

# Education Act 1990 No 8

[1990-8]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Education Reform Act 1990
- **Does not include amendments by**  
[Institute of Teachers Act 2004 No 65](#) (not commenced)

### Authorisation

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# Education Act 1990 No 8



New South Wales

An Act to amend the law relating to the education of school children; to repeal the *Education and Public Instruction Act 1987*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Education Act 1990*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed for the commencement of section 133 for the purpose of repealing different provisions of an Act or regulation on different days.

### 3 Definitions

- (1) In this Act:

**Board** means the Board of Studies constituted by this Act.

**compulsory school-age** means any age of or above 6 years and below 15 years.

**corporal punishment** of a student means the application of physical force in order to punish or correct the student, but does not include the application of force only to prevent personal injury to, or damage to or the destruction of property of, any person (including the student).

**distance education** means a form of education in which students and teachers are not regularly in the presence of each other but communicate with each other in writing, by print or by electronic or like means.

**government school** means a school established under this Act by the Minister.

**non-government school** means a registered non-government school.

**parent** includes a guardian or other person having the custody or care of a child.

**principal** includes an acting principal of a school.

**proprietor**, in relation to a registered non-government school, means the legal entity designated, in the school's certificate of registration, as the proprietor of the school.

**recognised certificate** means a School Certificate or Higher School Certificate granted under Part 8.

**registered non-government school** means a school, other than a government school, for the time being registered under Part 7.

**responsible person** for a school means:

- (a) the proprietor of the school and, if the proprietor is a corporation, each director or person concerned in the management of the school, or
- (b) a member of the governing body of the school, or
- (c) the principal of the school.

**system of non-government schools** means a system of non-government schools for the time being approved by the Minister under Part 7.

**Tribunal** means the Administrative Decisions Tribunal established by the [Administrative Decisions Tribunal Act 1997](#).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Notes included in this Act do not form part of this Act.

## Part 2 Objects of Act

### 4 Principles on which this Act is based

In enacting this Act, Parliament has had regard to the following principles:

- (a) every child has the right to receive an education,
- (b) the education of a child is primarily the responsibility of the child's parents,
- (c) it is the duty of the State to ensure that every child receives an education of the highest quality,
- (d) the principal responsibility of the State in the education of children is the provision of public education.

## **5 Principal objects of this Act**

The principal objects of this Act are as follows:

- (a) to set out aspects of the school curriculum, including the minimum curriculum for school registration and the curriculum for School Certificate and Higher School Certificate candidates,
- (b) to provide for the establishment and operation of government schools,
- (c) to ensure that only government schools established under this Act or non-government schools registered under this Act operate in New South Wales,
- (d) to allow children to be educated at home,
- (e) to provide for the grant of School Certificates and Higher School Certificates and for the accreditation of non-government schools that are competent to present candidates for those certificates.

## **6 Objects for administration of this Act or of education**

- (1) It is the intention of Parliament that every person concerned in the administration of this Act or of education for children of school-age in New South Wales is to have regard (as far as is practicable or appropriate) to the following objects:
  - (a) assisting each child to achieve his or her educational potential,
  - (b) promotion of a high standard of education in government schools which is provided free of charge for instruction and without discrimination on the ground of sex, race or religion,
  - (c) encouraging innovation and diversity within and among schools,
  - (d) provision of an education for children that gives them access to opportunities for further study, work or training,
  - (e) mitigating educational disadvantages arising from the child's gender or from geographic, economic, social, cultural, lingual or other causes,
  - (f) provision of an education for Aboriginal children that has regard to their special needs,
  - (g) development of an understanding of Aboriginal history and culture by all children,
  - (h) provision of an education for children from non-English speaking backgrounds that has regard to their special needs,
  - (i) recognition of the special problems of rural communities, particularly small and isolated communities,

- (j) provision of opportunities to children with special abilities,
- (k) provision of special educational assistance to children with disabilities,
- (l) development of a teaching staff that is skilled, dedicated and professional,
- (m) provision of opportunities for parents to participate in the education of their children,
- (n) provision of an education for children that promotes family and community values.

(1A) It is the intention of Parliament that the provision of courses of study required by this Act for the Higher School Certificate has the following objects:

- (a) to provide a curriculum structure that encourages students to complete secondary education,
- (b) to foster the intellectual, social and moral development of students, in particular by developing:
  - (i) their knowledge, skills, understanding and attitudes in the fields of study they choose, and
  - (ii) their capacity to manage their own learning, and
  - (iii) their desire to continue learning in formal or informal settings after school, and
  - (iv) their capacity to work with others, and
  - (v) their respect for the cultural diversity of Australian society,
- (c) to provide a flexible structure within which students can prepare for:
  - (i) further education and training, and
  - (ii) employment, and
  - (iii) full and active participation as members of the community,
- (d) to provide formal assessment and certification of students' achievements,
- (e) to provide a context within which schools also have the opportunity to foster the physical and spiritual development of students.

(2) This section does not limit the operation of any other provision of this Act.

## **Part 3 The school curriculum**

### **Division 1 Primary education**

#### **7 Key learning areas for primary education**

For the purposes of this Act, each of the following is a key learning area for primary education:

- English,
- Mathematics,
- Science and Technology,
- Human Society and its Environment,
- Creative and Practical Arts,
- Personal Development, Health and Physical Education.

#### **8 Minimum curriculum for primary education**

- (1) The curriculum for primary school children during Kindergarten to Year 6 must meet the following requirements:
  - (a) courses of study in each of the 6 key learning areas for primary education are to be provided for each child during each Year,
  - (b) courses of study relating to Australia are to be included in the key learning area of Human Society and its Environment,
  - (c) courses of study in both Art and Music are to be included in the key learning area of Creative and Practical Arts,
  - (d) courses of study in a key learning area are to be appropriate for the children concerned having regard to their level of achievement and needs,
  - (e) courses of study in a key learning area are to be provided in accordance with any relevant guidelines developed by the Board and approved by the Minister,
  - (f) courses of study in a key learning area are to be based on, and taught in accordance with, a syllabus developed or endorsed by the Board and approved by the Minister.
- (2) The requirements of this section constitute the minimum curriculum for schools providing primary education.
- (3) If requested to do so by the proprietor of a 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), the Board may approve such modifications to the syllabus referred to in subsection (1) (f) as it considers necessary to enable any part of a course of study in a key learning area that appears to the Board to be incompatible with the educational philosophy or religious outlook of the school to be based on, and taught compatibly with, that educational philosophy or religious outlook. The part of the course of study at that school is to be based on and taught in accordance with the syllabus as modified.

- (4) Any modification approved under subsection (3) must be consistent with the guidelines referred to in subsection (1) (e).

## **Division 2 Secondary education**

### **9 Key learning areas for secondary education (Years 7 to 10)**

For the purposes of this Act, each of the following is a key learning area for secondary education in Years 7 to 10:

- English,
- Mathematics,
- Science,
- Human Society and its Environment,
- Languages other than English,
- Technological and Applied Studies,
- Creative Arts,
- Personal Development, Health and Physical Education.

### **10 Minimum curriculum for secondary education (Years 7 to 10)**

- (1) The curriculum for secondary school children during Year 7 to Year 10 (other than for candidates for the School Certificate) must meet the following requirements:
- (a) courses of study in 6 out of the 8 key learning areas for secondary education are to be provided for each child,
  - (b) courses of study in the key learning areas of English, Mathematics, Science and Human Society and its Environment are to be provided during each Year, but the courses of study in the other key learning areas need not be provided during each Year,
  - (c) courses of study in a key learning area are to be appropriate for the children concerned having regard to their level of achievement and needs,

- (d) courses of study in a key learning area are to be provided in accordance with any relevant guidelines developed by the Board and approved by the Minister,
  - (e) courses of study in a key learning area are to be based on, and taught in accordance with, a syllabus developed or endorsed by the Board and approved by the Minister.
- (2) The requirements of this section constitute the minimum curriculum for schools providing secondary education for children during Year 7 to Year 10 who are not candidates for the School Certificate.
- (3) If requested to do so by the proprietor of a 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), the Board may approve such modifications to the syllabus referred to in subsection (1) (e) as it considers necessary to enable any part of a course of study in a key learning area that appears to the Board to be incompatible with the educational philosophy or religious outlook of the school to be based on, and taught compatibly with, that educational philosophy or religious outlook. The part of the course of study at that school is to be based on and taught in accordance with the syllabus as modified.
- (4) Any modification approved under subsection (3) must be consistent with the guidelines referred to in subsection (1) (d).

### **11 Curriculum for School Certificate candidates**

- (1) The curriculum during Year 7 to Year 10 for students who are candidates for the School Certificate must meet the following requirements:
- (a) courses of study in each of the 8 key learning areas for secondary education are to be provided for each student,
  - (b) courses of study in the key learning areas of English, Mathematics, Science and Human Society and its Environment are to be provided during each Year, but the courses of study in the other key learning areas need not be provided during each Year,
  - (c) courses of study in a key learning area are to be taught in accordance with a syllabus developed or endorsed by the Board and approved by the Minister.
- (2) (Repealed)
- (3) This section does not limit any requirement imposed under section 94 (School Certificate).

### **12 Curriculum for Higher School Certificate candidates**

- (1) The curriculum during Year 11 and Year 12 for students who are candidates for the

Higher School Certificate must meet the following requirements:

- (a) courses of study of a general description determined by the Minister on the recommendation of the Board are to be provided for each student in each Year,
  - (b) those courses of study are to include a course of study in English,
  - (c) those courses of study are to comply with a pattern of study determined by the Minister on the recommendation of the Board,
  - (d) those courses of study are to be taught in accordance with a syllabus developed or endorsed by the Board and approved by the Minister.
- (2) In making a recommendation to the Minister under this section with respect to a course of study to be provided for students, the Board is, in accordance with criteria specified by the Minister:
- (a) to establish the need for the course, and
  - (b) to provide an assurance of its quality, and
  - (c) to identify assessment procedures for the course, and
  - (d) to identify other implications for educational institutions on the implementation of the course.
- (3) A pattern of study determined under this section may include (but is not limited to) the number of courses to be studied, the sequence in which particular courses are to be taught and the number of units of study that a course is to contain.
- (4) The Minister is to ensure that the courses of study required to be undertaken by students who are candidates for the Higher School Certificate cover a broad range of study and in doing so is to obtain and have regard to the advice of the Board.
- (5) This section does not limit any requirement imposed under section 95 (Higher School Certificate).

## **Division 3 General**

### **13 Courses of study in key learning areas**

The general description of the courses of study for students in Kindergarten to Year 10 which may be chosen in a key learning area in order to comply with this Part and the key learning area to which any such course is allocated are to be determined by the Minister on the recommendation of the Board.

### **14 Syllabuses**

- (1) The Board may, for the purposes of this Part, develop syllabuses for courses of study



or endorse syllabuses developed by schools or other educational bodies.

- (2) The Minister may approve particular syllabuses developed by the Board and may give a general approval for syllabuses endorsed by the Board.
- (3) Any syllabus developed or endorsed by the Board for a particular course of study is to indicate the aims, objectives and desired outcomes in terms of knowledge and skills that should be acquired by children at various levels of achievement by the end of specified stages in the course, and any practical experience that children should acquire by the end of any such stage.
- (4) Any syllabus developed or endorsed by the Board for a particular course of study may indicate generally the period of time that should be allocated to the teaching of the course, but is not to make a specific period of time mandatory.

### **15 Disagreement between Minister and Board**

- (1) This section applies to a recommendation of the Board relating to:
  - (a) the school curriculum, or
  - (b) the nature or content of the recognised certificates, or
  - (c) the nature of the assessment or examination process leading to the award of the recognised certificates.
- (2) If the Minister does not approve any recommendation of the Board to which this section applies, the Board may request the Minister (and if so the Minister is required) to make public, as soon as practicable (but within 21 days), the Minister's decision not to approve the recommendation and the reasons for the decision.

### **16 Additional courses of study and other activities**

The total activities of children in any Year are not limited to the courses of study required for any minimum or other curriculum under this Part, but additional courses of study and other activities may be provided for the children.

### **17 Additional curriculum requirements for government schools**

- (1) The Minister may determine additional curriculum requirements for children attending government schools.
- (2) Any such additional requirement does not constitute part of the minimum curriculum for schools providing primary or secondary education or an additional requirement for being a candidate for the School Certificate or Higher School Certificate.

### **18 Basic skills testing**

- (1) In this section:

**basic skills testing** means a test of the basic skills of children (such as literacy and numeracy), but does not include a test relating to the teaching of a particular course of study.

