

2009

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

EDUCATION (PARTICIPATION) AMENDMENT BILL 2009

EXPLANATORY STATEMENT

**Presented by
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Explanatory Statement

This explanatory statement relates to the Bill as introduced into the ACT Legislative Assembly.

Overview of Bill

In April 2008 the ACT Skills Commission released a report which included a recommendation that the ACT Government review the age up to which participation in some form of education and/or training is compulsory.

In response, the ACT Government released *ACT Skills Future* in which the Government reiterated its commitment to increasing, to 95%, the proportion of 19-year-olds with a Year 12 Certificate or equivalent by 2013.

In August 2008, also in response, I released a consultation paper, *Pathways to the Future*, inviting community feedback on a proposal to raise the school-leaving age. The feedback received indicated strong support for the introduction of a compulsory participation age of 17, where young people would be supported to remain in education, training or work.

In April 2009, I detailed the Stanhope Government's 'earn or learn' policy by announcing the ACT Government's commitment to act on the findings of the consultation.

On 2 July 2009, all states and territories agreed to a similar policy position at the Council of Australian Governments as part of a new *National Partnership on Youth Attainment and Transitions*. Under this agreement all states and territories agreed to implement a National Youth Participation Requirement by 2010.

The National Youth Participation Requirement includes a mandatory requirement for all children and young people to participate in education until they complete year 10 and, once they complete year 10, to continue full-time in education, training or employment until they turn 17.

Continuing on to year 12 or tertiary education is not the most appropriate choice for all students. The requirement to continue in education, training or employment until age 17 permits young Canberrans who have completed year 10 to participate in an alternative option for their ongoing learning and development. This ensures those choosing not to continue in education will be pursuing learning that meets their needs, abilities, interests and plans for the future.

Outline of Provisions

Clause 1 Name of Act

States the title of the Act, which is the *Education (Participation) Amendment Act 2009*.

Clause 2 Commencement

States that the Act commences on 1 January 2010.

Clause 3 Legislation amended

States that the Act amends the *Education Act 2004*, the *Children and Young People Act 2008* and the *Evidence (Miscellaneous Provisions) Act 1991*.

Clause 4 Main objects of Act

Includes, in section (8)(b) regarding compulsory education, reference to the requirement to complete year 10 and to participate in education, training or employment until age 17.

Section (8)(ba) retains the rest of existing subsection (b), which refers to school attendance.

Clause 5 Chapter 2 Compulsory education

Part 2.1 Preliminary – ch 2

Defines the key terms used in chapter 2 of the Act.

Section 9 Meaning of *compulsory education age* – ch 2

The *compulsory education age* encompasses all children who are at least 6 years old and under 17 years old. A child who is under 17 years old but has completed year 12 (as defined in section 9C) is no longer of *compulsory education age*.

The term *compulsory education age* is key to the obligation placed on children, through their parents, to be enrolled with an education provider or registered for home education under section 10. When a child is 17 years old or completes year 12 (whichever occurs first) the obligation ceases.

Section 9A Meaning of *education course* and *education provider* – Act

An *education provider* is an organisation which provides an *education course*. To best accommodate the educational needs of children in the ACT, section 9A incorporates government, non-government and home education into the definition of *education course*. It also includes vocational education and training courses and higher education courses under state or territory law.

The table in section 9A lists, in column 3, the education providers with which a child may choose to enrol. Column 2 of the table lists the education course that the child may participate in with the provider.

Each education course and corresponding provider is an option for the purpose of meeting the obligation to be enrolled or registered as required by section 10. A child may elect to engage in a number of options.

Section 9B Meaning of *completes year 10* – Act

For a child under the age of 17 to participate in training or employment as an alternative to an education course, the child must have completed year 10. Section 9B outlines the circumstances in which a child will be taken to have completed year 10.

A high school record, for the purpose of subsection (1)(b) refers to a record issued by an education provider listed in section 9A to a child who is deemed ineligible to receive a year 10 certificate. A high school record (however described) lists the courses undertaken and grades earned by a student in years 9 to 10. A child who receives a high school record for the purpose of transferring to another school within the ACT or leaving the ACT school system has not completed year 10 for the purpose of subsection (1)(b).

Children who are registered for home education and wish to engage in a training or employment alternative, thereby needing to have completed year 10, will be considered under subsection (3)(b). Registration for home education may be grounds for satisfying the chief executive that a child has achieved the equivalent of completing year 10. A child registered for home education may be issued a record by the chief executive under subsection (4) for the purposes of subsection (3)(b).

