



New South Wales

# Education Amendment (School Attendance) Bill 2009

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Education Act 1990* to ensure that children of compulsory school-age attend school, and for that purpose:

- (a) to facilitate the provision of information to the Director-General of the Department of Education and Training about children who are not attending school, and
- (b) to provide for confidential conferences with parents and other relevant parties to assist in ensuring a child attends school, and
- (c) to provide for the making of compulsory schooling orders by the Children's Court directed at parents whose children do not attend school and, in certain cases, directed at children who do not attend school, and
- (d) to increase the monetary penalties for parents who do not ensure that their children attend school, in particular, where parents fail to comply with compulsory schooling orders.

The Bill also makes other amendments to the *Education Act 1990*, including:

- (a) to require opportunities to be provided for Aboriginal families and communities to participate in decision-making about the education of Aboriginal children, and
- (b) to confer specific power on the Director-General to determine the eligibility criteria for different kinds of government schools.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed (on or after 1 January 2010, the date on which recent changes to the compulsory school-age for children commence).

## Schedule 1 Amendment of Education Act 1990 No 8

**Schedule 1 [1]** defines relevant terms for the purposes of the amended provisions of the *Education Act 1990* (*the principal Act*).

Section 6 of the principal Act requires every person involved in the administration of the principal Act or in the education of school-age children to have regard to certain objects. **Schedule 1 [2]** inserts a new object that provides for Aboriginal families, kinship groups, representative organisations and communities to be given opportunities to participate in significant decisions made under the principal Act relating to the education of their children.

**Schedule 1 [3]** replaces the term “correspondence schools” with the term “distance education” to reflect changes in schooling methods, such as the use of the internet.

**Schedule 1 [4]** restates, without significant change, the duty of parents of children of compulsory school-age to cause their children to receive compulsory schooling.

**Schedule 1 [5]** (proposed section 22A) authorises relevant institutions and other people to provide information to the Director-General about a child who is not attending school as required by the principal Act. The proposed section also imposes a duty on relevant institutions to provide such information if requested by the Director-General. A *relevant institution* means a government department or other public authority and also includes a government school, a registered non-government school, a registered vocational training organisation and a non-government organisation that receives government funding.

The provision of information under the proposed section does not give rise to any liability to civil, criminal or disciplinary action and is not a breach of professional ethics or standards. The identity of a person who provides information under the proposed section is not to be disclosed.

**Schedule 1 [5]** (proposed section 22B) enables the Director-General to make schooling arrangements with the parents of a child, including written undertakings by the parents with respect to compulsory schooling for the child. These undertakings may be used in evidence in proceedings under Part 5 of the principal Act (such as proceedings against parents for compulsory schooling orders or for an offence).

**Schedule 1 [5]** (proposed section 22C) deals with conferences of relevant parties to deal with unsatisfactory school attendance. If a child is not receiving compulsory schooling, the Children's Court or the Director-General may direct the relevant parties to participate in a conference that is conducted by an authorised person appointed by the Children's Court or the Director-General. During a conference, parties may seek to identify and resolve issues in dispute, to identify services that would assist a child to attend school and to formulate undertakings and orders for consideration by the Children's Court to ensure the child is provided with compulsory schooling. Participants in a conference may disclose information about a child to assist in achieving the purposes of the conference, despite anything in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*. A conference is confidential and evidence of anything said during a conference cannot be used in court proceedings.

**Schedule 1 [5]** (proposed section 22D) enables the Children's Court, on the application of the Director-General, to make a **compulsory schooling order** in relation to a child who is not receiving compulsory schooling. An order may require a parent to cause the child to receive compulsory schooling in accordance with the order. An order may also be directed at a child, but only if the child is 12 years of age or older and lives independently of his or her parents or will not obey his or her parents. The Children's Court may also determine the participation requirements under section 21B (inserted by the *Education Amendment Act 2009*) for education or training or paid work if the child has completed Year 10. When making an order, the Children's Court may recommend that a relevant institution provide services to the child and his or her family to assist the child in receiving schooling. If a parent fails to comply with a compulsory schooling order, the maximum penalty for the offence under section 23 is increased to 100 penalty units (currently, \$11,000). If a child who is 15 years of age or older fails to comply with an order, the child is guilty of an offence and liable to a maximum penalty of 1 penalty unit (currently, \$110). If the order is not complied with, the Director-General may enrol the child in a government school if authorised to do so by the order. A decision by the Children's Court to impose an order may be appealed to the District Court.

