

### [3]    Section 18A (1A)

Insert after section 18A (1):

(1A)    The regulations may also make provision for or with respect to the extent to which information contained in periodic reports to parents on student achievement may be publicly revealed or must be kept confidential.

### [4]    Sections 26 (1), (2) and (4), 28 (5) (b), 34 (3), 35 (3) and (5), 100 (2) (a), 116 (2) (c) and 119

Omit “of School Education” wherever occurring.

### [5]    Part 5A

Insert after section 26:

## Part 5A Health and safety risks at schools arising from student behaviour

### Division 1      Preliminary

#### 26A    Definitions

In this Part:

*enrolment* includes prospective and continuing enrolment.

*guidelines* means the guidelines under Division 4.

**non-government schools authority** means an approved authority for a system of non-government schools within the meaning of section 40.

**relevant agency**—see section 26C.

**school** means a government school or a registered non-government school.

**student** includes:

- (a) a student who is above the age of 18 years, and
- (b) a prospective student.

## **Division 2 Obtaining information about students**

### **26B Purpose of obtaining information about students**

- (1) Information may be obtained under this Division solely for the purposes of assisting the Director-General or schools:
  - (a) to assess whether the enrolment of a particular student at a school is likely to constitute a risk (because of the behaviour of the student) to the health or safety of any person (including the student), and
  - (b) to develop and maintain strategies to eliminate or minimise any such risk.
- (2) However, nothing in this Division operates to prevent the provision or disclosure of information as required or permitted by or under any other Act or law.

### **26C Relevant agencies from which information may be obtained about students**

- (1) Information may be obtained in accordance with this Division from any one or more of the following (**relevant agencies**):
  - (a) schools,
  - (b) the Department of Education and Training,
  - (c) a non-government schools authority,
  - (d) the TAFE Commission and TAFE establishments,
  - (e) public health organisations within the meaning of the *Health Services Act 1997*,
  - (f) the Department of Ageing, Disability and Home Care,
  - (g) the Department of Community Services,
  - (h) the Department of Juvenile Justice,
  - (i) NSW Police,

- (j) any other agency prescribed by the regulations.
- (2) For the purposes of this Division, memoranda of understanding for the provision of information to:
  - (a) schools, or
  - (b) a non-government schools authority, or
  - (c) the Department of Education and Training,may be entered into, in accordance with the guidelines, between any one or more relevant agencies.

**26D Obtaining information about particular students**

- (1) The Department of Education and Training, a non-government schools authority or a school may request a relevant agency to provide such information about a particular student as would assist in making an assessment, or developing or maintaining strategies, of the kind referred to in section 26B.
- (2) The Department, authority or school may provide the relevant agency with such information about the student as may assist the agency to provide the information sought.
- (3) A relevant agency has a duty to provide information sought under this section if the agency has the information in its possession or under its control.
- (4) Information obtained under this section may be passed on to other schools, the Department or a non-government schools authority (or to any other person or body as permitted by this Act or the guidelines).
- (5) Information of the kind referred to in subsection (1) may be provided by one school to another school at which the student concerned enrolls:
  - (a) without the need for any request from the other school, and
  - (b) regardless of whether the information was obtained under this section or otherwise.
- (6) However, this section:
  - (a) does not authorise or require the provision of information if its disclosure is prohibited by:
    - (i) section 20G, 20P or 23 of the *Health Administration Act 1982*, or
    - (ii) section 29 (1) (f) of the *Children and Young Persons (Care and Protection) Act 1998*, and

- (b) does not require the provision of information if the guidelines authorise the relevant agency to refuse to provide the information.

**26E Consultation during assessment of risk and development of strategies**

In making an assessment, and (if necessary) developing a strategy, referred to in section 26B, the Director-General or school (as the case may be) must, unless the guidelines otherwise provide:

- (a) consult the student concerned and the parents or a parent of the student, and
- (b) disclose to the student, parent or parents any relevant information obtained under this Division.

**26F No offence or liability for disclosure of information**

- (1) An Act or law that prohibits the disclosure of information does not operate to prevent the provision of information under this Division. This subsection applies unless its operation is expressly excluded by this or some other Act.
- (2) Subsection (1) does not apply to a disclosure of information that is prohibited by:
  - (a) section 20G, 20P or 23 of the *Health Administration Act 1982*, or
  - (b) section 29 (1) (f) of the *Children and Young Persons (Care and Protection) Act 1998*.
- (3) If information about a student is provided under this Division in good faith and with reasonable care:
  - (a) no liability for defamation is incurred because of the provision of the information, and
  - (b) the provision of the information does not constitute a ground for any other civil proceedings, and
  - (c) the provision of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

**Note.** If the information is provided in the form of a document, the document is an **exempt document** for the purposes of the *Freedom of Information Act 1989* (except in relation to the student, the student's parents and any person nominated by the student or the student's parents)—see clause 20 (1) (h) and (4) of Schedule 1 to that Act.