Section 9C Meaning of *completes year 12* – Act

A child who has completed year 12 or an equivalent prior to turning 17 ceases to be of *compulsory education age*. This is because a child who has completed year 12 or an equivalent has attained an education standard above which the ACT Government does not seek to mandate participation. A child who completes year 12 prior to turning 17 will be encouraged to continue to engage in a course of education, training or employment if they wish, however, they are not required to do so under the Act.

Section 9D Guidelines – certain chief executive functions

The chief executive may establish and implement guidelines by means of a notifiable instrument which state what ‘reasonable grounds’ the chief executive may consider in deciding whether parents have a reasonable excuse for non-compliance, for the purposes of sections 10(5)(c), 10A(3), 10D(4) and 14D(3).

These guidelines will ensure that the decision making process gives due consideration to human rights and promotes a consistent approach.

Part 2.2 Compulsory education requirements

Section 10 Child of compulsory education age – enrolment and registration requirement

All children of compulsory education age and living in the ACT must be either enrolled with an education provider or registered for home education (or both) by the child’s parents. Failure to enrol or register a child may result in the child’s parents receiving a notice from the chief executive requiring enrolment or registration to occur.

Section 10 outlines the timeframes in which the child’s parents must ensure enrolment or registration (or both) has occurred. The purpose of the section is to ensure all children receive an education which meets the minimum education standard stipulated by the government.

Section 10 does not apply if an exemption certificate is in force for the child, or the child is participating in an approved training or employment alternative.

Subsection (5)(c) states that section 10 does not apply if the chief executive is satisfied on reasonable grounds that the child’s parents have a reasonable excuse for non-compliance.

Section 10A Child of compulsory education age – school attendance requirement

This section requires a child’s parents to ensure the child attend the school at which they are enrolled regularly and consistently. A child’s participation in an education course provided by an education provider other than a school is regulated by section 10D.

Attendance at school includes all activities at which the school requires the child's attendance, such as school sports days or school concerts. If a school event, such as an excursion is voluntary, non-attendance will not be in breach of section 10A.

Section 10A does not apply if the chief executive is satisfied that the child's parents have a reasonable excuse for non-compliance. For example, a reasonable excuse may be that the parents suffer from an illness or disability which makes the parents incapable of ensuring the child's attendance.

Section 10B Meaning of *participates* in education course – div 2.2.2

A child who is engaged in an education course through an education provider other than a school must meet the provider's participation requirements.

A child is participating in an education course if the child is enrolled with the education provider and complying with the provider's attendance requirements for the course.

Subsection (b) provides for the attendance requirements where an education course is not delivered face-to-face. Where a child is enrolled in a distance education course (however described) the child must meet the attendance requirements of the distance education provider, such as completing and returning assigned work within a specified time frame.

Section 10C Meaning of *full-time participation* in education course – div 2.2.2

Participation in an education course must be full-time. Full-time is defined by the education provider's requirements or is at least 25 hours per week. A child may participate part-time in two or more courses that equate to full-time participation in one course. This section gives children maximum flexibility to engage in education courses in a way that best meets their needs.

Section 10D Child of compulsory education age – participation requirement

This section requires a child's parents to ensure the child participates in an education course conducted by an education provider other than a school regularly and consistently.

Section 10D does not apply if the chief executive is satisfied that the parents have a reasonable excuse for non-compliance. For example, a reasonable excuse may be that the parents have no involvement in the child's life because the child has moved out of home.

Section 11 Participation requirement – absence

This section permits a child to be absent from participation in an education course if the absence is allowed by the education provider. For example, if a child is enrolled with an education provider that requires a medical certificate for absences caused by illness, a child absent due to illness but supplying a medical certificate will be taken to continue to participate.

This section gives flexibility to education providers and enables them to determine their own administrative requirements.

The section also permits a child to be absent from participation in an education course if the child is prohibited from attending an education course under the law of the Commonwealth or a state or territory. For example, if a child is subject to a court order which instructs the child not to attend the place at which the education course is delivered.

Section 11A Participation requirement – suspension

A child who has been suspended from an education provider will be taken to continue to meet the attendance or participation requirement for the period of suspension. This section ensures a child who has been suspended is not taken to be breaching the participation requirement.

Section 11B Participation requirement – exclusion

To ensure a child who has been excluded from an education provider is not in breach of the participation requirement, this section gives an excluded child time to resume participation in education or apply for approval to participate in a training or employment alternative, without contravening the obligation to participate under section 10D.

The time ‘reasonably required’ takes into account circumstances such as education provider shutdown periods during which the child may be unable to resume participation.

