



Australian Capital Territory

# Education Amendment Act 2020

A2020-38

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Australian Capital Territory

# Education Amendment Act 2020

**A2020-38**

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An Act to amend the *Education Act 2004* and the *Education Regulation 2005*

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Education Amendment Act 2020*.

### 2 Commencement

This Act commences on 1 January 2021.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

### 3 Legislation amended

This Act amends the *Education Act 2004* and the *Education Regulation 2005*.

## Part 2 Education Act 2004

### 4 Sections 10A (1) (a) and 10D (1) (a)

*omit*

### 5 Operation of government schools New section 21 (2A)

*insert*

- (2A) If a government school provides boarding facilities for students enrolled at the school, it must meet the requirements prescribed by regulation for the provision of boarding facilities.

### 6 Education to be free New section 26 (2A) to (2C)

*insert*

- (2A) If a person to whom subsection (2) (b) applies is charged a fee, the person may ask the Minister to waive the fee (a *fee waiver*).
- (2B) The Minister must waive the fee—
- (a) if the Minister is satisfied the person has demonstrated financial hardship; or
  - (b) if the Minister is satisfied the person's circumstances justify the waiver; or
  - (c) for any other reason prescribed by regulation.
- (2C) A fee must not be charged in relation to a child for whom a request for a fee waiver is made, and the child must not be excluded from school for nonpayment of a fee, while the request is being considered.

*Note* It is unlawful for a public authority, including a Minister, to fail to give proper consideration to relevant human rights in making a decision (see [Human Rights Act 2004](#), s 40B).

**7 Composition of school boards generally  
Section 41 (2) (d)**

*substitute*

- (d) 3 members (the *parents and citizens members*) appointed by the director-general and made up as follows:
- (i) if the school has a parents and citizens association—
    - (A) 1 member selected from the parents and citizens association of the school; and
    - (B) 2 members selected from the parents of students at the school or from members of the local community;
  - (ii) if the school does not have a parents and citizens association—
    - (A) 2 members selected from the parents of students at the school and 1 member selected from the local community, who is not also a parent of a student at the school; or
    - (B) if a member is unable to be selected from the local community—3 members selected from the parents of students at the school; and

**8 Composition of school boards of small schools  
Section 42 (2) (d)**

*substitute*

- (d) 3 members (the *parents and citizens members*) appointed by the director-general and made up as follows:
- (i) if the school has a parents and citizens association—
    - (A) 1 member selected from the parents and citizens association of the school; and

- (B) 2 members selected from the parents of students at the school or from members of the local community;
- (ii) if the school does not have a parents and citizens association—
  - (A) 2 members selected from the parents of students at the school and 1 member selected from the local community, who is not also a parent of a student at the school; or
  - (B) if a member is unable to be selected from the local community—3 members selected from the parents of students at the school; and

**9** **Provisional registration**  
**New section 86 (6) (ga)**

*insert*

- (ga) if the school will provide boarding facilities for students enrolled at the school—the school will meet the requirements prescribed by regulation for the provision of boarding facilities; and

**10** **Registration**  
**New section 88 (6) (ga)**

*insert*

- (ga) if the school provides boarding facilities for students enrolled at the school—the school meets the requirements prescribed by regulation for the provision of boarding facilities; and

**11 Registration at additional campus  
New section 88B (7) (ea)**

*insert*

- (ea) if the additional campus provides boarding facilities for students enrolled at the school—the additional campus meets the requirements prescribed by regulation for the provision of boarding facilities; and

**12 Registration at additional educational levels  
Section 90 (1)**

*omit*

if an application made under

*substitute*

if an application is made under

**13 New section 90 (7) (ea)**

*insert*

- (ea) if the school provides boarding facilities for students enrolled at the school at the additional educational level—the school meets the requirements prescribed by regulation for the provision of boarding facilities; and

**14 Conditions of provisional registration or registration  
New section 91 (ga)**

*insert*

- (ga) if the school provides boarding facilities for students enrolled at the school—the school meets the requirements prescribed by regulation for the provision of boarding facilities; and



**15**      **Renewal of registration**  
**New section 97 (6) (ga)**

*insert*

- (ga) if the school provides boarding facilities for students enrolled at the school—the school meets the requirements prescribed by regulation for the provision of boarding facilities; and

