

# NORTHERN TERRITORY OF AUSTRALIA

## EDUCATION ACT

As in force 1 June 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 1 June 2011. Any amendments that commence after that date are not included.

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## EDUCATION ACT

An Act to make provision for the availability of education to all people of the Northern Territory and in particular to provide for the access of all children to educational programs appropriate to their individual needs and abilities

### Part 1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Education Act*.

#### 2 Commencement

The several Parts and sections of this Act shall commence on such dates as are respectively fixed by the Administrator by notice in the *Gazette*.

#### 3 Repeal

- (1) The Acts of the State of South Australia listed in Schedule 1 cease to apply in the Territory as laws of the Territory.
- (2) The Ordinances listed in Schedule 2 are repealed.

#### 4 Definitions

- (1) In this Act:

*acting in an official capacity*, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

*advisory council* means an advisory council mentioned in section 11.

*attends*, for Part 4, see section 19A.



***authorised officer*** means any of the following:

- (a) the CEO;
- (b) an authorised person;
- (c) a departmental officer.

***authorised person***, for Part 4, see section 25.

***Authority*** means the Northern Territory Employment and Training Authority established under the *Northern Territory Employment and Training Act*.

***CEO*** means the Chief Executive Officer.

***child*** means a person who has not attained the age of 18 years.

***college*** means an institution or body declared to be a college under section 41(1).

***compliance notice***, for Part 4, see section 23A(2).

***compulsory school age***, see section 20(1).

***departmental officer*** means a public sector employee employed in the Agency.

***distance education centre*** includes a school of the air, a correspondence school and the Northern Territory Open Education Centre.

***eligible option***, see section 20(3)(a).

***Government school*** means a school declared to be a Government school under subsection (2).

***home education***, for Part 4, see section 19.

***information notice***, for Part 4, see section 23(2).

***Institute*** means the Institute of Advanced Studies established under section 23 of the *Charles Darwin University Act*.

***living independently***, for Part 4, see section 19C.

***non-Government school*** means a school other than a Government school.

***parent*** includes the person who has the actual custody of a child and the person with whom a child resides.

***principal*** means the person to whom the administration and control of a school is committed.

***reasonably believes*** means believes on reasonable grounds.

***registered*** means registered under this Act.

***school*** means a school or institution at which any person or body of persons provides, or offers to provide, courses of instruction substantially in pre-school, primary or secondary education.

***school day*** means a day on which instruction is provided at a school for children enrolled in the school.

***second or subsequent offence***, for Part 4, see section 19B.

***standard*** means an objective criterion by which skills and abilities may be assessed.

***University*** means the Charles Darwin University.

- (2) Subject to subsection (3), the Minister may, by *Gazette* notice, declare a school to be a Government school.
- (3) The Minister must not declare a school that is wholly maintained otherwise than by Territory or Commonwealth funding to be a Government school.

## **Part 2                      Administration**

### **5                      Administration of Act**

Subject to this Act, the Minister shall have the general administration of this Act and the administration and control of education services wholly provided and wholly maintained by him.

### **6                      Minister to provide education services**

- (1) The Minister may take all measures which, in the Minister's opinion, are necessary or desirable:
  - (a) to assist parents of children in the Territory in fulfilling their responsibility to educate their children according to the individual needs and abilities of those children; and
  - (b) to make education services, provided by the Minister, available to all people in the Territory; and
  - (c) to assist all people of the Territory with their own education.

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- (2) The Minister must establish and maintain education services in the Territory.
- (3) The Minister has power to do all things that are necessary or convenient to be done in, or in connection with, the performance of the Minister's functions under this Act.
- (4) Without limiting the generality of subsection (3), the Minister may:
- (a) establish and maintain:
    - (i) such Government schools or institutions for the provision of primary and secondary education; and
    - (ii) such pre-schools, correspondence schools and schools of the air; and
    - (iii) such colleges;as the Minister considers necessary or desirable; and
  - (b) in such manner and to the extent the Minister thinks fit, provide or arrange for the transport of children to and from any school and may pay the whole or any portion of the cost of transporting any children to and from any school; and
  - (c) establish and maintain the residences for the accommodation of teachers or students as the Minister considers necessary or desirable for this Act; and
  - (d) undertake or cause to be undertaken research and investigation with respect to education generally, a specified field of education or the provision of education services in the Territory; and
  - (e) provide financial assistance to the persons, bodies or institutions as the Minister considers necessary or desirable for, or in connection with, education services; and
  - (f) determine or arrange for the accreditation of courses of education provided in the Territory; and
  - (g) having sought the advice of the relevant Advisory Council, make provision for awards in relation to the passing of examinations or otherwise in relation to education services; and
  - (h) make provision for the granting of scholarships, bursaries and prizes in relation to education services.

## **7 Arrangements for provision of education services**

- (1) The Minister may make arrangements with the appropriate Minister of the Commonwealth or of a State or with any body or institution of the Commonwealth or of a State for the provision of teachers or education services.
- (2) An arrangement made under subsection (1) may do any of the following:
  - (a) provide that it continues for a specified period or until it is terminated at the request of a party to the arrangement;
  - (b) relate to the provision of teachers or education services in the Territory generally or at or in a specified place or part of the Territory;
  - (c) be limited to the provision of teachers or education services suitable for a specified field of education;
  - (d) include provisions relating to the remuneration and conditions of service of teachers to be provided under the arrangement; and
  - (e) provide that the Territory undertakes to pay the remuneration of teachers provided under the arrangement and meet the cost of the provision of other benefits or amenities to be provided to or for the use of teachers under their terms and conditions of service.

