

# Education Act 1990 No 8

[1990-8]



New South Wales

## Status Information

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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
- **See also**  
[Regulatory Reform and Other Legislative Repeals Bill 2015](#)

### 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:

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

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

**Board** means the Board of Studies, Teaching and Educational Standards constituted under the *Board of Studies, Teaching and Educational Standards Act 2013*.

**compulsory school-age**—see section 21B.

**compulsory schooling**—see section 22 (3).

**compulsory schooling order**—see section 22D.

**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).

**Department** means the Department of Education and Communities.

**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.

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

**inspector** means an inspector within the meaning of the [Board of Studies, Teaching and Educational Standards Act 2013](#).

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

**overseas student** means a student who holds a visa under the [Migration Act 1958](#) of the Commonwealth that enables the student to study in New South Wales, but does not include the holder of a permanent visa or special category visa within the meaning of that Act.

**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 Record of School Achievement 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.

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

**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.

**rules of the Board** means rules made by the Board under section 25 of the *Board of Studies, Teaching and Educational Standards Act 2013*.

**Secretary** means the Secretary of the Department.

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

**TAFE establishment** has the same meaning as it has in the *Technical and Further Education Commission Act 1990*.

**Tribunal** means the Civil and Administrative Tribunal.

(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 candidates for the Record of School Achievement and the Higher School Certificate,
- (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 Records of School Achievement and Higher School Certificates and for the accreditation of non-government schools that are competent to present candidates for them.

## **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,
  - (m1) provision of opportunities for Aboriginal families, kinship groups, representative

organisations and communities to participate in significant decisions under this Act relating to the education of their children,

(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 Record of School Achievement) 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 Record of School Achievement.
- (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 Record of School Achievement candidates**

- (1) The curriculum during Year 7 to Year 10 for students who are candidates for the Record of School Achievement 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 (Record of School Achievement).

#### **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 Record of School Achievement 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 Board is to arrange for the conduct of basic skills testing in such government schools and at such times as the Board may determine.

(3) The Board 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 school results**

(1) In this section:

**relevant national agreement** means an agreement between the State and the Commonwealth that gives effect to a national protocol or arrangement for the provision and publication of school results.

**school results** means the following results (whether they are the results of individuals or of schools or any other results):

- (a) results of national basic skills testing (including testing under section 18),
- (b) results of recognised certificate examinations and related assessments,
- (c) results of annual or other periodic assessments of the academic performance of students contained in reports to parents on student achievement.

The regulations may determine whether particular results are or are not results referred to in paragraphs (a)-(c).

- (2) School results may, in accordance with a relevant national agreement, be provided by the State to the Commonwealth or to an authority established by the Commonwealth.
- (3) School results must not be publicly revealed in a way that ranks or otherwise compares the results of particular schools, except as authorised by or under a relevant national agreement.
- (4) A person must not, in a newspaper or other document that is publicly available in this State:
  - (a) publish any ranking or other comparison of particular schools according to school results, except with the permission of the principals of the schools involved, or
  - (b) identify a school as being in a percentile of less than 90 per cent in relation to school results, except with the permission of the principal of the school.

Maximum penalty: 50 penalty units in the case of an individual and 500 penalty units in any other case.

(5) Nothing in subsection (4) prohibits:

- (a) anything authorised to be done by or under a relevant national agreement, or
- (b) the publication of the ranking of the schools in the top 10 per cent in relation to

the results of Higher School Certificate examinations and related assessments so long as the information used to determine that ranking is information as to the results of students that may be publicly revealed under subsection (6) (c).

- (6) School results must not be publicly revealed if the results of an identified student are revealed, except as follows:
- (a) to the student or to the student's parents, or to anyone with the student's or parent's consent,
  - (b) to the principal of a school (including a school in another State or Territory) at which the student is enrolling, is enrolled or was previously enrolled,
  - (c) in the case of results of recognised certificate examinations and related assessments—by or with the approval of the Board, by way of the publication of the results of students who the Board considers have achieved outstanding results.
- (7) The functions of the State under this section may be exercised by the Secretary or, if authorised by a relevant national agreement, by a State educational authority that arranges the testing, examinations or assessments concerned.
- (8) This section has effect despite any other Act or law or the decision of any tribunal.

## **Part 4 Functions of the Minister and the Board**

### **19 General functions of the 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, and financial assistance to non-government schools, 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
  - (a1) children with significant learning difficulties, 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 distance education.
- (3) Any such financial assistance is to be paid out of money to be provided by Parliament.
- (4) For the purposes of subsection (1) (a1), a child has a significant learning difficulty if a qualified teacher or other qualified education professional is of the opinion that the child is not, regardless of the cause, performing in the basic educational areas of reading, writing, spelling and mathematics in accordance with the child's peer age group and stage of learning.

## **20A Functions of the Board under this Act**

- (1) The Board is to exercise its functions under this Act in connection with the education of children at both the primary and secondary level.
- (2) In particular, the Board has the following functions under this Act:
  - (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,
  - (b1) to approve providers to provide courses to overseas students under Part 7A,
  - (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,
- (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 under this Act,
- (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 under this Act, is to have regard to the resources available for education in New South Wales schools.

**21** (Renumbered as section 83B)

**21A (Repealed)**

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

### **21B Compulsory school-age**

(1) For the purposes of this Act, a child is of compulsory school-age if the child is of or above the age of 6 years and below the minimum school leaving age.

(2) The minimum school leaving age is:

(a) the age at which the child completes Year 10 of secondary education (subject to participation required by subsection (3)), or

(b) the age of 17 years,

whichever first occurs.

(3) A child who completes Year 10 of secondary education but who is below the age of 17 years is of compulsory school-age unless the child participates on a full-time basis in:

(a) approved education or training, or



- (b) if the child is of or above the age of 15 years—paid work or a combination of approved education or training and paid work.
- (4) A child ceasing to be of compulsory school-age because of that participation does not revert to being of compulsory school-age because of a cessation in participation for any reason so long as the interruption in participation does not exceed a total period of 3 months in any 12-month period or such other period approved by the Minister.
- (5) The completion of Year 10 of secondary education is:
- (a) the completion of Year 10 of secondary education in this State (whether by school education or home schooling), or
  - (b) the completion of a course provided by the TAFE Commission that is approved by the Minister as the equivalent of Year 10 of secondary education in this State, or
  - (c) the completion, outside of this State, of the equivalent of Year 10 of secondary education in this State, or
  - (d) the completion of education in any special circumstances approved by the Minister.
- (6) Participation in approved education or training is participation in any of the following:
- (a) a higher education course within the meaning of the *Higher Education Act 2001*,
  - (b) a VET accredited course within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth,
  - (c) an apprenticeship or traineeship within the meaning of the *Apprenticeship and Traineeship Act 2001*,
  - (d) any other education or training approved by the Minister.
- (7) The regulations may prescribe rules and criteria that are to be applied for the purposes of this section in determining:
- (a) whether a child has completed Year 10, or
  - (b) whether a child is participating in paid work, or
  - (c) whether a child is participating in approved education or training, or
  - (d) whether such participation is on a full-time basis.

Subject to the regulations, participation on a full-time basis in paid work is participation for an average of 25 hours per week.

