



Australian Capital Territory

# **Education Act 2004**

**A2004-17**

**Republication No 1**

**Effective: 1 January 2005 – 1 January 2006**

Republication date: 1 January 2005

Act not amended

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Education Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2005. It also includes any amendment, repeal or expiry affecting the republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Education Act 2004

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Australian Capital Territory

# Education Act 2004

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An Act about the education of children in the ACT, and for other purposes

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## Chapter 1      General

### Part 1.1      Preliminary

#### 1      **Name of Act**

This Act is the *Education Act 2004*.

#### 3      **Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1*    The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*carer*—see section 6.’ means that the term ‘carer’ is defined in that section.

*Note 2*    A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

#### 4      **Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note*      See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

#### 5      **Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1*    *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**6** **Meaning of *parent* and *carer***

- (1) In this Act, a *parent* includes a carer.
- (2) In this Act, a *parent* is a person having parental responsibility for the child under the *Children and Young People Act 1999*.
- (3) In this Act, a *carer* is a person who is a carer under the *Children and Young People Act 1999*, section 5.

## **Part 1.2                      General principles and objects**

### **7                      General principles of Act**

- (1) Everyone involved in the administration of this Act, or in the education of children of school age in the ACT, is to apply the principle that every child has a right to receive a high-quality education.
- (2) Without limiting subsection (1), a high-quality education is based on the following principles:
  - (a) school education and home education provide a foundation for a democratic society;
  - (b) school education and home education should—
    - (i) aim to develop every child’s potential and maximise educational achievements; and
    - (ii) promote children’s enthusiasm for lifelong learning and optimism for the future; and
    - (iii) encourage parents to take part in the education of their children, and recognise their right to choose a suitable educational environment; and
    - (iv) promote respect for and tolerance of others; and
    - (v) recognise the social, religious, physical, intellectual and emotional needs of all students; and
    - (vi) aim over time to improve the learning outcomes of students so that the outcomes are free from disadvantage because of economic, social, cultural or other causes; and
    - (vii) encourage all children to complete their senior secondary education; and



- (viii) provide access to a broad education; and
  - (ix) recognise the needs of Indigenous students;
  - (c) innovation, diversity and opportunity within and among schools should be encouraged;
  - (d) effective quality assurance mechanisms should be applied to school education;
  - (e) government funding should be directed to children through their schools or school system;
  - (f) the partnership between the home, community and educational providers should be recognised;
  - (g) school communities should be given information about the operation of their schools.
- (3) Everyone involved in the administration of this Act, or in the education of children of school age in the ACT, is to apply the principle that school education—
- (a) recognises the individual needs of children with disabilities; and
  - (b) should make appropriate provision for those needs, unless it would impose unjustifiable hardship on the provider of the school education.
- (4) Corporal punishment is not allowed in ACT schools.

## **8 Main objects of Act**

The main objects of this Act are—

- (a) to state the responsibilities of parents and the government in relation to school education and the principles and values on which government and non-government school education and home education are based; and

- (b) to promote compulsory school education and state the circumstances in which school attendance is not required, including providing for suspension and exclusion from school; and
- (c) to provide for the operation and governance of government schools; and
- (d) to provide for the registration of non-government schools and home education.

## Chapter 2      School enrolment and attendance

### 9      **Meaning of *compulsory school age***

For this Act, a child is of *compulsory school age* if the child is at least 6 years old and under 15 years old.

### 10      **Compulsory enrolment**

- (1) This section applies to the parents of a child if the child is of compulsory school age and lives in the ACT.
- (2) Not later than 14 school term days after the day the child turns 6 years old, or begins to live in the ACT, the parents must enrol the child at a school or apply to register the child for home education.

Maximum penalty: 5 penalty units.

- (3) Subsection (2) does not apply if—
  - (a) the child lives in the ACT but is enrolled in a school under State law; or
  - (b) an exemption certificate is in force for the child; or
  - (c) the parents have a reasonable excuse for not complying with the subsection.
- (4) An offence against this section is a strict liability offence.

### 11      **Compulsory attendance**

- (1) This section applies to the parents of a child if the child lives in the ACT, is of compulsory school age and is enrolled at a school.
- (2) The parents must ensure that the child attends—

- (a) the school on every day, and during the times on every day, when the school is open for attendance; and
  - (b) every activity of the school (including attendances at an approved educational course) that the school requires the child to attend.
- (3) The parents must not contravene subsection (2).  
Maximum penalty: 5 penalty units.
- (4) Subsection (3) does not apply if the parents have a reasonable excuse for the contravention.
- (5) An offence against this section is a strict liability offence.

## **12 Information about school-age children**

- (1) This section applies if the chief executive believes on reasonable grounds that—
- (a) a child of compulsory school age lives in the ACT; and
  - (b) the child is not enrolled at a school or registered for home education.
- (2) The chief executive may give written notice to a parent of the child requiring the parent to give the chief executive the details about the child stated in the notice within 7 days after the day the parent receives the notice.
- (3) If the chief executive gives a notice under this section to the parent, the parent must comply with the notice.  
Maximum penalty: 50 penalty units.
- (4) An offence against this section is a strict liability offence.

**13 Employment of children under school-leaving age**

- (1) A person must not employ a child under school-leaving age, on a day and at a time, when the child—
- (a) is required under this Act to attend a school, school activity or approved educational course; or
  - (b) if the child does not live in the ACT or is enrolled at a school under State law—would be required under this Act to attend a school, school activity or approved educational course if the child were living in the ACT or were not enrolled at a school under State law.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

**14 Exemption certificates**

The chief executive may, on application by the parents of a child, issue a certificate exempting the child from school, if satisfied that—

- (a) it is necessary or desirable, having regard to any educational, vocational training or employment opportunity offered to the child before the child is of school-leaving age, to exempt the child from school; or
- (b) it is otherwise in the child's best interests, having regard to the care, health, development or education of the child, to exempt the child from school.

**15 Duration of exemption certificates**

An exemption certificate may be issued for a child until—

- (a) the child reaches school-leaving age; or
- (b) the ground on which the certificate was issued ceases to apply.

**16 Revocation of exemption certificates**

The chief executive may revoke an exemption certificate issued for a child if—

- (a) the certificate was issued in error; or
- (b) the ground on which the certificate was issued ceases to apply.

**17 Student transfer register**

The chief executive must establish procedures for recording the transfer of students between schools in the ACT.

## **Chapter 3            Government schools**

### **Part 3.1            General**

#### **18            Principles on which ch 3 based**

The following are the principles on which this chapter is based:

- (a) the ACT government school system is based on the principles of equity, universality and nondiscrimination;
- (b) government schools are free and open to everyone;
- (c) government schools offer a broad and balanced secular education to all children from preschool to year 12 by providing access to a broad curriculum;
- (d) the government school system is committed to—
  - (i) providing reasonable access to public education for all children in the ACT;
  - (ii) maximising student educational achievements and opportunities; and
  - (iii) developing emotional, physical and intellectual wellbeing of all students; and
  - (iv) responsiveness to community needs; and
  - (v) innovation, diversity and choice; and
  - (vi) preparing students to be independent and effective local and global citizens; and
  - (vii) teacher, student and parent participation in all aspects of school education; and

- (viii) combining central policies and guidelines with school level policies and decision-making; and
- (ix) making information available about, and being accountable for, the operation of government schools;
- (e) government school funding is provided to schools in recognition of the principles mentioned in paragraphs (a) to (d) and the diversity of children's needs.

**19 Minister to seek advice**

- (1) Before deciding the budget priorities and strategic directions for government schools each year, the Minister must ask for, and consider the advice of, the Government Schools Education Council.
- (2) This section does not limit the matters that the Minister may take into account in deciding the budget priorities and strategic directions for government schools.



## Part 3.2                      Establishment and operation of government schools

### 20                      Establishing government schools etc

- (1) The Minister may establish government schools and preschools (*government schools*).
- (2) The Minister may decide the kinds of government schools to be established and the educational level or levels for the schools.
- (3) The Minister may establish school-related educational institutions and services (*school-related institutions*).

#### **Example of school-related institution**

Hindmarsh Education Centre

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The Minister may name, and change the name of, a government school or school-related institution.
- (5) Before closing or amalgamating a government school, the Minister must—
  - (a) have regard to the educational, financial and social impact on students at the school, the students' families and the general school community; and
  - (b) ensure that school communities affected by the closure or amalgamation have been adequately consulted during a period of at least six months.

## **21 Operation of government schools**

- (1) The chief executive is responsible to the Minister for the operation of government schools.
- (2) Government schools are to be publicly owned and operated by the Territory itself.
- (3) The chief executive must establish procedures that give priority to the enrolment of children in the government school in their neighbourhood.
- (4) The principal of a government school is responsible for—
  - (a) educational leadership and management of the school; and
  - (b) educational outcomes for students at the school; and
  - (c) providing support to the school board in the carrying out of its functions; and
  - (d) contributing to the development and implementation of educational policies and strategies.
- (5) The principal of a government school must make available to parents of students at the school, and to the staff and students of the school, information about the school's educational programs and policies, and the school's operation.

## **22 Investigation of complaints—government schools**

- (1) The chief executive must develop and implement a complaints policy for government schools.
- (2) The chief executive must, as soon as practicable, investigate any complaint about the administration, management and operation of government schools that, in the chief executive's opinion, is not a frivolous or vexatious complaint.
- (3) The chief executive must, in an annual report under the *Annual Reports (Government Agencies) Act 2004* for a financial year,

include details about the number of complaints investigated by the chief executive under this section in that financial year.

**23 Review of government school system**

The chief executive must regularly review, and report to the Minister on, the government school system as a whole.

**24 Review of operation of government schools**

- (1) The chief executive must ensure that—
  - (a) the effectiveness of each government school is reviewed at least once every 5 years; and
  - (b) a report of the review is prepared.
- (2) The chief executive must ensure that a review seeks the input of the local community served by the school.
- (3) A review must take into account the views of—
  - (a) the parents of students at the school; and
  - (b) the teachers at the school; and
  - (c) the students at the school.
- (4) The chief executive must make the report of a review of a school available to—
  - (a) the parents of students at the school; and
  - (b) the staff of the school; and
  - (c) the students at the school.

**25 Reporting to parents—government schools**

- (1) The principal of a government school must set up procedures for giving reports to the parents of a child enrolled at the school about the child's academic progress and social development at the school.

- (2) A report must be given to the child's parents at least twice a year.

## 26 Education to be free

- (1) Education in government schools is to be free and no fees are chargeable for it.
- (2) Subsection (1) does not apply—
- (a) in relation to course money paid to a registered provider; or
  - (b) to people who hold a temporary visa under the *Migration Act 1958* (Cwlth), section 30 (2).
- (3) In subsection (2):

*course money*—see the *Education Services for Overseas Students Act 2000* (Cwlth), section 7.

*registered provider*—see the *Education Services for Overseas Students Act 2000* (Cwlth), section 5.

## 27 Voluntary financial contributions

- (1) The school board of a government school may ask the parents of a child enrolled at the school, or anyone else, to make a financial contribution to the school.
- (2) The following principles apply in relation to financial contributions:
- (a) each contribution is to be voluntary;
  - (b) a child at the school is not to be refused benefits or services because the child's parents do not make a contribution;
  - (c) a child is not to be approached or harassed for contributions;
  - (d) any record of contributions is confidential.
- (3) If the school board asks the parents of a child enrolled at the school to make a financial contribution, the school board must tell the

parents about the principles that apply in relation to financial contributions.

**28 Secular education**

- (1) Education in government schools is to be non-sectarian, secular education.
- (2) Secular education in government schools may include the study of different religions as distinct from education in a particular religion.

**29 Religious education**

- (1) If parents of children at a government school ask the principal for their children to receive religious education in a particular religion, the principal must ensure that reasonable time is allowed for their children's religious education in that religion.
- (2) The principal must ensure that the educational program continues for children at the school not attending religious education.
- (3) Religious education must be authorised by the religious body to which the person providing the instruction belongs.
- (4) Children attending a religious education class at a government school must be separated from other children at the school while the class is held.
- (5) In this section:

*religious education* means education in a particular religion as distinct from the study of different religions.

**30 Curriculum**

- (1) The chief executive must decide the curriculum requirements for children attending government schools (other than in years 11 and 12).

- (2) For subsection (1), the requirements include the framework of the curriculum and the principles on which the curriculum is based.

**31 Approved educational courses for children at government schools**

- (1) The chief executive may approve educational courses for a child enrolled at a government school that may be provided to the child at a place other than the school.
- (2) An approval may be subject to conditions.
- (3) However, the chief executive may approve an educational course only if satisfied that—
- (a) the standard of the course is appropriate; and
  - (b) there are adequate facilities for conducting the course; and
  - (c) the premises where the course is to be conducted comply with any relevant Territory laws about health and safety standards.