Section 11C Giving information notice

This section enables the chief executive to obtain further information in circumstances where there are reasonable grounds to suspect a child is not enrolled at an education provider, registered for home education or participating in a training or employment alternative. Likewise, it enables the chief executive to obtain further information about a child’s attendance and participation in education, training or employment.

By being authorised to require further information, the chief executive can ensure that she/he is informed of the child’s circumstances before deciding whether to take action to

ensure compliance with the obligation to be enrolled, registered, attending or participating in education, training or employment.

Section 11D Contents of information notice

To ensure that the recipient of an information notice clearly understands the obligations contained in the notice, this section outlines what information the notice must contain.

Section 11E Extension of time for compliance with information notice

This section enables the chief executive to extend the period in which parents must respond to an information notice. This section gives the chief executive the flexibility to take into account the particular circumstances of the notice recipients.

Section 11F Revocation of information notice on compliance

This section requires the chief executive to revoke an information notice if the chief executive is satisfied the notice has been complied with.

Part 2.3 Exemption certificates

Section 11G Meaning of *full-time participation requirement* – pt 2.3

Notes that the meaning of *full-time participation requirement* in part 2.3 has the meaning given by section 10D(3).

Section 11H Exemption certificate – application

In some circumstances it may be appropriate to exempt a child from the requirement to be enrolled at an education provider or registered for home education, or to meet the full-time participation requirement. For example, if a child has health problems which restrict the child's ability to engage in education.

A parent may apply to the chief executive to exempt a child from these requirements. The application may be for an exemption until the child is no longer of compulsory education age, or it may be for a shorter period. An application may be made to exempt the child from the full-time participation requirement.

An exemption may be granted for a child who seeks to engage in a training or employment alternative prior to completing year 10.

For example, if a child who has not yet completed year 10 is offered a unique employment opportunity which may no longer be available when the child has completed year 10, the chief executive may issue an exemption certificate permitting the child to engage in an employment alternative despite not having completed year 10. The chief executive may place a condition on the exemption certificate stating that the child must comply with the participation requirements outlined in part 2.4 'After year 10 – training and employment alternatives'.

Section 12 Exemption certificate – requirement for further information

To assist the chief executive in determining whether it is appropriate to issue an exemption certificate, this section gives the chief executive the authority to request further information or documents.

Section 12A Exemption certificate – issue

The chief executive has the power to issue or refuse to issue an exemption certificate. In reaching the decision, the chief executive may consider, but is not limited to considering, the child's health, education, sense of racial, ethnic, religious or cultural identity, and development. The chief executive may also consider whether the exemption would benefit the child. The chief executive is not limited to these considerations, and may take into account other information as appropriate in the circumstances.

Section 12B Exemption certificate – form

To ensure that the recipient of an exemption certificate clearly understands the certificate's scope, this section outlines what information the certificate must contain.

Section 12C Exemption certificate – conditions

This section enables the chief executive to issue an exemption certificate subject to conditions, provided the chief executive has reasonable grounds for imposing the condition.

Section 12D Exemption certificate – duration

This section enables the chief executive to limit the duration of the exemption certificate by reference either to a period of time or to a condition of the certificate.

Section 13 Exemption certificate – revocation

This section enables the chief executive to revoke an exemption certificate in specific circumstances.

Part 2.4 After year 10 – training and employment alternatives

Section 13A Meaning of *training alternative* and *training alternative provider* - Act

A training alternative provider is an organisation which provides a training alternative. Table 13A lists the training alternatives available in column 2, and the corresponding provider in column 3. The chief executive may approve additional training alternatives and training providers in a notifiable instrument.

Section 13B Meaning of *employment alternative* - Act

Employment alternatives available to children who have completed year 10 include paid work under a contract of service and paid work under a contract for services. The contract may be written or unwritten. An employment alternative does not include volunteering.

Employment of children in the ACT under the age of 15 is subject to the provisions of the *Children and Young People Act 2008*. The employment of children over the age of 15 is subject to industrial instruments relevant to the type of employment undertaken.

Section 13C Meaning of *full-time participation* in training or employment alternative – pt 2.4

Participation in a training or employment alternative must be full-time. Full-time is determined by the requirements of the alternative, or for at least 25 hours per week.

A child may participate in a combination of training and employment alternatives that equate to full-time participation in one alternative. This section gives children maximum flexibility in finding a training or employment alternative arrangement that best suits their needs and plans for the future.

