



New South Wales

Education Regulation 2017

under the

Education Act 1990

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Education Act 1990*.

ROBERT STOKES, MP
Minister for Education

Explanatory note

The object of this Regulation is to remake, without substantive change, the *Education Regulation 2012*, which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision for the following matters:

- (a) the criteria for determining whether a child has completed Year 10 or is no longer required to attend school because the child is participating on a full-time basis in paid work or approved education or training (or both),
- (b) the particular kinds of children in respect of whom certain non-government schools may be registered,
- (c) the notification requirements that must be complied with if a non-government school closes or ceases to operate, and the effect of the closure or cessation of operation on the registration of the school,
- (d) the circumstances in which a non-government school is taken not to operate for profit,
- (e) the constitution and procedure of the Non-Government Schools Not-for-profit Advisory Committee,
- (f) the constitution of parents and citizens associations and district councils.

This Regulation is made under the *Education Act 1990*, including sections 21B (7), 53 (1) (c), 63, 64 (2) (b), 65 (2) (c), 83C (3), 83K (3), 115 (1) and (3) and 130 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Education Regulation 2017*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Education Regulation 2012*, which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Education Act 1990*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Compulsory school-age

4 Completion of Year 10

- (1) For the purposes of section 21B of the Act, a child has completed Year 10 of secondary education in this State (as referred to in section 21B (5) (a)) if:
 - (a) the child has been awarded, or has received, a relevant certificate, or
 - (b) the child has satisfied the relevant participation requirements for Year 10 or Year 10 of home schooling.
- (2) For the purposes of this clause, a *relevant certificate* means:
 - (a) a Record of School Achievement or Higher School Certificate granted under Part 8 of the Act, or
 - (b) a transcript of study issued under section 98 of the Act, or
 - (c) a certificate from the proprietor of a non-accredited school confirming that the child has satisfied the relevant participation requirements for Year 10, or
 - (d) in the case of a child who is registered for home schooling—a certificate from an authorised person (within the meaning of section 70 of the Act) confirming that the child has satisfied the relevant participation requirements for Year 10 of home schooling.
- (3) For the purposes of this clause, a child has satisfied the *relevant participation requirements for Year 10* if:
 - (a) the child's attendance at school until the final day of Year 10 is satisfactory in the opinion of the relevant authority, and
 - (b) the child has:
 - (i) in the case of a child attending a non-accredited school—received instruction in courses of study that meet the curriculum requirements for secondary school children during Year 7 to Year 10 and has completed the courses of study for Year 10, and
 - (ii) in any other case—participated in courses of study which have been determined under the Act as appropriate to be undertaken by candidates for the Record of School Achievement, and
 - (c) the child has applied himself or herself with diligence and sustained effort in the opinion of the principal of the school.
- (4) For the purposes of this clause, a child has satisfied the *relevant participation requirements for Year 10 of home schooling* if:
 - (a) the child is, or was, registered for home schooling subject to the condition that he or she receive instruction in courses of study that meet the curriculum requirements for secondary school children during Year 7 to Year 10, and
 - (b) the child has completed the courses of study for Year 10.
- (5) In this clause:

non-accredited school means a registered non-government school that is not accredited to present candidates for the Record of School Achievement.

relevant authority means:

 - (a) in the case of a child attending a government school—the Secretary, and
 - (b) in the case of a child attending a non-government school that is a member of a system of non-government schools—the approved authority appointed under section 40 of the Act, and

- (c) in the case of a child attending any other non-government school—the proprietor of the school.

5 Participation in paid work

- (1) For the purposes of section 21B of the Act, a child is participating in paid work if:
 - (a) the child is undertaking work as an employee or a self-employed person, and
 - (b) the child is being paid for undertaking that work, and
 - (c) any requirements relating to the age or qualifications of an employee undertaking that work, as imposed by or under legislation, are complied with.
- (2) A child who undertakes work of a domestic or home maintenance nature for a parent of the child is not participating in paid work for the purposes of section 21B of the Act in relation to that work regardless of whether the child is being paid to undertake the work.

6 Participation in approved education or training

For the purposes of section 21B of the Act, participation in approved education or training includes participation in Years 11 and 12 of secondary education.

7 Participation on a full-time basis

For the purposes of section 21B of the Act:

- (a) a child is participating in paid work on a full-time basis if the child is participating in paid work for an average of 25 hours per week over a 4 week period, and
- (b) a child is participating in approved education or training on a full-time basis if the provider of the approved education or training that the child is participating in certifies that the education or training is being provided to the child on a full-time basis, and
- (c) a child is participating in a combination of approved education or training and paid work on a full-time basis if the child participates in any of the following for an average of 25 hours per week over a 4 week period:
 - (i) paid work, or
 - (ii) face-to-face instruction in connection with approved education or training.

Part 3 Non-government schools

8 Registration of non-government schools as efficient for education of children of particular kind

Children of the following kinds are prescribed for the purposes of sections 53 (1) (c), 64 (2) (b) and 65 (2) (c) of the Act:

- (a) children who need special instruction because of sensory, physical, intellectual or emotional disabilities,
- (b) children who are, or who are the children of, foreign nationals.

