

1992

Legislative Assembly for the Australian Capital Territory

EDUCATION (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

Circulated by Authority of Mr Michael Moore MLA

Outline

The proposed legislation is intended to promote fairness in decisions regarding the suspension, compulsory transfer, expulsion (or exclusion) of students at any school in the A.C.T. This object would be achieved by providing for a Board of Review to be established (see proposed section 30G) and allow for students, parents or guardians to apply to have such a decision reviewed (see proposed section 30D). The Board of Review would determine whether the relevant decision was a "fair" decision (see proposed section 30F(1)). In deciding whether a decision is fair, the Board would be required to take a number of factors into account (see proposed subsection 30F(2)).

In another sense, the principle of fairness is recognised in the broad composition of the Board of Review, reflecting as it does the government and independent school interest. Fairness in a procedural sense is also required of the Board of Review by proposed section 30L.

Another important principle underlying the Bill is the idea that by publishing the results of review by the Board, schools will be encouraged to make decisions in as fair a manner as possible. In effect, publicity is intended to be a sanction; the Bill contains no criminal sanctions.

Much of the language in the Bill, and a number of its provisions, have been adapted from the Schools Authority policy paper, "Policy and Procedures for Suspension and Exclusion of Students in A.C.T. Public Schools" which was issued in 1989.

This Bill represents the culmination of extensive public consultation on the subject. In particular, an exposure draft known as the Education (Amendment) Bill 1992 (5th Draft) was circulated to all schools and relevant bodies for comment in September 1992. The Bill has substantially the same effect as the exposure draft but has been simplified and further revised to make its language easier to understand. The Appendix contains comparative tables from which corresponding provisions in the Bill and the exposure draft may be identified.

The proposed legislation would take the form of an amendment of the *Education Act 1937*. In other words, the substantive provisions would become sections of that Act.

Financial Impact Statement

Consistent with Section 65 of the *Australian Capital Territory (Self-Government) Act 1988*, the proposed legislation would not have the effect of disposing of or charging any public money of the Territory. The proposed Board of Review would not be a permanent body or have its own staff; it would be constituted as required (see proposed section 30E). Its members would not be entitled to any remuneration.

Short Title

Clause 1 specifies the short title or name that the Act resulting from the Bill would have.

Principal Act

Bearing in mind that the proposed legislation would amend the *Education Act 1937*, in accordance with standard legislative practice that Act is referred to as the Principal Act.

Insertion

Clause 3 contains the proposed sections that would be inserted into the Principal Act.

Part 111A

The sections to be inserted into the Principal Act would form a distinct unit or "Part" of the Principal Act. The proposed Part would be largely self-contained.

Interpretation

Because the provisions in proposed Part 111A are largely self-contained, it is convenient that they should contain their own interpretation provision.

In particular, the definition "application for review" identifies the provision under which the review process would be initiated.

The definitions "government school educationalist" and "independent school educationalist" each refer to persons qualified to represent the interests of government schools and independent schools respectively.

The definition "relevant decision" is intended as a convenient way of describing a suspension, compulsory transfer, expulsion (or exclusion) that is to be reviewed.

The definition of "suspension" clarifies the meaning of one of the types of decisions that would be subject to review.

The definition "Association" refers to the organisation known as the Association of Independent Schools ACT.

At least one of the key terms in the Bill, namely, "Authority" is defined in section 5 of the Principal Act and used throughout that Act. For that reason there is no need for a special definition in proposed section 30B. The term is defined as follows:

"Authority" means the Australian Capital Territory Schools Authority.

Decisions to which this Act applies

Proposed section 30C identifies the types of decisions that may be reviewed. The section takes account of the fact that some procedures applicable to students at government schools (see paragraph (b)) do not apply to students at independent schools (see paragraph (c)). On the other hand, some procedures apply to students at all schools (see paragraph (a)). Note that the Bill only gives a right of review in relation to suspensions when either the suspension exceeds ten school days or the period of the suspension when added to the total number of school days of suspension during the term would exceed ten school days.

