



New South Wales

Education Amendment Act 2008 No 12

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New South Wales

Education Amendment Act 2008 No 12

Act No 12, 2008

An Act to amend the *Education Act 1990* with respect to overseas students and admission to government schools; and for other purposes. [Assented to 16 May 2008]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Education Amendment Act 2008*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 [3] commences on the date of assent to this Act or on the commencement of section 26C of the *Education Act 1990* (as inserted by Schedule 1 [5] to the *Education Legislation Amendment Act 2006*), whichever is the later.

3 Amendment of Education Act 1990 No 8

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

4 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- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.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.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

overseas student means a student who holds a visa under the *Migration Act 1958* of the Commonwealth that enables the student to study in New South Wales, but does not include the holder of a permanent visa or special category visa within the meaning of that Act.

[2] Section 25 Certificate of exemption from attending school

Insert after section 25 (2):

(2A) A certificate of exemption under this section may be limited to exemption from the requirement to attend a school during the times specified or referred to in the certificate.

[3] Section 26C Relevant agencies from which information may be obtained about students (as inserted by the Education Legislation Amendment Act 2006)

Insert after section 26C (1) (h):

(h1) the Department of Corrective Services,

[4] Section 28 Closure of government schools

Omit “a senior member of the Department” from section 28 (5) (e).

Insert instead “a senior member of staff of the Department of Education and Training”.

[5] Section 31 Instruction to be free

Insert at the end of the section:

(2) This section does not apply in relation to overseas students.

[6] Section 31A

Insert after section 31:

31A Overseas students

- (1) The Director-General may, by order published in the Gazette, fix the fees to be paid by overseas students, or classes of overseas students, at government schools.
- (2) The Director-General is to cause an order under this section to be placed on the Department's website.
- (3) The Director-General may exempt an overseas student, or class of overseas students, from the requirement to pay a fee in accordance with this section, or refund all or any part of such a fee, in such circumstances as the Director-General considers appropriate.
- (4) An overseas student is not entitled to receive instruction, or to participate in school activities, at a government school, unless any fee payable by the student under this section has been paid.
- (5) The Director-General may terminate the enrolment of an overseas student at a government school if a fee that is required to be paid under this section in relation to the overseas student has not been paid.
- (6) Any fee that is due but not paid under this section may be recovered by the Director-General as a debt in a court of competent jurisdiction.

[7] Section 34 Admission to government schools

Insert after section 34 (5):

- (6) The following matters may (without limitation) be taken into consideration in determining whether a particular government school can accommodate a child:
 - (a) the child's age and sex,
 - (b) the kind of school established under section 29,
 - (c) the financial and other resources provided to the school,
 - (d) the existing number of classrooms and other facilities at the school.
- (7) Nothing in this Part prevents the principal of a government school from accepting an application for the enrolment of an adult at that school for the purposes of receiving instruction.

[8] Section 34A

Insert after section 34:

34A Principals can require proof of eligibility to attend or entitlement to be enrolled at government schools

- (1) The principal of a government school may, for the purpose of establishing a child's eligibility to attend or entitlement to be enrolled at the school, require a person seeking to enrol the child at the school to provide proof, to the satisfaction of the principal, of the child's identity, date of birth and home address.
- (2) The requirement may include a requirement to produce any document or to provide a statutory declaration, or both.
- (3) The child is not entitled to be enrolled at the school unless and until the requirement is complied with (unless the requirement cannot reasonably be complied with in the circumstances).
- (4) The Director-General may terminate the enrolment of a child at a government school who is not entitled to be enrolled at the school if the child was enrolled as a result of false information or a false document provided to the principal.

[9] Section 115 Constitution of associations and district councils

Omit section 115 (2). Insert instead:

- (2) The Minister may establish a district council for a specified area by order published in the Gazette.
- (3) Any such district council is to be constituted in accordance with the regulations.

[10] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Education Amendment Act 2008

[11] Schedule 3, Part 8

Insert after Part 7:

Part 8 Provisions consequent on enactment of Education Amendment Act 2008

15 Payments by overseas students

The imposition by the Director-General of any fee or other charge that has been paid for or in relation to instruction provided

in a government school to an overseas student before the commencement of section 31A (as inserted by the *Education Amendment Act 2008*) is taken to have been lawfully imposed for all purposes.

16 District councils

A district council for an area established and in existence immediately before the amendment of section 115 of this Act by the *Education Amendment Act 2008* is taken to be a district council for that area established in accordance with section 115 as amended by that Act.

[Second reading speech made in Legislative Council on 2 April 2008
Agreement in principle speech made in Legislative Assembly on 6 May 2008]

BY AUTHORITY