- (2) The Minister is to arrange for the conduct of basic skills testing in such government schools and at such times as the Minister may determine.
- (3) The Minister may, at the request of a non-government school, arrange for the conduct of basic skills testing in the school.
- (4), (5) (Repealed)

#### **18A Publication of results of certain tests**

- (1) The regulations may make provision for or with respect to the extent to which the results of:
  - (a) basic skills testing under section 18, and
  - (b) School Certificate and Higher School Certificate examinations or other assessments,may be publicly revealed or must be kept confidential.
- (2) The Minister is required to recommend to the Governor that regulations be made under this section and, in making any such recommendation, is to have regard to the privacy of students and the potentially adverse effects of any inappropriate public disclosure of the results.
- (3) Despite anything else in this section, the Minister is to report to Parliament detailed information about the results so as to allow meaningful and substantial analysis of the effectiveness of schooling in achieving the aims of this Act and the government. The information should allow analysis of the effectiveness of all categories of schools and of government education provision for all students, including categories of students identified as in need of special provision.
- (4) A report must be made each year on the results of the previous calendar year. The information provided should allow a valid comparison to be made of standards from year to year.
- (5) Clause 12 of Schedule 1 to the [Freedom of Information Act 1989](#) applies to a breach of the confidentiality provisions of regulations made under this section in the same way as it applies to an offence against an Act.
- (6) In this section, **results** means results of individuals or schools, or any other results.

## **Part 4 The Minister's functions**

### **19 General functions of Minister**

The Minister has the following functions:

- (a) to exercise the functions in connection with the school curriculum that are conferred or imposed on the Minister under Part 3,
- (b) to establish and supervise the operation of government schools under Part 6,
- (c) to exercise the functions in connection with registration that are conferred or imposed on the Minister under Part 7,
- (d) to determine, having regard to the requirements of Part 8 and the advice of the Board, the general method of assessment of candidates for the recognised certificates (whether by public examination or other form of assessment),
- (e) to determine, having regard to the requirements of Part 8 and the advice of the Board, the nature of the information appearing on the recognised certificates or records of achievement issued by the Board,
- (f) to carry out such educational audits and program reviews as the Minister considers appropriate to assess and improve the quality of education for school children in New South Wales,
- (g) any other function conferred or imposed on the Minister under this Act.

### **20 Assistance to government school children with special needs**

- (1) The Minister may provide or arrange special or additional assistance for government school children with special needs, such as:
  - (a) children with disabilities, or
  - (b) children who live in isolated or remote areas, or
  - (c) children who are from non-English speaking backgrounds, or
  - (d) Aboriginal children, or
  - (e) children with special abilities, or
  - (f) children who are disadvantaged by their socio-economic background.
- (2) Any such special or additional assistance may include the provision of financial assistance, facilities, courses of study, staff, staff training or correspondence schools.
- (3) Any such financial assistance is to be paid out of money to be provided by Parliament.

## **21 Financial and other assistance in respect of non-government school children**

- (1) The Minister may provide financial assistance or other assistance, or both, in respect of non-government school children.
- (2) Any financial assistance provided under this section to non-government schools by way of per capita grants is (subject to this section) to be calculated so that the average per capita grant in respect of children attending such schools is a percentage of the average per capita cost to the State of educating children at government schools (as assessed by the Minister).
- (3) On and from a date notified by proclamation for the purposes of this subsection, that percentage is to be 25 per cent.

### **Editorial note—**

Date notified for the purposes of this subsection: 1.2.1992—see Gazette No 106 of 12.7.1991, p 5519.

- (4) In assessing the cost of educating a child at a government school, the cost of anything provided for both government and non-government school children is to be excluded.
- (5) However, any financial assistance provided under this section to non-government schools by way of per capita grants is to be allocated having regard to the needs of such schools, and accordingly the amount of the per capita grant (and the corresponding percentage) in respect of children attending different schools may differ.
- (6) Any financial assistance under this section to non-government schools may be paid directly to the schools or to an organisation (such as the Catholic Education Commission) for the benefit of the schools.
- (7) Any financial assistance under this section is to be paid out of money to be provided by Parliament.

## **Part 5 Attendance of children at school**

### **22 Compulsory schooling**

It is the duty of the parent of a child of or above the age of 6 and below the age of 15 to cause the child:

- (a) to be enrolled at a government school or registered non-government school and to attend the school at all times when the school is open for the child's instruction or participation in school activities, or
- (b) to be registered for home schooling under Division 6 of Part 7 and to receive instruction in accordance with the conditions to which the registration is subject.

### **23 Offence to fail to send child to school**

- (1) The parent of a child of or above the age of 6 and below the age of 15 is guilty of an offence if the parent:
- (a) fails to cause the child to be enrolled at a government school or registered non-government school or to be registered for home schooling, or
  - (b) fails to cause the child to attend any such school at all times when the school is open for the child's instruction or participation in school activities or to receive instruction in accordance with the conditions to which the child's registration for home schooling is subject.

Maximum penalty: 10 penalty units.

- (2) It is a defence to a prosecution under this section if:
- (a) the child is enrolled at, and regularly attends, in accordance with the law of another State or a Territory of the Commonwealth, a school in the other State or Territory, or
  - (b) the child is suspended from a government school or, because of the child's expulsion from a government school or otherwise, the child cannot gain admission to any government school in the State, or
  - (c) a certificate of exemption is in force under section 25 in respect of the child and any conditions to which the certificate is subject are complied with, or
  - (d) the child is participating in a program established by the Minister as referred to in section 35.
- (3) It is also a defence to a prosecution under this section if:
- (a) the child is enrolled at a correspondence school or other similar institution that is conducted by a government or other authority (whether or not of New South Wales) approved by the Minister and satisfies the requirements (if any) prescribed with respect to performance of school work, or
  - (b) the child was prevented from attending school or receiving instruction by:
    - (i) sickness, risk of infection or temporary or permanent incapacity, or
    - (ii) some accident or unforeseen event,and within 7 days of the occurrence of that sickness, risk or incapacity, or of that accident or unforeseen event, the defendant gave notice of it to the child's teacher, or
  - (b1) the child was prevented from attending school because, at the relevant time, the

child was excluded from the school under section 42D of the *Public Health Act 1991*, or

- (c) at all material times the child attended a school which the defendant reasonably believed to be a government school or registered non-government school, or
  - (d) the child has not been absent from school (excluding any absence referred to in paragraph (b)) for more than a total of 3 school days during the 3 months during which the school had been open immediately preceding the absence complained of, or
  - (e) the absence from school was because of the child's disobedience, and was not due to any default of the defendant, or
  - (f) a certificate is in force under section 26 exempting the child from attending classes at a government school and the absence complained of was authorised by the certificate.
- (4) A notice of the kind referred to in subsection (3) (b), or a record of its particulars, is to be kept by the principal of the school and is to form part of the register referred to in section 24.
- (5) If a child who is enrolled at a government school or registered non-government school has not been attending school regularly, the Minister may require the parent of the child to attend, together with the child, a conciliation conference with an officer authorised by the Minister.

## **24 Register of enrolments and attendances**

- (1) The principal of a government school or registered non-government school must keep a register, in a form approved by the Minister, of the enrolments and daily attendances of all children at the school.
- (2) The register must be available for inspection during school hours by a Board inspector or other person authorised by the Minister, who may require the principal of the school to furnish a copy of the register or any part of it.
- (3) When required to do so by the Minister, the principal of a government school or registered non-government school must furnish to the Minister information, within a time and in a form approved by the Minister, concerning the enrolment and attendance of children at the school during a specified period.
- (4) The particulars of enrolments and daily attendances recorded in a register under this section must be retained for such period as the Minister may determine.
- (5) A principal of a government school or registered non-government school who, without reasonable excuse, fails to comply with a requirement imposed by or under this

section is guilty of an offence.

Maximum penalty: 5 penalty units.

## **25 Certificate of exemption from attending school**

- (1) The Minister may grant a certificate exempting a child from the requirement of this Part that the child be enrolled at and attend a government school or registered non-government school or be registered for and receive home schooling, if the Minister is satisfied that conditions exist which make it necessary or desirable that such a certificate should be granted.
- (2) A certificate of exemption under this section may be given subject to conditions and may be limited in its operation to a period specified in the certificate.
- (3) A certificate of exemption under this section may be cancelled by the Minister.

## **26 Certificate of exemption from attending particular classes**

- (1) The parent of a child enrolled at a government school may give the Director-General of School Education written notice that the parent conscientiously objects on religious grounds to the child being taught a particular part of a course of study.
- (2) The Director-General of School Education may accept any such objection and grant a certificate exempting the child from attending classes relating to the part of the course concerned if satisfied that the objection is conscientiously held on religious grounds.
- (3) A certificate of exemption under this section may be given subject to conditions.
- (4) A certificate of exemption under this section may be cancelled by the Director-General of School Education.

## **Part 6 Government schools**

### **27 Establishment of government schools**

- (1) The Minister may establish a school in any locality if the Minister is satisfied that:
  - (a) sufficient children will regularly attend the school, and
  - (b) the school will comply with similar requirements to those required for the registration of non-government schools.
- (2) The Minister may name or change the name of a government school.

### **28 Closure of government schools**

- (1) The Minister may close a government school, but only in accordance with this section.

- (2) The Minister is to announce by 15 June in each year, the schools that the Minister proposes to close. Any such schools are not to be closed until the end of the following year.
- (3) Within 21 days of any such announcement, the Minister is to establish a School Closures Review Committee and notify in writing the Principal and President of the legally constituted parents organisation of each school concerned of that decision.
- (4) The School Closures Review Committee is to review and make recommendations to the Minister concerning the closure of a school if the majority of the parents of the children attending the school have, within 21 days of an announcement under subsection (2), submitted a request in writing to the Minister that a review of its closure be undertaken.
- (5) The School Closures Review Committee is to comprise:
  - (a) an independent person appointed by the Minister, who is to chair the Committee,
  - (b) the Director-General of School Education or nominee of that Director-General,
  - (c) a nominee of the Local Government Association of New South Wales,
  - (d) a nominee of the Federation of Parents' and Citizens Associations,
  - (e) an Assistant Director-General of School Education nominated by the Director-General,
  - (f) a nominee of the New South Wales Teachers Federation, and
  - (g) a nominee of the Minister.
- (6) In conducting a review, the Committee:
  - (a) is to call for submissions and seek expert demographic and educational advice for both the present and future use of the school, and
  - (b) is to seek out and have regard to the views of teachers, local communities and parents of the children attending the schools whose proposed closure is being reviewed, and
  - (c) is required to meet with representatives of those teachers, local communities and parents.
- (7) In making any recommendations concerning the closure of a school, the Committee is to have regard primarily to the educational needs of the local community concerned and of the State.
- (8) The Committee is to report to the Minister by 30 September of the year in which it is established.



- (9) If the Minister does not accept any recommendation of the Committee, the Minister is to make public within 21 days the reasons for the decision.
- (10) The procedure outlined in this section for the closure of a school does not apply:
- (a) in the case of a one-teacher school, or
  - (b) if the majority of the parents of children attending the school approve of the closure, or
  - (c) if the Minister is satisfied that there are exceptional or emergency circumstances which require an earlier closure of the school.

## **29 Kinds of government schools**

- (1) The kinds of school that may be established by the Minister include the following:
- infants schools,
  - primary schools,
  - secondary schools,
  - composite schools, in which both primary education and secondary education are offered,
  - schools in which education for specific age groups is offered,
  - schools for children with disabilities,
  - schools with boarding facilities.
- (2) Secondary schools that may be established by the Minister include (in addition to comprehensive or other secondary schools) the following:
- senior secondary schools that offer courses of study only for students in Year 11 and Year 12,
  - selective secondary schools for children with special abilities,
  - specialist secondary schools, such as agricultural or technology high schools,
  - separate boys and girls schools.

## **30 Secular instruction**

In government schools, the education is to consist of strictly non-sectarian and secular instruction. The words ***secular instruction*** are to be taken to include general religious education as distinct from dogmatic or polemical theology.

### **31 Instruction to be free**

The instruction provided in government schools is to be free of charge.

### **32 Special religious education**

- (1) In every government school, time is to be allowed for the religious education of children of any religious persuasion, but the total number of hours so allowed in a year is not to exceed, for each child, the number of school weeks in the year.
- (2) The religious education to be given to children of any religious persuasion is to be given by a member of the clergy or other religious teacher of that persuasion authorised by the religious body to which the member of the clergy or other religious teacher belongs.
- (3) The religious education to be given is in every case to be the religious education authorised by the religious body to which the member of the clergy or other religious teacher belongs.
- (4) The times at which religious education is to be given to children of a particular religious persuasion are to be fixed by agreement between the principal of the school and the local member of the clergy or other religious teacher of that persuasion.
- (5) Children attending a religious education class are to be separated from other children at the school while the class is held.
- (6) If the relevant member of the clergy or other religious teacher fails to attend the school at the appointed time, the children are to be appropriately cared for at the school during the period set aside for religious education.

### **33 Objection to religious education**

No child at a government school is to be required to receive any general religious education or special religious education if the parent of the child objects to the child's receiving that education.