Application for Review

Proposed section 30D fixes the point at which the review process begins: an application may be made by the student or the student's parents or guardian. The section provides for the application to be made in writing to the Schools Authority. The seven day limit for making application is adapted from paragraph 3.10 of the Schools Authority paper, "Policy and Procedures for Suspension and Exclusion of Students in ACT Public Schools".

Minister and effected persons and organisations to be notified

Proposed section 30E represents the next stage of the review process once an application has been made. As previously mentioned, the Board of Review is not a permanent body. It must be specially convened whenever a decision is to be reviewed. Proposed section 30E therefore represents part of the mechanism for constituting a Board of Review.

Function and powers of the Board of Review

Proposed section 30F indicates that the Board of Review has but one function; to determine whether the relevant decision is a "fair" decision. Notions of fairness of course vary from person to person. Proposed subsection 30F(2) therefore lays down guidelines that the Board of Review must take into account. The Board of Review may decide:

- (a) That a decision is fair;
- (b) That a decision is not fair (and is therefore set aside);
- (c) That an unfair decision be remitted for reconsideration.

Decisions of the Board are to be recorded in writing (see proposed subsections 30F(3) and (4) and a copy given to the affected parties (see proposed subsection 30F(6)).

Constitution of Board of Review

Proposed section 30C specifies the classes of persons who may be members of the Board of Review. The section provides for a balanced composition of members capable of representing the interests of the student and of government and non-government schools.

Proposed subsection 30G(2) gives the Association of Independent Schools (ACT) the option of appointing a member but the option must be exercised within 14 days of being notified that the Board is required to be constituted.

Reconstitution of Board of Review in certain cases.

Although it is envisaged that the Board of Review would review a decision within a matter of days, it is possible that one of its members might cease to be a member during the course of a review or even immediately the Board has been reconstituted. But for a provision such as proposed section 30H, the only way such a member could be replaced would be by constituting the Board of Review again. Proposed paragraph 30H(2)(d) reflects the possibility that if a member of the Community Advocate's staff ceases to be a member, the Community Advocate may decide to take the member's place or appoint another member of staff to be the new member. The Bill also takes account of the possibility that the Community Advocate him/herself may be a member of the Board of Review and then cease to hold the office of Community Advocate. Proposed subsection 30H(5) therefore provides for a replacement member in that situation. The status of that position on the Board is of critical importance because that member is the Chairperson (see proposed section 30J) In the case of a replacement member appointed by the Association of Independent Schools (A.C.T.), a seven day period would apply. (See proposed subsection 30H(4).

Application of subsection 26(4) of the Interpretation Act 1967

Proposed section 30I is intended to avoid a technical argument being raised against the Board operating with less than a full complement of members. The effect of subsection 26(4) of the Interpretation Act 1967 is that the Board of Review could continue to review a decision even if there were one or more vacancies in its membership. Although proposed section 30H makes provision for replacing a member, it does not require that a member be replaced. If the members of the Board considered that a member might not be replaced or that the replacement would be delayed until, they would be free to proceed with the review while the vacancy continued.

Chairperson

Proposed section 30J provides in effect that the Chairperson would be the Community Advocate or a member of the Community Advocate's staff appointed by the Community Advocate.

Meetings

Proposed section 30K lays down rules concerning meetings of the Board of Review. The Board is expected to meet as necessary (see proposed subsection 30K(1)). The Chairperson is authorised to convene meetings (see proposed subsection 30K(2)). A quorum is constituted by 3 members (including the Chairperson (see proposed subsection 30K(3)). Although questions will normally be decided on a majority vote, (see proposed subsection 30K(5)) the Chairperson has an extra or casting vote if the votes would otherwise be equal (see proposed subsection 30K(6)). Any aspects of Board meetings that are not provided for by the Act would be determined by the Board itself.

