



New South Wales

Education Amendment (School Attendance) Act 2009 No 79

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Education Amendment (School Attendance) Act 2009 No 79

Act No 79, 2009

An Act to amend the *Education Act 1990* with respect to the enrolment and attendance at school of children who are of compulsory school-age; and for other purposes. [Assented to 3 November 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Education Amendment (School Attendance) Act 2009*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation (being not earlier than 1 January 2010).

Schedule 1 Amendment of Education Act 1990 No 8

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

attend a school—a child attends a school if, and only if, the child attends the school at all times while the school is open for the child’s instruction or participation in school activities.

authorised person, in relation to a provision of this Act, means a person who is authorised in writing by the Minister (or the Minister’s delegate under section 119) for the purposes of that provision.

Board inspector—see section 104 and Schedule 1A.

compulsory schooling—see section 22 (3).

compulsory schooling order—see section 22D.

home schooling means schooling in the child’s home, other than distance education provided by a government or registered non-government school in which the child is enrolled.

relevant institution means a government department or other public authority (whether Commonwealth, State or Territory), and also includes a government school or registered non-government school, any registered vocational training organisation and any non-government organisation that is in receipt of government funding.

[2] Section 6 Objects for administration of this Act or of education

Insert after section 6 (1) (m):

- (m1) provision of opportunities for Aboriginal families, kinship groups, representative organisations and communities to participate in significant decisions under this Act relating to the education of their children,

[3] Section 20 Assistance to government school children with special needs

Omit “correspondence schools” from section 20 (2).

Insert instead “distance education”.

[4] Section 22

Omit the section. Insert instead:

22 Compulsory schooling—duty of parents

- (1) It is the duty of the parent of a child of compulsory school-age to cause the child:
 - (a) to be enrolled at, and to attend, a government school or a registered non-government school, or
 - (b) to be registered for home schooling under Part 7 and to receive instruction in accordance with the conditions to which the registration is subject.
- (2) That duty is satisfied if the child receives instruction of a kind referred to in section 23 (2).
- (3) Schooling required by this section is referred to in this Act as *compulsory schooling*.

[5] Sections 22A–22D

Insert after section 22:

22A Obtaining information about children of compulsory school-age

- (1) Any relevant institution or other person may provide information to the Department of Education and Training solely for the purpose of assisting the Director-General to ascertain:
 - (a) the age, identity or whereabouts of a child who is not receiving compulsory schooling or who is not participating in education, training or paid work as an alternative to receiving compulsory schooling, and
 - (b) the reasons why the child is not receiving that schooling or not so participating.
- (2) Information may be provided under this section:
 - (a) at the request of the Director-General or without any such request, and
 - (b) anonymously.
- (3) The Director-General may include in a request for information such information about a child, or a child's family, as may assist the relevant institution or other person concerned to provide the information requested.

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- (4) A relevant institution has a duty to provide information in its possession or control that the Director-General requests under this section.
 - (5) The authority or duty to provide information under this section:
 - (a) applies despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*, but
 - (b) is subject to any other Act or law and to client legal privilege.
 - (6) The provision of information under this section in good faith:
 - (a) does not give rise to any liability to civil, criminal or disciplinary action, and
 - (b) is not a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.
 - (7) The identity of any person who has provided information under this section is not to be disclosed.

22B Compulsory schooling undertakings by parents

- (1) The Director-General may make schooling arrangements with one or more parents of a child that includes a written undertaking by the parent or parents with respect to compulsory schooling for the child (a *compulsory schooling undertaking*).
- (2) The arrangements may be made before, during or after a conference under section 22C concerning the child.
- (3) A compulsory schooling undertaking may, with the agreement of the Director-General, be varied or revoked at any time.
- (4) A compulsory schooling undertaking is admissible in evidence in any proceedings under this Part.

22C Conference of relevant parties to deal with unsatisfactory school attendance

- (1) If a child is not receiving compulsory schooling, a conference of the relevant parties may be directed:
 - (a) by the Children's Court during proceedings for a compulsory schooling order, or
 - (b) by the Director-General at any time before or after any such proceedings.

- (2) The principal purpose of a conference is to ensure that the child is provided with compulsory schooling.
- (3) A conference is to be conducted by an authorised person appointed by the Children's Court or the Director-General (as the case requires).
- (4) The following persons are entitled to participate in a conference:
 - (a) in the case of a conference directed by the Children's Court—the parties to the proceedings and any legal practitioner representing them,
 - (b) such persons (including the parents of the child and representatives of relevant institutions wishing to participate) as the person conducting the conference considers appropriate,
 - (c) any other legal practitioner advising a participant in the conference (subject to such conditions or limitations as may be imposed by the person conducting the conference).
- (5) A conference may:
 - (a) seek to identify and resolve issues in dispute in relation to compulsory schooling for the child, and
 - (b) seek to identify any services whose provision to the child, or to his or her family, would facilitate compulsory schooling for the child, and
 - (c) formulate undertakings, and orders for consideration by the Children's Court, with respect to compulsory schooling for the child.