### **34 Admission to government schools**

- (1) The parent of a child may enrol the child at any government school if the child is eligible to attend the school and the school can accommodate the child.
- (2) A child is, in any case, 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.
- (3) The Director-General of School Education is to designate intake areas, and the government school or schools for each such area, so that all school-age children in the State will be eligible to attend a government school.

- (4) The Minister may refuse the admission of a child to all or any government schools if:
  - (a) the child has been expelled from any government school, or
  - (b) the Minister is of the opinion that there is other sufficient reason to do so.
- (5) A child is not to be refused admission to a government school because of the child's race or religion.

### **35 Discipline in government schools**

- (1) The Minister may control and regulate student discipline in government schools.
- (2) The Minister may prepare guidelines for the adoption by government schools of fair discipline codes that provide for the control and regulation of student discipline in those schools (except for the suspension or expulsion of students).
  - (2A) The guidelines and codes must not permit corporal punishment of students attending government schools.
  - (2B) The guidelines and codes may permit other reasonable forms of punishment or correction of those students, including requiring students to perform any reasonable work or service for the school.
- (3) The Minister may, on the recommendation of the Director-General of School Education, expel a child of any age from a government school. The Director-General of School Education may suspend any child from a government school.
- (4) The Minister may establish programs to assist any child who has a history of non-attendance at a government school or who has been expelled from a government school to adjust more successfully to school life or to improve his or her behaviour so as to be able to return to school.
- (5) The Director-General of School Education may, with the consent of the child's parent, arrange for a child who has been expelled from a government school to be admitted to and attend another government school (unless the child is refused admission under section 34 (4)) or to participate in a program referred to in subsection (4).

### **36 School councils**

- (1) The regulations may provide for the establishment of school councils at government schools.
- (2) A school council is to be constituted in such manner, and has such functions, as are prescribed by the regulations.

## **Part 7 Registration of non-government schools and of children for**

## **home schooling**

### **Division 1 Application**

#### **37 Application of Part**

This Part applies to schools other than government schools.

### **Division 2 Formation of systems of non-government schools**

#### **38 Registration as an individual school or as a member of a system**

A school may become a registered non-government school by:

- (a) being registered as an individual school, or
- (b) being registered as a member of a system of non-government schools that monitors the school's compliance with the requirements of this Act.

#### **39 Non-government schools may form a system**

Twenty or more registered or proposed non-government schools (or a number less than 20 but greater than 10 as the Minister approves in special circumstances on the recommendation of the Board) may form a system of non-government schools for the purposes of this Act.

#### **40 Approved authority for system of non-government schools**

For the purposes of this Act, the approved authority for a system of non-government schools is the person or body who or which is appointed for the time being by:

- (a) the proprietor or proprietors of the non-government schools, or
  - (b) the person or persons who propose to establish the non-government schools,
- to act on their behalf in relation to the system or proposed system.

#### **41 Applications for approval of system of non-government schools**

- (1) The approved authority for a proposed system of non-government schools may apply in writing to the Minister for approval of the system.
- (2) Any such application must:
  - (a) specify the schools to be included in the proposed system, and
  - (b) include appropriate evidence that the applicant is the approved authority for the proposed system, and
  - (c) include a description of the manner in which it is proposed to monitor compliance

with the requirements for registration of the schools under this Part and (if appropriate) for accreditation of the schools under Part 8.

#### **42 Approval of system of non-government schools**

- (1) As soon as practicable after receiving an application for approval of a proposed system of non-government schools, the Minister is:
  - (a) to approve the system, or
  - (b) to refuse to approve the system.
- (2) The Minister is to approve the system if the Minister is satisfied that the manner in which it is proposed to monitor compliance with the requirements for registration of the schools and (if appropriate) for accreditation of the schools is adequate.
- (3) The Minister is to give the approved authority for the system written notice of the Minister's decision.
- (4) Unless the approved authority for a system of non-government schools makes an application for registration of the schools (including those schools already registered under this Act) within 6 months of the Minister's approval of the system, that approval lapses.

#### **43 Inclusion of new schools in a system of non-government schools**

- (1) The approved authority for a system of non-government schools may notify the Minister in writing that a proprietor of a registered non-government school or a person who proposes to establish a new non-government school wishes to become a member of the system.
- (2) The school becomes a member of the system on the giving of that notice.
- (3) Unless application is made to register the school (whether or not already registered under this Act) within 6 months of its becoming a member of the system, the school ceases to be such a member.

#### **44 Withdrawal of non-government school from system**

- (1) The approved authority for a system of non-government schools may notify the Minister in writing that a school that is a member of the system is to be withdrawn from the system.
- (2) The school ceases to be a member of the system on the giving of that notice.
- (3) The Minister may, at the request of the proprietor of a non-government school and after consultation with the approved authority for the system, agree to the school's withdrawal from a system of non-government schools.

- (3A) A school that is withdrawn from a system of non-government schools that proposes to apply for registration as an individual non-government school must make an application for renewal of registration within 1 month after ceasing to be a member of the system.
- (4) The withdrawal of a school from a system does not cancel the registration of the school (but any such registration ceases after 6 months if it has not sooner expired).

#### **45 Withdrawal of approval of system of non-government schools**

- (1) The Minister may, at the request of the approved authority for the system or without any such request, withdraw the approval of a system of non-government schools at any time.
- (2) The withdrawal of that approval does not cancel the registration of the schools that were members of the system (but any such registration ceases after 6 months if it has not sooner expired).

#### **46 Board to advise Minister on systems of schools**

The Minister is required to obtain and have regard to the advice of the Board in connection with the exercise of any of the Minister's functions under this Division.

### **Division 3 Registration of non-government schools**

#### **47 Registration requirements for non-government schools**

For the purposes of this Act, the requirements for the registration of a non-government school are as follows:

- (a) if the school is seeking to become registered as an individual school—the school's proposed proprietor must be a corporation or other form of legal entity approved by the Minister,
- (b) each responsible person for the school, and any other person or body having similar functions in relation to the school as those of such a responsible person, is of good character,
- (c) any refusal to register, or cancellation of registration, of the school or any other school under section 56 or 59 occurring during the period of 5 years immediately before the application for registration is made has not been largely attributable to the actions of a responsible person or proposed responsible person for the school, or any other person or body having similar functions in relation to the management or operation of the school to those of a responsible person,
- (d) teaching staff for the school:
- (i) have attained the standard of professional teacher competence determined by the

Minister, or

- (ii) are working towards the standard of professional teacher competence determined by the Minister and are under the direct, on-site supervision of teaching staff who have attained the necessary standard of professional teacher competence,
- (e) educational facilities are adequate for the courses of study provided at the school,
- (f) school premises and buildings are satisfactory,
- (g) a safe and supportive environment is provided for students by means that include:
  - (i) school policies and procedures that make provision for the welfare of students, and
  - (ii) persons who are employed at the school being employed in accordance with the *Child Protection (Prohibited Employment) Act 1998*, and
  - (iii) school policies and procedures that ensure compliance with relevant notification requirements imposed in relation to persons employed at the school by Part 3A of the *Ombudsman Act 1974* and Part 7 of the *Commission for Children and Young People Act 1998*,
- (h) school policies relating to discipline of students attending the school are based on principles of procedural fairness, and do not permit corporal punishment of students,
- (i) if the school provides boarding facilities, whether itself or by contractual arrangement—school policies and procedures that are satisfactory to ensure the safety and welfare of boarders,
- (j) compliance with the requirements set out in Part 3 relating to:
  - (i) in the case of a school providing primary education—the minimum curriculum for a school providing primary education, or
  - (ii) in the case of a school providing secondary education for children during Year 7 to Year 10—the minimum curriculum for a school providing any such secondary education, or
  - (iii) in the case of a school providing secondary education for children during Year 11 and Year 12—the curriculum for students who are candidates for the Higher School Certificate,
- (k) school policies and procedures are appropriate to ensure the personal and social development of students who are undertaking all or a significant part of their courses of study by means of distance education,
- (l) school policies and procedures ensure its participation in annual reporting (of a kind determined by the Minister following consultation with persons recognised by the

Minister as having appropriate expertise in accountability matters):

- (i) to publicly disclose the educational and financial performance measures and policies of the school, and
- (ii) to provide data to the Minister that is relevant to the Minister's annual report to Parliament on the effectiveness of schooling in the State.

**Note—**

Section 131 enables the Board to make rules setting out guidelines to assist a non-government school to comply with the requirements for registration set out in section 47.

**47A Effect of section 47 on certain contracts**

The operation of section 47 is not to be regarded as giving rise to any implication that it is a term of any contract (whether or not written) between the proprietor of a registered non-government school and a parent of any child enrolled at the school that the school comply with the requirements imposed by or under this Act for registration of non-government schools or that failure to comply with any such requirement in itself gives rise to any civil cause of action.

**Note—**

Non-government schools are given protection from civil liability in tort for breach of a statutory duty (including liability for damages sought in an action for breach of contract or any other action) under Part 5 of the [Civil Liability Act 2002](#) by virtue of the [Civil Liability Regulation 2003](#).

**48 Existing non-government schools**

Any registered school (within the meaning of the [Education and Public Instruction Act 1987](#)) in existence immediately before the commencement of this section is to be taken to be a non-government school and to have been registered under this Act for a period of 2 years from the date of that commencement or for the balance of the current registration under that Act, whichever is the longer period.

**49 Application for initial registration of a new non-government school or a school joining a system**

- (1) A person who proposes to establish a new non-government school (other than a school that is to become a member of a system of non-government schools) may apply in writing to the Minister for registration of the school.
- (2) The approved authority for a system of non-government schools may apply in writing to the Minister for registration of a school (including a proposed new school) that has become or is to become a member of the system.
- (2A) An application for registration of a new non-government school must be made not later than 31 March in the calendar year before the year the proposed proprietor or approved authority intends to commence operating the school.



- (3) The approved authority for a system of non-government schools is (as far as is practicable) to apply at the same time for the registration of all the schools that are members of the system when the Minister first approves the system.
- (4) An application for registration of a non-government school is to be lodged with the Board.

**50 Consideration by Board of application for initial registration of new non-government schools etc**

- (1) As soon as practicable (but not later than 6 months) after an application for registration of a non-government school has been lodged with the Board under section 49, the Board is to provide the Minister with a written report about the application.
- (2) The written report to the Minister must include a recommendation as to whether or not the school should be registered.
- (3) The Board is to give an applicant for registration written notice of a recommendation to the Minister that the application be refused.

**51 Determination by Minister of applications for initial registration of new non-government schools etc**

- (1) As soon as practicable after receiving the report of the Board about an application for registration of a non-government school, the Minister:
  - (a) is to register the school in the Register kept by the Minister for the purpose and issue to the applicant a certificate of registration for the school, or
  - (b) is to refuse to register the school.
- (2) The Minister is to register the school if the Minister, having considered the Board's report and any decision of the Tribunal, is satisfied that the requirements for registration will be complied with at the school.
- (3) If the Board has recommended that a school not be registered, the Minister may not refuse to register the school unless:
  - (a) 30 days have elapsed since the applicant was given written notice of the Board's recommendation and no application has been made to the Tribunal for a review of the recommendation within those 30 days, or
  - (b) the Tribunal has determined an application for a review (made within those 30 days) of the recommendation and the Minister has considered any contrary recommendation of the Tribunal and the reasons for it, or
  - (c) any such application for a review of the recommendation has been withdrawn.
- (4) The Minister is to give an applicant written notice of a decision to refuse to register a

school.

## **52 Initial registration provisional for a maximum period of 12 months**

- (1) The initial registration of a non-government school is provisional and (subject to section 57A) has effect for the period specified in the certificate of registration for the school commencing on a date so specified.
- (2) The maximum period for which initial registration may be granted is 12 months.
- (3) This section:
  - (a) applies to the registration of a school that, by becoming a member of a system of non-government schools, is required to be re-registered under this Act (despite being already so registered when it becomes a member), and
  - (b) does not apply to the first renewal of registration of a school after the commencement of section 48.
- (4) If, at any time before the expiration of the initial period of registration of a non-government school, the Board is not satisfied that the requirements for its registration are being complied with, it may give a written notice under subsection (5) 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, the approved authority for the system.
- (5) The notice:
  - (a) is to state that the Board will recommend to the Minister that the period of initial registration be reduced under section 57A unless the matters specified in the notice have been addressed, and
  - (b) may specify the time within which such matters should be addressed.
- (6) A notice may be given under subsection (5) on more than one occasion.

## **53 Classes of registration**

- (1) The certificate of registration for a non-government school may certify the school as efficient for any one or more of the following:
  - (a) primary education for any specified Years,
  - (b) secondary education for any specified Years,
  - (c) education of a kind, or for children of a kind, prescribed by the regulations.
- (2) A school may be certified as efficient for education for any specified Years even though it is not proposed to offer education for any such Year in the immediate future.

## **Division 4 Continuing registration**

### **54 Inspection of schools**

The Board may arrange for a registered non-government school to be inspected by a Board inspector at random or if the Board has reason to believe that the requirements for registration are not being complied with at the school.