## **Part 3.3                      Attendance at government schools**

### **32                      Keeping of register of enrolments and attendances for government schools**

- (1) The principal of a government school, or the person giving an approved educational course (government), commits an offence if the principal or person fails to keep a register of enrolments and attendances.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

### **33                      Keeping records of enrolment and attendances for government schools**

- (1) The principal of a government school, or the person giving an approved educational course (government), must ensure that the following information is entered in the register of enrolments and attendances:

- (a) the full name of each child enrolled at the school or course;
- (b) a record of the attendance or nonattendance of the child at the school or course on every day when the school or course is open for attendance.

Maximum penalty: 10 penalty units.

- (2) The principal of a government school, or the person giving an approved educational course (government), commits an offence if—
  - (a) the principal or person makes an entry in the register of enrolments and attendances; and

- (b) the principal or person is reckless about whether the entry is correct.

Maximum penalty: 10 penalty units.

- (3) An offence against subsection (1) is a strict liability offence.

**34 Inspection of register of enrolment and attendances for government schools**

- (1) The principal of a government school, or the person giving an approved educational course (government), commits an offence if—
  - (a) an authorised person (government) asks the principal or person to make the register of enrolments and attendances available to the authorised person; and
  - (b) the principal or person fails to make the register available as asked.

Maximum penalty: 10 penalty units.

- (2) The principal of a government school, or the person giving an approved educational course (government), commits an offence if—
  - (a) the chief executive or an authorised person (government) asks the principal or the person to give the chief executive or authorised person stated information about enrolments or attendances of children at the school or course during a stated period or at a stated time; and
  - (b) the principal or person fails to give the information in accordance with the request.

Maximum penalty: 50 penalty units

- (3) An authorised person (government) may make copies of the register of enrolments and attendances or any part of the register.
- (4) The principal of a government school, or the person giving an approved educational course (government), must take reasonable



steps to assist an authorised person (government) in exercising functions under this section.

- (5) An offence against this section is a strict liability offence.

**35 Procedures to encourage school attendance at government schools**

- (1) The principal of a government school must set up procedures—
- (a) to encourage children to attend school regularly; and
  - (b) to help parents to encourage their children to attend school regularly.
- (2) The principal must refer parents and children to support services that encourage children to attend school regularly when the procedures mentioned in subsection (1) are not successful.
- (3) If a child enrolled at a government school has not been attending school regularly, the principal of the school may, by written notice, require the child's parents and the child to meet with an authorised person at a stated place and time.

**36 Suspension, exclusion or transfer of child by chief executive**

- (1) This section applies if—
- (a) a child attending a government school—
    - (i) is persistently and wilfully noncompliant; or
    - (ii) threatens to be violent or is violent to another child attending the school, a member of the staff of the school or anyone else involved in the school's operation; or
    - (iii) acts in a way that otherwise threatens the good order of the school or the safety or wellbeing of another child

- attending the school, a member of staff of the school or anyone else involved in the school's operation ; or
- (iv) displays behaviour that is disruptive to the child's learning or that of other children; and
- (b) the principal of the school is satisfied that action should be taken under this section.
- (2) The principal may recommend to the chief executive that the chief executive—
- (a) suspend the child from the school for a stated period of not longer than 20 days; or
- (b) transfer the child to another government school; or
- (c) exclude the child from all government schools.
- (3) After considering the principal's recommendation, the chief executive may—
- (a) give effect to the recommendation; or
- (b) take any other action mentioned in subsection (2) that the chief executive considers appropriate; or
- (c) suspend the child for not longer than 20 days.
- (4) The chief executive may exclude the child only if—
- (a) the child's parents have been given an opportunity to be consulted, and told in writing, about the proposed exclusion of the child and the reasons for it; and
- (b) the child has been given a reasonable opportunity to attend counselling, undertake relevant educational programs or receive other appropriate assistance; and
- (c) as far as the child's maturity and capacity for understanding allow, the participation of the child has been sought, and any

- views of the child considered, in deciding whether to exclude the child; and
- (d) the child has been given sufficient information about the decision-making process, in a language and way that the child can understand, to allow the child to take part in the process; and
  - (e) the child has been offered alternatives for continuing the child's education during the exclusion.
- (5) The chief executive may suspend or transfer the child only if—
- (a) the child's parents have been given an opportunity to be consulted, and told in writing, about the proposed suspension or transfer of the child and the reasons for it; and
  - (b) as far as the child's maturity and capacity for understanding allow, the participation of the child has been sought, and any views of the child considered, in deciding whether to suspend or transfer the child; and
  - (c) the child has been given sufficient information about the decision-making process, in a language and way that the child can understand, to allow the child to take part in the process; and
  - (d) the child has been given a reasonable opportunity to continue the child's education during the suspension.
- (6) Despite subsection (5), the chief executive may immediately suspend the child for not longer than 5 days if, in the chief executive's opinion, the circumstances are of such urgency or seriousness to require the child's immediate suspension.
- (7) However, before suspending the child under subsection (6), the chief executive must comply with the requirements of subsection (5) (a) to (d) to the extent that it is practicable and appropriate to do so.

- (8) To remove any doubt, the chief executive may suspend the child under subsection (6) while deciding what other action (if any) should be taken in relation to the child under this section.
- (9) If the child is suspended for 7 or more school days in a school term (whether or not consecutive school days), the chief executive must ensure that the child is given a reasonable opportunity to attend appropriate counselling.
- (10) The chief executive may delegate the chief executive's power to suspend a child from a government school for not longer than 5 days to the principal of the school.

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

## Part 3.4 School boards of government schools

### Division 3.4.1 Interpretation

#### 37 Definitions for pt 3.4

In this part:

*half-year* means a period of 6 months ending on 30 June or 31 December.

*money*, of a school, means money allocated to the school by the chief executive or otherwise received by the school.

#### **Examples of money otherwise received**

voluntary financial contributions, other donations and sponsorships

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

*parents and citizens association*, of a school, means

- (a) the entity declared under section 40 (Declaration of parents and citizens associations in certain circumstances) to be the parents and citizens association of the school; or
- (b) if there is no declaration under that section for the school—the parents and citizens association incorporated under the *Associations Incorporation Act 1991* or the *Associations Incorporation Act 1953* (repealed) in relation to the school.

*prescribed period*, for a term of office of a member of a school board (other than the principal), means the period—

- (a) beginning on whichever of the following is later:

- (i) 1 March in the year of the member's election or appointment;
  - (ii) the date of the member's election or appointment; and
- (b) ending at the end of the February at least 12 months, and not more than 24 months, after the beginning of the period.

*school* means a government school, but does not include a preschool.

*small school* means a school (other than a school-related institution) where fewer than 4 teachers are employed.

*student* means a student who attends classes at a school for at least 12 hours per week.

## **Division 3.4.2 Establishment and membership**

### **38 Establishment of school boards**

A school board is established for each government school.

*Note* Section 146 (Preschools) deals with opportunities for parents of children at preschools to participate in the conduct of the preschool.

### **39 Functions of school boards etc**

- (1) The functions of the school board of a government school are—
- (a) to establish strategic direction and priorities for the school; and
  - (b) to monitor and review school performance and to report on it to the chief executive, parents of students at the school and staff; and
  - (c) to develop, maintain and review curriculum for the school; and
  - (d) to develop and review education policies at the school; and
  - (e) to establish budgetary policies for the school and approve the school budget; and

- (f) to establish policies for the efficient and effective use of school assets and the management of financial risk; and
  - (g) to develop relationships between the school and the community and between the school and community organisations; and
  - (h) to make recommendations to the chief executive on issues affecting the school; and
  - (i) to encourage parent participation in their children's learning; and
  - (j) to exercise any other function given to the board under this Act or any other Territory law.
- (2) The chief executive may give written directions to the school board about the exercise of its functions, either generally or in relation to a particular issue.
- (3) The chief executive must, in an annual report under the *Annual Reports (Government Agencies) Act 2004* for a financial year, include particulars of any direction given by the chief executive under this section in that financial year to a particular school board and not to school boards generally.
- (4) The school board must give effect to the chief executive's directions.
- (5) The chief executive is not required—
- (a) to accept, or act in accordance with, a recommendation of the school board; or
  - (b) to carry out a policy decided by the school board.

#### **40 Declaration of parents and citizens associations in certain circumstances**

- (1) If there is a dispute about the entity that should be the parents and citizens association of a government school, the chief executive

must call a meeting of parents of students at the school and interested members of the community to discuss the entity to be the representative of the parents and community.

- (2) If, in the chief executive's opinion, it is appropriate in the circumstances to do so, the chief executive may call a meeting of parents of students at a government school and interested members of the community to discuss the entity to be the representative of the parents and community.
- (3) The chief executive may, after considering the outcome of a meeting under subsection (2) or (3) in relation to a government school, recommend to the Minister the entity to be the representative of the parents and community.
- (4) After receiving a recommendation under subsection (3), the Minister may, in writing, declare an entity to be the parents and citizens association of a government school.
- (5) A declaration under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

#### **41 Constitution of school boards generally**

- (1) This section applies to a school board of a government school other than—
  - (a) a small school or a school-related institution; or
  - (b) a school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies.
- (2) The school board of a government school consists of—
  - (a) the principal of the school; and
  - (b) 1 member (the *appointed member*) appointed by the chief executive as the appointed member; and



- (c) 2 members (the *staff members*) elected by staff of the school and appointed by the chief executive; and
- (d) 3 members (the *parents and citizens members*) elected by the parents and citizens association of the school and appointed by the chief executive; and
- (e) the members (the *board appointed members*) (if any) appointed by the board under subsection (6); and
- (f) for a school prescribed under the regulations—2 members (the *student members*) elected by the students at the school and appointed by the chief executive.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (3) A person is eligible to be elected or appointed as a staff member only if the person is employed as a member of the staff of the school.
- (4) A person is eligible to be elected or appointed a student member only if the person is a student at the school.
- (5) The appointed member, staff members, parent and citizens members and student members are appointed for the prescribed period.
- (6) The school board may appoint 1 or more people to be members of the board for a term (not longer than 12 months) decided by the school board.
- (7) The school board must not make an appointment under subsection (6) if there would be more than 2 board appointed members at the same time.

## **42 Constitution of school boards of small schools**

- (1) This section applies to a school board of a small school other than a school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies.
- (2) The school board of a small school consists of—
  - (a) the principal of the school; and
  - (b) 1 member (the *appointed member*) appointed by the chief executive as the appointed member; and
  - (c) 1 member (the *staff member*) appointed by the chief executive as the staff member; and
  - (d) 2 members (the *parents and citizens members*) elected by the parents and citizens association of the school and appointed by the chief executive; and
  - (e) the members (the *board appointed member*) (if any) appointed by the board under subsection (6).

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (3) A person is eligible to be appointed as the staff member only if the person is employed as a member of the staff of the school.
- (4) The staff member is to be appointed in a way prescribed under the regulations.
- (5) The appointed member, staff member and parent and citizen members are appointed for the prescribed period.

- (6) The school board may appoint 1 or more people to be members of the board for a term (not longer than 12 months) decided by the school board.
- (7) The school board must not make an appointment under subsection (6) if there would be more than 2 board appointed members at the same time.

**43 Constitution of school boards of school-related institutions and other schools in special circumstances**

- (1) This section applies to a school that is—
  - (a) a school-related institution; or
  - (b) declared, in writing, by the chief executive to be a school to which special circumstances apply.
- (2) If the school is a school-related institution, the chief executive must, if practical, determine the constitution of the school board of the school.

**Example**

It may not be practical to establish a school board for a school-related institution with fewer than 3 staff.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Subsection (2) does not prevent the chief executive from determining the constitution of a single school board for 2 or more institutions.
- (4) If the chief executive makes a determination under subsection (2) for the school, the chief executive may also determine—
  - (a) the members who are required to be present at a meeting of the board; and
  - (b) the members who may not vote at a meeting of the board.

- (5) If the school is a school to which special circumstances apply, the chief executive may determine the following:
- (a) the constitution of the school board of the school;
  - (b) the members who are required to be present at a meeting of the board;
  - (c) the members who may not vote at a meeting of the board.
- (6) The chief executive may make a determination under subsection (2), (4) or (5) only with the Minister's written approval.
- (7) Before making the determination the chief executive must, if practical, consult with the parents of students at the school, at a general meeting of the parents, about the constitution of the board.
- (8) In deciding whether or not to give the approval, the Minister must have regard to—
- (a) the need for the principal of the school to be a member of the board; and
  - (b) the need for the chief executive to be represented on the board; and
  - (c) whether staff of the school and students at the school have been consulted about the constitution of the board; and
  - (d) any comments made by the staff and students at the school about the constitution of the board; and
  - (e) the administrative needs, educational or related objectives, and any special characteristics of the school.