The Children's Court may include in a compulsory schooling order any undertaking or obligation formulated by a conference under paragraph (c).
- (6) Participants in a conference may disclose to each other such information concerning the child, and his or her family, as may reasonably assist in achieving the purpose of the conference.
- (7) The authority to disclose information under this section:
 - (a) applies despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*, but
 - (b) is subject to any other Act or law and to client legal privilege.
- (8) None of the following are admissible in evidence in any proceedings before any court or other body (other than care

proceedings under Chapter 5 of the *Children and Young Persons (Care and Protection) Act 1998*:

- (a) any evidence of anything said or of any admission made in a conference,
- (b) any document (or copy of a document) prepared in relation to the proceedings of the conference, other than a document containing the terms of an undertaking arising out of the conference.

This subsection does not apply to any such evidence or document if the persons in attendance at, or identified during, the conference and, in the case of a document, all persons specified in the document, consent to its admission in evidence.

22D Compulsory schooling orders

- (1) The Children's Court may, on the application of the Director-General, make an order under this section in relation to a child of compulsory school-age who is not receiving compulsory schooling (a *compulsory schooling order*).
- (2) A compulsory schooling order may require a parent of the child to cause the child to receive compulsory schooling in accordance with the order.
- (3) A compulsory schooling order may require the child to engage in compulsory schooling in accordance with the order if:
 - (a) the child is of or above the age of 12 years, and
 - (b) the Children's Court is satisfied that the child is living independently of his or her parents or that (because of the child's disobedience) the parents are not able to cause the child to receive compulsory schooling.
- (4) If the child completes Year 10 of secondary education as referred to in section 21B, a compulsory schooling order may determine the participation of the child required by section 21B (3) in education or training or in paid work in order that the child may cease compulsory schooling. That determination does not limit other participation that satisfies the requirements of section 21B (3).
- (5) The following applies to proceedings of the Children's Court under this section:
 - (a) subject to this section and the regulations, Chapter 6 of the *Children and Young Persons (Care and Protection) Act 1998* applies to and in respect of proceedings relating to an application under this section,

- (b) the proceedings may relate to any number of children of the same parent,
 - (c) the Children's Court may make an interim compulsory schooling order pending the final determination of the proceedings.
- (6) The Children's Court may vary or revoke a compulsory schooling order on the application of the Director-General or of a person subject to the order.
- (7) The Children's Court, when making a compulsory schooling order or when dismissing an application for or revoking such an order:
 - (a) may accept written undertakings from a parent, and from any other participant in a conference under section 22C, with respect to compulsory schooling for the child, and
 - (b) may recommend that a relevant institution provide services to the child, or to the child's family, in order to assist the child to receive compulsory schooling.
- (8) A compulsory schooling order (unless sooner revoked by the Children's Court) ceases to have effect:
 - (a) at the end of the period specified in the order during which it is to have effect, or
 - (b) when the child ceases to be of compulsory school-age, whichever first occurs.
- (9) The following applies if a parent or child fails to comply with an obligation under a compulsory schooling order:
 - (a) in the case of a parent—the maximum penalty for a relevant offence under section 23 (Offence if parent fails to send child to school) is increased to 100 penalty units,
 - (b) in the case of a child of or above the age of 15 years—the child is guilty of an offence and liable to a penalty not exceeding 1 penalty unit (but without the court proceeding to a conviction), unless the child had a reasonable excuse for not complying with the order,
 - (c) the Director-General may enrol the child in a government school (in accordance with section 34) if the compulsory schooling order authorises the Director-General to do so.
- (10) The Director-General may cause copies of a compulsory schooling order, and any undertaking or recommendation referred to in subsection (7), to be given to such persons as the

Director-General considers to have an interest in the welfare of the child.

- (11) Section 91 of the *Children and Young Persons (Care and Protection) Act 1998* applies to and in respect of an order under this section in the same way as it applies to and in respect of an order under Part 2 of Chapter 5 of that Act.

Note. Section 91 of the *Children and Young Persons (Care and Protection) Act 1998* provides a right of appeal from an order of the Children's Court.

- (12) Rules of court may be made under the *Children's Court Act 1987* with respect to the jurisdiction of the Children's Court under this section.
- (13) A compulsory schooling order does not have effect to the extent that it is inconsistent with a direction or an order made in relation to the child:
- (a) by the Director-General under section 26H, or
 - (b) by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children.