### **54A Renewal of registration**

- (1) The proprietor of a 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, may apply in writing to the Minister for the renewal of the registration of the school.
- (2) The application must be made at least 9 months before the school's existing registration is to expire, or a later date decided by the Board by written notice given to the proprietor or approved authority.
- (3) The application must include information demonstrating:
  - (a) whether or not the school continues to satisfy the requirements for registration under section 47, and
  - (b) whether or not since the school's registration was granted or last renewed, the school has complied with the terms of such registration.

### **55 Board to make recommendation about renewal of registration**

- (1) Within a reasonable time before the registration of a non-government school is to expire, the Board is to make a written recommendation to the Minister as to whether or not the registration should be renewed.
- (2) Before making a recommendation, the Board, if it is not satisfied that the requirements for registration are being complied with at the school, may give a written notice under subsection (3) 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, the approved authority for the system.
- (3) The notice:
  - (a) is to state that renewal of registration of the school will not be recommended until the matters specified in the notice have been addressed, and
  - (b) may specify the time within which any such matters should be addressed.
- (4) The Minister, on the advice of the Board, may, by a written notice given to the proprietor or principal of the school or the approved authority for the system, extend the period for which the school's registration was granted or last renewed, in order to

enable the matters concerned to be addressed.

- (5) More than one such extension may be granted.
- (6) The Board is to give the proprietor or principal of a non-government school or the approved authority for a system of non-government schools (as the case may require) written notice of a recommendation to the Minister that the registration of the school not be renewed.

## **56 Renewal of registration by Minister**

- (1) The Minister is to renew the registration of a non-government school if the Minister, having considered the recommendation of the Board and any decision of the Tribunal reviewing the Board's recommendation, is satisfied that the requirements for registration are being complied with at the school.
- (2) Renewal of registration of a non-government school is effected by the issue of a further certificate of registration for the school.
- (3) The Minister may not refuse to renew the registration of a non-government school unless the Minister has considered a recommendation of the Board concerning the matter.
- (4) If the Board has recommended that the registration of a non-government school not be renewed, the Minister may not refuse to renew the registration of the school unless:
  - (a) 30 days have elapsed since the proprietor or principal of the school or the approved authority for the system was given written notice of the Board's recommendation and no application has been made to the Tribunal for a review of the recommendation within those 30 days, or
  - (b) the Tribunal has determined an application for a review (made within those 30 days) of the recommendation and the Minister has considered any contrary recommendation of the Tribunal and the reasons for it, or
  - (c) any such application for a review of the recommendation has been withdrawn.
- (5) The Minister is to give written notice of a decision not to renew the registration of a non-government school 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.

## **57 Duration of renewal of registration**

- (1) The renewal of registration of a non-government school has effect (subject to section 57A) for the period specified in the further certificate of registration.

- (2) The maximum period for which registration may be renewed is 5 years.
- (3) If, at any time before the expiration of the renewal of registration of a non-government school, the Board is not satisfied that the requirements for its registration are being complied with, it may give a written notice under subsection (4) 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, the approved authority for the system.
- (4) The notice:
  - (a) is to state that the Board will recommend to the Minister that the period of renewal of registration be reduced under section 57A unless the matters specified in the notice have been addressed, and
  - (b) may specify the time within which such matters should be addressed.

#### **57A Reduction of period of initial registration or renewal of registration**

- (1) The Minister may, on the recommendation of the Board, reduce the duration of the initial period of registration, or renewal of registration, of a non-government school by issuing a further certificate of registration for the school specifying that the period of registration has been reduced and that the registration is now to have effect on a provisional basis for the period specified in the further certificate.
- (2) The Minister may do so only if the Minister is not satisfied that the requirements for registration are being complied with at the non-government school.
- (3) The Minister may reduce the duration of the initial period of registration, or a renewal of registration, of a non-government school on more than one occasion.
- (4) A person who conducts a non-government school that has the duration of its initial period of registration, or renewal of registration, reduced under this section must, as soon as practicable, notify the parents of students at the school in writing that the period has been reduced and the consequences of the reduction.

Maximum penalty: 5 penalty units.

#### **58 Common registration cycles for schools in a system**

The Minister may (but is not required to) register or renew the registration of non-government schools in a system so that their registration expires on the same date.

#### **59 Cancellation of registration**

- (1) The Minister may, on the recommendation of the Board, cancel the registration of a non-government school by written notice given 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.

- (2) The Minister may not do so unless the Minister is satisfied that the requirements for registration are not being complied with at the non-government school.
- (3) The Minister may not cancel the registration of a non-government school under this section unless written notice of the Board's recommendation has been given 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 and:
  - (a) 30 days have elapsed since the giving of that notice, during which time no application has been made to the Tribunal for a review of the Board's recommendation, or
  - (b) the Tribunal has determined an application for a review (made within those 30 days) of the recommendation and the Minister has considered any contrary recommendation of the Tribunal and the reasons for it, or
  - (c) any such application for a review of the recommendation has been withdrawn.

#### **60 Notice to be given of relocation of school**

- (1) If a registered non-government school or part of such a school is proposed to be moved to new premises, written notice is to be given to the Minister at least 3 months before the relocation.
- (2) If notice of the relocation is not so given, the proprietor and principal of the school are each guilty of an offence.

Maximum penalty: 5 penalty units.

- (3) If a registered non-government school or part of a registered non-government school is relocated, the school's registration continues (subject to this Part).
- (4) A reference in this section and section 61 to the relocation of a registered non-government school or part of such a school does not include a reference to the relocation of any playing field, sporting facility or other premises or building unconnected with:
  - (a) the teaching of courses of study, or
  - (b) the amenities for teachers and students participating in those courses, or
  - (c) the boarding facilities provided for students by the school.

#### **61 Cancellation of registration of relocated schools**

- (1) The Minister may, on the recommendation of the Board, cancel the registration of a non-government school that has been relocated or partially relocated by written notice 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.

- (2) The Minister may not do so unless the Minister is satisfied that the requirements for registration (relating to the premises, buildings and facilities of the school) will not be complied with at the school.
- (3) The registration of a non-government school may not be cancelled under this section after the school has been relocated or partially relocated for more than 12 months.
- (4) The Minister may not cancel the registration of a non-government school under this section unless written notice of the Board's recommendation has been given 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 and:
  - (a) 30 days have elapsed since the giving of that notice, during which time no application has been made to the Tribunal for a review of the Board's recommendation, or
  - (b) the Tribunal has determined an application for a review (made within those 30 days) of the recommendation and the Minister has considered any contrary recommendation of the Tribunal and the reasons for it, or
  - (c) any such application for a review of the recommendation has been withdrawn.
- (5) The Minister may not cancel the registration of a non-government school under this section the whole or part of which has been relocated because:
  - (a) the school has been damaged, or
  - (b) access to the school or part of the school has been cut off,by any event that was neither contemplated nor reasonably foreseeable by the proprietor or principal of the school.

## **62 Sale of schools**

- (1) If a registered non-government school is sold, written notice of the sale is to be given by the purchaser to the Minister within 7 days after completion of the sale.  
Maximum penalty: 5 penalty units.
- (2) The unexpired portion of the school's current period of registration, if greater than 6 months, is to be taken, for the purposes of this Act, to be 6 months only or such longer period (not exceeding the unexpired portion) as the Minister determines from the date of completion of the sale.

## **63 Changes in circumstances of operation of schools**

- (1) If a registered non-government school undergoes, or is to undergo, any change of a

prescribed kind in the circumstances of its operation, written notice of that change must be given in accordance with the regulations by 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, the approved authority for the system.

Maximum penalty: 5 penalty units.

- (2) The regulations may provide that, in the event of any specified change (of a prescribed kind) in the circumstances of the operation of a non-government school, the registration of the school:
- (a) ceases, or
  - (b) is limited to a period specified in the regulations.

### **63A Board to be notified of certain matters**

- (1) A responsible person for a school, or any other person or body having similar functions in relation to the school to those of such a responsible person, who:
- (a) is convicted of an offence punishable by imprisonment for 12 months or more, or
  - (b) 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
  - (c) if the person is a corporation—is the subject of a winding up order or has had a controller or administrator appointed,

must notify at least one other responsible person or responsible person for the school, and the Board, of the circumstances of the conviction, bankruptcy, insolvency, winding up order or appointment as soon as practicable after it occurs.

Maximum penalty: 5 penalty units.

- (2) If a responsible person for a school or other person or body having similar functions as a responsible person in relation to the school becomes a mentally incapacitated person, the following persons must cause notice of the incapacity to be given to the Board and at least one other responsible person for the school:
- (a) in the case of a responsible person who is a mentally incapacitated person and becomes a patient at an institution because of that incapacity—the medical superintendent of the institution,
  - (b) in the case of a responsible person who is a mentally incapacitated person because of being a protected person under the *Protected Estates Act 1983*—the Protective Commissioner.

Maximum penalty: 5 penalty units.



- (3) Notice under subsection (2) must be given as soon as practicable after the responsible person or other person or body having similar functions to those of a responsible person is admitted to the institution or becomes a protected person.
- (4) For the purposes of this section, notice given to any person designated by the Board as a designated person for the purposes of this section in an official notice given to schools by the Board is taken to be notice given to the Board.

## **Division 5 General**

### **64 Registration etc of part of non-government school**

- (1) A reference in this Act to the registration, the renewal of registration or the cancellation of registration of a non-government school includes a reference to the registration, the renewal of registration or the cancellation of registration of part of a non-government school.
- (2) Registration of part of a non-government school is registration of a non-government school as efficient only for education:
  - (a) for specified Years, or
  - (b) for education of a kind, or for children of a kind, prescribed by the regulations.

### **65 Conducting unregistered schools**

- (1) A person must not conduct or knowingly permit or assist in the conduct of a school (other than a government school) for the education of children of compulsory school-age unless the school is registered under this Part.
- (2) A person must not conduct or knowingly permit or assist in the conduct of a school (other than a government school) for:
  - (a) the education of primary school children of compulsory school-age, or
  - (b) the education of secondary school children of compulsory school-age, or
  - (c) education of a kind, or for children of a kind, prescribed by the regulations,unless the school is registered as efficient for the education of those children or education of that kind.
- (3) A person who conducts a school (other than a government school) for the education of children of compulsory school-age, being a school that is not or ceases to be registered under this Part, must, as soon as practicable, notify the parents of those children in writing that the school is not registered.

Maximum penalty: 5 penalty units and, in the case of a continuing offence, a further penalty not exceeding 5 penalty units for each day the offence continues.

#### **66 Certificate of registration to be displayed**

- (1) The current certificate of registration of a non-government school is to be displayed in the entrance to the main school building or in some other conspicuous place at the school.
- (2) If the certificate is not so displayed, the principal of the school is guilty of an offence.  
Maximum penalty: 5 penalty units.

#### **67 Proposal to offer education of a different kind**

A proposal that a registered non-government school offer education different from that for which the school is, by its current certificate of registration, registered as efficient, is to be dealt with as if it were a proposal to establish a new school.

#### **68 Proposal to re-establish school**

A proposal to re-establish a non-government school:

- (a) which has for any reason become unregistered, or
- (b) which, it is anticipated, will become unregistered because of this Part,

is to be dealt with under this Part as if it were a proposal to establish a new school.

#### **69 Returns by schools**

The approved authority for a system of non-government schools, or the proprietor or principal of a registered non-government school that is not a member of such a system, is to provide returns to the Board concerning the requirements for registration in relation to the school in a form (and at the times) approved by the Board for the purpose.

Maximum penalty: 5 penalty units.

### **Division 6 Registration for home schooling**

#### **70 Definitions of “authorised person” and “home schooling”**

In this Division:

**authorised person** means a Board inspector, or any other person, authorised in writing by the Minister to exercise the functions of an authorised person for the purposes of the provision in this Division in which the expression occurs.

**home schooling** means schooling in the child’s home.

#### **71 Application for registration for home schooling**

- (1) A parent of a child may apply in writing to the Minister for registration of the child for home schooling.

- (2) As soon as practicable after such an application is made, the Minister is to obtain advice on the application from an authorised person.
- (3) The authorised person is to notify the applicant in writing of a recommendation to the Minister that the application be refused.

## **72 Registration for home schooling**

- (1) As soon as practicable after receiving the recommendation of an authorised person about an application for registration of a child for home schooling, the Minister:
  - (a) is to register the child in a Register kept by the Minister for the purpose, or
  - (b) is to refuse to register the child.
- (2) The Minister is to register the child if the Minister, having regard to:
  - (a) the recommendation of the authorised person about the application, and
  - (b) any decision of the Tribunal on an application for a review of the authorised person's recommendation,is satisfied that the conditions subject to which registration is required to be given will be complied with.
- (3) The Minister may register more than one child of any one parent for home schooling.
- (4) If the authorised person recommends that the Minister refuse to register a child for home schooling, the Minister may not do so unless:
  - (a) 30 days have elapsed since the applicant was given written notice of the authorised person's recommendation and no application has been made to the Tribunal for a review of the recommendation within those 30 days, or
  - (b) the Tribunal has determined an application for a review (made within those 30 days) of the recommendation and the Minister has considered any contrary recommendation of the Tribunal and the reasons for it, or
  - (c) any such application for a review of the recommendation has been withdrawn.
- (5) The Minister is to notify the applicant in writing of the Minister's decision to refuse to register the child for home schooling.
- (6) On registration of a child for home schooling, a certificate of registration is to be issued for the child to the applicant for registration.