**Schedule 1 [6]** substitutes section 23 to update (and increase the maximum penalty for) the offence of failing to send a child to school. A parent of a child of compulsory school-age is guilty of the offence if the parent fails to cause the child to be enrolled at school or registered for home schooling. The maximum penalty is 25 penalty units for a first offence, 50 penalty units for a second offence or 100 penalty units for a parent subject to a compulsory schooling order (currently the maximum penalty for the offence is 10 penalty units). There are various defences to the offence, including

if a child is participating in distance education or approved alternative education, if the child is subject to a certificate of exemption under section 25 of the principal Act, or if the child cannot attend school because of a medical condition or because the child has been suspended or expelled from school. In proceedings for the offence, the court may make a community service order instead of imposing a fine. The revised section also makes provision for the medical examination of children whose non-attendance at school is alleged to have been caused by a medical condition (including provision under which a school principal may require a parent to provide medical certificates for non-attendance by the child because of the past record of absences due to medical conditions). **Schedule 1 [14]** makes a consequential amendment.

**Schedule 1 [7] and [9]** require school principals to keep in the register of enrolments and attendances particulars about absences of children from school for medical or other reasons, and particulars about any unsatisfactory school attendance by children of compulsory school-age.

**Schedule 1 [11]** amends the definition of *authorised person*.

**Schedule 1 [8], [12] and [13]** make consequential amendments.

**Schedule 1 [10]** enables the Director-General to determine eligibility criteria for different kinds of government schools.

**Schedule 1 [15]** requires the provisions inserted by the proposed Act to be reviewed after 2 years.

**Schedule 1 [16]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

First print



New South Wales

# Education Amendment (School Attendance) Bill 2009

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New South Wales

# Education Amendment (School Attendance) Bill 2009

No. , 2009

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## A Bill for

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Education Amendment (School Attendance) Act 2009</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation (being not earlier than 1 January 2010).	5 6



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<b>Schedule 1</b>	<b>Amendment of Education Act 1990 No 8</b>	1
<b>[1]</b>	<b>Section 3 Definitions</b>	2
	Insert in alphabetical order in section 3 (1):	3
	<i>attend a school</i> —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.	4 5 6
	<i>authorised person</i> , 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.	7 8 9 10
	<i>Board inspector</i> —see section 104 and Schedule 1A.	11
	<i>compulsory schooling</i> —see section 22 (3).	12
	<i>compulsory schooling order</i> —see section 22D.	13
	<i>home schooling</i> 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.	14 15 16
	<i>relevant institution</i> 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.	17 18 19 20 21 22
<b>[2]</b>	<b>Section 6 Objects for administration of this Act or of education</b>	23
	Insert after section 6 (1) (m):	24
	(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,	25 26 27 28
<b>[3]</b>	<b>Section 20 Assistance to government school children with special needs</b>	29
	Omit “correspondence schools” from section 20 (2).	30
	Insert instead “distance education”.	31

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<b>[4] Section 22</b>	1
Omit the section. Insert instead:	2
<b>22 Compulsory schooling—duty of parents</b>	3
(1) It is the duty of the parent of a child of compulsory school-age to cause the child:	4
	5
(a) to be enrolled at, and to attend, a government school or a registered non-government school, or	6
	7
(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.	8
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(2) That duty is satisfied if the child receives instruction of a kind referred to in section 23 (2).	11
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(3) Schooling required by this section is referred to in this Act as <i>compulsory schooling</i> .	13
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<b>[5] Sections 22A–22D</b>	15
Insert after section 22:	16
<b>22A Obtaining information about children of compulsory school-age</b>	17
(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:	18
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(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	21
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(b) the reasons why the child is not receiving that schooling or not so participating.	25
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(2) Information may be provided under this section:	27
(a) at the request of the Director-General or without any such request, and	28
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(b) anonymously.	30
(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.	31
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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.	1 2 3
(5)	The authority or duty to provide information under this section:	4
	(a) applies despite the <i>Privacy and Personal Information Protection Act 1998</i> or the <i>Health Records and Information Privacy Act 2002</i> , but	5 6 7
	(b) is subject to any other Act or law and to client legal privilege.	8 9
(6)	The provision of information under this section in good faith:	10
	(a) does not give rise to any liability to civil, criminal or disciplinary action, and	11 12
	(b) is not a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.	13 14 15
(7)	The identity of any person who has provided information under this section is not to be disclosed.	16 17
<b>22B</b>	<b>Compulsory schooling undertakings by parents</b>	18
(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 <i>compulsory schooling undertaking</i> ).	19 20 21 22
(2)	The arrangements may be made before, during or after a conference under section 22C concerning the child.	23 24
(3)	A compulsory schooling undertaking may, with the agreement of the Director-General, be varied or revoked at any time.	25 26
(4)	A compulsory schooling undertaking is admissible in evidence in any proceedings under this Part.	27 28
<b>22C</b>	<b>Conference of relevant parties to deal with unsatisfactory school attendance</b>	29 30
(1)	If a child is not receiving compulsory schooling, a conference of the relevant parties may be directed:	31 32
	(a) by the Children's Court during proceedings for a compulsory schooling order, or	33 34
	(b) by the Director-General at any time before or after any such proceedings.	35 36