[6] Section 23

Omit the section. Insert instead:

23 Offence if parent fails to send child to school

- (1) A parent of a child of compulsory school-age is guilty of an offence if the parent fails to cause the child:
- (a) to be enrolled at, and to attend, a government school or a registered non-government school, or
 - (b) to be registered for home schooling under Part 7.
- Maximum penalty:
- (a) in the case of a first offence—25 penalty units, or
 - (b) in the case of a second or subsequent offence—50 penalty units, or
 - (c) in the case of a parent subject to a compulsory schooling order—100 penalty units.
- (2) It is a defence to a prosecution under this section if at the relevant time:
- (a) the child was enrolled at, and attended, a school in another State, Territory or country in accordance with the law of that State, Territory or country, or

- (b) the child was enrolled at a government or registered non-government school and participating in distance education provided by the school (unless the Director-General or school had previously directed that the child cease distance education because of the failure of the child to perform the required school work), or
 - (c) the child was participating in an alternative education program approved by the Minister for children unable, for social, cultural or other reasons, to participate effectively in formal school education (unless the Director-General had previously directed that the child resume formal school education because the child was not achieving the education outcomes required of participants in the program), or
 - (d) the child was participating in a program established by the Minister under section 35 (Discipline in government schools), or
 - (e) a certificate of exemption was in force under section 25 in respect of the child and any conditions to which the certificate is subject were being complied with, or
 - (f) the child was attending a school that the parent reasonably believed to be a government school or registered non-government school.
- (3) It is also a defence to a prosecution under this section if at the relevant time:
- (a) the child was prevented from attending school:
 - (i) because of some medical condition, or
 - (ii) because of some accident or unforeseen event, and within 7 days after that condition became apparent, or that accident or event occurred, notice of that fact (together with any medical certificate required by subsection (7)) was given to the school, or
 - (b) the child had not been absent from school (excluding any absence referred to in paragraph (a)) for more than 3 days during the 3 months during which the school had been open immediately preceding the absence complained of, or
 - (c) the child was prevented from attending school because of a direction under section 42D of the *Public Health Act 1991*, or
 - (d) a certificate was in force under section 26 exempting the child from attending classes at a government school and

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- the absence complained of was authorised by the certificate, or
- (e) the child was suspended from a government school, or
 - (f) the child could not gain admission to any available government or registered non-government school in the State because of the child's expulsion from a school or otherwise, or
 - (g) the child's absence from school was:
 - (i) because of the child's disobedience, or
 - (ii) a consequence of the failure of a person (other than a parent of the child) to honour an undertaking accepted under this Part,and was not the parent's fault, or
 - (h) the child was living independently of his or her parents.
- (4) Proceedings for an offence against this section may be commenced only by, or with the written consent of, the Director-General.
- (5) Instead of imposing a fine on a person, the court may make a community service order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999*, and may do so as if a reference in that subsection to a sentence of imprisonment were a reference to a fine.
- (6) If, in any proceedings for an offence against this section, it is alleged that the child's absence from school is due to a medical condition, the court may (on the application of the Director-General) order that the child submit to a medical examination by a medical practitioner nominated by the Director-General. In that case:
- (a) the costs of the medical examination are to be borne by the Director-General, and
 - (b) the medical practitioner is not subject to any liability arising only because the medical examination was carried out without the consent of the parent or child.
- (7) Notice of a medical condition that prevents a child from attending school is required to be accompanied by a certificate from a medical practitioner that states that the child should not attend school because of the condition briefly described in the certificate if the principal of the school has notified a parent of the child that because of the number or duration of past absences a notice must in future be accompanied by such a certificate.

[7] Section 24 Register of enrolments and attendances

Insert after section 24 (1):

- (1A) The register is to contain any notification given (or particulars of any notification given) about the absence of a child from school under section 23 (3) (a).

[8] Section 24 (2)

Omit “by a Board inspector or other person authorised by the Minister”.

Insert instead “by a Board inspector or by any authorised person”.

[9] Section 24 (3)

Omit “concerning the enrolment and attendance of children at the school during a specified period.”.

Insert instead:

concerning the following:

- (a) the enrolment and attendance of children at the school during a specified period,
(b) any unsatisfactory school attendance by children of compulsory school-age enrolled at the school.

[10] Section 29 Kinds of government schools

Insert after section 29 (2):

- (3) The Director-General may (subject to section 34) determine the eligibility criteria for the different kinds of schools established by the Minister.

[11] Section 70

Omit the section. Insert instead:

70 Definition of “authorised person”

In this Division, *authorised person* includes any Board inspector.

[12] Section 76 Consideration by Board of notice of conscientious objection

Omit “authorised person (within the meaning of Division 6)” from section 76 (1) (b).

Insert instead “authorised person under Division 6”.

[13] Section 122 Attendance officers

Omit “An officer authorised by the Minister for the purposes of this section, or a police officer,”.

Insert instead “An authorised person or police officer (an *officer*)”.

[14] Section 123 Evidence

Omit “section 23 (1) (a)” from section 123 (4). Insert instead “section 23”.

[15] Section 135

Insert after section 134:

135 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of Part 5 remain valid and whether the terms of that Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of the *Education Amendment (School Attendance) Act 2009*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

[16] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Education Amendment (School Attendance) Act 2009

[Agreement in principle speech made in Legislative Assembly on 23 September 2009

Second reading speech made in Legislative Council on 27 October 2009]

BY AUTHORITY