## **22 Compulsory schooling—duty of parents**

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

### **22A Obtaining information about children of compulsory school-age**

- (1) Any relevant institution or other person may provide information to the Department solely for the purpose of assisting the Secretary to ascertain:
  - (a) the age, identity or whereabouts of a child who is not receiving compulsory schooling or who is not participating in education, training or paid work as an alternative to receiving compulsory schooling, and
  - (b) the reasons why the child is not receiving that schooling or not so participating.
- (2) Information may be provided under this section:
  - (a) at the request of the Secretary or without any such request, and
  - (b) anonymously.
- (3) The Secretary may include in a request for information such information about a child, or a child's family, as may assist the relevant institution or other person concerned to provide the information requested.
- (4) A relevant institution has a duty to provide information in its possession or control that the Secretary requests under this section.
- (5) The authority or duty to provide information under this section:
  - (a) applies despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*, but
  - (b) is subject to any other Act or law and to client legal privilege.
- (6) The provision of information under this section in good faith:
  - (a) does not give rise to any liability to civil, criminal or disciplinary action, and
  - (b) is not a breach of professional etiquette or ethics or a departure from accepted

standards of professional conduct.

- (7) The identity of any person who has provided information under this section is not to be disclosed.

## **22B Compulsory schooling undertakings by parents**

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

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

- (1) If a child is not receiving compulsory schooling, a conference of the relevant parties may be directed:
- (a) by the Children's Court during proceedings for a compulsory schooling order, or
  - (b) by the Secretary at any time before or after any such proceedings.
- (2) The principal purpose of a conference is to ensure that the child is provided with compulsory schooling.
- (3) A conference is to be conducted by an authorised person appointed by the Children's Court or the Secretary (as the case requires).
- (4) The following persons are entitled to participate in a conference:
- (a) in the case of a conference directed by the Children's Court—the parties to the proceedings and any legal practitioner representing them,
  - (b) such persons (including the parents of the child and representatives of relevant institutions wishing to participate) as the person conducting the conference considers appropriate,
  - (c) any other legal practitioner advising a participant in the conference (subject to such conditions or limitations as may be imposed by the person conducting the conference).
- (5) A conference may:

- (a) seek to identify and resolve issues in dispute in relation to compulsory schooling for the child, and
- (b) seek to identify any services whose provision to the child, or to his or her family, would facilitate compulsory schooling for the child, and
- (c) formulate undertakings, and orders for consideration by the Children's Court, with respect to compulsory schooling for the child.

The Children's Court may include in a compulsory schooling order any undertaking or obligation formulated by a conference under paragraph (c).

- (6) Participants in a conference may disclose to each other such information concerning the child, and his or her family, as may reasonably assist in achieving the purpose of the conference.
- (7) The authority to disclose information under this section:
  - (a) applies despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*, but
  - (b) is subject to any other Act or law and to client legal privilege.
- (8) None of the following are admissible in evidence in any proceedings before any court or other body (other than care proceedings under Chapter 5 of the *Children and Young Persons (Care and Protection) Act 1998*):
  - (a) any evidence of anything said or of any admission made in a conference,
  - (b) any document (or copy of a document) prepared in relation to the proceedings of the conference, other than a document containing the terms of an undertaking arising out of the conference.

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

## **22D Compulsory schooling orders**

- (1) The Children's Court may, on the application of the Secretary, make an order under this section in relation to a child of compulsory school-age who is not receiving compulsory schooling (a **compulsory schooling order**).
- (2) A compulsory schooling order may require a parent of the child to cause the child to receive compulsory schooling in accordance with the order.
- (3) A compulsory schooling order may require the child to engage in compulsory schooling in accordance with the order if:

- (a) the child is of or above the age of 12 years, and
  - (b) the Children's Court is satisfied that the child is living independently of his or her parents or that (because of the child's disobedience) the parents are not able to cause the child to receive compulsory schooling.
- (4) If the child completes Year 10 of secondary education as referred to in section 21B, a compulsory schooling order may determine the participation of the child required by section 21B (3) in education or training or in paid work in order that the child may cease compulsory schooling. That determination does not limit other participation that satisfies the requirements of section 21B (3).
- (5) The following applies to proceedings of the Children's Court under this section:
- (a) subject to this section and the regulations, Chapter 6 of the *Children and Young Persons (Care and Protection) Act 1998* applies to and in respect of proceedings relating to an application under this section,
  - (b) the proceedings may relate to any number of children of the same parent,
  - (c) the Children's Court may make an interim compulsory schooling order pending the final determination of the proceedings.
- (6) The Children's Court may vary or revoke a compulsory schooling order on the application of the Secretary or of a person subject to the order.
- (7) The Children's Court, when making a compulsory schooling order or when dismissing an application for or revoking such an order:
- (a) may accept written undertakings from a parent, and from any other participant in a conference under section 22C, with respect to compulsory schooling for the child, and
  - (b) may recommend that a relevant institution provide services to the child, or to the child's family, in order to assist the child to receive compulsory schooling.
- (8) A compulsory schooling order (unless sooner revoked by the Children's Court) ceases to have effect:
- (a) at the end of the period specified in the order during which it is to have effect, or
  - (b) when the child ceases to be of compulsory school-age,
- whichever first occurs.
- (9) The following applies if a parent or child fails to comply with an obligation under a compulsory schooling order:
- (a) in the case of a parent—the maximum penalty for a relevant offence under section

- 23 (Offence if parent fails to send child to school) is increased to 100 penalty units,
- (b) in the case of a child of or above the age of 15 years—the child is guilty of an offence and liable to a penalty not exceeding 1 penalty unit (but without the court proceeding to a conviction), unless the child had a reasonable excuse for not complying with the order,
  - (c) the Secretary may enrol the child in a government school (in accordance with section 34) if the compulsory schooling order authorises the Secretary to do so.
- (10) The Secretary may cause copies of a compulsory schooling order, and any undertaking or recommendation referred to in subsection (7), to be given to such persons as the Secretary considers to have an interest in the welfare of the child.
- (11) Section 91 of the *Children and Young Persons (Care and Protection) Act 1998* applies to and in respect of an order under this section in the same way as it applies to and in respect of an order under Part 2 of Chapter 5 of that Act.

**Note—**

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

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

**23 Offence if parent fails to send child to school**

- (1) A parent of a child of compulsory school-age is guilty of an offence if the parent fails to cause the child:
- (a) to be enrolled at, and to attend, a government school or a registered non-government school, or
  - (b) to be registered for home schooling under Part 7.
- Maximum penalty:
- (a) in the case of a first offence—25 penalty units, or
  - (b) in the case of a second or subsequent offence—50 penalty units, or
  - (c) in the case of a parent subject to a compulsory schooling order—100 penalty

units.