## **73 Conditions and duration of registration for home schooling**

- (1) The registration of a child for home schooling is subject to the conditions specified in the certificate of registration.

- (2) The conditions so specified:
  - (a) must comply with the requirements of the regulations, and
  - (b) subject to any such regulations, must provide for the child to receive instruction that meets the relevant requirements of Part 3 relating to the minimum curriculum for schools.
- (3) Registration of a child for home schooling is to be limited in its operation to a period (not exceeding 2 years) specified in the certificate of registration.

#### **74 Cancellation of registration for home schooling**

- (1) The Minister may, on the recommendation of an authorised person, cancel the registration of a child for home schooling by notice in writing to a parent of the child, if the parent:
  - (a) has failed to ensure that the child receives instruction in accordance with the conditions to which the registration is subject, or
  - (b) has refused or failed to allow an authorised person (in accordance with those conditions) to enter, at any reasonable time, the premises where the child receives schooling or to inspect those premises or records required to be kept for the purposes of this Act, or
  - (c) has breached any other condition to which the certificate of registration is subject.
- (2) The Minister may not cancel the registration of a child for home schooling under subsection (1) (a) if:
  - (a) the child was prevented from receiving instruction by sickness, permanent or temporary incapacity or some accident or unforeseen event, or
  - (b) the child has not received instruction for only 3 school days or less in any period of 3 months during which the child has been registered for home schooling, or
  - (c) any failure to ensure that the child received instruction was a result of the child's disobedience and was not due to the default of the parent.
- (3) The Minister may not cancel the registration of a child for home schooling written unless notice of the authorised person's recommendation to the Minister has been given to a parent of the child and:
  - (a) 30 days have elapsed since the giving of that notice, during which time no application has been made to the Tribunal for a review of the recommendation, or
  - (b) the Tribunal has determined an application for a review (made within those 30 days) of the recommendation and the Minister has considered any contrary recommendation of the Tribunal and the reasons for it, or

(c) any such application for a review of the recommendation has been withdrawn.

## **Division 7 Conscientious objections to registration**

### **75 Notice to the Minister of conscientious objection**

A person who:

- (a) proposes to establish a new non-government school, or
- (b) is the proprietor of a registered non-government school, or
- (c) being a parent of a child, wishes the child to receive home schooling,

may give the Minister written notice that the person conscientiously objects on religious grounds to registration under this Act.

### **76 Consideration by Board of notice of conscientious objection**

- (1) The Minister, on receipt of a notice of conscientious objection to registration, is to refer the matter:
  - (a) if the objection is to registration of a school, to the Board, or
  - (b) if the objection is to registration of a child for home schooling, to an authorised person (within the meaning of Division 6).
- (2) As soon as practicable (but not later than 6 months) after an objection is referred to the Board or an authorised person for advice, the Board or authorised person is to give the Minister a written report about the matter, including a recommendation as to whether or not the Minister should accept the objection.
- (3) The Board or the authorised person is to give the person who objects to registration written notice of a recommendation to the Minister that the Minister not accept the objection.
- (4) For the purposes of Part 10 (Review of decisions by Tribunal) any such recommendation is to be regarded as:
  - (a) in the case of an objection to registration of a school, a recommendation that the Minister not register the school, or
  - (b) in the case of an objection to registration of a child for home schooling, a recommendation that the Minister not register the child for home schooling.

### **77 Acceptance or rejection of conscientious objection**

- (1) The Minister may accept an objection to registration under this Act if the Minister, having considered the report of the Board or authorised person and any decision of the Tribunal, is satisfied that:

- (a) the Minister would be required to register the school or the child for home schooling (as the case may be) under this Act if an application had been made for such registration, and
  - (b) the objection to registration is conscientiously held on religious grounds.
- (2) If the Board or authorised person has recommended that the Minister not accept an objection to registration, the Minister may not refuse to accept the objection unless:
- (a) 30 days have elapsed since the objector was given written notice of the recommendation of the Board or authorised person and no application has been made to the Tribunal for a review of the recommendation within those 30 days, or
  - (b) the Tribunal has determined an application for a review (made within those 30 days) of the recommendation and the Minister has considered any contrary recommendation of the Tribunal and the reasons for it, or
  - (c) any such application for a review of the recommendation has been withdrawn.

#### **78 Certificate of exemption**

- (1) If the Minister accepts an objection to registration, the Minister is to issue a certificate exempting the school or the child (as the case may be) from the requirement to be registered under this Act.
- (2) A certificate under this section may be given subject to conditions.
- (3) A certificate under this section is to be limited in its operation to a period, specified in the certificate, not exceeding:
  - (a) 5 years in the case of a school, or
  - (b) 2 years in the case of home schooling.

#### **79 Notice of decision to refuse to accept objection**

The Minister is to give any person who objects to registration under this Part written notice of a decision not to accept the objection.

#### **80 Exempted school to be regarded as registered**

- (1) A school to which a current certificate of exemption applies under this Division is to be regarded as registered under this Act.
- (2) For the purposes of the application of this Act to such a school, the school is to be regarded as becoming unregistered if:
  - (a) the period for which the school has been exempted has expired and a written notice of a decision of the Minister not to accept a further objection to registration under this Act has been given in accordance with this Part, or

(b) the school's exemption has been cancelled under this Division.

### **81 Child to be regarded as registered for home schooling**

A child to whom a current certificate of exemption applies under this Division is to be regarded as registered for home schooling under this Act.

### **82 Cancellation of exemption**

- (1) The Minister may, on the recommendation of the Board or an authorised person (as the case may be), cancel an exemption granted under this Division if the Minister is satisfied:
  - (a) that the Minister would be entitled to cancel the registration of the school or child for home schooling had the school or child been registered, or
  - (b) that the objection to registration is not conscientiously held on religious grounds.
- (2) A recommendation of the Board or the authorised person that the Minister cancel an exemption under this Division is to be regarded for the purposes of Part 10 (Review of decisions by Tribunal) as:
  - (a) in the case of a school, a recommendation that registration of the school be cancelled, or
  - (b) in the case of a child receiving home schooling, a recommendation that registration of the child for home schooling be cancelled.
- (3) The Minister may not cancel an exemption under this Division unless written notice of the recommendation of the Board or the authorised person has been given to the proprietor of the school or the parent of the child concerned and:
  - (a) 30 days have elapsed since the giving of that notice, during which time no application has been made to the Tribunal for a review of the recommendation of the Board or the authorised person, or
  - (b) the Tribunal has determined an application for a review (made within those 30 days) of the recommendation and the Minister has considered any contrary recommendation of the Tribunal and the reasons for it, or
  - (c) any such application to the Tribunal has been withdrawn.

### **83 Current certificate of exemption to be displayed**

- (1) The current certificate of exemption of a school is to be displayed in the entrance to the main school building or in some other conspicuous place at the school.
- (2) If the certificate is not so displayed, the principal of the school is guilty of an offence.

Maximum penalty: 5 penalty units.

## **Part 8 Certificates of study**

### **Division 1 Accreditation of non-government schools**

#### **84 Accreditation of existing registered non-government schools**

- (1) A non-government school that, immediately before the commencement of this section, provided courses of study for students in Year 10 is to be taken to have been accredited under this Part on that commencement for the purpose of presenting candidates for the School Certificate.
- (2) A non-government school that, immediately before the commencement of this section, provided courses of study for students in Year 11 or Year 12 is to be taken to have been accredited under this Part on that commencement for the purpose of presenting candidates for the Higher School Certificate.
- (3) This section applies only to a registered non-government school.
- (4) Accreditation under this section has effect for the period of the school's continuing registration in accordance with section 48.

#### **85 Applications for accreditation of registered non-government schools**

- (1) Application may be made to the Board for the accreditation of a registered non-government school for the purpose of presenting candidates for the School Certificate or Higher School Certificate, or both.
- (2) Such an application may be made by the proprietor or principal of a registered non-government school or, in the case of a registered non-government school that is a member of a system of non-government schools, by the approved authority for the system.

#### **86 Accreditation by Board**

- (1) As soon as practicable after receiving an application for accreditation of a non-government school, the Board:
  - (a) is to accredit the school in a Register kept by the Board for the purpose, or
  - (b) is to refuse to accredit the school.
- (2) The Board is to accredit a non-government school if it is satisfied that the requirements of this Act relating to the courses of study to be undertaken by candidates for the certificate concerned will be complied with at the school.
- (3) The Board may satisfy itself of that matter by having regard to either or both of the following:
  - (a) material provided by the applicant indicating the methods used or intended to be



used to monitor and ensure compliance with those requirements,

(b) a report of a Board inspector.

(4) The Board is to issue a certificate of accreditation for any school it accredits.

### **87 Duration of accreditation**

(1) Accreditation has effect (subject to section 87A) for such period, not exceeding 5 years, as is specified in the certificate of accreditation, commencing on a date so specified.

(2) Unless the Board considers it is not appropriate in any particular case, the period of accreditation of a non-government school is to correspond to the period of registration of the school.

(3) If a school becomes a member of a system of non-government schools, the Board may require the school to be re-accredited for a different period in order to comply with subsection (2).

### **87A Reduction of period of accreditation**

(1) If, at any time before the expiration of the accreditation of a non-government school, the Board is not satisfied that the requirements of this Act relating to the courses of study to be undertaken by its candidates for the certificate concerned are being complied with, it may give a written notice under subsection (2) 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, the approved authority for the system.

(2) The notice:

(a) is to state that the Board will reduce the period of accreditation of the school under subsection (3) unless the matters specified in the notice have been addressed, and

(b) may specify the time within which such matters should be addressed.

(3) If a school that receives a notice under subsection (2) fails to address the matters specified in the notice to the satisfaction of the Board (within the time, if any, specified in the notice), the Board may reduce the duration of the accreditation of the school by issuing a further certificate of accreditation for the school specifying a reduced period of accreditation.

(4) The Board may reduce the duration of the accreditation of a school on more than one occasion.

(5) The proprietor or principal of a non-government school that has its period of accreditation reduced under this section 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, as soon as practicable after the period is reduced, notify the parents of students at the school in writing that the period has been reduced and the consequences of the reduction.

Maximum penalty: 5 penalty units.

#### **88 Decision of Board not to accredit school**

- (1) The Board is to give written notice of a decision not to accredit or to grant accreditation different from that applied for and the reasons for its decision to the applicant for accreditation.
- (2) Any such decision of the Board has no effect:
  - (a) until 30 days have elapsed since the applicant was given written notice of the decision, or
  - (b) if an application for a review of the decision has been made to the Tribunal within those 30 days, unless (and until such time as) the Tribunal has confirmed the decision or the application has been withdrawn.

#### **89 Minister may accredit school**

- (1) If the Tribunal, in determining an application to review a decision of the Board not to accredit a non-government school (or to grant accreditation different from that applied for), recommends to the Minister that the Minister accredit the school, the Minister is:
  - (a) to accredit the school, or
  - (b) to refuse to accredit the school.
- (2) The Minister may accredit the school if the Minister, having considered the reasons for the Board's decision and the reasons for the recommendation of the Tribunal, is satisfied that the school will comply with the requirements of this Act relating to the courses of study to be undertaken by candidates for the recognised certificate concerned.

#### **90 Renewal of accreditation**

- (1) The accreditation of a non-government school may, on application duly made, be renewed before the expiry of the period for which accreditation was last granted.
- (2) The provisions of this Division relating to applications for initial accreditation and the determination of those applications apply to applications for renewal of accreditation and the determination of those applications.

## **91 Cancellation of accreditation**

(1) The Board may, by written notice to:

- (a) the proprietor or principal of a non-government school, or
- (b) in the case of a school that is a member of a system of non-government schools, the approved authority for the system,

cancel the accreditation of the school if the Board is satisfied that the requirements of this Act relating to the courses of study to be undertaken by candidates for the certificate concerned are not being complied with at the school.

(2) Any such notice has no effect:

- (a) until 30 days have elapsed since the giving of the notice, or
- (b) if an application for a review of the decision has been made to the Tribunal within those 30 days, unless (and until such time as) the Tribunal has confirmed the decision or the application has been withdrawn.

(3) If the Tribunal, in determining an application to review cancellation of accreditation, recommends to the Minister that accreditation not be cancelled, the Minister, as soon as practicable after the application has been determined, is:

- (a) to quash the Board's decision to cancel the school's accreditation, or
- (b) to cancel the school's accreditation or to cancel it in so far as it relates to one of the recognised certificates.