- (9) The chief executive may appoint a person in accordance with the determination to be a member of the board of the school.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (10) A member of the board is appointed for the term stated in the instrument making or evidencing the appointment.
- (11) A determination under subsection (2), (4) or (5) must be in writing and is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

#### **44 Ending of appointment of members of school board**

- (1) The chief executive must end the appointment of a member of the school board of a government school if the member ceases to be eligible to be appointed or elected to the position.
- (2) The chief executive must end the appointment of a member of the school board of a government school, other than the principal of the school, if—
- (a) the member is absent from 3 consecutive meetings of the board without reasonable excuse or leave given by the board; or
  - (b) contravenes section 49 (Disclosure of interests by members of school boards) without reasonable excuse.
- (3) The chief executive may end the appointment of a member of the school board of a government school, other than the principal at the school, for misbehaviour or physical or mental incapacity.

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

**45 Chairperson and deputy chairperson of school boards**

- (1) The members of the school board of a government school must, whenever necessary, elect—
  - (a) a member to be chairperson; and
  - (b) another member to be deputy chairperson.
- (2) The school board must tell the chief executive of the election of a member as chairperson or deputy chairperson.
- (3) The members of the school board must not appoint the principal of the school or a member of staff of the school to be chairperson of the board.

**46 School boards to take part in selection of school principals**

The members of the school board of a government school must, whenever necessary, nominate a member of the board as a member of any selection panel established by the chief executive to make recommendations to the chief executive about the appointment of the principal for the school.

**Division 3.4.3 Proceedings of school boards**

**47 Time and place of meetings of school boards**

- (1) The school board of a government school meets at the times and places it decides.
- (2) However, the school board must meet at least 4 times a year.
- (3) The chairperson—
  - (a) may at any time call a meeting of the school board; and
  - (b) must call a meeting if asked by the Minister, the chief executive or 3 members of the board.

- (4) If the chairperson is not available to call a meeting for any reason, the deputy chairperson or the principal of the school may call a meeting of the school board.

**48 Procedures governing proceedings of school boards**

- (1) The chairperson of the school board of a government school presides at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent, the deputy chairperson presides.
- (3) If the chairperson and deputy chairperson are both absent, the member chosen by the members present presides.
- (4) Business may be carried out at a meeting of the school board only if 3 or more members are present and—
- (a) for the school board of a school other than a school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies—at least 1 of the members present is a staff member and at least 1 of the members present is a parents and citizens association member; or
  - (b) for the school board of a school to which section 43 applies—the members (if any) who are required, under the determination under section 43 (4) or (5) applying to the school, to be present at a meeting of the school board are present.
- (5) At a meeting of the school board each member (other than a non-voting member) has a vote on each question to be decided.
- (6) A question is to be decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a casting vote.

- (7) The school board may hold meetings, or allow members to take part in meetings, by telephone, closed-circuit television or another form of communication.
- (8) A member who takes part in a meeting under subsection (7) is taken to be present at the meeting.
- (9) A resolution of the school board is a valid resolution, even though it is not passed at a meeting of the board, if—
  - (a) all members (other than the non-voting members) agree, in writing, to the proposed resolution; and
  - (b) notice of the resolution is given under procedures decided by the school board.
- (10) The school board must keep minutes of its meetings.
- (11) The school board may conduct its proceedings (including its meetings) as it otherwise considers appropriate.
- (12) In this section:  
*non-voting member* means—
  - (a) for the school board of a school other than a school to which section 43 applies—a board appointed member; or
  - (b) for the school board of a school to which section 43 applies—a member who, under the determination under section 43 (4) or (5) applying to the school, may not vote at a meeting of the school board.

#### **49 Disclosure of interests by members of school boards**

- (1) This section applies to a member of a school board if—
  - (a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the board; and



- (b) the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the school board.
- (3) The disclosure must be recorded in the school board's minutes and, unless the board otherwise decides, the member (the *first member*) must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board on the issue.
- (4) Any other member who also has a direct or indirect financial interest in the issue must not—
  - (a) be present when the school board is considering its decision under subsection (3) in relation to the first member; or
  - (b) take part in making the decision.
- (5) Within 14 days after the end of each financial year, the chairperson of the school board must give the chief executive a statement of any disclosure of interest made under this section in relation to the school board during the financial year.

## **Division 3.4.4      Financial matters**

### **50      School boards to approve budgets**

- (1) The school board of a government school must approve a budget for each year.
- (2) The school board must approve the budget before the date decided by the chief executive.

- (3) The budget may only be approved by the school board if it is in the form, and based on the accounting or other policies or practices, (if any) required by the chief executive.
- (4) The chief executive may ask the school board to approve a budget for a part of a year.
- (5) The school board must comply with the request.
- (6) If the school board approves the budget, money of the school may be spent in accordance with the budget.

## **51 Application of money of school**

The school board of a government school may approve the spending of money of the school only in payment or discharge of the costs of, or liabilities incurred by, the school.

## **52 School boards to approve financial statement and report**

- (1) As soon as practicable after the end of each half-year (but not later than the date decided by the chief executive), the school board of a government school must approve a financial statement for the half-year, in a form approved by the chief executive or as the chief executive directs.
- (2) As soon as practicable after the end of each year (but not later than the date decided by the chief executive), the school board of a government school must approve an annual report on the board's operations during the year.
- (3) The annual report must include—
  - (a) the financial statements approved under subsection (1) for each half-year; and
  - (b) a statement of how voluntary contributions made to the school have been or will be spent; and

- (c) if a school board is holding funds in reserve—a statement setting out the purposes for which the funds are being held and the amount being held for each of those purposes.

*Note* If a form is approved under s 154 for a statement under par (c), the form must be used.

- (4) The school board must give a copy of each report approved under this section to the chief executive.
- (5) The chief executive may issue guidelines about what is, or is not, holding funds in reserve.

**53 School boards to make available summaries of budget and annual report**

- (1) Not later than 14 days after approving the budget for a year, the school board of a government school must make a summary of the budget available to parents of students at the school and to the staff and students of the school.
- (2) Not later than 14 days after approving the annual report for a year, the school board of a government school must make a summary of the report available to parents of students at the school and to the staff and students of the school.

## Part 3.5 Government Schools Education Council

### Division 3.5.1 Establishment and membership

#### 54 Establishment of council (government)

The Government Schools Education Council (in this part called the *council*) is established.

#### 55 Functions of council (government)

The functions of the council are—

- (a) to advise the Minister on any aspect of the ACT government school system; and
- (b) when asked by the Minister under this paragraph, to inquire into and give advice to the Minister on any aspect of the ACT government school system; and
- (c) to meet with the Non-Government Schools Education Council to discuss matters of mutual interest; and
- (d) to exercise any other function given to the council under this Act or any other Territory law.

*Note* The Minister must present a copy of any advice to the Legislative Assembly (see s 73).

#### 56 Membership of council (government)

The council consists of the following members:

- (a) the chief executive;
- (b) the members (*appointed members*) appointed under section 57.

**57 Appointed members of council (government)**

- (1) The Minister must appoint the following members of the council:
- (a) a chairperson;
  - (b) 6 people who, in the Minister's opinion, have experience in 1 or more of the areas of business and commerce, public policy, early childhood care, education, the special needs of young people and teacher education (the *community members*);
  - (c) 10 people who, in the Minister's opinion, represent the views of government school education (the *education members*).

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) For subsection (1) (c), the Minister must appoint—
- (a) 2 education members chosen from nominations of the peak organisation representing principals; and
  - (b) 2 education members chosen from nominations of the government teacher union; and
  - (c) 2 education members chosen from nominations of the peak organisation representing parent associations of government schools; and
  - (d) 2 education members chosen from nominations of the peak organisation representing students; and
  - (e) 1 education member chosen from nominations of the peak organisation representing school boards; and

- (f) 1 education member chosen from nominations of the peak organisation representing preschool parents.

**58 Deputy chairperson of council (government)**

- (1) The appointed members must, whenever necessary, elect another appointed member to be deputy chairperson.
- (2) The council must tell the Minister of the election of an appointed member as deputy chairperson.

**59 Term of appointment to council (government)**

- (1) An appointed member is to be appointed for a term not longer than 3 years.
- (2) The instrument appointing, or evidencing the appointment of, an appointed member must state whether the person is appointed as chairperson or a community or education member.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

**60 Ending of appointment to council (government)**

- (1) The Minister may end the appointment of an appointed member—
- (a) for misbehaviour; or
- (b) for contravening section 65 (Disclosure of interests by members of council (government)).

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

- (2) The Minister may also end the appointment of an education member if satisfied that the person no longer represents the views of the organisation from which the person was chosen.

**61 Conditions of appointment generally of appointed members**

An appointed member holds the position on the conditions not provided by this Act or another Territory law that are decided by the Minister.

**62 Arrangements for staff**

- (1) The council may arrange with the chief executive to use public servants in the administrative unit under the chief executive's control.
- (2) The *Public Sector Management Act 1994* applies to the management by the council of public servants the subject of an arrangement under subsection (1).

**Division 3.5.2 Proceedings of council (government)**

**63 Time and place of meetings of council (government)**

- (1) The council meets at the times and places it decides.
- (2) However, the council must meet at least twice a year.
- (3) The chairperson—
  - (a) may at any time call a meeting of the council; and
  - (b) must call a meeting if asked by the Minister, the chief executive or at least 9 members.
- (4) If the chairperson is not available to call a meeting for any reason, the deputy chairperson may call a meeting of the council.

**64 Procedures governing proceedings of council (government)**

- (1) The chairperson of the council presides at all meetings of the council at which the chairperson is present.

- (2) If the chairperson is absent, the deputy chairperson presides.
- (3) If the chairperson and deputy chairperson are both absent, the member chosen by the members present presides.
- (4) Business may be carried out at a meeting of the council only if 9 members are present.
- (5) At a meeting of the council each appointed member has a vote on each question to be decided.
- (6) A question is to be decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a casting vote.
- (7) The council may hold meetings, or allow members to take part in meetings, by telephone, closed-circuit television or another form of communication.
- (8) A member who takes part in a meeting under subsection (7) is taken to be present at the meeting.
- (9) A resolution of the council is a valid resolution, even though it was not passed at a meeting of the council, if—
  - (a) all appointed members agree, in writing, to the proposed resolution; and
  - (b) notice of the resolution is given under procedures decided by the council.
- (10) The council must keep minutes of its meetings.
- (11) The council may conduct its proceedings (including its meetings) as it otherwise considers appropriate.

**65 Disclosure of interests by members of council (government)**

- (1) This section applies to a member of the council if—



- (a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the council; and
  - (b) the interest could conflict with the proper exercise of the member's functions in relation to the council's consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the council.
- (3) The disclosure must be recorded in the council's minutes and, unless the council otherwise decides, the member (the *first member*) must not—
- (a) be present when the council considers the issue; or
  - (b) take part in a decision of the council on the issue.
- (4) Any other member who also has a direct or indirect financial interest in the issue must not—
- (a) be present when the council is considering its decision under subsection (3) in relation to the first member; or
  - (b) take part in making the decision.
- (5) Within 14 days after the end of each financial year, the chairperson of the council must give the Minister a statement of any disclosure of interest made under this section during the financial year.

## **66 Annual report by council (government)**

- (1) As soon as practicable after the end of each financial year (but not later than the date decided by the Minister), the council must give the Minister a report about its operations for the financial year.

**Chapter 3** Government schools  
**Part 3.5** Government Schools Education Council  
**Division 3.5.2** Proceedings of council (government)

Section 66

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- (2) The Minister must present a copy of the report under this section to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

## **Part 3.6**                      **Other provisions**

### **Division 3.6.1**            **Authorised persons (government)**

#### **67**            **Appointment of authorised persons (government)**

- (1) The chief executive may appoint a person to be an authorised person (government) for this Act or a provision of this Act, other than chapter 4 (Non-government schools).

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) The regulations may prescribe a person to be an authorised person (government) for this Act or a provision of this Act, other than chapter 4.
- (3) A person may be appointed as an authorised person (government) under subsection (1) only if—
- (a) the person is an Australian citizen or a permanent resident of Australia; and
  - (b) the chief executive is satisfied that the person is a suitable person to be appointed, having regard in particular to—
    - (i) whether the person has any criminal convictions; and
    - (ii) the person's employment record; and
  - (c) the person has satisfactorily completed adequate training to exercise the powers of an authorised person (government) proposed to be given to the person.

**68 Identity cards for authorised persons (government)**

- (1) The chief executive must give an authorised person (government) an identity card that states the person is an authorised person (government) for this Act, or stated provisions of this Act, and shows—
  - (a) a recent photograph of the person; and
  - (b) the name of the person; and
  - (c) the date of issue of the card; and
  - (d) an expiry date for the card; and
  - (e) anything else prescribed under the regulations.
- (2) A person who ceases to be an authorised person (government) must return his or her identity card to the chief executive as soon as practicable, but within 21 days after the day the person ceases to be an authorised person.

Maximum penalty: 1 penalty unit.
- (3) An offence against subsection (2) is a strict liability offence.