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(2)	The principal purpose of a conference is to ensure that the child is provided with compulsory schooling.	1 2
(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).	3 4 5
(4)	The following persons are entitled to participate in a conference:	6
	(a) in the case of a conference directed by the Children’s Court—the parties to the proceedings and any legal practitioner representing them,	7 8 9
	(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,	10 11 12 13
	(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).	14 15 16
(5)	A conference may:	17
	(a) seek to identify and resolve issues in dispute in relation to compulsory schooling for the child, and	18 19
	(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	20 21 22
	(c) formulate undertakings, and orders for consideration by the Children’s Court, with respect to compulsory schooling for the child.	23 24 25
	The Children’s Court may include in a compulsory schooling order any undertaking or obligation formulated by a conference under paragraph (c).	26 27 28
(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.	29 30 31
(7)	The authority to disclose information under this section:	32
	(a) applies despite the <i>Privacy and Personal Information Protection Act 1998</i> or the <i>Health Records and Information Privacy Act 2002</i> , but	33 34 35
	(b) is subject to any other Act or law and to client legal privilege.	36 37
(8)	None of the following are admissible in evidence in any proceedings before any court or other body (other than care	38 39

proceedings under Chapter 5 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> :	1
(a) any evidence of anything said or of any admission made in a conference,	2
(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.	3
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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.	5
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<b>22D Compulsory schooling orders</b>	13
(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 <i>compulsory schooling order</i> ).	14
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(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.	18
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(3) A compulsory schooling order may require the child to engage in compulsory schooling in accordance with the order if:	21
	22
(a) the child is of or above the age of 12 years, and	23
(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.	24
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(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).	28
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(5) The following applies to proceedings of the Children's Court under this section:	35
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(a) subject to this section and the regulations, Chapter 6 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> applies to and in respect of proceedings relating to an application under this section,	37
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- (b) the proceedings may relate to any number of children of the same parent, 1  
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  - (c) the Children’s Court may make an interim compulsory schooling order pending the final determination of the proceedings. 3  
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  - (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. 6  
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  - (7) The Children’s Court, when making a compulsory schooling order or when dismissing an application for or revoking such an order: 9  
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    - (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 12  
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    - (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. 15  
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  - (8) A compulsory schooling order (unless sooner revoked by the Children’s Court) ceases to have effect: 18  
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    - (a) at the end of the period specified in the order during which it is to have effect, or 20  
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    - (b) when the child ceases to be of compulsory school-age, whichever first occurs. 22  
23
  - (9) The following applies if a parent or child fails to comply with an obligation under a compulsory schooling order: 24  
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    - (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, 26  
27  
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    - (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, 29  
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    - (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. 34  
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  - (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 37  
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	Director-General considers to have an interest in the welfare of the child.	1 2
(11)	Section 91 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> 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.	3 4 5 6
	<b>Note.</b> Section 91 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> provides a right of appeal from an order of the Children's Court.	7 8 9
(12)	Rules of court may be made under the <i>Children's Court Act 1987</i> with respect to the jurisdiction of the Children's Court under this section.	10 11 12
(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:	13 14 15
	(a) by the Director-General under section 26H, or	16
	(b) by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children.	17 18
<b>[6]</b>	<b>Section 23</b>	19
	Omit the section. Insert instead:	20
	<b>23 Offence if parent fails to send child to school</b>	21
(1)	A parent of a child of compulsory school-age is guilty of an offence if the parent fails to cause the child:	22 23
	(a) to be enrolled at, and to attend, a government school or a registered non-government school, or	24 25
	(b) to be registered for home schooling under Part 7.	26
	Maximum penalty:	27
	(a) in the case of a first offence—25 penalty units, or	28
	(b) in the case of a second or subsequent offence—50 penalty units, or	29 30
	(c) in the case of a parent subject to a compulsory schooling order—100 penalty units.	31 32
(2)	It is a defence to a prosecution under this section if at the relevant time:	33 34
	(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	35 36 37