Section 13D Approval statement – application

In order to engage in a training or employment alternative, as opposed to continuing in education after completing year 10, a child's parents must apply to the chief executive for an approval statement. Applications are required to enable the chief executive to monitor the engagement of a child in training or employment alternatives, and to support a child in pursuing the best possible employment or training path for the child.

Section 14 Approval statement – requirement for further information

To assist the chief executive in making an informed decision about whether to issue an approval statement, the chief executive may give an applicant a written notice requiring the applicant to provide further information to support their application.

Section 14A Approval statement – issue

The chief executive has the power to issue or refuse to issue an approval statement. In reaching the decision the chief executive may consider, but is not limited to considering, the child's health, education, sense of racial, ethnic, religious or cultural identity, and development. The chief executive may also consider whether the education or training alternative would benefit the child. The chief executive is not limited to these considerations, and may take into account other information as appropriate in the circumstances.

Section 14B Approval statement - form

To ensure that the recipient of an approval statement clearly understands the statement's scope, this section outlines what information the statement must contain.

Section 14C Approval statement – conditions

This section outlines the conditions attached to approval statements. This section enables the chief executive to issue an approval statement subject to conditions, provided the chief executive has reasonable grounds for imposing the conditions.

Section 14D Approval statement – compliance requirement

A child's parents must ensure the child complies with an approval statement, and any conditions contained within it.

This section does not apply if the chief executive is satisfied the parents have a reasonable excuse for non-compliance.

Section 15 Approval statement – duration

This section enables the chief executive to limit the duration of the approval statement by reference either to a period of time or to a condition of the statement.

Section 15A Approval statement – revocation

This section enables the chief executive to revoke an approval statement in specific circumstances.

Section 15B Return to education while approval statement in force

In the event a child has a current approval statement but enrolls with an education provider, the child's parents must notify the chief executive that child has done so. This is to ensure the chief executive can effectively monitor the child's engagement in education or a training or employment alternative.

Section 15C Training and employment alternatives – absence

This section ensures a child is not in breach of the participation requirement during an allowed absence from a training or employment provider. For example, absence during an employer's shut down period would be considered an allowed absence.

This section also states that a child is not in breach of the participation requirement if the child is prohibited by law of the Commonwealth or a state or territory from attending the place at which the child is engaged in employment or training.

Section 15D Training alternative – suspension

If a training provider suspends (however described) a child enrolled with the provider, the child's participation is taken to continue during the suspension. This is to ensure the suspended child is not in breach of the participation requirement for the duration of the suspension.

Section 16 Training alternative – exclusion

If a training provider excludes (however described) a child enrolled with the provider, the child's participation is taken to continue for the time reasonably required to enrol in an education course or apply for approval to participate in another training or employment alternative. This is to ensure the excluded child is not in breach of the participation requirement whilst the child seeks to re-enrol or apply for approval to participate in another training or employment alternative.

The child must act promptly to seek re-enrolment or approval to participate in another alternative following the exclusion.

Section 16A Employment alternative – termination

If an employer terminates a child's employment, the child's participation is taken to continue for the time reasonably required to enrol in an education course or apply for approval to participate in another training or employment alternative. This is to ensure the excluded child is not in breach of the participation requirement whilst the child seeks

to re-enrol or apply for approval to participate in another training or employment alternative.

The child must act promptly following the termination.

Part 2.5 Compliance notices

Section 16B Giving compliance notice

This section enables the chief executive to issue compliance notices in relation to the enrolment and registration requirement, attendance requirement, participation requirement and the compliance requirement.

By creating offences based on the failure to comply with a compliance notice rather than strict liability offences, the chief executive can respond to children not meeting the Act's requirements in a case-sensitive way.

Compliance notices clearly demonstrate to the recipient that they are in breach of their obligations under the Act and the steps they must take to ensure compliance.

Section 16C Contents of compliance notice

This section specifies what information the chief executive must include in a compliance notice so that the recipient can clearly identify the contravention and the steps the person needs to take to comply.

Section 16D Extension of time for compliance with compliance notice

This section ensures the chief executive has the authority to extend a compliance notice period if, for example, the chief executive becomes aware that the period of time specified in the notice is insufficient for the recipient to meet the obligations within it.

Section 17 Revocation of compliance notice on compliance

The chief executive must revoke a compliance notice if satisfied on reasonable grounds that the parent has complied with the notice.

Part 2.6 Offences - parents

Section 17A Contravention of information and compliance notices

A person who contravenes a compliance notice commits an offence for which the person may be prosecuted. Contravention of a compliance notice is a strict liability offence.

This section does not apply if the parent has a reasonable excuse for complying with the notice. Determining what is a reasonable excuse will be determined on a case-by-case basis.