- (2) It is a defence to a prosecution under this section if at the relevant time:
- (a) the child was enrolled at, and attended, a school in another State, Territory or country in accordance with the law of that State, Territory or country, or
  - (b) the child was enrolled at a government or registered non-government school and participating in distance education provided by the school (unless the Secretary or school had previously directed that the child cease distance education because of the failure of the child to perform the required school work), or
  - (c) the child was participating in an alternative education program approved by the Minister for children unable, for social, cultural or other reasons, to participate effectively in formal school education (unless the Secretary had previously directed that the child resume formal school education because the child was not achieving the education outcomes required of participants in the program), or
  - (d) the child was participating in a program established by the Minister under section 35 (Discipline in government schools), or
  - (e) a certificate of exemption was in force under section 25 in respect of the child and any conditions to which the certificate is subject were being complied with, or
  - (f) the child was attending a school that the parent reasonably believed to be a government school or registered non-government school.
- (3) It is also a defence to a prosecution under this section if at the relevant time:
- (a1) the child has written permission from the principal of a government school or registered non-government school, and from the director of a TAFE establishment, to enrol in a course referred to in section 21B (5) (b) and is so enrolled, or
  - (a) the child was prevented from attending school:
    - (i) because of some medical condition, or
    - (ii) because of some accident or unforeseen event,  
and within 7 days after that condition became apparent, or that accident or event occurred, notice of that fact (together with any medical certificate required by subsection (7)) was given to the school, or
  - (b) the child had not been absent from school (excluding any absence referred to in paragraph (a)) for more than 3 days during the 3 months during which the school had been open immediately preceding the absence complained of, or
  - (c) the child was prevented from attending school because of a direction under section 88 of the *Public Health Act 2010*, or

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

## **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.

- (1A) The register is to contain any notification given (or particulars of any notification given) about the absence of a child from school under section 23 (3) (a).
- (2) The register must be available for inspection during school hours by an inspector or by any authorised person, 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 following:
  - (a) the enrolment and attendance of children at the school during a specified period,
  - (b) any unsatisfactory school attendance by children of compulsory school-age enrolled at the school.
- (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.
- (2A) A certificate of exemption under this section may be limited to exemption from the requirement to attend a school during the times specified or referred to 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 Secretary 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 Secretary 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 Secretary.

## **Part 5A Health and safety risks at schools arising from student behaviour**

### **Division 1 Preliminary**

#### **26A Definitions**

In this Part:

**enrolment** includes prospective and continuing enrolment.

**guidelines** means the guidelines under Division 4.

**non-government schools authority** means an approved authority for a system of non-government schools within the meaning of section 40.

**relevant agency**—see section 26C.

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

**student** includes:

- (a) a student who is above the age of 18 years, and
- (b) a prospective student.

### **Division 2 Obtaining information about students**

#### **26B Purpose of obtaining information about students**

- (1) Information may be obtained under this Division solely for the purposes of assisting the Secretary or schools:
  - (a) to assess whether the enrolment of a particular student at a school is likely to constitute a risk (because of the behaviour of the student) to the health or safety of any person (including the student), and
  - (b) to develop and maintain strategies to eliminate or minimise any such risk.
- (2) Information about a student obtained under this Division is prohibited from being

disclosed under the [Government Information \(Public Access\) Act 2009](#) except in response to an access application under that Act that is made by:

- (a) the student the subject of the information, or
- (b) a parent of the student, or
- (c) any person nominated in writing by the student or a parent of the student.

(3) Nothing in this Division operates to prevent the provision or disclosure of information as required or permitted by or under any other Act or law (except as provided by subsection (2)).

### **26C Relevant agencies from which information may be obtained about students**

(1) Information may be obtained in accordance with this Division from any one or more of the following (**relevant agencies**):

- (a) schools,
- (b) the Department of Education and Communities,
- (c) a non-government schools authority,
- (d) the TAFE Commission and TAFE establishments,
- (e) public health organisations within the meaning of the [Health Services Act 1997](#),
- (f) the Department of Ageing, Disability and Home Care,
- (g) the Department of Community Services,
- (h) the Department of Juvenile Justice,
- (h1) the Department of Corrective Services,
- (i) the NSW Police Force,
- (j) any other agency prescribed by the regulations.

(2) For the purposes of this Division, memoranda of understanding for the provision of information to:

- (a) schools, or
- (b) a non-government schools authority, or
- (c) the Department of Education and Communities,

may be entered into, in accordance with the guidelines, between any one or more relevant agencies.

## **26D Obtaining information about particular students**

- (1) The Department, a non-government schools authority or a school may request a relevant agency to provide such information about a particular student as would assist in making an assessment, or developing or maintaining strategies, of the kind referred to in section 26B.
- (2) The Department, authority or school may provide the relevant agency with such information about the student as may assist the agency to provide the information sought.
- (3) A relevant agency has a duty to provide information sought under this section if the agency has the information in its possession or under its control.
- (4) Information obtained under this section may be passed on to other schools, the Department or a non-government schools authority (or to any other person or body as permitted by this Act or the guidelines).
- (5) Information of the kind referred to in subsection (1) may be provided by one school to another school at which the student concerned enrolls:
  - (a) without the need for any request from the other school, and
  - (b) regardless of whether the information was obtained under this section or otherwise.
- (6) However, this section:
  - (a) does not authorise or require the provision of information if its disclosure is prohibited by:
    - (i) section 20G, 20P or 23 of the *Health Administration Act 1982*, or
    - (ii) section 29 (1) (f) of the *Children and Young Persons (Care and Protection) Act 1998*, and
  - (b) does not require the provision of information if the guidelines authorise the relevant agency to refuse to provide the information.

## **26E Consultation during assessment of risk and development of strategies**

In making an assessment, and (if necessary) developing a strategy, referred to in section 26B, the Secretary or school (as the case may be) must, unless the guidelines otherwise provide:

- (a) consult the student concerned and the parents or a parent of the student, and
- (b) disclose to the student, parent or parents any relevant information obtained under this Division.

## **26F No offence or liability for disclosure of information**

- (1) An Act or law that prohibits the disclosure of information does not operate to prevent the provision of information under this Division. This subsection applies unless its operation is expressly excluded by this or some other Act.
- (2) Subsection (1) does not apply to a disclosure of information that is prohibited by:
  - (a) section 20G, 20P or 23 of the *Health Administration Act 1982*, or
  - (b) section 29 (1) (f) of the *Children and Young Persons (Care and Protection) Act 1998*.
- (3) If information about a student is provided under this Division in good faith and with reasonable care:
  - (a) no liability for defamation is incurred because of the provision of the information, and
  - (b) the provision of the information does not constitute a ground for any other civil proceedings, and
  - (c) the provision of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

## **Division 3 Directions about enrolment at government schools**

### **26G Operation of Division**

- (1) This Division has effect despite any entitlement to enrolment at a government school under section 34 (1) or (2).
- (2) Nothing in this Division affects the operation of section 34 (4).

### **26H Directions about enrolment**

- (1) The Secretary may direct that a student is not to be enrolled at any government school other than a government school of a kind specified in the direction.
- (2) A direction under this section may be given only if the Secretary believes on reasonable grounds that the enrolment of the student otherwise than as permitted by the direction would constitute a risk (because of the behaviour of the student) to the health or safety of any person (including the student).
- (3) A student is not to be enrolled at a government school in contravention of a direction in force under this section.
- (4) Any facility conducted by the State for the purpose of educating students in

Kindergarten or any of Years 1-12 is taken to be a government school for the purpose of a direction under this section and, for that purpose, may be so referred to in the guidelines.

### **26I Representations by student, parents and others**

- (1) Before a direction is given under this Division:
  - (a) the Secretary must ensure that the student the subject of the proposed direction, the parents or a parent of the student and any other person identified in the guidelines for the purposes of this section:
    - (i) is given access to the information that gave rise to the proposed direction, and
    - (ii) is given written notice of the grounds for the proposed direction, and
    - (iii) is given an opportunity to make representations (whether oral or written, or both oral and written, as the student, parent or other person chooses) in relation to the information and the proposed direction, and
  - (b) the Secretary must take into consideration any representations so made.
- (2) However, the guidelines may provide that the access, notice and opportunity required by this section may be withheld, in the circumstances specified in the guidelines, from any person referred to in this section.
- (3) Guidelines referred to in subsection (2) must require the access, notice and opportunity concerned to be given to at least one adult person referred to in this section (who may be the student, if the student is an adult).

### **26J Notice of direction**

The Secretary is to give written notice of a direction under this Division and of the grounds for the direction:

- (a) to the student concerned, and
- (b) to the parents or a parent of the student (unless the guidelines otherwise provide).