**Division 3.6.2 Inspection powers for government schools**

**69 Power not to be exercised before identity card shown etc**

- (1) An authorised person (government) may exercise a power under this chapter in relation to a person only if the authorised person first shows the person his or her identity card.
- (2) An authorised person (government) may not remain in a government school entered under this division if, when asked by the principal, the authorised person does not show his or her identity card.

**70      Entry to government schools**

An authorised person (government) may enter a government school at any time.

**71      Powers on entry**

An authorised person (government) who enters a government school under section 70 may inspect the school or anything in it (including the register of enrolment and attendances).

**Division 3.6.3      Miscellaneous**

**72      Protection of members of school boards**

- (1) A person who is, or has been, a member of a school board of a government school is not civilly liable for an act or omission done honestly in the exercise of a function under this Act.
- (2) Any liability that would, apart from subsection (1), attach to a person attaches to the Territory.

**73      Minister to present advice of council (government)**

The Minister must present a copy of advice given to the Minister under section 55 (a) or (b) (Functions of council (government)) to the Legislative Assembly within 6 sitting days after the day it is given to the Minister.

## Chapter 4 Non-government schools

### Part 4.1 General

#### 74 Meaning of *school* in ch 4

In this chapter:

*school* does not include a government school.

#### 75 Principles on which ch 4 based

The following are the principles on which this chapter is based:

- (a) the non-government school sector consists of schools from a range of different educational and religious philosophies;
- (b) the variety of schools in the sector reflects the diversity of the community in the ACT and the preferences of parents for a particular style of education for their children;
- (c) the non-government schools sector is committed to—
  - (i) developing the spiritual, physical, emotional and intellectual welfare of its students; and
  - (ii) innovation, diversity and choice; and
  - (iii) maximising student outcomes; and
  - (iv) teacher, parent and student participation in all aspects of school education; and
  - (v) promoting the partnership between home and school; and
  - (vi) preparing students for their full participation in all aspects of a democratic society.

**76 Minister to seek advice**

- (1) Before deciding the budget priorities for non-government schools each year, the Minister must ask for, and consider the advice of, the Non-government Schools Education Council.
- (2) This section does not limit the matters that the Minister may take into account in deciding the budget priorities for non-government schools.

**77 Registrar**

The Minister must appoint a Registrar of Non-Government Schools.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

**78 Functions of registrar**

The registrar has the following functions:

- (a) to register non-government schools;
- (b) to keep a register of non-government schools;
- (c) to exercise any other function given to the registrar under this Act or any other Territory law.

**79 Register of non-government schools**

The registrar must keep a register of non-government schools.

**80 Availability of information about operation of non-government schools and their educational programs**

- (1) The principal of a non-government school must make available to parents of students at the school and to the staff and students of the school information about the school's educational programs and policies, and the operation of the school.
- (2) The principal of a non-government school must also consult parents of students at the school about the operation of the school, including its educational programs and policies.

**81 Approved educational courses for children at non-government schools**

- (1) The principal of a non-government school may approve educational courses that may be provided to a child enrolled at the school at a place other than the school.
- (2) An approval may be subject to conditions.
- (3) However, the principal may approve an educational course only if satisfied that—
  - (a) the standard of the course is appropriate; and
  - (b) there are adequate facilities for conducting the course; and
  - (c) the premises where the course is to be conducted comply with any relevant Territory laws about health and safety standards.



## **Part 4.2                      Registration—non-government schools**

### **82                      Schools to be registered**

- (1) A person must not conduct a school unless it is registered or provisionally registered under this part.

Maximum penalty: 50 penalty units.

- (2) The principal of a school commits an offence if—

- (a) the school is not registered or provisionally registered under this part; and  
(b) the school begins educating a child at any educational level.

Maximum penalty: 20 penalty units.

- (3) The principal of a school commits an offence if—

- (a) the school is not registered or provisionally registered under this part for education at a particular education level; and  
(b) the school begins educating a child at that education level.

Maximum penalty: 10 penalty units.

- (4) An offence against this section is a strict liability offence.

### **83                      Applications for in-principle approval for proposed registration**

- (1) This section applies if a person intends to make application under—

- (a) section 85 for provisional registration of a school; or  
(b) section 89 for registration of a school at an additional educational level.

- (2) The person must apply in writing to the Minister for approval (*in-principle approval*) to apply for the proposed registration.
- (3) The application for in-principle approval must be made at least 2 years before the day the person proposes to apply to the Minister for provisional registration of the school or for registration of the school at the additional educational level.
- (4) The applicant must state the day (the *proposed opening day*), not later than 4 years after the day the application is made to the Minister, when the person proposes to begin operating the school or operating the school at the additional educational level.
- (5) The chief executive must publish notice of the making of the application in a daily newspaper printed and published in the ACT.
- (6) The notice must state that written comments on the proposed registration may be made to the Minister within a stated period of at least 60 days after the day the notice is published.
- (7) The chief executive must make a copy of the application available for inspection by members of the public at the chief executive's office during ordinary business hours.

#### **84 Deciding in-principle applications**

- (1) In deciding whether to give in-principle approval for the provisional registration of a school, the Minister must have regard to—
  - (a) whether the proposed school would undermine the viability of existing schools; and
  - (b) whether there is, or is likely to be, demand in the community for the proposed school, including—
    - (i) any increase, or likely increase, in the number of school-age children in the area where the school is to be located; and

- (ii) the level of registration of interest shown by the community for the proposed school.
- (2) In deciding whether to give in-principle approval for the registration of a school at an additional educational level, the Minister must have regard to—
  - (a) whether the provision of the additional educational level by the school would undermine the viability of other existing schools; and
  - (b) the demand for the additional educational level, including the level of registration of interest shown by the community for the proposed provision of the additional educational level by the school.
- (3) If the Minister is satisfied after considering the application, and after having regard to any comments made under section 83 (6) and the matters mentioned in subsection (1) or (2), that in-principle approval should be given for the proposed registration, the Minister must, by written notice, give the person in-principle approval for the proposed application.
- (4) If the Minister is not satisfied after considering the application, and after having regard to any comments made under section 83 (6) and the matters mentioned in subsection (1) or (2), that in-principle approval should be given for the proposed registration, the Minister must, by written notice, refuse to give the person in-principle approval for the proposed application.
- (5) A notice under subsection (3) or (4) must state the Minister's reasons for giving or refusing to give in-principle approval for the proposed registration.
- (6) The chief executive must make a copy of the Minister's reasons available for inspection by members of the public at the chief executive's office during ordinary business hours.

- (7) An in-principle approval lapses on whichever of the following is later:
- (a) 2 years after the day it is given;
  - (b) the proposed opening day.

### **85 Application for provisional registration**

- (1) This section applies if—
- (a) a person has in-principle approval under section 84 to apply for provisional registration of a school; and
  - (b) the person has given the registrar written notice of the person's intention to apply at least the prescribed period before the first day of the school year or term when it is proposed to begin operating the school; and
  - (c) the in-principle approval has not lapsed.
- (2) The person may apply in writing to the Minister for provisional registration of the school.
- (3) The application must state where the school is to be located.
- (4) The chief executive must publish notice of the making of the application in a daily newspaper printed and published in the ACT.
- (5) The chief executive must make a copy of the application for provisional registration available for inspection by members of the public at the chief executive's office during ordinary business hours.
- (6) In this section:
- prescribed period* means—
- (a) 6 months; or
  - (b) if the Minister approves a shorter period for the notice—that period.

## 86 Provisional registration

- (1) This section applies if an application is made under section 85 for provisional registration of a school.
- (2) Before deciding whether the school should be provisionally registered, the Minister must appoint a panel to report to the Minister on the application.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) If the Minister is satisfied after considering the panel's report that the school meets the criteria mentioned in subsection (6), the Minister must direct the registrar to provisionally register the school.

*Note* Section 93 deals with the duration of provisional registration.

- (4) If the Minister directs the registrar to provisionally register the school, the registrar must provisionally register the school by—
  - (a) entering particulars of the school required under the regulations in the register of non-government schools; and
  - (b) giving the proprietor of the school a certificate of provisional registration for the school.
- (5) If the Minister is not satisfied after considering the panel's report that the school meets the criteria mentioned in subsection (6), the Minister must direct the registrar to refuse to provisionally register the school.
- (6) The criteria for provisional registration of a school are that—

- (a) the proprietor of the school is a corporation; and
- (b) the school will have appropriate policies, facilities and equipment for—
  - (i) the curriculum to be offered by the school; and
  - (ii) the safety and welfare of its students; and
- (c) the curriculum (including the framework of the curriculum and the principles on which the curriculum is based) will meet the curriculum requirements for students attending government schools; and
- (d) the nature and content of the education to be offered at the school will be appropriate for the educational levels for which provisional registration of the school is sought; and
- (e) the teaching staff will be qualified to teach at the educational levels at which they are to be employed to teach; and
- (f) the school will have satisfactory processes to monitor quality educational outcomes; and
- (g) the school will be financially viable.

**87 Application for registration**

- (1) This section applies to a school that has been provisionally registered for at least 12 months.
- (2) The proprietor of the school may apply in writing to the Minister for registration of the school at the educational levels for which the school is provisionally registered.
- (3) The chief executive must publish notice of the making of the application in a daily newspaper printed and published in the ACT.
- (4) The chief executive must make a copy of the application for registration available for inspection by members of the public at the chief executive's office during ordinary business hours.

## **88 Registration**

- (1) This section applies if an application is made under section 87 for registration of a school.
- (2) Before deciding whether the school should be registered, the Minister must appoint a panel to report to the Minister on the application.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) If the Minister is satisfied after considering the panel's report that the school meets the criteria mentioned in subsection (6), the Minister must direct the registrar to register the school for a stated period of not longer than 5 years.
- (4) If the Minister directs the registrar to register the school, the registrar must register the school by—
  - (a) entering particulars of the school required under the regulations in the register of non-government schools; and
  - (b) giving the proprietor of the school a certificate of registration for the school.
- (5) If the Minister is not satisfied after considering the panel's report that the school meets the criteria mentioned in subsection (6), the Minister must direct the registrar to refuse to register the school.
- (6) The criteria for registration of a school are that—
  - (a) the proprietor of the school is a corporation; and

- (b) the school has appropriate policies, facilities and equipment for—
  - (i) the curriculum offered by the school; and
  - (ii) the safety and welfare of its students; and
- (c) the curriculum (including the framework of the curriculum and the principles on which the curriculum is based) meets the curriculum requirements for students attending government schools; and
- (d) the nature and content of the education offered at the school are appropriate for the educational levels for which the school is provisionally registered; and
- (e) the teaching staff are qualified to teach at the educational levels at which they are employed to teach; and
- (f) the school has satisfactory processes to monitor quality educational outcomes; and
- (g) the school is financially viable.

**89 Application for registration at additional educational levels**

- (1) This section applies if—
  - (a) a proprietor of a registered non-government school has in-principle approval under section 84 (Deciding in-principle applications) to apply to operate the school at a stated additional educational level; and
  - (b) the proprietor has given the registrar written notice of the proprietor's intention to apply at least the prescribed period before the first day of the school year or term when it is proposed to begin operating the school at the additional educational level; and



- (c) the in-principle approval has not lapsed.
- (2) The proprietor of the school may apply in writing to the Minister for registration of the school at the additional educational level.
- (3) The chief executive must publish notice of the making of the application in a daily newspaper printed and published in the ACT.
- (4) The notice must state that written comments on the proposed registration may be made to the Minister within a stated period of at least 60 days after the day the notice is published.
- (5) The chief executive must make a copy of the application available for inspection by members of the public at the chief executive's office during ordinary business hours.
- (6) In this section:
  - prescribed period* means—
    - (a) 6 months; or
    - (b) if the Minister approves a shorter period for the application— that period.

## **90 Registration at additional educational levels**

- (1) This section applies if an application made under section 89 for registration of a school at an additional educational level.
- (2) Before deciding whether a school should be registered at the additional educational level, the Minister must appoint a panel to report to the Minister on the application.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) If the Minister is satisfied after considering the panel's report that the school meets the criteria mentioned in subsection (7), the Minister must direct the registrar to register the school at the additional educational level.
- (4) If the Minister directs the registrar to register the school at the additional educational level, the registrar must register the school at the additional educational level by—
  - (a) entering the particulars of the school required under the regulations in the register of non-government schools; and
  - (b) giving the proprietor of the school a certificate of registration that includes the additional educational level (a *new certificate*).
- (5) If the registrar gives the proprietor a new certificate, the proprietor must return the school's existing certificate of registration to the registrar within 14 days after the day the proprietor receives the new certificate.
- (6) If the Minister is not satisfied after considering the panel's report that the school meets the criteria mentioned in subsection (7), the Minister must direct the registrar to refuse to register the school at the additional educational level.
- (7) The criteria for registration of a school at an additional educational level are that—
  - (a) the school will have appropriate policies, facilities and equipment for—
    - (i) the curriculum to be offered by the school at the additional educational level; and
    - (ii) the safety and welfare of its students at the additional educational level; and

- (b) the curriculum (including the framework of the curriculum and the principles on which the curriculum is based) meets the curriculum requirements for students attending government schools; and
- (c) the nature and content of the education to be offered at the school will be appropriate for the additional educational level; and
- (d) the teaching staff will be qualified to teach at the additional educational level; and
- (e) the school will have satisfactory processes to monitor quality educational outcomes at the additional educational level; and
- (f) the school will be financially viable.