Clause 6 New section 146A

This section has been recast for clarity. It requires the chief executive to establish procedures for recording student transfers within ACT schools.

Clause 7 New section 153A

In a proceeding for an offence under the Act, evidence of enrolment and attendance may be provided by a signed certificate from a school principal or the person giving an approved educational course.

Evidence of enrolment and participation at an education provider or training provider may be provided by a signed certificate from the provider's registrar (however described).

Evidence of employment and hours of work may be provided by a signed certificate from the employer.

The presumption that a certificate issued under section 153A is evidence only exists while there is not evidence to the contrary. Should the authenticity of a signed certificate be challenged in a court, the presumption that the certificate is evidence will lapse.

Clause 8 New chapter 9

Chapter 9 Transitional provisions

Section 300 Meaning of *amending Act* – ch 9

States the meaning of *amending Act* for the purpose of chapter 9.

Section 301 Application of amending Act

Provides that this Act does not apply to a child who, in 2009, is 15 years old or older, and not enrolled at a school or registered for home education.

Section 302 Transitional regulations

Permits the creation of regulations to prescribe transitional measures necessary for the enactment of the amending Act.

The purpose of this section is to make provision for anything that is not, or is not adequately or appropriately dealt with in the amending Act. This is a standard transitional provision designed to deal with unforeseen contingencies.

Section 303 Expiry – ch 9

States that chapter 9 of the Act (transitional provisions) expires 2 years after the day it commences.

Clause 9 Schedule 1, items 1 and 2

States which decisions made under chapter 2 of the Act are reviewable decisions.

Clause 10 Dictionary, note 2

Adds foreign country to the list of definitions under the Legislation Act.

Clause 11 Dictionary, new definitions

Defines approval statement, completes year 10, completes year 12 and compliance notice by reference to relevant sections of the Act.

Clause 12 Dictionary, definition of *compulsory school age*

Replaces the existing definition of compulsory school age with compulsory education age, defined for the purpose of chapter 2 by reference to section 9.

Clause 13 Dictionary, new definitions

Defines *education course*, *education provider* and *employment alternative* by reference to relevant sections of the Act.

Clause 14 Dictionary, definition of *exemption certificate*

Defines *exemption certificate* by reference to section 11H.

Clause 15 Dictionary, new definitions

Defines *full-time participation*, *full-time participation requirement*, *information notice* and *participates* by reference to relevant sections of the Act.

Clause 16 Dictionary, definition of *school*, paragraph (b)

Defines school for the purposes of chapter 2 and part 6.2 as meaning a government or non-government school.

Clause 17 Dictionary, definition of *school-leaving age*

Removes the definition of *school-leaving age*.

Clause 18 Dictionary, new definitions

Defines *training alternative* and *training alternative provider* by reference to relevant sections of the Act.

Part 1.1 Children and Young People Act 2008

Clause [1.1] Section 86 (1) and note

Changes the reference to *school-leaving age* to a reference to 15 years old or older to retain the original intention of the Act.

Clause [1.2] Section 397 (d) and note

Changes the reference to *school-leaving age* to a reference to 15 years old or older to retain the original intention of the Act.

Clause [1.3] Section 645 (1) (a) and note

Changes the reference to *school-leaving age* to a reference to 15 years old or older to retain the original intention of the Act.

Clause [1.4] Section 779

Omits section 779 because it was a reference to the definition of *school-leaving age* in the Education Act, and the term no longer exists.

Clause [1.5] Section 780, definition of *work experience* and note

Changes the reference to *school-leaving age* to a reference to under 15 years old to retain the original intention of the Act.

Clause [1.6] Section 782 (a)

Changes the reference to *school-leaving age* to a reference to under 15 years old to retain the original intention of the Act.

Clause [1.7] Part 21.4 heading and notes

Changes the reference to *school-leaving age* to a reference to under 15 years old to retain the original intention of the Act.

Part 24.1 Employment of children and young people under 15 years old

Clause [1.8] Dictionary, definition of *school-leaving age* and note

Omits the definition of *school-leaving age* as the term no longer exists in the Education Act, by which the term is referenced.

Clause [1.9] Further amendments, mentions of *school-leaving age*

Replaces the reference to *school-leaving age* with 15 years old to retain the original intention of the Act.

Part 1.2 Evidence (Miscellaneous Provisions) Act 1991

Clause [1.10] Section 74 (2) (b) (iii)

Changes the reference to *school-leaving age* to a reference to under 15 years old to retain the original intention of the Act.