### **26K Variation and revocation of direction**

The Secretary may vary or revoke a direction under this Division:

- (a) on the application of the student concerned, or
- (b) on the application of a parent of the student, or
- (c) on the Secretary's own initiative.

## **Division 4 Guidelines**

## **26L Issue of guidelines**

- (1) The Minister may from time to time issue guidelines (not inconsistent with this Act or the regulations) for the purposes of this Part.
- (2) The guidelines must make provision with respect to each of the following matters:
  - (a) the general principles that a person must bear in mind when exercising a function under this Part,
  - (b) for the purposes of section 26B, matters that are likely to constitute a risk to the health or safety of any person,
  - (c) the way in which assessments of the kind referred to in section 26B are to be carried out,
  - (d) memoranda of understanding between relevant agencies for the purposes of Division 2, including who may enter memoranda of understanding on behalf of relevant agencies,
  - (e) the kind of information that may, or must (if any), be sought under Division 2,
  - (f) who may make a request for information under section 26D on behalf of the Department, a non-government schools authority or a school,
  - (g) who may provide information on behalf of relevant agencies,
  - (h) the circumstances in which a relevant agency may refuse to provide information requested under Division 2,
  - (i) the way in which information obtained under Division 2 is to be kept and the length of time that it is to be kept,
  - (j) additional circumstances (if any) in which the information may be passed on, and to whom it may be passed on,
  - (k) the circumstances in which the Secretary or a school is not required to consult the student concerned or the parents or a parent of the student under section 26E,
  - (l) the procedures (other than those required by section 26I) to be followed before a direction under Division 3 is given, varied or revoked by the Secretary,
  - (m) the kinds of government schools that may be specified in such a direction,
  - (n) the circumstances in which notice of such a direction is not required to be given to the parents of the student concerned,
  - (o) the way in which such a direction is to be reviewed following an application for a variation or revocation of it.

- (3) The guidelines may also make provision with respect to such other matters as the Minister considers appropriate.
- (4) The Minister may from time to time amend or revoke the guidelines.
- (5) The guidelines, and any instrument amending or revoking the guidelines, must be published in the Gazette.
- (6) The guidelines as in force from time to time must be made publicly available in such manner as the Minister thinks appropriate.

**Editorial note—**

For guidelines under this section, see Gazette No 11 of 15.1.2010, p 139.

**26M Compliance with guidelines**

It is the duty of any person or agency involved in the administration of, or having functions under, this Part to comply with any applicable guidelines.

**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.
- (3) The Board is, with the assistance of the Department, to provide advice to the Minister on the compliance by government schools with similar requirements to those required for the registration of non-government schools.

**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 Secretary or nominee of the Secretary,
  - (c) a nominee of the Local Government Association of New South Wales,
  - (d) a nominee of the Federation of Parents' and Citizens Associations,
  - (e) a nominee of the Secretary who is, in the opinion of the Secretary, a senior member of staff of the Department,
  - (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.
- (3) The Secretary may (subject to section 34) determine the eligibility criteria for the different kinds of schools established by the Minister.

## **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**

- (1) The instruction provided in government schools is to be free of charge.
- (2) This section does not apply in relation to overseas students.

### **31A Overseas students**

- (1) The Secretary may, by order published in the Gazette, fix the fees to be paid by overseas students, or classes of overseas students, at government schools.
- (2) The Secretary is to cause an order under this section to be placed on the Department's website.
- (3) The Secretary may exempt an overseas student, or class of overseas students, from the requirement to pay a fee in accordance with this section, or refund all or any part of such a fee, in such circumstances as the Secretary considers appropriate.
- (4) An overseas student is not entitled to receive instruction, or to participate in school activities, at a government school, unless any fee payable by the student under this section has been paid.
- (5) The Secretary may terminate the enrolment of an overseas student at a government school if a fee that is required to be paid under this section in relation to the overseas student has not been paid.
- (6) Any fee that is due but not paid under this section may be recovered by the Secretary as a debt in a court of competent jurisdiction.

### **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.

#### **33A Special education in ethics as secular alternative to special religious education**

- (1) Special education in ethics is allowed as a secular alternative to special religious education at government schools.
- (2) If the parent of a child objects to the child receiving special religious education, the child is entitled to receive special education in ethics, but only if:
  - (a) it is reasonably practicable for special education in ethics to be made available to the child at the government school, and
  - (b) the parent requests that the child receive special education in ethics.
- (3) A government school cannot be directed (by the Minister or otherwise) not to make special education in ethics available at the school.

### **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 Secretary 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.
- (6) The following matters may (without limitation) be taken into consideration in determining whether a particular government school can accommodate a child:
  - (a) the child's age and sex,
  - (b) the kind of school established under section 29,

(c) the financial and other resources provided to the school,

(d) the existing number of classrooms and other facilities at the school.

(7) Nothing in this Part prevents the principal of a government school from accepting an application for the enrolment of an adult at that school for the purposes of receiving instruction.

### **34A Principals can require proof of eligibility to attend or entitlement to be enrolled at government schools**

(1) The principal of a government school may, for the purpose of establishing a child's eligibility to attend or entitlement to be enrolled at the school, require a person seeking to enrol the child at the school to provide proof, to the satisfaction of the principal, of the child's identity, date of birth and home address.

(2) The requirement may include a requirement to produce any document or to provide a statutory declaration, or both.

(3) The child is not entitled to be enrolled at the school unless and until the requirement is complied with (unless the requirement cannot reasonably be complied with in the circumstances).

(4) The Secretary may terminate the enrolment of a child at a government school who is not entitled to be enrolled at the school if the child was enrolled as a result of false information or a false document provided to the principal.

### **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 Secretary, expel a child of any age from a government school. The Secretary 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 Secretary 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 Non-government schools and home schooling**

### **Division 1 Application**

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

This Part applies to schools other than government schools.

### **Division 2 Registration**

#### **Subdivision 1 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 Division 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 Subdivision.

### **Subdivision 2 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,
- (b1) policies and procedures for the proper governance of the school are in place,
- (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 have the necessary experience and qualifications (having regard to accreditation under the *Teacher Accreditation Act 2004* but without limiting such other matters as may be relevant),
- (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 Part 2 of the *Child Protection (Working with Children) Act 2012*, 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 the *Child Protection (Working with Children) Act 2012*, and
  - (iv) maintaining a student enrolment and attendance register,
- (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—**

The rules of the Board may set 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 an administrative review of the recommendation within those 30 days, or
  - (b) the Tribunal has determined an application for an administrative 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 an administrative 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.

### **Subdivision 3 Continuing registration**

#### **54 (Repealed)**

#### **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 administratively 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 an administrative review of the recommendation within those 30 days, or
  - (b) the Tribunal has determined an application for an administrative 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 an administrative 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 an administrative review of the Board's recommendation, or
  - (b) the Tribunal has determined an application for an administrative 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 an administrative 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 Division).
- (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 an administrative review of the Board's recommendation, or
  - (b) the Tribunal has determined an application for an administrative 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 an administrative 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 *NSW Trustee and Guardian Act 2009*—the NSW Trustee and Guardian.

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.

## **Subdivision 4 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 Division.
- (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 Division, 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 Division,

is to be dealt with under this Division 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.

## **Subdivision 5 Registration for home schooling**

### **70 Definition of “authorised person”**

In this Subdivision, **authorised person** includes an inspector.