**91 Conditions of provisional registration or registration**

The conditions of provisional registration or registration of a school under this part are that—

- (a) the proprietor of the school remains a corporation; and
- (b) the school has appropriate policies, facilities and equipment for—
  - (i) the curriculum offered by the school; and
  - (ii) the safety and welfare of its students; and
- (c) the curriculum (including the framework of the curriculum and the principles on which the curriculum is based) meets the curriculum requirements for students attending government schools; and
- (d) the nature and content of the education offered at the school are appropriate for the educational levels for which the school is provisionally registered or registered; and

- (e) the teaching staff are qualified to teach at the educational levels at which they are employed to teach; and
- (f) the school has satisfactory processes to monitor quality educational outcomes; and
- (g) the school is financially viable.

## **92 Certificate of provisional registration or registration**

- (1) A certificate of provisional registration or registration of a non-government school must—
  - (a) state the proprietor of the school; and
  - (b) state the educational level or levels for which the school is provisionally registered or registered under this part; and
  - (c) state where the school is to be located; and
  - (d) state the term of provisional registration or registration; and
  - (e) include any other particulars required under the regulations.
- (2) The registrar may include any other particulars in the certificate that the registrar considers appropriate.
- (3) The proprietor of a registered non-government school must tell the registrar in writing about a change in any of the particulars of the certificate within 1 month after the day the change happens.

## **93 Period of provisional registration and registration**

- (1) Provisional registration of a school ends when the earliest of the following happens:
  - (a) 2 years after the school is provisionally registered;
  - (b) the school is registered under section 88.
- (2) Registration of a school is for a period not longer than 5 years stated in the school's certificate of registration.

**94 Investigation of complaints—non-government schools**

- (1) The proprietor of a non-government school must develop and implement a complaints policy for the school.
- (2) The proprietor of a non-government school must, as soon as practicable, investigate any complaint about the administration, management and operation of the school that, in the proprietor's opinion, is not a frivolous or vexatious complaint.

**95 Cancellation of provisional registration or registration**

- (1) The Minister may direct the registrar to cancel the provisional registration or registration of a school if satisfied on reasonable grounds—
  - (a) that a condition of the school's provisional registration or registration has been contravened; or
  - (b) that the school's proprietor or principal has otherwise contravened this Act.

*Note* Section 91 (Conditions of provisional registration or registration) sets out the conditions of registration.

- (2) Before directing the registrar to cancel the provisional registration or registration of a school, the Minister must give the proprietor of the school a written notice—
  - (a) stating the grounds on which the Minister proposes to direct the registrar to cancel the provisional registration or registration; and
  - (b) stating the facts that, in the Minister's opinion, establish the grounds; and
  - (c) telling the proprietor that the proprietor may, within 14 days beginning the day after the day the proprietor receives the notice, give a written response to the Minister about the matters in the notice.

- (3) In deciding whether to direct the registrar to cancel the provisional registration or registration, the Minister must consider any response given to the Minister in accordance with subsection (2) (c).
- (4) If the Minister is satisfied that the grounds for cancelling the provisional registration or registration have been established, the Minister may direct the registrar to cancel the school's provisional registration or registration.
- (5) If the Minister directs the registrar to cancel the school's provisional registration or registration, the registrar must cancel the provisional registration or registration by noting the cancellation in the particulars of the school in the register of non-government schools.
- (6) The Minister must give the proprietor written notice of the Minister's decision.
- (7) Cancellation of provisional registration or registration takes effect on the day when notice of the cancellation is given to the proprietor or, if the notice states a later date of effect, that date.

## **96 Application for renewal of registration**

- (1) The proprietor of a non-government school that is registered under this part may apply in writing to the Minister for renewal of the registration.
- (2) The application must be made at least the prescribed period before the registration ends.
- (3) In this section:  
*prescribed period* means—
  - (a) 6 months; or
  - (b) if the Minister approves a shorter period—that period.

## 97 Renewal of registration

- (1) This section applies if application is made under section 96 for renewal of registration of a school.
- (2) Before deciding whether the registration of a school should be renewed, the Minister must appoint a panel to report to the Minister on the application.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) If the Minister is satisfied, after considering the panel's report, that the school meets the criteria mentioned in subsection (6), the Minister must direct the registrar to renew the registration of the school for a stated period of not longer than 5 years.
- (4) If the Minister directs the registrar to renew the registration of the school, the registrar must renew the registration by—
  - (a) entering the particulars of the school required under the regulations in the register of non-government schools; and
  - (b) giving the proprietor of the school a certificate of registration for the school.
- (5) If the Minister is not satisfied, after considering the panel's report, that the school meets the criteria mentioned in subsection (6), the Minister must direct the registrar to refuse to renew the registration of the school.
- (6) The criteria for renewal of registration of a school are that—
  - (a) the proprietor of the school remains a corporation; and

- (b) the school has appropriate policies, facilities and equipment for—
  - (i) the curriculum offered by the school; and
  - (ii) the safety and welfare of its students; and
- (c) the curriculum (including the framework of the curriculum and the principles on which the curriculum is based) meets the curriculum requirements for students attending government schools; and
- (d) the nature and content of the education offered at the school are appropriate for the educational levels for which the school is provisionally registered or registered; and
- (e) the teaching staff are qualified to teach at the educational levels at which they are employed to teach; and
- (f) the school has satisfactory processes to monitor quality educational outcomes; and
- (g) the school is financially viable.

**98 Inspection of panel reports for school registration etc**

- (1) This section applies to a report to the Minister by a panel under any of the following provisions:
  - (a) section 86 (Provisional registration);
  - (b) section 88 (Registration);
  - (c) section 90 (Registration at additional educational levels);
  - (d) section 97 (Renewal of registration).
- (2) A person may, without charge, inspect a copy of the report during ordinary business hours at the office of the chief executive.
- (3) A person may, on payment of the reasonable copying costs, obtain a copy of all or part of the report.





## Part 4.3 Attendance at non-government schools

### 99 Keeping of register of enrolments and attendances for non-government schools

- (1) The principal of a non-government school, or the person giving an approved educational course (non-government), commits an offence if the principal or person fails to keep a register of enrolments and attendances

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

### 100 Keeping records of enrolment and attendances for non-government schools

- (1) The principal of a non-government school, or the person giving an approved educational course (non-government), must ensure that the following information is entered in the register of enrolments and attendances:

- (a) the full name of each child enrolled at the school or course;
- (b) a record of the attendance or nonattendance of the child at the school or course on every day when the school or course is open for attendance.

Maximum penalty: 10 penalty units.

- (2) The principal of a non-government school, or the person giving an approved educational course (non-government), commits an offence if—
  - (a) the principal or person makes an entry in the register of enrolments and attendances; and

- (b) the principal or person is reckless about whether the entry is correct.

Maximum penalty: 10 penalty units.

- (3) An offence against subsection (1) is a strict liability offence.

**101 Inspection of register of enrolment and attendances for non-government schools**

- (1) The principal of a non-government school, or the person giving an approved educational course (non-government), commits an offence if—

- (a) an authorised person (non-government) asks the principal or person to make the register of enrolments and attendances available to the authorised person; and

- (b) the principal or person fails to make the register available as asked.

Maximum penalty: 10 penalty units.

- (2) The principal of a non-government school, or the person giving an approved educational course (non-government), commits an offence if—

- (a) the chief executive or an authorised person (non-government) asks the principal or the person to give the chief executive or authorised person stated information about enrolments or attendances of children at the school or course during a stated period or at a stated time; and

- (b) the principal or person fails to give the information in accordance with the request.

Maximum penalty: 50 penalty units.

- (3) An authorised person (non-government) may make copies of the register of enrolments and attendances or any part of the register.

- (4) The principal of a non-government school, or the person giving an approved educational course (non-government), must take reasonable steps to assist an authorised person (non-government) in exercising functions under this section.
- (5) An offence against this section is a strict liability offence.

**102 Procedures to encourage attendance at non-government schools**

- (1) The principal of a non-government school must set up procedures—
  - (a) to encourage children to attend school regularly; and
  - (b) to help parents to encourage their children to attend school regularly.
- (2) The principal must refer parents and children to support services that encourage children to attend school regularly when the procedures mentioned in subsection (1) are not successful.
- (3) If a child enrolled at a non-government school has not been attending school regularly, the principal of the school may, by written notice, require the child's parents and the child to meet with an authorised person (non-government) at a stated place and time.

**103 Reporting to parents—non-government schools**

- (1) The principal of a non-government school must set up procedures for giving reports to the parents of a child enrolled at the school about the child's academic progress and social development at the school.
- (2) A report must be given to the child's parents at least twice a year.

**104 Suspension or exclusion of children—Catholic systemic schools**

- (1) This section applies if—
  - (a) a child attending a non-government school that is a Catholic systemic school—
    - (i) is persistently and wilfully noncompliant; or
    - (ii) threatens to be violent or is violent to another child attending the school, a member of the staff of the school or anyone else involved in the school's operation; or
    - (iii) acts in a way that otherwise threatens the good order of the school or the safety or wellbeing of another child attending the school, a member of staff of the school or anyone else involved in the school's operation; or
    - (iv) displays behaviour that is disruptive to the child's learning or that of other children; and
  - (b) the principal of the school is satisfied that action should be taken under this section.
- (2) The principal may recommend to the director that the director—
  - (a) suspend the child from the school for a stated period of not longer than 20 days; or
  - (b) transfer the child to another Catholic systemic school; or
  - (c) exclude the child from all Catholic systemic schools.
- (3) After considering the principal's recommendation, the director may—
  - (a) give effect to the recommendation; or
  - (b) take any other action mentioned in subsection (2) that the director considers appropriate; or

- (c) suspend the child for not longer than 20 days.
- (4) The director may exclude the child only if—
  - (a) the child's parents have been given an opportunity to be consulted, and told in writing, about the proposed exclusion of the child and the reasons for it; and
  - (b) the child has been given a reasonable opportunity to attend counselling, undertake relevant educational programs or receive other appropriate assistance; and
  - (c) as far as the child's maturity and capacity for understanding allow, the participation of the child has been sought, and any views of the child considered, in deciding whether to exclude the child; and
  - (d) the child has been given sufficient information about the decision-making process, in a language and way that the child can understand, to allow the child to take part in the process; and
  - (e) the child has been offered information about alternatives for continuing the child's education after the exclusion.
- (5) The director may suspend or transfer the child only if—
  - (a) the child's parents have been given an opportunity to be consulted, and told in writing, about the proposed suspension or transfer of the child and the reasons for it; and
  - (b) as far as the child's maturity and capacity for understanding allow, the participation of the child has been sought, and any views of the child considered, in deciding whether to suspend or transfer the child; and

- (c) the child has been given sufficient information about the decision-making process, in a language and way that the child can understand, to allow the child to take part in the process; and
  - (d) the child has been given a reasonable opportunity to continue the child's education during the suspension.
- (6) Despite subsection (5), the director may immediately suspend the child for not longer than 5 days if, in the director's opinion, the circumstances are of such urgency or seriousness to require the child's immediate suspension.
  - (7) However, before suspending the child under subsection (6), the director must comply with the requirements of subsection (5) (a) to (d) to the extent that it is practicable and appropriate to do so.
  - (8) To remove any doubt, the director may suspend the child under subsection (6) while deciding what other action (if any) should be taken in relation to the child under this section.
  - (9) If the child is suspended for 7 or more school days in a school term (whether or not consecutive school days), the director must ensure that the child is given a reasonable opportunity to attend appropriate counselling.
  - (10) The director may delegate the director's power to suspend a child from a school for not longer than 5 days to the principal of the school.

