



New South Wales

Education Amendment Bill 2008

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Education Act 1990* as follows:

- (a) to confirm that overseas students may be required to pay fees in order to attend government schools,
- (b) to give principals of government schools the power to require proof of a child's name, age and residential address prior to the enrolment of that child at the school,
- (c) to add the Department of Corrective Services to the list of agencies that may be asked to provide certain information about students in relation to health and safety at schools,
- (d) to make other minor amendments in respect of admission to government schools, exemption from attendance, district councils and adult students.

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 the date of assent (except as otherwise specified).

Clause 3 is a formal provision that gives effect to the amendments to the *Education Act 1990* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Overseas students

Schedule 1 [6] inserts proposed section 31A into the *Education Act 1990* (the *Principal Act*) to confirm that overseas students may be required to pay a fee in order to receive instruction, or to participate in school activities, in government schools. The Director-General may fix any such fees payable by order published in the Gazette. The proposed section allows the Director-General to vary the fees for different classes of students and to exempt certain overseas students (or classes of overseas students) from the requirement to pay a fee.

Schedule 1 [1] inserts a definition of *overseas student* for the purpose of proposed section 31A.

Schedule 1 [5] contains a consequential amendment.

Schedule 1 [11] contains a consequential provision to confirm the validity of the imposition of any fees or charges in relation to the attendance of an overseas student at a government school before the commencement of proposed section 31A.

Admission to government schools

Section 34 of the Principal Act currently provides that a child may be enrolled at a government school if the child is eligible to attend the school and the school can accommodate the child. The section also provides that a child is entitled to be enrolled at the government school that is designated for the intake area within which the child's home is situated and that the child is eligible to attend.

Schedule 1 [7] amends section 34 to provide guidance as to the matters that may be taken into consideration in determining whether a government school can accommodate a child. The amendments to section 34 also make it clear that nothing in Part 6 (Government schools) prevents the principal of a government school from accepting an application for the enrolment of an adult at that school.

Schedule 1 [8] inserts proposed section 34A into the Principal Act to allow the principal of a school to require a person seeking to enrol a child at a government school to provide proof of the child's identity, date of birth and home address for the purpose of establishing a child's eligibility to attend or entitlement to be enrolled at the school. Such a requirement must be complied with in order for the child to be entitled to be enrolled at the school (unless the request cannot be reasonably complied with in the circumstances). A principal is entitled to refuse the child's enrolment at the school (and any prior enrolment may be terminated) if false or misleading information is provided in response to such a request.

Miscellaneous

Schedule 1 [2] amends section 25 of the Principal Act to make it clear that the existing power of the Minister to exempt a child from enrolment and attendance at a school can be limited to times specified in the certificate.

Schedule 1 [3] adds the Department of Corrective Services to the list of agencies that may be asked to provide information to the Department of Education and Training, a non-government schools authority or a school about a particular student in order to assess whether the enrolment of the student will constitute a risk to the health or safety of any person.

Schedule 1 [4] makes an amendment by way of statute law revision.

Schedule 1 [9] amends section 115 of the Principal Act so that a district council for a specified area may be established by the Minister by order published in the Gazette (rather than being established by the Minister for an area prescribed by regulation).

Schedule 1 [11] contains a savings provision in relation to existing district councils.

Schedule 1 [10] enables regulations of a savings and transitional nature to be made as a consequence of the proposed Act.

First print



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Education Amendment Bill 2008

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New South Wales

Education Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Education Act 1990* with respect to overseas students and admission to government schools; and for other purposes.