### **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 an administrative 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 an administrative review of the recommendation within those 30 days, or
  - (b) the Tribunal has determined an application for an administrative 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 an administrative 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 an administrative review of the recommendation, or

(b) the Tribunal has determined an application for an administrative 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 an administrative review of the recommendation has been withdrawn.

## **Subdivision 6 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 under Subdivision 5.

(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 (Administrative 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 an administrative review of the recommendation within those 30 days, or
  - (b) the Tribunal has determined an application for an administrative 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 an administrative 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 Division 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 Subdivision 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 Division, or
  - (b) the school's exemption has been cancelled under this Subdivision.

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

A child to whom a current certificate of exemption applies under this Subdivision 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 Subdivision 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 Subdivision is to be regarded for the purposes of Part 10 (Administrative 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 Subdivision 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 an administrative review of the recommendation of the Board or the authorised person, or
- (b) the Tribunal has determined an application for an administrative 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.

## **Division 3 Financial assistance to non-government schools**

### **83A Definitions**

In this Division:

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

**for profit declaration**—see section 83D.

**non-compliance declaration**—see section 83F.

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

### **83B 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) The determination of the amount of financial assistance provided under this section is subject to the obligations of the State, under any agreement made between the State and the Commonwealth, that relate to financial assistance in respect of non-government school children. The amount may exceed any amount that the State is so obliged to contribute in respect of non-government school children.
- (3) If there ceases to be any relevant agreement in operation in respect of non-government school children, the following provisions have effect subject to this

section:

- (a) the Minister is to maintain financial assistance in respect of non-government school children at the level that the State was obliged to contribute under the most recent relevant agreement before it ceased,
  - (b) the Minister may increase the amount of that financial assistance from time to time to take account of the costs of schooling (as assessed by the Minister).
- (4) Financial assistance under this section may be allocated having regard to the needs of different non-government schools.
  - (5) Financial assistance under this section includes the cost to the State of the administration of the provision of that financial assistance.
  - (6) Any financial assistance in respect of non-government school children may be paid directly to the school that the children attend or to a system of non-government schools for the benefit of that school.
  - (7) Any payment of financial assistance under this section is to be paid out of money to be provided by Parliament and is subject to Parliament appropriating money for the payment.
  - (8) The Minister is to review the operation of this section in 2017.
  - (9) In this section, **relevant agreement** means:
    - (a) the National Education Reform Agreement, or
    - (b) any subsequent replacement agreement.

**83C Financial assistance not to be provided to schools that operate for profit**

- (1) The Minister must not provide financial assistance (whether under this Division or otherwise) to or for the benefit of a school that operates for profit.
- (2) A school operates for profit (without limiting the circumstances in which it does so) if the Minister is satisfied that:
  - (a) any part of its proprietor's assets (in so far as they relate to the school) or its proprietor's income (in so far as it arises from the operation of the school) is used for any purpose other than for the operation of the school, or
  - (b) any payment is made by the school to a related entity or other person or body:
    - (i) for property, goods or services at more than reasonable market value, or
    - (ii) for property, goods or services that are not required for the operation of the school, or

- (iii) for property, goods or services that is in any other way unreasonable in the circumstances having regard to the fact that financial assistance is provided to or for the benefit of the school by the Minister, or
  - (c) any payment is made by the school to a person in connection with the person's activities as a member of the governing body of the school unless it is in reimbursement for a payment made by the person in connection with the operation of the school.
- (3) The regulations may specify whether or not a school operates for profit because of any particular use of assets or income, any particular payment in relation to the school or any other matter. Any such regulation has effect despite anything to the contrary in subsection (2).
- (4) The Minister is not obliged to terminate the provision of financial assistance because of this section if, following an investigation under this Division, the Minister is satisfied that:
- (a) termination of financial assistance is not justified because of the minor nature of the relevant conduct, or
  - (b) more appropriate action can be taken under section 83E.

### **83D Declaration that school operating for profit**

- (1) The Minister may declare that a school operates for profit or has operated for profit during a specified previous period, or both (a **for profit declaration**).
- (2) The Minister may make a for profit declaration only if the Advisory Committee recommends that the declaration be made because the school operates for profit or has so operated for profit (as the case requires).
- (3) A for profit declaration in respect of a school is conclusive evidence that the school operates for profit or has so operated for profit (as the case requires).
- (4) The Minister may revoke a for profit declaration at any time, and is to do so if the Advisory Committee advises the Minister, or the Minister is satisfied, that the school no longer operates for profit.
- (5) A for profit declaration may specify a period to which it applies that is wholly or partly before the declaration is made (including before the commencement of this section).
- (6) The Minister's obligation under this Division not to provide financial assistance to or for the benefit of a school that operates for profit applies, whether or not a for profit declaration has been made.

### **83E Financial assistance to schools may be suspended, reduced or made subject to**

**conditions**

- (1) The Minister may suspend, reduce or impose conditions on the provision of financial assistance (whether under this Division or otherwise) to or for the benefit of a school that is a non-compliant school.
- (2) A school is a non-compliant school if the Minister is satisfied that:
  - (a) the school or the proprietor of the school has failed to provide reasonable assistance in relation to the conduct of any investigation of the school or proprietor under this Division, or
  - (b) the school or the proprietor of the school has failed to comply with a direction of the Minister given under this Division to the school or proprietor, or
  - (c) it is a non-compliant school because of any other circumstances set out in the regulations.
- (3) A school is also a non-compliant school if the school operates for profit, or has operated for profit, but following an investigation under this Division, the Minister is satisfied that:
  - (a) termination of financial assistance to the school is not justified because of the minor nature of the relevant conduct, or
  - (b) more appropriate action can be taken in respect of the school under this section.
- (4) If a school ceases to be a non-compliant school, the school is not entitled to any payment that was not made because it was a non-compliant school.

**83F Declaration that school non-compliant**

- (1) The Minister may declare that a school is a non-compliant school (a ***non-compliance declaration***).
- (2) The Minister may make a non-compliance declaration only if the Advisory Committee recommends that the declaration be made because the school is a non-compliant school.
- (3) Any such recommendation of the Advisory Committee may include a recommendation on any consequent suspension or reduction of, or imposition of conditions on, the provision of financial assistance.
- (4) A non-compliance declaration in respect of a school is conclusive evidence that it is a non-compliant school and that grounds exist for the Minister to suspend, reduce or impose conditions on the provision of financial assistance in respect of the school.
- (5) The Minister may revoke a non-compliance declaration at any time, and is to do so if the Advisory Committee advises the Minister, or the Minister is satisfied, that the

school is no longer a non-compliant school.

- (6) The Minister's power under this Division to suspend, reduce or impose conditions on the provision of financial assistance to or for the benefit of a non-compliant school applies, whether or not a non-compliance declaration has been made and whether or not the suspension, reduction or imposition is recommended by the Advisory Committee.

### **83G Notice of recommendation of Advisory Committee relating to for profit or non-compliance declarations and administrative review by Tribunal**

The Minister is not to make a for profit declaration or a non-compliance declaration in respect of a school unless the Minister has given written notice to the school and to the proprietor of the school setting out the relevant recommendation of the Advisory Committee and unless:

- (a) 30 days have elapsed since the notice was given and no application has been made to the Tribunal for administrative review of the recommendation, or
- (b) the Tribunal has determined an application for administrative 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 administrative review of the recommendation has been withdrawn.