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- (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 1  
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  - (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 7  
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  - (d) the child was participating in a program established by the Minister under section 35 (Discipline in government schools), or 15  
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  - (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 18  
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  - (f) the child was attending a school that the parent reasonably believed to be a government school or registered non-government school. 21  
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23
  - (3) It is also a defence to a prosecution under this section if at the relevant time: 24  
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    - (a) the child was prevented from attending school: 26
      - (i) because of some medical condition, or 27
      - (ii) because of some accident or unforeseen event, 28  
and within 7 days after that condition became apparent, or 29  
that accident or event occurred, notice of that fact (together 30  
with any medical certificate required by subsection (7)) 31  
was given to the school, or 32
    - (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 33  
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    - (c) the child was prevented from attending school because of a direction under section 42D of the *Public Health Act 1991*, or 37  
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    - (d) a certificate was in force under section 26 exempting the child from attending classes at a government school and 40  
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the absence complained of was authorised by the certificate, or	1
(e) the child was suspended from a government school, or	2
(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	3
(g) the child's absence from school was:	4
(i) because of the child's disobedience, or	5
(ii) a consequence of the failure of a person (other than a parent of the child) to honour an undertaking accepted under this Part,	6
and was not the parent's fault, or	7
(h) the child was living independently of his or her parents.	8
(4) Proceedings for an offence against this section may be commenced only by, or with the written consent of, the Director-General.	9
(5) Instead of imposing a fine on a person, the court may make a community service order under section 8 (1) of the <i>Crimes (Sentencing Procedure) Act 1999</i> , and may do so as if a reference in that subsection to a sentence of imprisonment were a reference to a fine.	10
(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:	11
(a) the costs of the medical examination are to be borne by the Director-General, and	12
(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.	13
(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.	14

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<b>[7] Section 24 Register of enrolments and attendances</b>	1
Insert after section 24 (1):	2
(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).	3 4 5
<b>[8] Section 24 (2)</b>	6
Omit “by a Board inspector or other person authorised by the Minister”.	7
Insert instead “by a Board inspector or by any authorised person”.	8
<b>[9] Section 24 (3)</b>	9
Omit “concerning the enrolment and attendance of children at the school during a specified period.”.	10 11
Insert instead:	12
concerning the following:	13
(a) the enrolment and attendance of children at the school during a specified period,	14 15
(b) any unsatisfactory school attendance by children of compulsory school-age enrolled at the school.	16 17
<b>[10] Section 29 Kinds of government schools</b>	18
Insert after section 29 (2):	19
(3) The Director-General may (subject to section 34) determine the eligibility criteria for the different kinds of schools established by the Minister.	20 21 22
<b>[11] Section 70</b>	23
Omit the section. Insert instead:	24
<b>70 Definition of “authorised person”</b>	25
In this Division, <i>authorised person</i> includes any Board inspector.	26
<b>[12] Section 76 Consideration by Board of notice of conscientious objection</b>	27
Omit “authorised person (within the meaning of Division 6)” from section 76 (1) (b).	28 29
Insert instead “authorised person under Division 6”.	30

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<b>[13] Section 122 Attendance officers</b>	1
Omit “An officer authorised by the Minister for the purposes of this section, or a police officer,”.	2
	3
Insert instead “An authorised person or police officer (an <i>officer</i> )”.	4
<b>[14] Section 123 Evidence</b>	5
Omit “section 23 (1) (a)” from section 123 (4). Insert instead “section 23”.	6
<b>[15] Section 135</b>	7
Insert after section 134:	8
<b>135 Review of Act</b>	9
(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.	10
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(2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of the <i>Education Amendment (School Attendance) Act 2009</i> .	13
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(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
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<b>[16] Schedule 3 Savings, transitional and other provisions</b>	19
Insert at the end of clause 2 (1):	20
<i>Education Amendment (School Attendance) Act 2009</i>	21