9 Closure or cessation of operation of non-government schools

- (1) For the purposes of section 63 of the Act, the proprietor or principal of a registered 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) must give written notice of the following changes to the circumstances of the operation of the school:
 - (a) the closure of the school,
 - (b) the cessation of operation of the school for at least 1 year,
 - (c) the cessation of operation of the school for at least 2 years.
- (2) The written notice must be given:
 - (a) to any person designated by the Authority as a designated person for the purposes of this clause in an official notice given to schools by the Authority, and
 - (b) as soon as reasonably practicable after the proprietor or principal of a 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) becomes aware that the school is to undergo, or has undergone, the change, but not later than one month after the change has occurred.
- (3) In the event of a closure of a school or the cessation of operation of the school for at least 2 years, the registration of the school ceases.
- (4) In the event of the cessation of operation of the school for at least 1 year, the registration of the school continues to have effect for 1 year after the end of the first 12 months during which the school did not operate.
- (5) If the registration of a school ceases under subclause (3) or is limited under subclause (4), the Minister is to give written notice of that cessation or limitation 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, to the approved authority for the system.
- (6) For the purposes of this clause, a school ceases operation if:
 - (a) there are no courses of study being taught at the school, or
 - (b) there are no students enrolled at the school.
- (7) In subclause (6), *courses of study* means courses of study that comply with the curriculum requirements under Part 3 of the Act that apply to the students at the school.

10 School does not operate for profit because of certain payments to students

For the purposes of section 83C (3) of the Act, a non-government school is not taken to operate for profit because of a reasonable payment made to a student of the school in connection with a prize, scholarship or other activity as a student of the school.

11 Non-Government Schools Not-for-profit Advisory Committee

For the purposes of section 83K (3) of the Act, Schedule 1 contains provisions relating to the constitution and procedure of the Non-Government Schools Not-for-profit Advisory Committee.

Part 4 Miscellaneous

12 Constitution of parents and citizens associations and kindred associations for government schools

- (1) The Minister may constitute a parents and citizens association or a kindred association for a government school on receiving minutes of a meeting at which 7 or more persons (each being a parent of a child attending the school or a resident of the district served by the school):
 - (a) have resolved that such an association be formed, and
 - (b) have appointed a president, at least 2 vice-presidents, a treasurer and a secretary from among themselves.
- (2) The appointed persons hold office until their successors are appointed in accordance with the rules made or adopted by the association for the conduct of the association's affairs.

13 Constitution of district councils

- (1) A district council for an area is to consist of delegates appointed by each parents and citizens association or kindred association constituted for any government school situated in the area.
- (2) Each parents and citizens association or kindred association may appoint up to 2 delegates.
- (3) The delegates of a parents and citizens association or kindred association are to be appointed in accordance with the rules made or adopted by the association for the conduct of the association's affairs.

14 Repeal and savings

- (1) The *Education Regulation 2012* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Education Regulation 2012*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Constitution and procedure of advisory committee

(Clause 11)

Part 1 General

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the committee.

committee means the Non-Government Schools Not-for-profit Advisory Committee.

member means any member of the committee.

Part 2 Constitution

2 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Part-time appointments

Members hold office as part-time members.

4 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Deputies

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a member who is the Chairperson the member's functions as Chairperson.

6 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the committee of which reasonable notice has been given to the member personally or by post, except on leave

granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or

- (f) 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
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

7 Filling of vacancy in office of member

If the office of a member becomes vacant, a person is, subject to the Act and this Regulation, to be appointed to fill the vacancy.

8 Chairperson

- (1) The Chairperson vacates office as Chairperson if he or she:
 - (a) is removed from that office by the Minister under this clause, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member of the committee.
- (2) The Minister may at any time remove the Chairperson from office as Chairperson.

9 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the committee, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.
- (2) A disclosure by a member at a meeting of the committee that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the committee otherwise determines:

- (a) be present during any deliberation of the committee with respect to the matter, or
 - (b) take part in any decision of the committee with respect to the matter.
- (5) For the purposes of the making of a determination by the committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the committee for the purpose of making the determination, or
 - (b) take part in the making by the committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the committee.
- (7) This clause applies to a committee of the committee (a *subcommittee*) and the members of that subcommittee in the same way as it applies to the committee and its members.

10 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to the appointment of a member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Regulation as a member.

Part 3 Procedure

11 General procedure

The procedure for the calling of meetings of the committee and for the conduct of business at those meetings is, subject to the Act and this Regulation, to be as determined by the committee.

12 Quorum

The quorum for a meeting of the committee is a majority of its members for the time being.

13 Presiding member

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the committee who are present at a meeting of the committee) is to preside at a meeting of the committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

14 Voting

A decision supported by a majority of the votes cast at a meeting of the committee at which a quorum is present is the decision of the committee.

15 Transaction of business outside meetings or by telephone etc

- (1) The committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the committee made at a meeting of the committee.
- (2) The committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the committee.
- (4) A resolution approved under subclause (1) is, subject to this Regulation, to be recorded in the minutes of the meetings of the committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.