### **83H Investigations in relation to schools**

- (1) The Minister may carry out an investigation into a school or the proprietor of a school if the Minister suspects that the school may be operating for profit or may be a non-compliant school.
- (2) The Minister is to consult with the Advisory Committee before carrying out an investigation.
- (3) The Minister may defer all or part of any financial assistance to or for the benefit of the school during an investigation.
- (4) The Minister is to complete an investigation as soon as is reasonably practicable.
- (5) The Minister is to have regard to any advice of the Advisory Committee in relation to the investigation.

### **83I Directions to schools and proprietors**

- (1) The Minister may give any one or more of the following directions in writing to a school or to the proprietor of a school:
  - (a) a direction that the school or proprietor undergo an audit of the financial affairs of

the school or proprietor,

(b) a direction that the school or proprietor provide specified information to the Minister (or other specified person) relating to the affairs of the school or proprietor,

(c) a direction that the school or proprietor cease any specified conduct that is in breach of the obligation of the school not to operate for profit in order to be provided with financial assistance,

(d) a direction of a kind authorised by the regulations.

(2) The Minister may specify in a direction under this section the manner in which, and the time by which, the direction is to be complied with (including that information be verified by statutory declaration).

(3) The Minister may direct a school or proprietor required under this section to undergo an audit of the financial affairs of the school or proprietor to pay the Minister for the reasonable costs of or associated with the audit.

(4) The Minister is to seek the advice of the Advisory Committee in relation to any proposed direction under this section (other than a direction under subsection (1) (b)).

### **83J Recovery of amounts from schools**

(1) The Minister may recover the amount of any financial assistance provided by the Minister to or for the benefit of a school (whether under this Division or otherwise) if the financial assistance was provided in respect of a period when the school operated for profit or was a non-compliant school.

(2) Any amount of costs under section 83I (3) that is not paid by a school or the proprietor of a school may be recovered by the Minister as if it were financial assistance provided under this Division to the school when the school was a non-compliant school.

(3) The Minister may recover an amount under this section:

(a) as a debt in a court of competent jurisdiction, or

(b) by reducing future amounts of financial assistance payable by the Minister to or for the benefit of the school concerned,

or both.

(4) A school, the proprietor of a school and any system of non-government schools to which an amount recoverable under this section (or part of the amount) was paid are jointly and severally liable for repayment of the amount.

### **83K Non-Government Schools Not-for-profit Advisory Committee**

- (1) There is to be a Non-Government Schools Not-for-profit Advisory Committee comprised of the following members appointed by the Minister:
  - (a) the Chairperson of the Advisory Committee, being a person who, in the opinion of the Minister, is independent of the non-government school sector and the NSW Government,
  - (b) one person who represents the Association of Independent Schools,
  - (c) one person who represents the Catholic Education Commission,
  - (d) one person who represents the Board,
  - (e) one person who represents the Department,
  - (f) any other persons who, in the opinion of the Minister, will be of assistance to the Advisory Committee in the exercise of its functions.
- (2) The functions of the Advisory Committee are as follows:
  - (a) to provide advice to the Minister on compliance with this Division by schools and proprietors of schools,
  - (b) to make recommendations to the Minister for the making of for profit declarations or non-compliance declarations,
  - (c) to exercise any other function (not inconsistent with this Act) relating to financial assistance to schools that is conferred by this Division or that is agreed between the Minister and the Advisory Committee.
- (3) The regulations may make provision for or with respect to the functions, members and procedure of the Advisory Committee.
- (4) A matter or thing done or omitted to be done by the Advisory Committee or a member of the Advisory Committee does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the member personally to any action, liability, claim or demand.
- (5) Legal proceedings by or against the Advisory Committee are to be taken in the name of the Advisory Committee and not by or against the members of the Advisory Committee.

### **83L Not-for-profit guidelines**

- (1) The Minister may publish guidelines in the Gazette relating to the exercise of functions under this Division (including guidelines to assist schools and proprietors of schools to comply with this Division).



- (2) The Minister is to seek the advice of the Advisory Committee before publishing any such guidelines.

## **Part 7A Approval to provide courses to overseas students**

### **Note—**

The approval by the Board of providers to provide courses at schools to overseas students forms the basis of the registration of those providers under the [Education Services for Overseas Students Act 2000](#) of the Commonwealth.

### **83M Interpretation**

In this Part:

**approval** means an approval of a provider granted by the Board under this Part.

**approved provider** means a provider who is for the time being approved by the Board under this Part to provide courses to overseas students.

**Commonwealth Act** means the [Education Services for Overseas Students Act 2000](#) of the Commonwealth.

**provider** has the same meaning as it has in the Commonwealth Act.

### **83N Board responsible for approving providers**

For the purposes of the Commonwealth Act, the Board is responsible for approving providers to provide courses at government schools or non-government schools to overseas students who are enrolled at those schools.

### **Note—**

Accordingly, the Board is a designated authority for the purposes of the Commonwealth Act.

### **83O Approval to provide courses to overseas students**

- (1) The Board may, on the application of a provider, approve the provider to provide courses at a government school or registered non-government school to overseas students enrolled at the school.
- (2) An approval may (according to the terms of the approval) apply to such courses generally, to specified classes of such courses or to a specified course or courses.
- (3) An application for approval must be in such form, and be accompanied by such fee, as the Board may determine.
- (4) The Board may require an applicant to furnish further information in relation to the application.
- (5) An approval has effect for such period as is specified in the approval, commencing on a date so specified.

- (6) Approval may be granted unconditionally or subject to such conditions (which may be imposed when the approval is granted or at any later time) as the Board determines.
- (7) Examples of the conditions that may be imposed include the following:
  - (a) conditions specifying the premises in or from which the courses to which the approval relates are to be conducted,
  - (b) conditions requiring the payment (including periodic payment while the approval remains in force) of fees to the Board in respect of the approval.
- (8) The Board must not refuse an application for approval except on the grounds that:
  - (a) the applicant has not furnished such further information in relation to the application as the Board requires, or
  - (b) the Board has reasonable grounds to believe that the applicant will not comply with the national code (within the meaning of the Commonwealth Act), or
  - (c) the Board is not satisfied that all relevant Commonwealth criteria are met.
- (9) In this section, **relevant Commonwealth criteria**, in relation to an application for approval, means the criteria that the Board (in its role as a designated authority within the meaning of the Commonwealth Act) is required to certify as having been met for the purposes of recommending that the applicant be registered as a provider under the Commonwealth Act.

### **83P Amendment, suspension or cancellation of approval**

- (1) The Board may, on its own motion or on the application of any person or body, do any of the following in relation to an approval:
  - (a) amend the approval so that it applies to different courses,
  - (b) revoke or amend any condition of the approval,
  - (c) impose additional conditions on the approval,
  - (d) suspend or cancel the approval.
- (2) The suspension of an approval may be lifted at any time by the Board. Before lifting the suspension, the Board may require the payment of a fee determined by the Board.
- (3) The Board may not suspend or cancel an approval except on one or more of the following grounds:
  - (a) the approved provider concerned requests the suspension or cancellation,
  - (b) the approved provider is no longer providing courses for overseas students,

- (c) the approved provider has ceased to exist,
- (d) the approved provider has contravened the Commonwealth Act, the national code (within the meaning of that Act) or a regulation under that Act,
- (e) the Board has reasonable grounds to believe that one or more of the relevant Commonwealth criteria are not met,
- (f) the approved provider has contravened this Part or a condition of the provider's approval.

(4) In this section, **relevant Commonwealth criteria**, in relation to an approval, means the criteria that the Board (in its role as a designated authority within the meaning of the Commonwealth Act) would be required to certify as having been met if the Board were to recommend afresh that the provider concerned be registered as a provider under the Commonwealth Act.