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

- (11) If the director excludes a child from all Catholic systemic schools, the director must give the registrar written notice of the exclusion.
- (12) In this section:

***director*** means the person occupying the position prescribed under the regulations.

**105 Suspension or exclusion of children—other non-government schools**

- (1) This section applies if—
  - (a) a child attending a non-government school (other than a Catholic systemic school)—
    - (i) is persistently and wilfully noncompliant; or
    - (ii) threatens to be violent or is violent to another child attending the school, a member of the staff of the school or anyone else involved in the school's operation; or
    - (iii) acts in a way that otherwise threatens the good order of the school or the safety or wellbeing of another child attending the school, a member of staff of the school or anyone else involved in the school's operation; or
    - (iv) displays behaviour that is disruptive to the child's learning or that of other children; and
  - (b) the principal of the school is satisfied that action should be taken under this section.
- (2) The principal may—
  - (a) suspend the child from the school for a stated period of not longer than 20 days; or
  - (b) exclude the child from the school.
- (3) The principal may exclude the child only if—
  - (a) the child's parents have been given an opportunity to be consulted, and told in writing, about the proposed exclusion of the child and the reasons for it; and
  - (b) the child has been given a reasonable opportunity to attend counselling, undertake relevant educational programs or receive other appropriate assistance; and



- (c) as far as the child's maturity and capacity for understanding allow, the participation of the child has been sought, and any views of the child considered, in deciding whether to exclude the child; and
  - (d) the child has been given sufficient information about the decision-making process, in a language and way that the child can understand, to allow the child to take part in the process; and
  - (e) the child has been offered information about alternatives for continuing the child's education after the exclusion.
- (4) The principal may suspend the child only if—
- (a) the child's parents have been given an opportunity to be consulted, and told in writing, about the proposed suspension of the child and the reasons for it; and
  - (b) as far as the child's maturity and capacity for understanding allow, the participation of the child has been sought, and any views of the child considered, in deciding whether to suspend the child; and
  - (c) the child has been given sufficient information about the decision-making process, in a language and way that the child can understand, to allow the child to take part in the process; and
  - (d) the child has been given a reasonable opportunity to continue the child's education during the suspension.
- (5) Despite subsection (4), the principal may immediately suspend a child for not longer than 5 days if, in the principal's opinion, the circumstances are of such urgency or seriousness to require the child's immediate suspension.

- (6) However, before suspending a child under subsection (5), the principal must comply with the requirements of subsection (4) (a) to (d) to the extent that it is practicable and appropriate to do so.
- (7) To remove any doubt, the principal may suspend the child under subsection (5) while deciding what other action (if any) should be taken in relation to the child under this section.
- (8) If the child is suspended for 7 or more school days in a school term (whether or not consecutive school days), the principal must ensure that the child is given a reasonable opportunity to attend appropriate counselling.
- (9) If the principal of the school excludes a child from the school, the principal must give the registrar written notice of the exclusion.

## **Part 4.4                      Non-government Schools Education Council**

### **Division 4.4.1              Establishment and membership**

#### **106                      Establishment of council (non-government)**

The Non-government Schools Education Council (in this part called the *council*) is established.

#### **107                      Functions of council (non-government)**

The functions of the council are—

- (a) to advise the Minister on any aspect of non-government schooling; and
- (b) when asked by the Minister under this paragraph, to inquire into and give advice to the Minister on any aspect of non-government schooling; and
- (c) to meet with the Government Schools Education Council to discuss matters of mutual interest; and
- (d) to exercise any other function given to the council under this Act or any other Territory law.

*Note*            The Minister must present a copy of any advice to the Legislative Assembly (see s 127).

#### **108                      Membership of council (non-government)**

The council consists of the members appointed under section 109.

## **109 Members of council (non-government)**

- (1) The Minister must appoint the following members of the council:
  - (a) a chairperson;
  - (b) 4 people who, in the Minister's opinion, represent the views of the general community (the *community members*);
  - (c) 6 people who, in the Minister's opinion, represent the views of non-government school education (the *education members*).

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) For subsection (1) (c), the Minister must appoint—
  - (a) 3 education members chosen from nominations of organisations representing Catholic schools; and
  - (b) 1 education member chosen from nominations of organisations representing non-Catholic independent schools; and
  - (c) 1 education member chosen from nominations of the non-government school union; and
  - (d) 1 education member chosen from nominations of organisations representing parent associations of non-government schools.

## **110 Deputy chairperson of council (non-government)**

- (1) The members of the council must, whenever necessary, elect another member to be deputy chairperson.
- (2) The council must tell the Minister of the election of the member as deputy chairperson.

**111 Term of appointment to council (non-government)**

- (1) A member of the council is to be appointed for a term not longer than 3 years.
- (2) The instrument appointing, or evidencing the appointment of, a member of the council must state whether the person is appointed as chairperson or a community or education member.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

**112 Ending of appointment to council (non-government)**

- (1) The Minister may end the appointment of a member of the council—
  - (a) for misbehaviour; or
  - (b) for contravening section 117 (Disclosure of interests by members of council (non-government)).
- (2) The Minister may also end the appointment of an education member if satisfied that the person no longer represents the views of the organisation from which the person was chosen.

*Note* A person's appointment also ends if the person resigns (see Legislation Act s 210).

**113 Conditions of appointment generally of council (non-government) members**

A member of the council holds the position on the conditions not provided by this Act or another Territory law that are decided by the Minister.

**114 Arrangements for staff**

- (1) The council (non-government) may arrange with the chief executive to use public servants in the administrative unit under the chief executive's control.
- (2) The *Public Sector Management Act 1994* applies to the management by the council (non-government) of public servants the subject of an arrangement under subsection (1).

**Division 4.4.2 Proceedings of council (non-government)**

**115 Time and place of meetings of council (non-government)**

- (1) The council meets at the times and places it decides.
- (2) However, the council must meet at least twice a year.

**116 Proceedings of council (non-government)**

- (1) The council must keep minutes of its meetings.
- (2) The council may conduct its proceedings (including its meetings) as it considers appropriate.

**117 Disclosure of interests by members of council (non-government)**

- (1) This section applies to a member of the council if—
  - (a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the council; and
  - (b) the interest could conflict with the proper exercise of the member's functions in relation to the council's consideration of the issue.

- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the council.
- (3) The disclosure must be recorded in the council's minutes and, unless the council otherwise decides, the member (the *first member*) must not—
  - (a) be present when the council considers the issue; or
  - (b) take part in a decision of the council on the issue.
- (4) Any other member who also has a direct or indirect financial interest in the issue must not—
  - (a) be present when the council is considering its decision under subsection (3) in relation to the first member; or
  - (b) take part in making the decision.
- (5) Within 14 days after the end of each financial year, the chairperson of the council must give the Minister a statement of any disclosure of interest made under this section during the financial year.

### **118 Annual report by council (non-government)**

- (1) As soon as practicable after the end of each financial year (but not later than the date decided by the Minister), the council must give the Minister a report about its operations for the financial year.
- (2) The Minister must present a copy of the report under this section to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

## **Part 4.5 Other provisions**

### **Division 4.5.1 Authorised persons (non-government)**

#### **119 Appointment of authorised persons (non-government)**

- (1) The chief executive may appoint a person to be an authorised person (non-government) for this chapter or a provision of this chapter.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) The regulations may prescribe a person to be an authorised person (non-government) for this chapter or a provision of this chapter.
- (3) A person may be appointed as an authorised person (non-government) under subsection (1) only if—
- (a) the person is an Australian citizen or a permanent resident of Australia; and
  - (b) the chief executive is satisfied that the person is a suitable person to be appointed, having regard in particular to—
    - (i) whether the person has any criminal convictions; and
    - (ii) the person's employment record; and
  - (c) the person has satisfactorily completed adequate training to exercise the powers of an authorised person (non-government) proposed to be given to the person.



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**120 Identity cards for authorised persons (non-government)**

- (1) The chief executive must give an authorised person (non-government) an identity card that states the person is an authorised person (non-government) for this chapter, or stated provisions of this chapter, and shows—
  - (a) a recent photograph of the person; and
  - (b) the name of the person; and
  - (c) the date of issue of the card; and
  - (d) an expiry date for the card; and
  - (e) anything else prescribed under the regulations.
- (2) A person who ceases to be an authorised person (non-government) must return his or her identity card to the chief executive as soon as practicable, but within 21 days after the day the person ceases to be an authorised person.

Maximum penalty: 1 penalty unit.
- (3) An offence against subsection (2) is a strict liability offence.

**Division 4.5.2 Inspection powers for non-government schools**

**121 Power not to be exercised before identity card shown etc**

- (1) An authorised person (non-government) may exercise a power under this chapter in relation to a person only if the authorised person first shows the person his or her identity card.
- (2) An authorised person (non-government) may not remain in a non-government school entered under this division if, when asked by the principal, the authorised person does not show his or her identity card.

**122 Entry to non-government schools for inspections**

To find out whether this Act is being complied with, an authorised person (non-government) may enter a non-government school at any time when it is being used as a school under this Act.

**123 Entry to non-government schools with consent**

- (1) An authorised person (non-government) may enter a non-government school at any other time if the principal of the school consents to the entry.
- (2) An authorised person (non-government) may, without the principal's consent, enter the non-government school to ask for consent to enter the school.

**124 Consent to entry**

- (1) This section applies if an authorised person (non-government) intends to ask the principal of a non-government school to consent to the authorised person entering the school.
- (2) Before asking for the consent, the authorised person (non-government) must tell the principal—
  - (a) the reason for the entry; and
  - (b) that the principal is not required to consent.
- (3) If the consent is given, the authorised person (non-government) must ask the principal to sign an acknowledgment of the consent.
- (4) The acknowledgment must state that—
  - (a) the principal was told—
    - (i) the reason for the entry; and
    - (ii) that the principal is not required to consent; and

- (b) the principal gives an authorised person (non-government) consent to enter the school and exercise powers under this chapter; and
  - (c) the time and date the consent was given.
- (5) If the principal signs an acknowledgment of consent, the authorised person (non-government) must immediately give a copy to the principal.
- (6) A court may assume that the principal did not consent if—
- (a) a question arises, in a proceeding in the court, whether the principal consented to the authorised person (non-government) entering the school under this chapter; and
  - (b) an acknowledgment under this section is not produced in evidence for the entry; and
  - (c) it is not proved that the principal consented to the entry.

## **125 Powers on entry**

An authorised person (non-government) who enters a non-government school under section 122 (Entry to non-government schools for inspections) or section 123 (Entry to non-government schools with consent) may inspect the school or anything in it (including the register of enrolments and attendances).

## **Division 4.5.3 Miscellaneous**

### **126 Inspection of register of non-government schools**

- (1) A person may, without charge, inspect the register of non-government schools during ordinary business hours at the office of the chief executive.
- (2) A person may, on payment of the reasonable copying costs, obtain a copy of all or part of the register.

**127 Minister to present advice of council (non-government)**

The Minister must present a copy of advice given to the Minister under section 107 (a) or (b) (Functions of council (non-government)) to the Legislative Assembly within 6 sitting days after the day it is given to the Minister.

## **Chapter 5            Home education**

### **Part 5.1            General**

#### **128            Principles on which ch 5 based**

The following are the principles on which this chapter is based:

- (a) parents have the right to choose a suitable educational environment for their children;
- (b) there is a diversity of religious and educational philosophies held by parents providing home education for their children;
- (c) the diversity of educational philosophies reflects the diversity of preferences of parents for particular forms of education for their children;
- (d) home education is committed to—
  - (i) offering a broad range of opportunities that foster in each child the development of the child's unique spiritual, emotional, physical, social and intellectual being; and
  - (ii) valuing the individual needs, interests and aptitudes of each child; and
  - (iii) preparing each child to become an independent and effective local and global citizen.

## Part 5.2 Registration—home education

### 129 Meaning of *home education*

In this Act:

*home education*, in relation to a child, means education conducted by 1 or both of the child's parents from a home base.

### 130 Provisional registration for home education

- (1) If the parents of a child apply in writing to the chief executive for provisional registration of the child for home education, the chief executive must provisionally register the child for home education.
- (2) Provisional registration for home education ends 6 months after the day the provisional registration begins.

### 131 Registration for home education

- (1) This section applies if—
  - (a) a child is provisionally registered for home education under section 130; and
  - (b) the parents of the child apply in writing to the chief executive for registration for home education; and
  - (c) the application is made not earlier than 3 months after the day the child was provisionally registered for home education.
- (2) Also, this section applies if—
  - (a) the parents of a child apply in writing to the chief executive for registration for home education; and
  - (b) immediately before the application, the child was registered or approved (however described) under the law of a State or another Territory for home education.

- (3) The chief executive may register the child for home education for a period of not longer than 2 years if satisfied that the conditions for registration will be complied with.
- (4) To decide whether the conditions for registration will be complied with, an authorised person (government) may inspect any education programs, materials or other records proposed to be used for the home education.

### **132 Conditions of registration for home education**

The registration of a child for home education is subject to the following conditions:

- (a) the parents of the child are to provide high-quality education for the child;
- (b) the parents of the child must document the educational opportunities offered by the parents to their child and the strategies they use to encourage their child to learn;
- (c) the parents of the child must make available for inspection on request by the chief executive any education programs, materials or other records used for the home education.

### **133 Registration of child**

- (1) If the chief executive approves the registration of a child for home education, the chief executive must—
  - (a) enter the particulars prescribed under the regulations in the home education register kept under section 139 (Home education register); and
  - (b) give the parents of the child a certificate of registration for the child.
- (2) The certificate of registration must state the period for which the child is registered for home education.