Procedure

Proposed section 30L is intended as a procedural safeguard. Its object is to ensure that the Board itself does not act unfairly. In particular, the Board is prohibited from making a decision without giving the staff and governing body of the school concerned a reasonable opportunity to attend meetings of the Board, make submissions to the Board or place before the Board documents relevant to the Review. Proposed subsection 30L(2) would extend the operation of subsection 30L(1) to former staff members and former members of the school board.

Information and Documents

Proposed section 30M empowers the Board to request information or produce documents relevant to the review. Although proposed subsection 30M(1) would oblige staff or members of the school board to comply with the request, no criminal sanction is provided. Proposed subsection 30M(2) would extend the operation of subsection 30M(1) to former staff members and former members of the school board.

Publication of Decisions

Proposed section 30N provides for the decision of the Board of Review to be published for public information. Although the name of the school and the date of the decision would be identified, the name of the student involved would not be published. The intention underlying this provision is that the prospect of publicity should encourage schools to make decisions in as fair a manner as possible.

Liability for defamatory statements

Proposed section 30P is intended to protect oral or written statements made in good faith from liability for defamation. Proposed subsection 30P(1) would give protection to members of the Board. Proposed subsection 30P(2) would protect persons such as the applicant for review or his/her parents. It would also protect staff members and members of school boards who make submissions or produce documents under proposed sections 30L or 30M. It is intended that the protection conferred would encourage frank discussion of the issues. Proposed subsection 30P(3) would protect a newspaper which publishes a notice under proposed section 30N. Proposed subsection 30P(4) is intended to preserve any common law or other protection from liability for defamatory statements.

APPENDIX

COMPARATIVE TABLE

Provision of Bill (Education Amendment) Bill 1992	Provision of exposure draft ("Education (Amendment) Bill 1992 (5th draft)")
Clause 3	Clause 3
Proposed section 30B	Proposed section 30B
definition of "application for review"	-
definition of "Association"	-
definition of "government school educationalist"	definition of "government school educationalist"
definition of "independent school educationalist"	definition of "independent school educationalist"
definition of "legal practitioner"	definition of "legal practitioner"
definition of "relevant decision"	definition of "decision under review"
definition of "school"	definition of "school"
definition of "school concerned"	-
definition of "suspension"	definition of "suspension"
Proposed Section 30C	definition section 30BA
Proposed section 30D ("Application for Review")	Proposed section 30C ("Request for review")
Proposed section 30E ("Minister and affected persons and organisations to be notified")	Proposed section 30D ("Minister and appointing authorities to be notified")
Proposed section 30F	Proposed section 30DA
Proposed section 30G	Proposed section 30E
(1)	(1) and (2)
(1)(a)	(1)(a)
(1)(b)	(1)(b)
(1)(c) (legal practitioner appointed by the Attorney General)	(1)(d) (an officer of the Legal Aid Commission (ACT) who is a legal practitioner)
(1)(d) (include the Community Advocate)	(1)(c)
(1)(e)	(1)(e)

(2) (limited to Association)

Proposed section 30H

(1)
(2)(a)
(2)(b)
(2)(c) (Attorney General may
appoint another legal
practitioner)

(2)(d) (Community Advocate may
assume the office or appoint
another member of staff)

(2)(e)
(3)
(4) (limited to Association)
(5)
(6)

Proposed section 30I

Proposed section 30J

Proposed section 30K

Proposed section 30L

Proposed section 30M
(1) and (2)

Proposed section 30N

Proposed section 30P

(3)

Proposed section 30EA

(1)
(2)(a)
(2)(b)
(2)(d) (President of the Legal
Aid Commission (ACT) may
appoint another legal
practitioner)

(2)(c) (Community Advocate may
appoint another legal
practitioner)

(2)(e)
-
(3)
(4)
(5)

Proposed section 30EB

Proposed section 30FA

Proposed section 30G

Proposed section 30GA

Proposed section 30H

Proposed section 30J

Proposed section 30JA