### **83Q Requirements relating to approval decisions of Board**

- (1) Before the Board makes any decision under this Part, the Board must:
  - (a) cause written notice of the proposed decision to be given to the provider concerned, and
  - (b) give the provider a reasonable opportunity to make representations to the Board in relation to the proposed decision.
- (2) Subsection (1) (b) does not apply if the Board is of the opinion that it is in the public interest for the decision to have effect immediately.
- (3) In making a decision under this Part, the Board must have regard to any representations made under this section in relation to the proposed decision.
- (4) Notice of any decision under this Part by the Board, together with the reasons for the decision, must be given to the provider to which the decision relates.
- (5) This section does not apply to a decision to require a provider to provide further information in relation to an application for approval or a decision to grant such an application unconditionally.

### **83R Offences relating to advertising of courses for overseas students**

- (1) A person must not falsely advertise or otherwise falsely represent that a person is or has been approved by the Board to provide a course to overseas students.
- (2) A person must not advertise or otherwise represent that a person will or is, or is likely, to be approved by the Board to provide a course to overseas students.

Maximum penalty: 200 penalty units.

### **83S Information may be given to other bodies**

- (1) The Board may disclose to any agency of the State or the Commonwealth or of any other State or Territory or, to the extent authorised by the regulations, any other person any information the Board has about or arising from:
  - (a) an application for approval under this Part, or
  - (b) the approval of providers to provide courses to overseas students, or
  - (c) any action taken by the Board in relation to an approved provider.
- (2) In disclosing any information in accordance with this section or under a provision of a corresponding law, the Board does not contravene any obligation, whether imposed by any other Act or law, not to disclose the information.
- (3) In this section, **corresponding law** means the law of the Commonwealth (including the Commonwealth Act), or of another State or Territory, relating to education or training.

## **Part 8 Awards of study**

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

#### **84 (Repealed)**

#### **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 Record of School Achievement 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 an 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 an administrative 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 for an administrative review of 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 an administrative 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 for an administrative review of 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 Record of School Achievement or Higher School Certificate unless the school is accredited to present those candidates for that award.
- (2) A person who conducts a school (other than a government school) for the education of candidates for the Record of School Achievement or Higher School Certificate, being a school that is not or ceases to be accredited to present those candidates for that award, 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 award 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 Awards**

### **94 Record of School Achievement**

- (1) Records of School Achievement 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 Record of School Achievement 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 Record of School Achievement, 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 examinations or other assessments may be conducted on a school-basis, but are to be moderated on a State-wide basis in the learning areas and in the manner determined by the Board.
- (3) The Board may refuse to grant a Record of School Achievement to a student whose attendance or application at school has been of such an unsatisfactory character that the granting of a Record of School Achievement would not, in the opinion of the Board, be justified.
- (4) Records of School Achievement are to be granted in the manner determined by the Board.

#### **95 Higher School Certificate**

- (1) Higher School Certificates are to be granted by the Board to students:
- (a) who have been granted a Record of School Achievement 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, 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 Record of School Achievement 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 Record of School Achievement undertake an examination or other assessment referred to in section 94 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 Record of School Achievement 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 Recording student results and activities and provision of transcript of study**

- (1) The Board is to keep a record of a student's results in courses of study undertaken in Years 10, 11 and 12 for a recognised certificate at a government school or an accredited non-government school. The record may include any other information relating to the student's activities while at school as the Board thinks appropriate.
- (2) The Board may provide a transcript of study that sets out a student's record:
  - (a) to the student, or
  - (b) to the school attended by the student, or
  - (c) to any other person or body authorised by the regulations.
- (3) The Board is required to provide a transcript of study to any of the following students if requested by the student:
  - (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 for the minimum period determined by the Board (but only when the student leaves school).
- (4) Transcripts of study are to be provided in the manner determined by the Board.
- (5) A record is to be kept and a transcript of study provided under this section whether or not the student is also granted a recognised certificate.
- (6) The Board may provide 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**

### **99-101A (Repealed)**

**102** (Renumbered as section 20A)

### **103-106 (Repealed)**

## **Part 10 Administrative review of decisions by Tribunal**

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

- (1) An application may be made to the Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) 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,
  - (e1) a direction of the Secretary under Division 3 of Part 5A concerning the government schools in which a particular student may be enrolled,
  - (e2) a recommendation of the Non-Government Schools Not-for-profit Advisory Committee under Division 3 of Part 7 that the Minister make a for profit declaration or a non-compliance declaration in respect of a school (including a recommendation on any consequent suspension or reduction of, or imposition of conditions on, the provision of financial assistance),
  - (e3) a decision of the Board:
    - (i) to refuse to grant approval under Part 7A, or
    - (ii) to impose conditions on, amend, suspend or cancel such an approval,
  - (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, direction or decision under this Act.

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

- (1) On application for the administrative review of a recommendation or decision, the Tribunal may:
  - (a) confirm the recommendation, direction or decision, or
  - (a1) in the case of an application for the administrative review of a direction of the Secretary concerning the government schools in which a particular student may be enrolled—recommend to the Minister that the direction be varied or revoked, or
  - (b) in the case of an application for the administrative review of a recommendation of

the Board or other person or body—make a different recommendation to the Minister concerning the subject-matter of the application, or

- (c) in the case of an application for the administrative 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 administrative 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 administrative review by Tribunal) and 65 (Power to remit matters to administrator for further consideration) of the *Administrative Decisions Review Act 1997*.

(3) This section does not apply in relation to a decision of the Board under Part 7A.

**Note—**

Accordingly, sections 63 and 65 of the *Administrative Decisions Review Act 1997* apply.

**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,
  - (d) an application to the Board for approval to provide courses to overseas students.
- (2) For the purposes of section 6 (4) of the *Administrative Decisions Review 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 2009*.
- (2) The Minister may establish a district council for a specified area by order published in the Gazette.
- (3) Any such district council is to be constituted in accordance with 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 Secretary,
  - (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 Minister or Secretary**

The Minister or the Secretary may delegate to any person or body the exercise of any of their respective functions under this Act (other than the power of delegation conferred by this section).

**Note—**

The power of the Board to delegate its functions under this Act is contained in the [Board of Studies, Teaching and Educational Standards Act 2013](#).

#### **120, 121 (Repealed)**

#### **122 Attendance officers**

An authorised person or police officer (an **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 17 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, or
  - (d) a child has or has not, as at a day specified in the certificate, completed Year 10 of secondary education at the school,
- 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.
- (2A) In any proceedings under this Act, a certificate purporting to be signed by the Minister stating:
- (a) that an amount of financial assistance has been paid by the Minister to or for the benefit of a non-government school on a specified day, or
  - (b) that a for profit declaration or non-compliance declaration under Division 3 of Part

7 was made on a specified day and the terms of the declaration,  
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 17 is to be presumed to be so until the court is satisfied to the contrary.

(4) In any proceedings under this Act for an offence against section 23, a certificate purporting to be signed by the Secretary or by an officer prescribed by the regulations stating that, to the best of the belief of the Secretary or officer, on any day specified in the certificate:

- (a) a child was not enrolled as a student at a government school or registered non-government school, and
- (b) the child was not registered for home schooling,

is admissible in evidence and is prima facie evidence that the child was not so enrolled or registered.