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| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Education Amendment Act 2008</i> . | 3 |
| 2 Commencement | 4 |
| (1) This Act commences on the date of assent to this Act, except as provided by subsection (2). | 5 6 |
| (2) Schedule 1 [3] commences on the date of assent to this Act or on the commencement of section 26C of the <i>Education Act 1990</i> (as inserted by Schedule 1 [5] to the <i>Education Legislation Amendment Act 2006</i>), whichever is the later. | 7 8 9 10 |
| 3 Amendment of Education Act 1990 No 8 | 11 |
| The <i>Education Act 1990</i> is amended as set out in Schedule 1. | 12 |
| 4 Repeal of Act | 13 |
| (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced. | 14 15 |
| (2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act. | 16 17 |

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| Schedule 1 | Amendments | 1 |
| | (Section 3) | 2 |
| [1] | Section 3 Definitions | 3 |
| | Insert in alphabetical order in section 3 (1): | 4 |
| | <i>overseas student</i> means a student who holds a visa under the | 5 |
| | <i>Migration Act 1958</i> of the Commonwealth that enables the | 6 |
| | student to study in New South Wales, but does not include the | 7 |
| | holder of a permanent visa or special category visa within the | 8 |
| | meaning of that Act. | 9 |
| [2] | Section 25 Certificate of exemption from attending school | 10 |
| | Insert after section 25 (2): | 11 |
| | (2A) A certificate of exemption under this section may be limited to | 12 |
| | exemption from the requirement to attend a school during the | 13 |
| | times specified or referred to in the certificate. | 14 |
| [3] | Section 26C Relevant agencies from which information may be obtained about students (as inserted by the Education Legislation Amendment Act 2006) | 15 |
| | Insert after section 26C (1) (h): | 16 |
| | (h1) the Department of Corrective Services, | 17 |
| [4] | Section 28 Closure of government schools | 18 |
| | Omit “a senior member of the Department” from section 28 (5) (e). | 19 |
| | Insert instead “a senior member of staff of the Department of Education and Training”. | 20 |
| [5] | Section 31 Instruction to be free | 21 |
| | Insert at the end of the section: | 22 |
| | (2) This section does not apply in relation to overseas students. | 23 |
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| [6] Section 31A | 1 |
| Insert after section 31: | 2 |
| 31A Overseas students | 3 |
| (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. | 4 5 6 |
| (2) The Director-General is to cause an order under this section to be placed on the Department's website. | 7 8 |
| (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. | 9 10 11 12 13 |
| (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. | 14 15 16 |
| (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. | 17 18 19 20 |
| (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. | 21 22 23 |
| [7] Section 34 Admission to government schools | 24 |
| Insert after section 34 (5): | 25 |
| (6) The following matters may (without limitation) be taken into consideration in determining whether a particular government school can accommodate a child: | 26 27 28 |
| (a) the child's age and sex, | 29 |
| (b) the kind of school established under section 29, | 30 |
| (c) the financial and other resources provided to the school, | 31 |
| (d) the existing number of classrooms and other facilities at the school. | 32 33 |
| (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. | 34 35 36 |

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| [8] Section 34A | 1 |
| Insert after section 34: | 2 |
| 34A Principals can require proof of eligibility to attend or entitlement to be enrolled at government schools | 3 |
| (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. | 4 |
| (2) The requirement may include a requirement to produce any document or to provide a statutory declaration, or both. | 5 |
| (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). | 6 |
| (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. | 7 |
| [9] Section 115 Constitution of associations and district councils | 8 |
| Omit section 115 (2). Insert instead: | 9 |
| (2) The Minister may establish a district council for a specified area by order published in the Gazette. | 10 |
| (3) Any such district council is to be constituted in accordance with the regulations. | 11 |
| [10] Schedule 3 Savings, transitional and other provisions | 12 |
| Insert at the end of clause 2 (1): | 13 |
| <i>Education Amendment Act 2008</i> | 14 |
| [11] Schedule 3, Part 8 | 15 |
| Insert after Part 7: | 16 |
| Part 8 Provisions consequent on enactment of Education Amendment Act 2008 | 17 |
| 15 Payments by overseas students | 18 |
| The imposition by the Director-General of any fee or other charge that has been paid for or in relation to instruction provided | 19 |

Education Amendment Bill 2008

Schedule 1 Amendments

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.