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**Division 3      Directions about enrolment at government schools**

**26G      Operation of Division**

- (1) This Division has effect despite any entitlement to enrolment at a government school under section 34 (1) or (2).
- (2) Nothing in this Division affects the operation of section 34 (4).

**26H      Directions about enrolment**

- (1) The Director-General may direct that a student is not to be enrolled at any government school other than a government school of a kind specified in the direction.
- (2) A direction under this section may be given only if the Director-General believes on reasonable grounds that the enrolment of the student otherwise than as permitted by the direction would constitute a risk (because of the behaviour of the student) to the health or safety of any person (including the student).
- (3) A student is not to be enrolled at a government school in contravention of a direction in force under this section.
- (4) Any facility conducted by the State for the purpose of educating students in Kindergarten or any of Years 1–12 is taken to be a government school for the purpose of a direction under this section and, for that purpose, may be so referred to in the guidelines.

**26I      Representations by student, parents and others**

- (1) Before a direction is given under this Division:
  - (a) the Director-General must ensure that the student the subject of the proposed direction, the parents or a parent of the student and any other person identified in the guidelines for the purposes of this section:
    - (i) is given access to the information that gave rise to the proposed direction, and
    - (ii) is given written notice of the grounds for the proposed direction, and
    - (iii) is given an opportunity to make representations (whether oral or written, or both oral and written, as the student, parent or other person chooses) in relation to the information and the proposed direction, and



- (b) the Director-General must take into consideration any representations so made.
- (2) However, the guidelines may provide that the access, notice and opportunity required by this section may be withheld, in the circumstances specified in the guidelines, from any person referred to in this section.
- (3) Guidelines referred to in subsection (2) must require the access, notice and opportunity concerned to be given to at least one adult person referred to in this section (who may be the student, if the student is an adult).

**26J Notice of direction**

The Director-General is to give written notice of a direction under this Division and of the grounds for the direction:

- (a) to the student concerned, and
- (b) to the parents or a parent of the student (unless the guidelines otherwise provide).

**26K Variation and revocation of direction**

The Director-General may vary or revoke a direction under this Division:

- (a) on the application of the student concerned, or
- (b) on the application of a parent of the student, or
- (c) on the Director-General's own initiative.

**Division 4 Guidelines**

**26L Issue of guidelines**

- (1) The Minister may from time to time issue guidelines (not inconsistent with this Act or the regulations) for the purposes of this Part.
- (2) The guidelines must make provision with respect to each of the following matters:
  - (a) the general principles that a person must bear in mind when exercising a function under this Part,
  - (b) for the purposes of section 26B, matters that are likely to constitute a risk to the health or safety of any person,
  - (c) the way in which assessments of the kind referred to in section 26B are to be carried out,

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- (d) memoranda of understanding between relevant agencies for the purposes of Division 2, including who may enter memoranda of understanding on behalf of relevant agencies,
  - (e) the kind of information that may, or must (if any), be sought under Division 2,
  - (f) who may make a request for information under section 26D on behalf of the Department of Education and Training, a non-government schools authority or a school,
  - (g) who may provide information on behalf of relevant agencies,
  - (h) the circumstances in which a relevant agency may refuse to provide information requested under Division 2,
  - (i) the way in which information obtained under Division 2 is to be kept and the length of time that it is to be kept,
  - (j) additional circumstances (if any) in which the information may be passed on, and to whom it may be passed on,
  - (k) the circumstances in which the Director-General or a school is not required to consult the student concerned or the parents or a parent of the student under section 26E,
  - (l) the procedures (other than those required by section 26I) to be followed before a direction under Division 3 is given, varied or revoked by the Director-General,
  - (m) the kinds of government schools that may be specified in such a direction,
  - (n) the circumstances in which notice of such a direction is not required to be given to the parents of the student concerned,
  - (o) the way in which such a direction is to be reviewed following an application for a variation or revocation of it.
- (3) The guidelines may also make provision with respect to such other matters as the Minister considers appropriate.
  - (4) The Minister may from time to time amend or revoke the guidelines.
  - (5) The guidelines, and any instrument amending or revoking the guidelines, must be published in the Gazette.
  - (6) The guidelines as in force from time to time must be made publicly available in such manner as the Minister thinks appropriate.

**26M Compliance with guidelines**

It is the duty of any person or agency involved in the administration of, or having functions under, this Part to comply with any applicable guidelines.

**[6] Sections 28 (5) (b) and 100 (2) (a)**

Omit “that Director-General” wherever occurring.