(4) The Minister is to give 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, the approved authority for the system, written notice of the Minister's decision.

(5) The accreditation of a school is cancelled if the school ceases to be a registered non-government school.

## **92 Quality of educational program to be assessed**

(1) In deciding whether the requirements of this Act relating to the courses of study for the recognised certificate concerned will be complied with (or are being complied with) at a non-government school, the Board or the Minister is to have regard to such matters as:

- (a) the record (if any) of achievement by students at the school in the courses, and
- (b) the standard of teaching of the courses at the school, and
- (c) the facilities provided or to be provided at the school for the courses.

- (2) While the Board or the Minister may have regard to such other matters as the Board or the Minister thinks fit (including the number of hours allocated at the school for the courses of study concerned), the matters referred to in subsection (1) (a), (b) and (c) are the principal matters to which each is to have regard in deciding whether the requirements will be (or are being) complied with at the school.

### **93 Conducting school that is not accredited**

- (1) A person must not conduct or knowingly permit or assist in the conduct of a school (other than a government school) for the education of candidates for the School Certificate or Higher School Certificate unless the school is accredited to present those candidates for that Certificate.
- (2) A person who conducts a school (other than a government school) for the education of candidates for the School Certificate or Higher School Certificate, being a school that is not or ceases to be accredited to present those candidates for that Certificate, must, as soon as practicable, notify the parents of those candidates in writing that the school is not accredited for that purpose and of the consequences for candidates for that Certificate of the school not being accredited for that purpose.

Maximum penalty: 5 penalty units and, in the case of a continuing offence, a further penalty not exceeding 5 penalty units for each day the offence continues.

## **Division 2 Certificates**

### **94 School Certificate**

- (1) School Certificates are to be granted by the Board to students:
- (a) who:
- (i) have attended a government school, or
  - (ii) have attended a registered non-government school to which a current certificate of accreditation for presentation of candidates for the School Certificate applies, or
  - (iii) have attended a school outside New South Wales recognised by the Board, and
- (b) who have participated, to the Board's satisfaction, in courses of study which have been determined under this Act as appropriate to be undertaken by candidates for the School Certificate, and
- (c) who have been accepted by the Board as having satisfactorily completed those courses of study, and
- (d) who have, to the Board's satisfaction, undertaken the requisite examinations or

other forms of assessment, and

- (e) who have complied with any requirements prescribed by the regulations or any requirements imposed by the Minister or the Board, and
  - (f) who have completed Year 10.
- (2) The requisite examination or other assessment may be conducted on a school-basis, but must include tests conducted on a State-wide basis in the following areas:
- (a) English-literacy,
  - (b) Mathematics,
  - (c) Science,
  - (d) Australian History, Australian Geography and Civics and Citizenship,
  - (e) Computing Skills.
- (3) The requirements of subsection (2) do not apply in relation to a particular area referred to in subsection (2) (a)-(c) until a date determined by the Minister after consultation with the Board.
- (4) The requirements of subsection (2) do not apply in relation to the particular areas referred to in subsection (2) (d) until 1 January 2002 or, if before that date the Minister after consultation with the Board determines a later date, until that later date.
- (4A) The requirements of subsection (2) do not apply in relation to the area referred to in subsection (2) (e) until 1 January 2006 or, if before that date the Minister after consultation with the Board determines a later date, until that later date.
- (5) The Board may refuse to grant a School Certificate to a student whose attendance or application at school has been of such an unsatisfactory character that the grant of the certificate would not, in the opinion of the Board, be justified.

## **95 Higher School Certificate**

- (1) Higher School Certificates are to be granted by the Board to students:
- (a) who have been granted a School Certificate or who have attained such other qualifications as the Board considers satisfactory, and
  - (b) who:
    - (i) have attended a government school, or
    - (ii) have attended a registered non-government school to which a current certificate of accreditation for presentation of candidates for the Higher School Certificate applies, or

- (iii) have attended a school outside New South Wales recognised by the Board or a TAFE establishment within the meaning of the *Technical and Further Education Commission Act 1990*, and
  - (c) who have participated, to the Board's satisfaction, in courses of study which have been determined under this Act as appropriate to be undertaken by candidates for the Higher School Certificate, and
  - (d) who have been accepted by the Board as having satisfactorily completed those courses of study, and
  - (e) who have, to the Board's satisfaction, undertaken the requisite examinations or other forms of assessment, and
  - (f) who have complied with any requirements prescribed by the regulations or any requirements imposed by the Minister or the Board.
- (2) The requisite examination or other assessment must include a public examination conducted on a State-wide basis.
- (3) The Board may refuse to grant a Higher School Certificate to a student whose attendance or application at school has been of such an unsatisfactory character that the grant of the certificate would not, in the opinion of the Board, be justified.

**95A Award of School Certificate or Higher School Certificate to students following special course of study**

- (1) The Board may dispense with the requirement in section 94 that a candidate for the School Certificate undertake a test referred to in section 94 (2) if the Board is satisfied that:
- (a) the candidate has special educational needs, and
  - (b) the candidate has completed a course of study:
    - (i) developed by the Board and approved by the Minister for candidates with special educational needs, and
    - (ii) adapted by the school that the candidate attends to cater for the special educational needs of the candidate, and
  - (c) the principal of the school has submitted a written report to the Board that the candidate has achieved the outcomes required by the Board of candidates undertaking the course of study.
- (2) The Board may dispense with the requirement in section 95 that a candidate for the Higher School Certificate undertake a public examination referred to in section 95 (2) if the Board is satisfied that:

- (a) the candidate has special educational needs, and
- (b) the candidate has completed a course of study:
  - (i) developed by the Board and approved by the Minister for candidates with special educational needs, and
  - (ii) adapted by the school that the candidate attends to cater for the special educational needs of the candidate, and
- (c) the principal of the school has submitted a written report to the Board that the candidate has achieved the outcomes required by the Board of candidates undertaking the course of study.

#### **96 Certificate candidates affected by illness etc**

- (1) If the Board is satisfied that a candidate for one of the recognised certificates was unable, because of illness or misadventure, to undertake an examination or other form of assessment for that certificate, the Board may determine that the candidate is to be treated, for the purposes of this Act, as:
  - (a) having undertaken the examination or other form of assessment, and
  - (b) having attained in the examination or other form of assessment a standard determined by the Board.
- (2) The Board may:
  - (a) on evidence put before it, conclude that a candidate for one of the recognised certificates at an examination or other form of assessment for that certificate was seriously affected by illness or misadventure, and
  - (b) determine that the candidate is to be treated, for the purposes of this Act, as having attained in the examination or other form of assessment a standard determined by the Board.
- (3) In determining a standard for the purposes of this section, the Board is to have regard to such evidence as is available to the Board relating to the candidate's participation in the course of study to which the examination or other form of assessment related.
- (4) The Board is not obliged to make a determination under this section except on application:
  - (a) made to it within the period prescribed by the rules of the Board, and
  - (b) supported by evidence acceptable to the Board.

#### **97 Reconsideration of decisions**

- (1) If a person who considers himself or herself to be adversely affected by a decision of

the Board in relation to the award of a School Certificate or a Higher School Certificate requests the Board to reconsider the decision, the Board is, subject to the rules of the Board, to reconsider the decision and confirm, reverse or vary the decision.

- (2) The Board's decision in relation to the request is final.
- (3) Rules of the Board may make provision for or with respect to:
  - (a) the manner in which, and the time within which, a request under this section must be made, and
  - (b) any other matter relevant to the disposal of any such request.

## **98 Record of achievement**

- (1) The Board is to issue a record of achievement to a student at any government school or accredited non-government school in the following cases:
  - (a) a student who completes Year 10 (whether or not the student leaves school),
  - (b) a student who undertakes courses of study in Year 11 or 12 (but only when the student leaves school).
- (2) The record is to specify the student's achievements in any courses of study undertaken in Year 10 or in Year 11 or 12 (as the case requires), and may include such other information relating to the student's activities at school as the Board thinks appropriate.
- (3) A record of achievement is not to be issued unless the student is undertaking courses of study for a recognised certificate.
- (4) A student is to be issued with a record of achievement whether or not the student is also granted a recognised certificate.
- (5) If the student has completed less than the period of study determined by the Board in either Year 11 or 12, the Board is not required to include any information relating to the student's achievements or activities in Year 11 or 12, respectively.
- (6) The Board may issue special records of achievement to students with intellectual disabilities who undertake formal courses of study even though the courses are not undertaken for a recognised certificate.

## **Part 9 The Board of Studies**

### **99 The Board of Studies**

- (1) There is constituted by this Act a corporation with the corporate name of the Board of Studies.



(2) The Board:

- (a) has the functions conferred or imposed on it by or under this or any other Act, and
- (b) is, for the purposes of any Act, a statutory body representing the Crown.

**100 Constitution of the Board**

(1) The Board is to consist of:

- (a) the President of the Board, and
- (b) 3 ex-officio members, and
- (c) 19 appointed members.

(2) The ex-officio members are:

- (a) the Director-General of School Education or a nominee of that Director-General, and
- (b) the Managing Director of the TAFE Commission or a nominee of that Managing Director, and
- (c) the Executive Director of the Ministry of Education and Youth Affairs or an officer of that Ministry nominated by the Executive Director.

(3) The appointed members are to be persons appointed by the Minister, being:

- (a) one nominee of the New South Wales Vice-Chancellors' Committee,
- (b) two nominees of the Council of the Federation of Parents and Citizens Associations of New South Wales, one nominee to represent parents of primary school children and the other nominee to represent parents of secondary school children,
- (c) one nominee of the Catholic Education Commission of New South Wales,
- (d) one person, being a nominee of the Association of Independent Schools, the Headmasters' Conference and the Association of Heads of Independent Girls' Schools,
- (e) one non-government school teacher (other than a principal), being a nominee of the Independent Teachers' Association,
- (f) one parent of a child attending a non-government school, being a nominee of the Council of Catholic School Parents and the New South Wales Parents' Council,
- (g) 2 principals of government schools, one being a nominee of the New South Wales Council of Primary School Principals and the other being a nominee of the New South Wales Council of Secondary School Principals,

- (h) 2 nominees of the New South Wales Teachers Federation, one being a primary government school teacher (other than a principal) and the other being a secondary government school teacher (other than a principal),
- (i) one person with knowledge and expertise in early childhood education,
- (j) an Aboriginal person with knowledge and expertise in the education of Aboriginal people,
- (k) 6 other persons having, in the Minister's opinion, qualifications or experience that enables them to make a valuable contribution to primary or secondary education in New South Wales.

(4) Schedule 1 has effect with respect to the members and procedure of the Board.

### **101 President of the Board**

- (1) The Governor may appoint a President of the Board.
- (2) The President is to be appointed on a full-time basis.
- (3) The employment of the President is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.

### **101A Acting President of Board**

- (1) The Minister may, from time to time, appoint a person to act in the office of President during the illness or absence of the President or during a vacancy in the office of President. The person, while so acting, has all the functions of the President and is taken to be the President.
- (2) The Minister may, at any time, remove a person from the office to which the person was appointed under this section.
- (3) A person while acting under this section is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

### **102 Functions of the Board**

- (1) The Board is to exercise its functions in connection with the education of children at both the primary and secondary level.
- (2) In particular, the Board has the following functions:
  - (a) to develop or endorse syllabuses and exercise its other functions under Part 3 (The School Curriculum),
  - (b) to provide advice and make recommendations to the Minister about the

- registration of non-government schools under Part 7,
- (c) to accredit registered non-government schools under Part 8,
  - (d) to grant the recognised certificates,
  - (e) to prepare and distribute to schools information relating to the courses of study for candidates for the recognised certificates, and information relating to eligibility to be granted those certificates,
  - (f) to prepare and make available to schools curriculum support materials,
  - (g) to develop or endorse syllabuses for courses of study that are appropriate for students (including candidates for the recognised certificates) who wish to continue at or return to school after the normal school-leaving age (including on a part-time basis),
  - (h) to develop or endorse, in consultation with the TAFE Commission, syllabuses for courses of study that will enable school students to be granted credits by TAFE establishments within the meaning of the *Technical and Further Education Commission Act 1990*,
  - (i) to make such arrangements as may be necessary for the conduct of examinations or other forms of assessment for candidates for the recognised certificates and to regulate the conduct of those examinations or other forms of assessment and the recording of candidates' achievements in them,
  - (j) to prepare and distribute to schools information relating to the conduct of examinations and other forms of assessment for candidates for the recognised certificates,
  - (k) to recognise, for any of the purposes of this Act, educational attainments obtained at educational institutions outside New South Wales,
  - (l) to provide advice and guidance to schools concerning the policies and practices of the Board,
  - (m) to provide advice and assistance to students, employers and the public concerning the nature and content of courses of study for the recognised certificates (and the assessment and reporting of candidates' achievements in those courses),
  - (n) to monitor, by inspection of schools and otherwise, the application of its policies in schools,
  - (o) to arrange for the development of appropriate curriculum resources and other material to assist in the education of school students with an Aboriginal background,

- (p) to develop curriculum resources for use in the teaching of Aboriginal studies (including Aboriginal history and culture),
- (q) to promote the provision of education in schools that adequately equips students to acquire a vocation and for their life in the community,
- (r) to advise the Minister in relation to the following matters:
  - (i) any changes to the requirements of Part 3 that the Board considers appropriate,
  - (ii) the functions of the Minister under Part 4,
  - (iii) whether changes should be made in the number or type of recognised certificates,
  - (iv) the likely impact of any change in the Board's policies (particularly in relation to courses of study) on the overall planning, allocation or use of educational resources in New South Wales,
  - (v) special arrangements for students with special educational needs, including the approval of special courses of study, the modification of requirements for the grant of the recognised certificates and the grant of special records of achievement,
  - (vi) any matter in relation to which the Minister requests the Board's advice.
- (3) The Board, in the exercise of its functions, is to have regard to the resources available for education in New South Wales schools.