**16**      **Director-general may give certain information to other States**  
**Section 145C (1) and (2)**

*substitute*

- (1) This section applies if—
- (a) a corresponding officer asks the director-general, in writing, whether a child or young person is receiving an education in the ACT; or
  - (b) the director-general considers, on the director-general's own initiative, that giving a corresponding officer information about the education of a child in the ACT is in the best interests of the child.
- (2) Subject to subsection (4), the director-general may provide the following information, orally or in writing, to the corresponding officer:
- (a) if the child or young person is enrolled at an education provider or registered for home education under this Act—that the child or young person is receiving an education in the ACT;
  - (b) for a child enrolled at an education provider under this Act—whether the child is contravening section 10A (2) or section 10D (3) (which are about participation and school attendance requirements);

- (c) if the director-general is satisfied on reasonable grounds that the child or young person is not enrolled at an education provider or registered for home education under this Act—that the child or young person is not receiving an education in the ACT;
- (d) if the child or young person, or a parent of the child or young person, has been issued with an exemption certificate under part 2.3—that the child or young person is exempt from receiving an education in the ACT;
- (e) in any other circumstances—that the director-general is not able to confirm whether the child or young person is receiving an education in the ACT.

#### **17 Section 145C (4) and note**

*substitute*

- (4) The director-general must, before providing any information to a corresponding officer under subsection (1), have the consent of—
  - (a) a parent of the child or young person; or
  - (b) if the director-general is satisfied the child or young person understands what information is being given, the purpose of giving the information and who will receive the information—the child or young person.

*Note* Consent is not required in certain circumstances (see s 145E).

- (4A) In considering the best interests of a child for subsection (1) (b), the director-general must consider the following:
  - (a) the need to ensure that the child is not at risk of abuse or neglect;
  - (b) the child's physical, emotional and intellectual needs;
  - (c) the child's access to, or benefit from, education;
  - (d) the child's age, level of understanding or level of maturity;
  - (e) any views or wishes expressed by the child or young person;

- (f) the relationship the child has with the child's parents;
- (g) the attitude to the child and to parental responsibilities, demonstrated by the child's parents;
- (h) a court order or criminal investigation relating to the child or the child's parents.

## **18 Regulation-making power Section 155 (2)**

*substitute*

- (2) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.
- (3) A regulation may adopt an Australian Standard as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the [Legislation Act](#).

- (4) The [Legislation Act](#), section 47 (6) does not apply to an Australian Standard mentioned in subsection (3).

## **19 Dictionary, note 2**

*insert*

- territory law

**20 Dictionary, new definition of *boarding facilities****insert*

***boarding facilities***, provided by a school for students enrolled at the school, means—

- (a) facilities for residential accommodation provided for a fee or other consideration; but
- (b) does not include the following:
  - (i) facilities provided by an entity whose main function is to provide a service other than an education course;

**Example**

Peta is in hospital for medical treatment, during which she completes a portion of schooling.

- (ii) facilities provided for students at a school-related institution;
- (iii) facilities prescribed by regulation as facilities that are not boarding facilities.

**21 Reviewable decisions  
Schedule 1, new item 10A***insert*

10A	26 (2A)	refuse to waive fee	applicant	Minister
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**22 Further amendments, note**

*omit the note in*

- section 9B (4)
- section 9C (4)
- section 10 (4)
- section 11H (4)
- section 13D (5)
- section 52 (3)
- section 83 (2)
- section 85 (3)
- section 87 (2)
- section 88A (2)
- section 89 (2)
- section 96 (1)
- section 130 (1)
- section 137 (1)
- section 142 (2)

## Part 3 Education Regulation 2005

### 23 New section 2B

*in part 2, insert*

### 2B Requirements for provision of boarding facilities—Act, s 21 (2A)

A school that provides boarding facilities must have policies for the provision of the facilities that comply with AS 5725:2015 (Boarding Standard for Australian schools and residences) as in force from time to time.

*Note* AS 5725:2015 may be purchased at [www.standards.org.au](http://www.standards.org.au).

### 24 New section 4A

*in part 3, insert*

### 4A Requirements for provision of boarding facilities—Act, s 86 (6) (ga), s 88 (6) (ga), s 88B (7) (ea), s 90 (7) (ea), s 91 (6) (ga) and s 97 (6) (ga)

A school that provides boarding facilities must have policies for the provision of the facilities that comply with AS 5725:2015 (Boarding Standard for Australian schools and residences) as in force from time to time.

*Note* AS 5725:2015 may be purchased at [www.standards.org.au](http://www.standards.org.au).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 23 July 2020.

**2 Notification**

Notified under the [Legislation Act](#) on 20 August 2020.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Education Amendment Bill 2020, which was passed by the Legislative Assembly on 13 August 2020.

Clerk of the Legislative Assembly

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