Insert instead “the Director-General”.

**[7] Section 28 (5) (e)**

Omit the paragraph. Insert instead:

- (e) a nominee of the Director-General who is, in the opinion of the Director-General, a senior member of the Department,

**[8] Sections 95 (1) (b) (iii) and 102 (2) (h)**

Omit “within the meaning of the *Technical and Further Education Commission Act 1990*” wherever occurring.

**[9] Section 107 Applications for review of certain decisions**

Insert after section 107 (1) (e):

- (e1) a direction of the Director-General under Division 3 of Part 5A concerning the government schools in which a particular student may be enrolled,

**[10] Section 107 (2)**

Insert “, direction” after “recommendation”.

**[11] Section 108 Determination of application by the Tribunal**

Insert “, direction” after “recommendation” in section 108 (1) (a).

**[12] Section 108 (1) (a1)**

Insert after section 108 (1) (a):

- (a1) in the case of an application for the review of a direction of the Director-General concerning the government schools in which a particular student may be enrolled—recommend to the Minister that the direction be varied or revoked, or

**[13] Section 123 Evidence**

Insert after section 123 (3):

- (4) In any proceedings under this Act for an offence against section 23 (1) (a), a certificate purporting to be signed by the Director-General stating that, to the best of the Director-General's belief, on any day specified in the certificate:
- (a) a child was not enrolled as a student at a government school or registered non-government school, and
  - (b) the child was not registered for home schooling,
- is admissible in evidence and is prima facie evidence that the child was not so enrolled or registered.

**[14] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Education Legislation Amendment Act 2006*

## **Schedule 2 Amendment of Education Regulation 2001**

(Section 4)

### **Clause 5 Publication of results and other matters: section 18A**

Insert after clause 5 (1) (b):

- (c) results of annual assessments of the academic performance of students contained in reports to parents on student achievement.

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**Schedule 3      Amendment of Education (School  
Administrative and Support Staff)  
Act 1987**

(Section 5)

**[1] Section 34 Delegation by Director-General**

Omit “, other than this power of delegation”.

**[2] Section 34 (2)**

Insert at the end of section 34:

(2) If:

- (a) a function of the Director-General is delegated to a person in accordance with subsection (1), and
- (b) the instrument of delegation authorises the sub-delegation of the function,

then, subject to any conditions to which the delegation is subject, the person to whom the function is delegated may sub-delegate the function to any other person to whom the function may be delegated under subsection (1).

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## **Schedule 4 Amendment of Teaching Service Act 1980**

(Section 6)

**[1] Section 99 Making of regulations by Governor**

Omit the section.

**[2] Section 100 Regulations**

Omit “The Director-General may, with the approval of the Governor,” from section 100 (1).

Insert instead “The Governor may”.

**[3] Section 100 (1) (j)**

Omit “(Schedule 3 excepted)” wherever occurring.

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

Insert at the end of clause 2 (1):

*Education Legislation Amendment Act 2006*

**[5] Schedule 3, Part 5**

Insert after Part 4:

### **Part 5 Provisions consequent on enactment of Education Legislation Amendment Act 2006**

#### **21 Existing regulations**

- (1) Any regulation under this Act that was made, or that purports to have been made, before the date of assent to the *Education Legislation Amendment Act 2006*, whether by the Governor or by the Director-General:
  - (a) in relation to matters arising before that date, is taken to have been validly made and always to have had effect regardless of by whom it was made, and
  - (b) in relation to matters arising on or after that date, is taken to have been validly made and has effect, and may be repealed or amended, as if it had been made by the Governor.

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- (2) Anything done or omitted to be done in accordance with, or in contravention of, a regulation referred to in subclause (1) has the same effect, and is taken always to have had the same effect, as it would have had were this clause to have been in force when it was done or omitted to be done.
  - (3) Any reference in this clause to making a regulation includes a reference to approving the making of a regulation.



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## **Schedule 5 Amendment of Freedom of Information Act 1989**

(Section 7)

### **[1] Schedule 1 Exempt documents**

Insert at the end of clause 20 (1) (g):

, or

- (h) information provided about a student under Division 2 of Part 5A of the *Education Act 1990*.

### **[2] Schedule 1, clause 20 (4)**

Insert after clause 20 (3):

- (4) Despite subclause (1) (h), a document containing information referred to in that paragraph is not an exempt document in relation to the following persons:
  - (a) the student the subject of the information,
  - (b) the parents of the student,
  - (c) any person nominated in writing for the purposes of this subclause by the student or a parent of the student.

[Second reading speech made in—

Legislative Assembly on 27 October 2006

Legislative Council on 16 November 2006]

BY AUTHORITY