### **103 Committees of Board**

- (1) The Board may, with the approval of the Minister, appoint such committees and members of committees as the Board considers appropriate to assist the Board in the exercise of its functions.
- (2) The Board is not to appoint a person as a member of a committee of the Board unless the Board is of the opinion that the person has appropriate expertise to make a valuable contribution to the committee.
- (3) It does not matter if any or all of the members of a committee are not members of the Board.
- (4) The procedure of a committee of the Board is to be determined by the Board or (subject to any determination of the Board) by the committee.

### **104 Staff of the Board**

- (1) The Board may employ temporarily such persons, to be known as Board inspectors, as

it requires:

- (a) to be primarily responsible, under the direction of the Board, for leading statewide developments in school curriculum, and
- (b) to exercise such functions as the Board may specify in connection with approvals and registrations under Part 7 or accreditations under Part 8, and
- (c) to exercise such other functions as may be conferred on Board inspectors by this Act or as the Board may determine.

Schedule 1A has effect with respect to the employment of Board inspectors in accordance with this subsection.

- (1A) Such other staff as may be necessary to enable the Board to exercise its functions are to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Board may, with the approval of the Minister, arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a teaching service, a government department, an administrative office, a public or local authority or any other relevant body.
- (3) The Board may appoint any person whose services are made use of under this section to exercise the functions of a Board inspector under this Act.

#### **105 Casual staff**

- (1) The Board may employ casual staff in connection with the exercise of its functions in respect of examinations or other forms of assessment or for any other purpose approved by the Minister.
- (2) Any such casual staff are to be employed on such terms and conditions as are approved by:
  - (a) in the case of casual staff employed to mark examinations—the Department Head of the Office of the Board, or
  - (b) in any other case—the Public Employment Industrial Relations Authority.
- (3) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the employment of any such casual staff.

#### **106 Annual report of Board to Parliament**

- (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Board is to prepare and forward to the Minister a report of its work and activities for the 12 months ending on the 30 June in that year.
- (2) The Minister is required to lay the report or cause it to be laid before both Houses of

Parliament as soon as practicable after receiving the report.

## **Part 10 Review of decisions by Tribunal**

### **107 Applications for reviews of certain decisions**

- (1) An application may be made to the Tribunal for a review of any of the following decisions:
  - (a) a recommendation of the Board that registration of a non-government school be refused,
  - (b) a recommendation of the Board that registration of a non-government school not be renewed,
  - (c) a recommendation of the Board that registration of a non-government school be cancelled,
  - (d) a recommendation of an authorised person that the Minister refuse to register a child for home schooling,
  - (e) a recommendation of an authorised person that the registration of a child for home schooling be cancelled,
  - (f) a decision of the Board not to accredit a school,
  - (g) a decision of the Board not to renew the accreditation of a school,
  - (h) a decision of the Board to cancel a school's accreditation.
- (2) A person is entitled to make any such application only if the person is or is required to be given notice of the recommendation or decision under this Act.

### **108 Determination of application by the Tribunal**

- (1) On application for the review of a recommendation or decision, the Tribunal may:
  - (a) confirm the recommendation or decision, or
  - (b) in the case of an application for the review of a recommendation of the Board or an authorised person—make a different recommendation to the Minister concerning the subject-matter of the application, or
  - (c) in the case of an application for the review of a decision of the Board not to accredit a school—recommend to the Minister that the Minister accredit the school as requested or grant such other accreditation as the Tribunal considers appropriate, or
  - (d) in the case of an application for the review of a decision of the Board to cancel a

school's accreditation—recommend to the Minister that the Minister not cancel the accreditation or cancel it only in so far as it relates to one of the recognised certificates.

- (2) This section applies to the exclusion of the provisions of sections 63 (Determination of review by Tribunal) and 65 (Power to remit matters to administrator for further consideration) of the *Administrative Decisions Tribunal Act 1997*.

#### **109 Failure of Board to make a recommendation or decision**

- (1) This section applies to the following applications:

- (a) an application to the Board for registration of a non-government school,
- (b) an application to the Board for accreditation of a non-government school,
- (c) an application to the Minister for registration of a child for home schooling.

- (2) For the purposes of section 6 (4) of the *Administrative Decisions Tribunal Act 1997*, the Board or Minister (as the case may be) is taken to be required to make a decision in relation to an application to which this section applies within 5 months of the lodgment of such an application.

#### **110-113 (Repealed)**

### **Part 11 Parents and citizens and kindred associations**

#### **114 Definition of “parents and citizens association”**

In this Part:

**parents and citizens association** means an association constituted under this Act and consisting of parents of children attending any government school together with other residents of the district served by the school who are interested in the welfare of the school.

#### **115 Constitution of associations and district councils**

- (1) A parents and citizens association or a kindred association may be constituted in connection with any government school in accordance with the regulations.
- (1A) Any such parents and citizens association may be incorporated under the *Parents and Citizens Associations Incorporation Act 1976* or under the *Associations Incorporation Act 1984*.
- (2) The Minister may establish a district council, constituted in accordance with the regulations, for any area prescribed by the regulations.

## **116 Objects and functions**

- (1) The objects of an association are:
  - (a) to promote the interests of the school by bringing parents, citizens, students and teaching staff into close co-operation, and
  - (b) to assist in providing facilities and equipment for the school and in promoting the recreation and welfare of the students at the school, and
  - (c) to encourage parent and community participation in curriculum and other education issues in schools where there is no school council.
- (2) The functions of an association are the following:
  - (a) to report, when requested by the Minister, on the material requirements of the school and to advise on the subject of maintenance of the school, alterations and additions to school facilities, and the selection of new sites,
  - (b) to assist and co-operate with the teaching staff in public functions associated with the school,
  - (c) to be responsible for the election of parent representatives to any school council constituted at the school in consultation with the principal of the school to ensure consistency with any guidelines for elections issued by the Director-General of School Education,
  - (d) to assist in any other matters in which the Minister may seek the co-operation of the association and to exercise such other functions as may be prescribed by the regulations.
- (3) The object of a district council is to advance the common interests of government schools within the area for which it is established, and for that purpose a district council may:
  - (a) advise the Minister on all matters (other than staff matters) relating to government schools within the area, and
  - (b) assist in raising funds for establishing and maintaining scholarships for pupils attending government schools within the area, and
  - (c) assist, when required, in the arrangement and supervision of contracts for the conveyance of children to government schools, and
  - (d) assist in the establishment and maintenance of libraries in connection with government schools within the area, and
  - (e) exercise such other functions as may be prescribed by the regulations.



### **117 Rules of associations and district councils**

- (1) Each association and district council may, subject to this Act and the regulations, make rules for the conduct of its business and affairs, but those rules are not operative unless (nor until such time as) they are approved by the Minister.
- (2) Any of a set of standard or model rules published by the Minister in the Education Gazette and adopted by an association or district council are to be taken to have been approved by the Minister for the purposes of subsection (1) and take effect on their adoption.

## **Part 12 Miscellaneous**

### **118 Register of non-government schools etc to be available for inspection**

Registers kept under this Act of the registration or accreditation of non-government schools are to be made available for public inspection at all reasonable times.

### **119 Delegation by the Minister, the Board or the Director-General**

The Minister, the Board and the Director-General of School Education may delegate to any person or body (including, in the case of a delegation by the Board, any committee of the Board) the exercise of any of their respective functions under this Act (other than the power of delegation conferred by this section).

### **120 Liability of members of Board etc**

- (1) A matter or thing done by a relevant authority, any member of a relevant authority or any person acting under the direction of a relevant authority does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject such a member or a person so acting personally to any action, liability, claim or demand.
- (2) In this section, **relevant authority** means the Board or a committee of the Board.

### **121 Entry to premises of registered school**

- (1) For the purposes of an inspection under this Act, a Board inspector is at all reasonable times to have full and free access to the premises and enrolment and attendance records of any government school or any registered non-government school.
- (2) A person who hinders or obstructs a Board inspector in exercising any power conferred by this section is guilty of an offence.

Maximum penalty: 5 penalty units.

- (3) A person is not guilty of an offence under this section because of any act of hindrance or obstruction unless it is established that the Board inspector:

- (a) identified himself or herself as a Board inspector, and
- (b) warned the person that that act constituted an offence.

(4) In this section, **registered non-government school** includes any school or proposed school in respect of which an application for registration has been made under this Act.

## **122 Attendance officers**

An officer authorised by the Minister for the purposes of this section, or a police officer, may:

- (a) during school hours:
  - (i) approach any child who is apparently of or above the age of 6 and below the age of 15 and is apparently not in attendance at school as required by this Act, and
  - (ii) request the child to provide to the officer the name and home address of, and the name and address of the school attended by, the child, and
- (b) accompany the child to his or her home, or to a school, to verify the information provided to the officer by the child.

## **123 Evidence**

- (1) In any proceedings under this Act, a certificate purporting to be signed by the principal of a government school or registered non-government school, stating that:
  - (a) a child was or was not, on any day specified in the certificate, enrolled as a student at the school, or
  - (b) a child did or did not, on any day or part of a day so specified, attend the school, or
  - (c) the school was or was not open for instruction on a day so specified,is admissible in evidence and is prima facie evidence of the matters stated in the certificate.
- (2) In any proceedings under this Act, a certificate purporting to be signed by the Minister or by an officer prescribed by the regulations, stating that:
  - (a) a school was or was not, on a day specified in the certificate, registered under Part 7, or
  - (b) a child was or was not, on a day so specified, registered under Part 7 for home schooling, or
  - (c) a school was or was not, on a day so specified, accredited under Part 8,

is admissible in evidence and is prima facie evidence of the matters stated in the certificate.

(3) In any proceedings under this Act:

- (a) the court may take judicial notice of the apparent age of a child, and
- (b) a child apparently of or above the age of 6 and below the age of 15 is to be presumed to be so until the court is satisfied to the contrary.

## **124 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court.

### **124A Continuing offences**

- (1) A person who is guilty of an offence because the person contravenes a requirement by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
  - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
  - (b) is guilty of an offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

## **125 Acquisition and disposal of land**

- (1) The Minister may, for the purposes of this Act or jointly for those purposes and purposes of or associated with public education or recreation, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The Minister may acquire, by gift made during a person's lifetime or by devise or bequest in the will or other testamentary disposition of any person, any property for use for purposes for which land may be acquired under subsection (1).
- (3) The Minister may agree to a condition of any such gift, devise or bequest, and the rule of law against remoteness of vesting does not apply to any such condition.
- (4) The Minister may expend money on the improvement of any land acquired under this Act or, for the purposes of this Act, on any other land, even though the improvement

or the land may not be used solely for public education.

(5) The Minister may:

- (a) for any of the purposes for which land may be acquired under this section, grant a lease or licence of any land so acquired, and
- (b) in the case of land that is no longer required for the purpose for which it was acquired, grant a lease or licence of the land or sell or exchange the land, and
- (c) grant easements and rights of way in respect of land acquired under this section.

(6) The Minister may make commercial use of land acquired under this section if that use is associated with a purpose for which land may be so acquired.

(7) Land:

- (a) acquired under or for the purposes of the *Public Instruction Act 1880* or the *Education and Public Instruction Act 1987*, or
  - (b) acquired under any other Act for those purposes, or
  - (c) held by the Crown in trust under the *Public Instruction Act 1880*,
- is to be taken to have been acquired under this section.

#### **126 (Repealed)**

#### **127 Part 2 not to give rise to cause of action etc**

Nothing in Part 2 (Objects of Act) gives rise to, or can be taken into account in, any civil cause of action.