**134 Period of registration**

Registration of a child for home education is for the period (not longer than 2 years) stated in the certificate of registration.

**135 Cancellation of registration for home education**

- (1) The chief executive may cancel the registration of a child for home education if the chief executive is satisfied on reasonable grounds that a parent has contravened a condition of the registration.
- (2) Before cancelling registration, the chief executive must give the parents a written notice—
  - (a) stating the grounds on which the chief executive proposes to cancel the registration; and
  - (b) stating the facts that, in the chief executive's opinion, establish the grounds; and
  - (c) telling the parents that they may, within 30 days beginning the day after the day they receive the notice, give a written response to the chief executive about the matters in the notice.
- (3) In deciding whether to cancel registration, the chief executive must consider any response given to the chief executive in accordance with subsection (2) (c).
- (4) However, the chief executive must not cancel the registration if satisfied that—
  - (a) the parents have demonstrated that the contravention has been rectified and that they will comply with the conditions of the registration; and
- (b) it is not otherwise in the public interest that the registration be cancelled.
- (5) The chief executive must give the parents written notice of the decision.



- (6) Cancellation of registration takes effect on the day when notice of the cancellation is given to the parents or, if the notice states a later date of effect, that date.

**136 Certificate of registration for home education**

A certificate of registration for home education must state—

- (a) the name of the child registered for home education; and
- (b) the names of the child's parents; and
- (c) the address of the home base from which the home education will be carried out; and
- (d) the period of registration; and
- (e) the conditions of registration; and
- (f) any other particulars prescribed under the regulations.

**137 Renewal of registration for home education**

- (1) The parents of a child who is registered for home education under this part may apply in writing to the chief executive for renewal of the registration.
- (2) The application must be made at least the prescribed period before the registration ends.
- (3) The chief executive may renew the registration of the child for home education for a period of not longer than 2 years if satisfied that the conditions for registration will be complied with.
- (4) In this section:
  - prescribed period* means—
    - (a) 3 months; or
    - (b) if the chief executive approves a shorter period—that period.

**138 Home education reports**

The parents of a child registered for home education must give the chief executive a report about the educational progress of the child once every year.

**139 Home education register**

The chief executive must keep a register of children registered for home education.

## **Chapter 6            Miscellaneous**

### **Part 6.1            Review of decisions**

#### **140            Meaning of *reviewable decisions* for pt 6.1**

In this part:

*reviewable decision* means—

- (a) a decision of the Minister mentioned in schedule 1, part 1.1, column 3 under a provision of this Act mentioned in schedule 1, part 1.1, column 2; or
- (b) a decision of the chief executive mentioned in schedule 1, part 1.2, column 3 under a provision of this Act mentioned in schedule 1, part 1.2, column 2.

#### **141            Notice of decisions to be given to affected people**

- (1) If the Minister makes a reviewable decision, the Minister must give written notice of the decision to each person mentioned in schedule 1, part 1.1, column 4 in relation to the decision.
- (2) If the chief executive makes a reviewable decision, the chief executive must give written notice of the decision to each person mentioned in schedule 1, part 1.2, column 4 in relation to the decision.
- (3) A notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

**142 Who may apply for internal review of decisions**

- (1) A person whose interests are affected by a reviewable decision may apply in writing to the decision-maker for internal review of the decision.
- (2) The decision-maker must arrange for someone else (the *internal reviewer*) to review the decision.
- (3) However, this section does not apply to a reviewable decision made personally by the Minister or chief executive.

**143 Applications for internal review**

- (1) An application for internal review of a reviewable decision must be made within—
  - (a) 28 days after the day the applicant is told about the decision by the decision-maker; or
  - (b) any longer period allowed by the internal reviewer, either before or after the end of the 28 days.
- (2) The application must set out the grounds on which internal review of the decision is sought.
- (3) The making of the application for internal review of the decision does not affect the operation of the decision.

**144 Internal review**

- (1) The internal reviewer must review the reviewable decision, and confirm, vary or revoke the decision, within 28 days after the decision-maker receives the application for internal review of the decision.
- (2) If the decision is not varied or revoked within the 28 days, the decision is taken to have been confirmed by the internal reviewer.

- (3) As soon as practicable after reviewing the decision, the internal reviewer must give written notice of the decision on the internal review to the applicant.
- (4) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

**145 Review by administrative appeals tribunal of certain decisions**

A person may apply in writing to the administrative appeals tribunal for review of—

- (a) a decision made by an internal reviewer; or
- (b) a reviewable decision made personally by the Minister or the chief executive.

## Part 6.2 Other provisions

### 146 Preschools

In exercising functions in relation to a government preschool, the chief executive must take the steps necessary to encourage, and give opportunities to, parents of children attending the preschool to participate in the conduct of the preschool.

### 147 Offences on school premises

- (1) A person must not trespass on school premises.

Maximum penalty: 5 penalty units.

- (2) A person commits an offence if the person behaves in an offensive or disorderly way on school premises.

Maximum penalty: 10 penalty units.

- (3) A person commits an offence if the person—

(a) is on school premises; and

(b) is directed to leave the premises by a police officer, the principal of the school or a person authorised by the principal; and

(c) fails to leave the premises in accordance with the direction.

Maximum penalty: 10 penalty units.

- (4) An offence against this section is a strict liability offence.

- (5) In this section:

*school premises* means land (including any building or structure on the land) occupied by a school.

**148 Obligations on parents**

- (1) For this Act, if an obligation is expressed to apply to the parents of a child it is sufficient for any parent of the child to carry out the obligation.
- (2) For this Act, if an obligation is expressed to apply to the parents of a child and no parent carries out the obligation, each parent is liable for the failure to carry out the obligation.

**149 Notification of parents**

For this Act, if notice is required to be given to the parents of a child, or there is an obligation to ask or tell the parents of a child something, it is sufficient if a parent of the child is given notice or asked or told the thing.

**150 Minister may grant scholarships etc**

- (1) The Minister may give bursaries, exhibitions, free places, prizes, scholarships or other forms of assistance or reward to be used for—
  - (a) the benefit of a student at a government school, or at a college or university in the ACT; or
  - (b) the benefit of a government school, or a college or university in the ACT; or
  - (c) a child registered for home education in the ACT.

**Example for par (b)**

a fund to provide for a teacher with particular skills to teach at a particular government school

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) To remove any doubt, this section does not appropriate public money.

## 151 Gifts and donations

- (1) This section applies if the Minister is satisfied that a condition attached to, or a purpose of, a gift or bequest of property to the Territory on trust for educational purposes (the *original trust*) is inappropriate, impracticable, or impossible to comply with.
- (2) The Minister may, in writing, declare the property the subject of the original trust is subject to another trust.
- (3) The declaration must state of the purposes of the other trust.
- (4) In making the declaration, the Minister must ensure that the property is dealt with as nearly as is practicable for the purposes for which it was held immediately before the declaration, except so far as it is inappropriate, impracticable, or impossible to do so.
- (5) When the declaration commences, the original trust ceases and the property is taken to be held by the Territory in trust for the purposes stated in the declaration.
- (6) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## 152 Education trust fund

- (1) The Minister must keep and administer a fund called the education trust fund.
- (2) The assets of the fund may only be used in accordance with this section.
- (3) The chief executive must open and maintain under the *Financial Management Act 1996*, section 51 (Departmental trust banking accounts) a trust account with an authorised deposit-taking institution (the *education trust account*) to be used only for the fund.



- (4) The account consists of—
- (a) money held by the Territory in trust in relation to anything mentioned in section 150 (Minister may grant scholarships etc); and
  - (b) any other money that may be lawfully paid into the fund.
- (5) The fund may be used only for the following purposes:
- (a) promoting education;
  - (b) giving bursaries, exhibitions, free places, prizes, scholarships or other forms of assistance or reward for a benefit mentioned in section 150;
  - (c) any other purpose prescribed under the regulations.

**153 Notices of intention under former education Act to conduct schools at additional educational levels**

- (1) This section applies in relation to a school if—
- (a) before 27 November 2003, a person gave the registrar a notice of intention under the former education Act, section 22 (1) (Provisional registration) in relation to the school; and
  - (b) the notice related to the conduct of the school at an additional educational level; and
  - (c) the school was registered under the former education Act, section 23 immediately before the commencement of this section.
- (2) For section 89 (1) (a), the proprietor of the school is taken to have in-principle approval under section 84 to apply to operate the school at the additional educational level.
- (3) For section 89 (1) (c), and despite section 84 (7), the in-principle approval is taken to lapse on 31 December 2014.

- (4) In this section:

*former education Act* means the *Education Act 1937* (repealed).

*registrar*—see the former education Act, section 5.

- (5) This section expires on 1 January 2015.

#### **154 Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

#### **155 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## **Chapter 7            Transitional provisions**

### **Part 7.1                Assets and liabilities of former authority**

#### **156            Meaning of *former authority***

In this part:

*former authority* means the authority under the *Schools Authority Act 1976* (repealed).

#### **157            Vesting of assets and liabilities of former authority in Territory**

- (1) The assets and liabilities of the former authority vest in the Territory.
- (2) If an asset or liability that vests in the Territory is mentioned in a contract, agreement or arrangement, a reference to the former authority in the contract, agreement or arrangement is, in relation to anything happening or to happen in relation to the asset or liability after the vesting of the asset or liability in the Territory, a reference to the Territory.

#### **158            Evidentiary certificate for vested assets and liabilities**

- (1) The chief executive may certify that an asset or liability has vested in the Territory under section 157.
- (2) A certificate under subsection (1) is evidence of the matters it states.

**159 Registration of changes in title to certain assets**

- (1) This section applies if—
  - (a) a registrable asset vests in the Territory under section 157 (Vesting of assets and liabilities of former authority in Territory); and
  - (b) the Territory gives the registering authority for the asset a certificate under section 158 for the asset.
- (2) The registering authority must make the entries in the appropriate register kept by the registering authority, and do anything else necessary or desirable to be done, to reflect the vesting of the asset in the Territory.
- (3) The evidentiary value of a register mentioned in this section is not affected by—
  - (a) the making of an entry under this section; or
  - (b) the failure to make an entry under this section; or
  - (c) the failure by the Territory to give a certificate to the registering authority for a registrable asset.
- (4) In this section:

***registering authority***, for a registrable asset, means the person who, under Territory law, is required or permitted to enter particulars about the ownership of the asset in a register.

***registrable asset*** means an asset, including an interest in land, particulars of the ownership of which are required or permitted under Territory law to be entered in a register.

**160 Proceedings and evidence in relation to vested assets and liabilities**

- (1) This section applies in relation to an asset or liability that vests in the Territory under section 157 (Vesting of assets and liabilities of former authority in Territory).
- (2) If a proceeding had been begun in relation to the asset or liability before it vested in the Territory and the former authority is a party to the proceeding, the Territory is substituted for the former authority as a party to the proceeding.
- (3) If a proceeding could have been begun by or against the former authority in relation to the asset or liability before it vested in the Territory, the proceeding may be begun by or against the Territory.
- (4) The *Limitation Act 1985* applies to a cause of action that accrued to or against the former authority in relation to the asset or liability as if the cause of action had accrued to or against the Territory when it accrued to or against the former authority.
- (5) The court or other entity in which a proceeding is begun or continued by or against the Territory in relation to the asset or liability may give directions about the conduct of the proceeding.
- (6) Any evidence that would have been admissible for or against the former authority in the proceeding is admissible for or against the Territory.
- (7) In this section:  
***proceeding*** includes a right of appeal or review (including a right of review under the *Ombudsman Act 1989*) or any other civil proceeding.

## Part 7.2 General savings

### Division 7.2.1 Interpretation

#### 161 Definitions for pt 7.3

In this part:

*commencement day* means the day the *Schools Authority Act 1976* is repealed.

*former authority Act* means the *Schools Authority Act 1976* (repealed).

*former education Act* means the *Education Act 1937* (repealed).

### Division 7.2.2 Former authority Act

#### 162 Existing schools etc

- (1) A preschool, primary school, high school or secondary college established under the former authority Act, section 6 (1) (a) (i) that was in existence immediately before the commencement day is taken, after the commencement day, to be a school of that kind established under this Act, section 20 (1) (Establishing government schools etc).
- (2) A school or other educational or related institution, educational service, or educational or related service established under the former authority Act, section 6 (other than section 6 (1) (a) (i)), that was in existence immediately before the commencement day is taken, after the commencement day, to be a school-related educational institution established under this Act, section 20 (3) (Establishing government schools etc).

**163 Name of schools, institutions and services**

- (1) This section applies to a preschool, primary school, high school or secondary college, a school or other educational related institution, or an educational or related service, established under the former authority Act that was in existence immediately before the commencement day.
- (2) A name given to the preschool, school, college, institution or service that it had immediately before the commencement day is taken, after the commencement day, to have been given to it under this Act, section 20 (4) (Establishing government schools etc).