(5) In any proceedings under this Act for an offence against section 23 (1), a certificate purporting to be signed by the Secretary or by an officer prescribed by the regulations stating, to the best of the belief of the Secretary or officer, on any day specified in the certificate:

- (a) whether or not a child has completed Year 10 of secondary education in this State, or
- (b) whether or not specified education completed outside of the State is the equivalent of Year 10 of secondary education in this State,

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

(6) In any proceedings under this Act, a certificate purporting to be authenticated by the Board, or to be signed by an officer prescribed by the regulations, stating any of the following matters is admissible in evidence and is prima facie evidence of the matters stated in the certificate:

- (a) that a person or body was or was not, on a day or during a period specified, an approved provider (within the meaning of Part 7A),
- (b) that a person or body, as such a provider, was or was not approved to provide courses generally, a specified class of courses or a specified course.

## **124 Proceedings for offences**

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

### **135 Review of Act**

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

## **Schedules 1-2 (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*

*Education Amendment (Financial Assistance to Non-Government Schools) Act 2006*

*Education Legislation Amendment Act 2006*

*Education Amendment Act 2008*

*Education Amendment Act 2009*

*Education Amendment (Publication of School Results) Act 2009*

*Education Amendment (School Attendance) Act 2009*

*Education Amendment (Record of School Achievement) Act 2012*

any other Act that amends this Act

- (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:
- 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
  - 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.

## **Part 7 Provision consequent on enactment of [Education Amendment \(Financial Assistance to Non-Government Schools\) Act 2006](#)**

### **14 Application of section 21A**

Section 21A, as inserted by the [Education Amendment \(Financial Assistance to Non-Government Schools\) Act 2006](#), applies:

- (a) in relation to any school that, immediately before the commencement of that section, was a registered non-government school—as from 1 January 2007, and
- (b) in relation to any school that is registered as a non-government school after the commencement of that section—as from the date on which it is registered.

## **Part 8 Provisions consequent on enactment of [Education Amendment Act 2008](#)**

### **15 Payments by overseas students**

The imposition by the Director-General of any fee or other charge that has been paid for or in relation to instruction provided in a government school to an overseas student before the commencement of section 31A (as inserted by the [Education Amendment Act 2008](#)) is

taken to have been lawfully imposed for all purposes.

#### **16 District councils**

A district council for an area established and in existence immediately before the amendment of section 115 of this Act by the *Education Amendment Act 2008* is taken to be a district council for that area established in accordance with section 115 as amended by that Act.

### **Part 9 Provisions consequent on enactment of *Education Amendment Act 2009***

#### **17 Application of compulsory school-age amendments and requirement to continue school, work or approved education or training until the age of 17 years**

- (1) The amendments made by the *Education Amendment Act 2009* do not apply to a child who attained the age of 15 years before 1 January 2010, unless:
  - (a) the child completed Year 10 of secondary education (as referred to in section 21B) during the 2009 school year, or
  - (b) the child was enrolled at a government or registered non-government school at the end of the 2009 school year or was registered for home schooling at the end of 2009.
- (2) The regulations may make provision for the purpose of determining whether a child was enrolled at a school at the end of the 2009 school year.

### **Part 10 Provisions consequent on enactment of *Education Amendment (Publication of School Results) Act 2009***

#### **18 Definition and application**

- (1) In this Part:

***amending Act*** means the *Education Amendment (Publication of School Results) Act 2009*.

- (2) This Part has effect despite any other Act or law or the decision of any tribunal.

#### **19 Application of amending Act to previous school results**

Section 18A (as substituted by the amending Act) extends to school results for testing, examinations and assessments held before the commencement of the amending Act.

#### **20 FOI exemption—transitional arrangement**

Until the repeal of the *Freedom of Information Act 1989*, clause 12 of Schedule 1 to that Act applies to a breach of the confidentiality provisions of section 18A of this Act in the

same way as it applies to an offence against an Act.

## **21 Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2009**

On and from the commencement of the amending Act, clauses 13.2, 13.3 and 36.1.2 of the *Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2009* cease to have effect.

## **Part 11 Provisions consequent on enactment of Education Amendment (Record of School Achievement) Act 2012**

### **22 Application of amendments to students in Year 11 or Year 12**

The amendments made by the *Education Amendment (Record of School Achievement) Act 2012* do not apply in relation to Year 11 or Year 12 students in 2012 or Year 12 students in 2013.

### **23 Continuation of accreditation of non-government schools**

The amendments made to Division 1 of Part 8 of this Act by the *Education Amendment (Record of School Achievement) Act 2012* do not affect any accreditation in force immediately before the commencement of those amendments. Any such accreditation for the purposes of presenting candidates for the School Certificate is taken to be an accreditation for the purposes of presenting candidates for the Record of School Achievement.

### **24 Continuation of curriculum for School Certificate candidates**

The amendment made to section 11 of this Act by the *Education Amendment (Record of School Achievement) Act 2012* does not affect the curriculum during Year 7 to Year 10 for students who are candidates for the School Certificate that is in force immediately before the commencement of that amendment. Any such curriculum is (until duly changed) the curriculum during Year 7 to Year 10 for students who are candidates for the Record of School Achievement.

## **Part 12 Provisions consequent on enactment of Education Amendment (School Providers for Overseas Students) Act 2013**

### **25 Definition**

In this Part:

**repealed Regulation** means the *Vocational Education and Training (Commonwealth Powers) (Transitional) Regulation 2011*.

## **26 Pending applications**

Any application made under the repealed Regulation, but not finally determined, immediately before the repeal of that Regulation is taken to have been made under Part 7A of this Act.

## **27 Approvals in force under repealed Regulation**

Any approval in force under the repealed Regulation immediately before the repeal of that Regulation is taken to have been granted under Part 7A of this Act.

## **Part 13 Provisions consequent on enactment of [Board of Studies, Teaching and Educational Standards Act 2013](#)**

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

The amendments made to section 47 by Schedule 3 to the [Board of Studies, Teaching and Educational Standards Act 2013](#) extend to an application under Division 3 or 4 of Part 7 of this Act that was made (but not determined) before the commencement of those amendments.

## **Part 14 Provisions consequent on enactment of [Education Amendment \(Not-for-profit Non-Government School Funding\) Act 2014](#)**

### **29 Definition of “amending Act”**

In this Part:

**amending Act** means the [Education Amendment \(Not-for-profit Non-Government School Funding\) Act 2014](#).

### **30 Meaning of “operate for profit” in relation to period before commencement of amending Act and during transition period**

For the purposes of this Act, the determination of whether a non-government school operated for profit during any period before the commencement of the amending Act, and during the period of 3 months after that commencement, is to be determined in accordance with section 21A, as in force immediately before the repeal of that section by the amending Act.

### **31 Investigations and directions in relation to any period before the commencement of amending Act**

- (1) An investigation may be carried out by the Minister under section 83H (as inserted by the amending Act) in relation to a period (and any conduct occurring in a period) before the commencement of the amending Act.
- (2) A direction may be given by the Minister under section 83I in relation to a period (and

any conduct occurring in a period) before the commencement of the amending Act.

**32 Recovery of payments made before the commencement of amending Act**

The Minister may recover under section 83J an amount of financial assistance paid to or for the benefit of a non-government school before the commencement of the amending Act.

**33 Declaration that particular non-government school operating for profit**

- (1) On the commencement of the amending Act, a for profit declaration is taken to have been made under section 83D (as inserted by the amending Act) that the Malek Fahd Islamic School at 405 Waterloo Road, Greenacre, operated for profit from 1 January 2010 until 31 July 2012.
- (2) The Minister may revoke any such declaration in the same way that the Minister may revoke a for profit declaration under section 83D.