#### **128 Scholarships attached to schools**

- (1) In addition to any sum which may be specially appropriated by Parliament for a similar purpose, any person may collect, raise or give a sum of money for or towards founding, in connection with any government school, a scholarship at any university, college, government school or other institution, and land or money may for that purpose be devised or bequeathed.
- (2) Such a scholarship is to be open to any student enrolled at the school, and if any school in respect of which a scholarship is founded is discontinued, the Minister may direct that the scholarship is to attach to some other school.

#### **129 Schools with no principal**

If a school has no principal:

- (a) any notice required or permitted to be given by or under this Act to the principal of

the school, if given to any of the teachers at the school, is to be taken to have been given to every teacher at the school, and

- (b) an obligation imposed by or under this Act on the principal is to be taken to be an obligation imposed on every teacher at the school, but which may be discharged by any one of them on behalf of them all.

### **130 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

### **131 Rules of Board**

- (1) The Board may make rules, not inconsistent with this Act or the regulations, for or with respect to the exercise of any of its functions.
- (1A) Without limiting subsection (1), the rules may set out guidelines with respect to the requirements for registration and accreditation set out in Parts 7 and 8.
- (2) A rule does not take effect unless approved by the Minister.
- (3) A rule is to be published as prescribed by the regulations and takes effect on the date of publication or a later date specified in the rule.

### **132 (Repealed)**

### **133 Repeal of [Education and Public Instruction Act 1987](#) etc**

The following Acts and instruments are repealed:

- (a) the [Education and Public Instruction Act 1987](#),
- (b) the [Miscellaneous Acts \(Education and Public Instruction\) Repeal and Amendment Act 1987](#),
- (c) the [Education and Public Instruction Regulation 1987](#) and any other regulation made under an Act repealed by this section.

### **134 Savings, transitional and other provisions**

Schedule 3 has effect.

## **Schedule 1 Provisions relating to members and procedure of the**

## Board of Studies

(Section 100)

### 1 Definition

In this Schedule, **appointed member** means a member of the Board referred to in section 100 (1) (c).

### 2 Nominations for appointed members

- (1) For the purposes of section 100 (3), the Minister may require a body or bodies responsible for nominating a member of the Board to furnish a list of so many nominees as the Minister may specify, from which the Minister may select the nominee to be appointed.
- (2) In default by the nominating body or bodies in complying with the requirement, the Minister may appoint such person as the Minister thinks fit.
- (3) In furnishing a list of nominees, the body or bodies responsible for the nominations is or are required to have regard to the need to nominate both men and women and persons who have professional experience or demonstrated interest in gender issues in education, the education of children with disabilities, Aboriginal education, the education of children from non-English speaking backgrounds, and in primary as well as secondary education.

### 3 Representation of certain interests

The Board at any time is to include (as far as practicable):

- (a) members who have professional experience or demonstrated interest in gender issues in education, and
- (b) at least one member who has professional experience or demonstrated interest in the education of children with disabilities, and
- (c) at least one member who has professional experience or demonstrated interest in Aboriginal education, and
- (d) at least one member who has professional experience or demonstrated interest in the education of children from non-English speaking backgrounds.

### 4 Deputy President

The Board may appoint, from among its members, a person to be the Deputy President of the Board.

### 5 Term of office

Subject to this Act, an appointed member is to hold office for such period (not exceeding 3

years) as may be specified in the instrument of the member's appointment, but is eligible (if otherwise qualified) for re-appointment.

## **6 Alternative members**

- (1) The Minister may, from time to time, appoint a person to be an alternative member for an appointed member of the Board.
- (2) The alternative members for appointed members are to be appointed by the Minister after consultation with the bodies responsible for nominating those members.
- (3) The provisions of this Schedule, with any necessary modifications, are to apply to and in respect of alternative members in the same way as they apply to members.
- (4) An alternative member may act in the office of the member for whom he or she is the alternative member during the illness or absence of that member (or a vacancy in the office of that member) and, while so acting, has all the functions of that member and is to be taken to be that member.

## **7 Remuneration**

An appointed 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.

## **8 Filling of vacancy in office of appointed member**

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

## **9 Casual vacancies**

- (1) The office of an appointed 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 by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for being 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 temporary patient or a continued treatment patient within the meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*, 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, or
- (i) being a member referred to in section 100 (3) (e)-(h), ceases to hold the qualifications or office necessary for his or her membership.

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

#### **10 Disclosure of pecuniary interests**

- (1) A member of the Board who, in terms of any guidelines determined by the Board for the purposes of this clause, has a direct or indirect pecuniary interest:
  - (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board, or
  - (b) in a thing being done or about to be done by the Board,is to disclose, as soon as possible after the relevant facts have come to the member's knowledge, the nature of the interest at a meeting of the Board.
- (2) After a member has disclosed the nature of an interest in any matter or thing, the member is not, unless the Minister otherwise determines:
  - (a) to be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter, or
  - (b) to exercise any functions under this Act with respect to that thing.
- (3) Even though a member contravenes the provisions of this clause, the contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

#### **11 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of an appointed member.



(2) If by or under any other Act provision is made:

- (a) requiring a person who is the holder of an 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,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Board or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member of the Board is for the purposes of any Act to be taken not to be an office or place of profit under the Crown.

## **12 General procedure**

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

## **13 Quorum**

The quorum for a meeting of the Board is 12 members.

## **14 Presiding member**

- (1) The President or, in the absence of the President, the Deputy President (or, in the absence of both, another member elected to chair the meeting by the members present) is to preside at a meeting of the Board.
- (2) The presiding member at any meeting of the Board has a deliberative vote and, in the event of any equality of votes, has a second or casting vote.

## **15 Voting**

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

## **16 Minutes**

The Board is to cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

## **17 Proof of certain matters not required**

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Board,

- (b) any resolution of the Board,
- (c) the appointment of, or the holding of any qualifications or office by, any member of the Board, or
- (d) the presence of a quorum at any meeting of the Board.

## **18 First meeting of the Board**

The Minister is to call the first meeting of the Board in such manner as the Minister thinks fit.

## **Schedule 1A Board inspectors**

(Section 104)

### **1 Application of this Schedule**

This Schedule applies to Board inspectors employed temporarily in accordance with section 104 (1), but not to persons exercising any of the functions of Board inspectors in accordance with section 104 (3).

### **2 Board inspectors are public sector employees**

Board inspectors are public sector employees for the purposes of the *Industrial Relations Act 1996* or any other Act.

### **3 Employment to be temporary**

- (1) A person may be employed as a Board inspector for a period of up to 5 years determined by the Board, and is eligible (if otherwise qualified) for re-employment for a further such period or periods.
- (2) The Board may dispense with the services of a Board inspector at any time.

### **4 Conditions of employment**

- (1) Except as otherwise determined by or under a State industrial instrument or any other Act or law, a Board inspector has the same conditions of employment regarding:
  - (a) rates and conditions of payment of allowances, and
  - (b) leave (including extended or long service leave) entitlements, and
  - (c) public holidays, and
  - (d) attendance at, fitness for and absences from work,

as officers of the Public Service, and for that purpose, Schedule 5 to the *Public Sector Management Act 1988*, and the provisions of any regulations made under that Act in connection with any of those matters, apply (with any necessary modifications) to the

employment of Board inspectors.

- (2) The salary, wages and other conditions of employment of Board inspectors, in so far as they are not fixed by or under this Act, a State industrial instrument or any other Act or law, are to be determined by the Department Head of the Office of the Board.

## 5 Appointments to be on merit

- (1) The basis of selection procedures in connection with employment as a Board inspector is to be the respective merits of applicants for such employment.
- (2) The merit of an applicant is to be determined having regard to:
  - (a) the nature of the duties of a Board inspector, and
  - (b) abilities, qualifications, experience, standard of work performance and personal qualities of the applicant that are relevant to the performance of those duties.

## 6 Legal proceedings not to be brought in respect of employment or re-employment of Board inspectors

- (1) A decision to employ or a failure to employ a person as a Board inspector, and any matter, question or dispute relating to such a decision or failure, are not industrial matters for the purposes of the *Industrial Relations Act 1996*.
- (2) No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of any decision to employ or any failure to employ a person as a Board inspector, the entitlement or non-entitlement of a person to be so employed or the validity or invalidity of any such employment.
- (3) Subclause (2) does not affect the operation of the *Government and Related Employees Appeal Tribunal Act 1980*.
- (4) In this clause, **employment** includes re-employment.

## Schedule 2 (Repealed)

## Schedule 3 Savings, transitional and other provisions

(Section 134)

### Part 1 Preliminary

#### 1 Definition

In this Schedule:

**former Act** means the *Education and Public Instruction Act 1987*.

## **2 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Education Reform Act 1990*

*Education Reform Amendment (School Discipline) Act 1995*

*Education Reform Amendment Act 1997*

*Education Reform Amendment (Board Inspectors) Act 1997*

*Education Amendment (Special Courses of Study) Act 1999*

*Education Amendment (Non-Government Schools Registration) Act 2004*

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **3 Dissolution of Board of Secondary Education**

- (1) The Board of Secondary Education constituted under the former Act is dissolved.
- (2) A person who, immediately before the dissolution of that Board, held office as a member of that Board:
- (a) ceases to hold that office, and
  - (b) is not entitled to any remuneration or compensation because of the loss of that office, and
  - (c) is eligible (if otherwise qualified) to be appointed as a member of the Board of Studies constituted under this Act.
- (3) The assets, rights, liabilities and obligations of the Board of Secondary Education become, on its dissolution, the assets, rights, liabilities and obligations of the Board of

Studies constituted under this Act.

#### **4 Associations and councils**

- (1) A parents and citizens association or kindred association established (or deemed to be established) under the former Act, or a district council so established, that was in existence immediately before the repeal of the former Act, is to be taken to be a parents and citizens association or kindred association, or a district council, constituted under this Act.
- (2) Rules made by any such association or council and in force immediately before the repeal of the former Act continue in force and are to be taken to have been made under this Act.

#### **5 Construction of superseded references**

In any other Act, in any instrument made under any Act or in a document of any kind:

- (a) a reference to a public school or State school is to be read as a reference to a government school under this Act, and
- (b) a reference to a certified school under the *Public Instruction (Amendment) Act 1916* or a school registered under the *Bursary Endowment Act 1912* or a school registered under the former Act is to be read as a reference to a registered non-government school under this Act, and
- (c) a reference to the Secondary Schools Board or the Board of Senior School Studies or the Board of Secondary Education is to be read as a reference to the Board of Studies under this Act, and
- (d) a reference to the school leaving age is to be read as a reference to the age of 15 years.

#### **6 Continuation of existing exemptions from attendance at school**

A certificate of exemption under section 6 of the former Act and in force on the repeal of that Act is to be taken to be a certificate of exemption under section 25 of this Act.

#### **7 Vesting of land in Minister**

The repeal of section 45A of the *Education and Public Instruction Act 1987* does not affect the vesting of land under that section.

### **Part 3 Provisions consequent on enactment of *Education Reform Amendment (School Discipline) Act 1995***

#### **8 Application of amended registration requirements**

The amendment made to section 47 of this Act by the *Education Reform Amendment*

*(School Discipline) Act 1995* extends to any school registered before the commencement of that amendment.

## **Part 4 Provisions consequent on enactment of *Education Reform Amendment Act 1997***

### **9 Regulations relating to basic skills testing**

Regulations made under section 18 and in force immediately before its amendment by the *Education Reform Amendment Act 1997* are taken to have been made under section 18A.

### **10 Existing members of Board**

- (1) The amendment made by Schedule 2 [6] to the *Education Reform Amendment Act 1997* does not affect the term of office being served by a person holding office as a member of the Board immediately before the commencement of that amendment.
- (2) A person holding office as President immediately before the commencement of this clause is taken to have been appointed under section 101 as President on a full-time basis for the balance of the term for which he or she was originally appointed as President.

## **Part 5 Provisions consequent on enactment of *Education Amendment (Special Courses of Study) Act 1999***

### **11 School Certificates**

- (1) A document issued by the Board as a School Certificate before the commencement of this clause is taken to be a School Certificate validly granted at the time of issue and to be valid on and from the time of issue if the Board was satisfied at the time of issue as to the matters referred to in section 95A (1) (a), (b) and (c).
- (2) Subclause (1) does not affect any School Certificate validly granted by the Board before the commencement of this clause.

## **Part 6 Provisions consequent on enactment of *Education Amendment (Non-Government Schools Registration) Act 2004***

### **12 Registration of non-government schools**

Sections 8, 10 and 47, as in force immediately before the commencement of Schedule 1 [4], [5], [6], [7] and [9] to the *Education Amendment (Non-Government Schools Registration) Act 2004*, continue to apply to and in respect of a non-government school that was a registered non-government school at that commencement for a period of 1 year after the commencement, or for the balance of its current registration (whichever is the shorter).

### **13 Certificates of registration or accreditation**

An amendment made by Schedule 1 [12], [16], [22] or [23] to the *Education Amendment (Non-Government Schools Registration) Act 2004* does not apply to or in respect of a certificate of registration or accreditation in force immediately before the commencement of the amendment.