**164 School boards**

A school board established under the former authority Act, section 37 and in existence immediately before the commencement day is taken, after the commencement day, to have been established under this Act, section 38 (Establishment of school boards).

**165 Parents and citizens associations**

A declaration of a parents and citizens association for a government school in force under the former authority Act, section 36 (2) immediately before the commencement day is taken, after the commencement day, to be a declaration under this Act, section 40 (Declaration of parents and citizens associations in certain circumstances).

**166 Members of school boards**

A person who was a member of a school board under the former authority Act, section 40, 41 or 42 immediately before the commencement day is taken, on the commencement day, to be a member of the school board appointed under this Act, section 41 (Constitution of school boards generally), section 42 (Constitution of school boards of small schools), or section 43 (Constitution of

school boards of school-related institutions and other schools in special circumstances), as the case requires, for the remainder of the term for which the member was appointed.

### **Division 7.2.3 Former education Act**

#### **167 Exemption certificates**

An exemption certificate given under the former education Act, section 16 that was in force immediately before the commencement day is taken, after the commencement day, to be a certificate issued under this Act, section 14 (Exemption certificates) for the remainder of the term for which it was given.

#### **168 Existing registered and provisionally registered schools**

- (1) A school provisionally registered under the former education Act, section 22 immediately before the commencement day is taken, on the commencement day, to be a school provisionally registered under this Act, section 86—
  - (a) for the educational levels for which it was provisionally registered immediately before the commencement day; and
  - (b) for the remainder of the period for which it was provisionally registered under the former education Act.
- (2) A school registered under the former education Act, section 23 immediately before the commencement day is taken, after the commencement day, to be a school registered under this Act, section 88—
  - (a) for the educational levels for which it was registered immediately before the commencement day; and
  - (b) for the remainder of the period for which it was registered under the former education Act.



- (3) A certificate issued under the former education Act, section 22 that was in force immediately before the commencement day is taken, after the commencement day, to be a certificate issued under this Act, section 86 (4) (b) (Provisional registration).
- (4) A certificate issued under the former education Act, section 23 that was in force immediately before the commencement day is taken, after the commencement day, to be a certificate issued under this Act, section 88 (4) (b) (Registration).

## **169 Registers**

- (1) A register of attendances kept under the former education Act, section 15 is taken, after the commencement day, to be a register of enrolments and attendances under this Act, section 33 (Keeping records of enrolment and attendances for government schools) or section 100 (Keeping records of enrolment and attendances for non-government schools), as the case requires.
- (2) A list of registered primary schools and a list of registered secondary schools kept under the former education Act, section 28 is taken, after the commencement day, to be a register of non-government schools kept by the registrar under this Act, section 79 (Register of non-government schools).

## **Part 7.3**                      **Miscellaneous**

### **170**                      **Modification of ch 7's operation**

The regulations may modify the operation of this chapter to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this chapter.

### **171**                      **Expiry of ch 7**

This chapter expires 1 year after the day it commences.

### **172**                      **Declared law for Legislation Act, s 88**

This chapter is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

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## **Schedule 1      Reviewable decisions**

(see s 140)

### **Part 1.1            Minister's decisions**

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
1	84 (4)	refusing to give in-principle approval	applicant for in-principle approval
2	86 (5)	directing registrar to refuse to provisionally register a non-government school	applicant for provisional registration of the school
3	88 (3)	directing registrar to register a non-government school for a shorter period than the period applied for	proprietor of the school
4	88 (5)	directing registrar to refuse to register a non-government school	proprietor of the school
5	90 (6)	directing registrar to refuse to register a non-government school at an additional educational level	proprietor of the school

**Schedule 1**  
**Part 1.1**

Reviewable decisions  
Minister's decisions

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<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
6	95 (1)	directing registrar to cancel provisional registration or registration of a non-government school	proprietor of the school
7	97 (3)	directing registrar to renew registration of a non-government school for a shorter period than the period applied for	proprietor of the school
8	97 (5)	directing registrar to refuse to renew registration of a non-government school	proprietor of the school

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## **Part 1.2**                      **Chief executive's decisions**

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
1	14	refusing to issue exemption certificate on application	parents of the child
2	16	revoking an exemption certificate	parents of the child
3	36	suspending, excluding or transferring a child	parents of the child
4	131 (3)	refusing to register a child for home education on application	parents of the child
5	131 (3)	registering a child for home education for a shorter period than the period applied for	parents of the child
6	135 (1)	cancelling registration of a child for home education	parents of the child
7	137 (3)	refusing to renew registration of a child for home education	parents of the child
8	137 (3)	renewing registration of a child for home education for a shorter period than the period applied for	parents of the child

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACT
- administrative appeals tribunal
- appoint
- chief executive (see s 161)
- child
- contravene
- exercise
- fail
- financial year
- function
- State.

***appointed member—***

- (a) for the school board of a government school, other than a small school, a school-related institution or another school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies—see section 41 (Constitution of school boards generally); or
- (b) for the school board of a small school, other than a school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies—see section 42 (Constitution of school boards of small schools); or
- (c) for the Government Schools Education Council—see section 56 (Membership of council (government)).

***approved educational course*** means an approved educational course (government) or approved educational course (non-government).

***approved educational course (government)*** means an educational course approved under section 31 (Approved educational courses for children at government schools).

***approved educational course (non-government)*** means an educational course approved under section 81 (Approved educational courses for children at non-government schools).

***authorised person*** means an authorised person (government) or authorised person (non-government).

***authorised person (government)*** means a person who is an authorised person (government) under section 67 (Appointment of authorised persons (government)).

***authorised person (non-government)*** means a person who is an authorised person (non-government) under section 119 (Appointment of authorised persons (non-government)).

***board appointed member***—

- (a) for the school board of a government school, other than a small school, a school-related institution or another school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies—see section 41 (Constitution of school boards generally); or
- (b) for a school board of a small school, other than a school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies—see section 42 (Constitution of school boards of small schools).

***carer***—see section 6.

***community member***—

- (a) for part 3.5 (Government Schools Education Council)—see section 57 (Appointed members of council (government)); and
- (b) for part 4.4 (Non-government Schools Education Council)—see section 109 (Members of council (government)).

***compulsory school age***—see section 9.

***corporal punishment*** means physical force applied to punish or correct, and includes any action designed or likely to cause physical pain or discomfort taken to punish or correct.

***council***—

- (a) for part 3.5—means the Government Schools Education Council; and
- (b) for part 4.4—means the Non-Government Schools Education Council.

***council (government)***, for part 3.5—means the Government Schools Education Council.

***council (non-government)***, for part 4.4—means the Non-government Schools Education Council.

***educational course*** means a course of teaching and learning directed toward acquiring a particular area of knowledge and skills.

***education member***—

- (a) for part 3.5 (Government Schools Education Council)—see section 57 (Appointed members of council (government)); and
- (b) for part 4.4 (Non-government Schools Education Council)—see section 109 (Members of council (government)).



**exclusion—**

- (a) of a child from all government schools—means preventing the child from continuing to be enrolled or being re-enrolled at any government school; and
- (b) of a child from all Catholic systemic schools—means preventing the child from continuing to be enrolled or being re-enrolled at any Catholic systemic school; and
- (c) of a child from a non-government school—means preventing the child from continuing to be enrolled or being re-enrolled at the non-government school.

**exemption certificate** means a certificate issued under section 14 (Exemption certificates).

**government school** means—

- (a) except for part 3.4 (School boards of government schools)—a school, preschool or school-related institution established under section 20 (Establishing government schools etc); and
- (b) for part 3.4—a school or school-related institution established under section 20.

**half-year**, for part 3.4 (School boards of government schools)—see section 37.

**home education**—see section 129.

**in-principle approval**—see section 83 (Applications for in-principle approval for proposed registration).

**internal-reviewer**—see section 142 (Who may apply for internal review of decisions).

**money**, for part 3.4 (School boards of government schools)—see section 37.

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

**parent**—see section 6.

**parents and citizens association**, for part 3.4 (School boards of government schools)—see section 37.

**parents and citizens member**—

- (a) for the school board of a government school, other than a small school, a school-related institution or another school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies—see section 41 (Constitution of school boards generally); or
- (b) for the school board of a small school, other than a school to which section 43 applies—see section 42 (Constitution of school boards of small schools).

**prescribed period**, for part 3.4 (School boards of government schools)—see section 37.

**proposed opening day**—see section 83 (4) (Applications for in-principle approval for proposed registration).

**registered non-government school** means a school that is registered or provisionally registered under part 4.2 (Registration—non-government schools).

**register of enrolments and attendances**, in relation to a person, means the register of enrolments and attendances kept by the person under section 32 (Register of enrolments and attendances for government schools) or section 99 (Register of enrolments and attendances for non-government schools).

**register of non-government schools** means the register kept by the registrar under section 79.

**registrar** means the Registrar of Non-Government Schools.

**reviewable decision**—see section 140.

***school***—

- (a) except for chapter 2, part 3.4, chapter 4 and part 6.2—means a school or school-related institution established under section 20 (Establishing government schools etc); and
- (b) for chapter 2 (School enrolment and attendance) and part 6.2 (Other provisions)—means a government school or non-government school; and
- (c) for part 3.4 (Schools boards of government schools)—see section 37; and
- (d) for chapter 4 (Non-government schools)—see section 74.

***school board***, of a government school, means the school board of the school established under part 3.4.

***school-leaving age*** means 15 years old.

***school-related institution***—see section 20 (Establishing government schools etc).

***small school***, for part 3.4 (School boards of government schools)—see section 37.

***staff***, of a school, means the principal and teachers of, and other people employed at, the school.

***staff member***—

- (a) for the school board of a government school, other than a small school, a school-related institution or another school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies—see section 41 (Constitution of school boards generally); or
- (b) for the school board of a small school, other than a school to which section 43 applies—see section 42 (Constitution of school boards of small schools).

***student***, for part 3.4 (School boards of government schools)—see section 37.

***student member***, for the school board of a government school, other than a small school, a school-related institution or another school to which section 43 (Constitution of school boards of school-related institutions and other schools in special circumstances) applies—see section 41.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Education Act 2004 A2004-17**

notified LR 8 April 2004

s 1, s 2 commenced 8 April 2004 (LA s 75 (1))

remainder commenced 1 January 2005 (s 2)

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

#### **Notices of intention under former education Act to conduct schools at additional educational levels**

s 153 [exp 1 January 2015 \(s 153 \(5\)\)](#)

#### **Transitional provisions**

ch 7 hdg [exp 1 January 2006 \(s 171\)](#)

#### **Assets and liabilities of former authority**

pt 7.1 hdg [exp 1 January 2006 \(s 171\)](#)

#### **Meaning of former authority**

s 156 [exp 1 January 2006 \(s 171\)](#)

#### **Vesting of assets and liabilities of former authority in Territory**

s 157 [exp 1 January 2006 \(s 171\)](#)

#### **Evidentiary certificate for vested assets and liabilities**

s 158 [exp 1 January 2006 \(s 171\)](#)

#### **Registration of changes in title to certain assets**

s 159 [exp 1 January 2006 \(s 171\)](#)

#### **Proceedings and evidence in relation to vested assets and liabilities**

s 160 [exp 1 January 2006 \(s 171\)](#)

#### **General savings**

pt 7.2 hdg [exp 1 January 2006 \(s 171\)](#)

#### **Interpretation**

div 7.2.1 hdg [exp 1 January 2006 \(s 171\)](#)

#### **Definitions for pt 7.3**

s 161 [exp 1 January 2006 \(s 171\)](#)

#### **Former authority Act**

div 7.2.2 hdg [exp 1 January 2006 \(s 171\)](#)

#### **Existing schools etc**

s 162 [exp 1 January 2006 \(s 171\)](#)

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<b>Name of schools, institutions and services</b>	
s 163	<a href="#">exp 1 January 2006 (s 171)</a>
<b>School boards</b>	
s 164	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Parents and citizens associations</b>	
s 165	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Members of school boards</b>	
s 166	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Former education Act</b>	
div 7.2.3 hdg	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Exemption certificates</b>	
s 167	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Existing registered and provisionally registered schools</b>	
s 168	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Registers</b>	
s 169	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Miscellaneous</b>	
pt 7.3 hdg	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Modification of ch 7's operation</b>	
s 170	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Expiry of ch 7</b>	
s 171	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Declared law for Legislation Act, s 88</b>	
s 172	<a href="#">exp 1 January 2006 (s 171)</a>
<b>Repeals and consequential amendments</b>	
ch 8 hdg	om LA s 89 (3)
<b>Acts repealed</b>	
s 173	om LA s 89 (3)
<b>Regulations repealed</b>	
s 174	om LA s 89 (3)
<b>Legislation amended—sch 2</b>	
s 175	om LA s 89 (3)
<b>Consequential amendments</b>	
sch 2	om LA s 89 (3)

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