



New South Wales

Education Amendment (School Attendance) Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Education Act 1990* to ensure that children of compulsory school-age attend school, and for that purpose:

- (a) to facilitate the provision of information to the Director-General of the Department of Education and Training about children who are not attending school, and
 - (b) to provide for confidential conferences with parents and other relevant parties to assist in ensuring a child attends school, and
 - (c) to provide for the making of compulsory schooling orders by the Children's Court directed at parents whose children do not attend school and, in certain cases, directed at children who do not attend school, and
 - (d) to increase the monetary penalties for parents who do not ensure that their children attend school, in particular, where parents fail to comply with compulsory schooling orders.
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The Bill also makes other amendments to the *Education Act 1990*, including:

- (a) to require opportunities to be provided for Aboriginal families and communities to participate in decision-making about the education of Aboriginal children, and
- (b) to confer specific power on the Director-General to determine the eligibility criteria for different kinds of government schools.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed (on or after 1 January 2010, the date on which recent changes to the compulsory school-age for children commence).

Schedule 1 Amendment of Education Act 1990 No 8

Schedule 1 [1] defines relevant terms for the purposes of the amended provisions of the *Education Act 1990* (*the principal Act*).

Section 6 of the principal Act requires every person involved in the administration of the principal Act or in the education of school-age children to have regard to certain objects. **Schedule 1 [2]** inserts a new object that provides for Aboriginal families, kinship groups, representative organisations and communities to be given opportunities to participate in significant decisions made under the principal Act relating to the education of their children.

Schedule 1 [3] replaces the term “correspondence schools” with the term “distance education” to reflect changes in schooling methods, such as the use of the internet.

Schedule 1 [4] restates, without significant change, the duty of parents of children of compulsory school-age to cause their children to receive compulsory schooling.

Schedule 1 [5] (proposed section 22A) authorises relevant institutions and other people to provide information to the Director-General about a child who is not attending school as required by the principal Act. The proposed section also imposes a duty on relevant institutions to provide such information if requested by the Director-General. A *relevant institution* means a government department or other public authority and also includes a government school, a registered non-government school, a registered vocational training organisation and a non-government organisation that receives government funding.

The provision of information under the proposed section does not give rise to any liability to civil, criminal or disciplinary action and is not a breach of professional ethics or standards. The identity of a person who provides information under the proposed section is not to be disclosed.

Schedule 1 [5] (proposed section 22B) enables the Director-General to make schooling arrangements with the parents of a child, including written undertakings by the parents with respect to compulsory schooling for the child. These undertakings may be used in evidence in proceedings under Part 5 of the principal Act (such as proceedings against parents for compulsory schooling orders or for an offence).

Schedule 1 [5] (proposed section 22C) deals with conferences of relevant parties to deal with unsatisfactory school attendance. If a child is not receiving compulsory schooling, the Children's Court or the Director-General may direct the relevant parties to participate in a conference that is conducted by an authorised person appointed by the Children's Court or the Director-General. During a conference, parties may seek to identify and resolve issues in dispute, to identify services that would assist a child to attend school and to formulate undertakings and orders for consideration by the Children's Court to ensure the child is provided with compulsory schooling. Participants in a conference may disclose information about a child to assist in achieving the purposes of the conference, despite anything in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*. A conference is confidential and evidence of anything said during a conference cannot be used in court proceedings.

Schedule 1 [5] (proposed section 22D) enables the Children's Court, on the application of the Director-General, to make a **compulsory schooling order** in relation to a child who is not receiving compulsory schooling. An order may require a parent to cause the child to receive compulsory schooling in accordance with the order. An order may also be directed at a child, but only if the child is 12 years of age or older and lives independently of his or her parents or will not obey his or her parents. The Children's Court may also determine the participation requirements under section 21B (inserted by the *Education Amendment Act 2009*) for education or training or paid work if the child has completed Year 10. When making an order, the Children's Court may recommend that a relevant institution provide services to the child and his or her family to assist the child in receiving schooling. If a parent fails to comply with a compulsory schooling order, the maximum penalty for the offence under section 23 is increased to 100 penalty units (currently, \$11,000). If a child who is 15 years of age or older fails to comply with an order, the child is guilty of an offence and liable to a maximum penalty of 1 penalty unit (currently, \$110). If the order is not complied with, the Director-General may enrol the child in a government school if authorised to do so by the order. A decision by the Children's Court to impose an order may be appealed to the District Court.

Schedule 1 [6] substitutes section 23 to update (and increase the maximum penalty for) the offence of failing to send a child to school. A parent of a child of compulsory school-age is guilty of the offence if the parent fails to cause the child to be enrolled at school or registered for home schooling. The maximum penalty is 25 penalty units for a first offence, 50 penalty units for a second offence or 100 penalty units for a parent subject to a compulsory schooling order (currently the maximum penalty for the offence is 10 penalty units). There are various defences to the offence, including

if a child is participating in distance education or approved alternative education, if the child is subject to a certificate of exemption under section 25 of the principal Act, or if the child cannot attend school because of a medical condition or because the child has been suspended or expelled from school. In proceedings for the offence, the court may make a community service order instead of imposing a fine. The revised section also makes provision for the medical examination of children whose non-attendance at school is alleged to have been caused by a medical condition (including provision under which a school principal may require a parent to provide medical certificates for non-attendance by the child because of the past record of absences due to medical conditions). **Schedule 1 [14]** makes a consequential amendment.

Schedule 1 [7] and [9] require school principals to keep in the register of enrolments and attendances particulars about absences of children from school for medical or other reasons, and particulars about any unsatisfactory school attendance by children of compulsory school-age.

Schedule 1 [11] amends the definition of *authorised person*.

Schedule 1 [8], [12] and [13] make consequential amendments.

Schedule 1 [10] enables the Director-General to determine eligibility criteria for different kinds of government schools.

Schedule 1 [15] requires the provisions inserted by the proposed Act to be reviewed after 2 years.

Schedule 1 [16] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.