## **8 CEO's powers and functions**

- (1) The CEO is, in the exercise of powers and the performance of functions under this Act (other than Part 7), subject to the direction and control of the Minister.
- (2) The CEO may, if directed in writing by the Minister, perform any function or exercise any power which the Minister is authorised or required to perform or exercise by this Act, other than a power or function of the Minister in respect of a college that is an Agency within the meaning of the *Public Sector Employment and Management Act*.

## **9 Delegated power**

- (1) The CEO may, in relation to teachers provided under arrangements entered into under section 7, exercise such powers under the law of the Commonwealth or a State as may be lawfully delegated to the CEO under that law.

- (2) The CEO may, writing, delegate to a public sector employee all or any of the CEO's powers or functions under this Act.

**9A Delegation by Minister**

The Minister may, by instrument in writing, delegate to a person any of the Minister's powers and functions under this Act, other than a power or function of the Minister in respect of a college that is an Agency within the meaning of the *Public Sector Employment and Management Act* and this power of delegation.

**10 Reports**

- (1) The CEO must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the administration of this Act and on the operation of education services in the Territory during the year ending on that date.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 3 sittings days after the Minister receives the report.

**Part 2A Northern Territory Board of Studies**

**10A Definitions**

In this Part:

***Board*** means the Northern Territory Board of Studies established by section 10B.

***chairperson*** means the chairperson of the Board appointed under section 10C(1).

***member*** means a member of the Board appointed under section 10C(1) and includes the chairperson.

**10B Establishment of Board**

There is established by this Act a Board by the name of the Northern Territory Board of Studies.

**10C Composition of Board and appointment of members**

- (1) The Board consists of:
- (a) a chairperson; and
  - (b) 15 other members,

appointed by the Administrator.

- (2) The Minister must nominate a person (who is not an employee of the department administering this Act) for appointment as the chairperson.
- (3) The Regulations may prescribe the interest groups or bodies from which the remaining 15 members are drawn and the manner in which prospective members are to be nominated.
- (4) The exercise of a power or the performance of a function by the Board is not affected by reason only of there being a vacancy in the membership of the Board.
- (6) Where a body prescribed in the Regulations for the purposes of this section changes its name (but not otherwise), the body continues to be the prescribed body for this section.

#### **10D Period of appointment**

- (1) Subject to this Act, a member holds office until the expiration of the period, not exceeding 3 years, specified in the instrument of appointment, but is eligible for re-appointment.
- (2) Where a period of appointment is not specified, the member holds office, subject to this Part, for 3 years.
- (3) The appointments of members are to be arranged so that, as far as practicable, the terms of office of 8 members expire together, with the terms of office of the other 8 members expiring 18 months later.

#### **10E Acting chairperson**

If the chairperson is absent from a meeting, the members present must elect one of their number to be acting chairperson and that person may exercise the powers and perform the duties of the chairperson for that meeting.

#### **10F Resignation of members**

A member may resign his or her office by writing signed by him or her and delivered to the Administrator.

#### **10G Dismissal of members**

- (1) The Administrator may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity to carry out his or her duties as a member.

(2) Where a member:

- (a) is absent, except on leave granted by the Board, from 2 consecutive meetings of the Board; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of his or her remuneration for their benefit;

the Administrator must terminate the appointment of the member.

- (3) If a member was appointed on the nomination of a body, the Administrator must terminate the appointment of the member if the nominating body so requests.

## **10H Meeting of Board**

- (1) The chairperson must call such meetings of the Board as are necessary for the exercise of its powers and the performance of its functions, but so that the interval between one meeting and the next does not exceed 4 months.
- (2) The Minister may at any time direct the chairperson to convene a meeting of the Board and the chairperson must convene a meeting accordingly.
- (3) At a meeting of the Board:
  - (a) 9 members constitute a quorum; and
  - (b) questions arising are to be determined by a majority of the votes of the members present and voting, excluding the member presiding at the meeting, but, in the event of an equality of votes, the member presiding at that meeting has a casting vote; and
  - (c) subject to this Act, the Board may determine the procedure to be followed at or in connection with the meeting.
- (4) The Board must keep records of its meetings.

**10J Functions of Board**

The following are functions of the Board:

- (a) providing advice to the Minister and the Chief Executive Officer on curriculum policy in relation to:
  - (i) establishing and maintaining curriculum frameworks that encompass the needs of all students in the Territory school education system; and
  - (ii) establishing and maintaining procedures for student assessment, reporting and certification; and
  - (iii) monitoring, evaluating and reporting on student performances; and
  - (iv) improving student outcomes; and
  - (v) government policy that impacts on the Board's functions;
- (b) co-operating and consulting with prescribed authorities or bodies engaged in education and related matters.

**10K Powers of the Board**

Subject to this Act, the Board has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of its functions.

**10M Issue of certificates by Board**

- (1) The Board may determine the certificates to be issued to a person in respect of the person's educational attainments, and must issue a certificate to a person whose educational attainments, as assessed or determined in accordance with this section, qualify the person for such issue.
- (2) The Board must prepare and maintain records of assessments under, or recognised by, the Board in relation to a student or former student and provide, on request by the student or former student, a copy of those records to the student or former student, or to such other person as the student or former student specifies in that request.

**10P Ministerial control**

The Board is, in the exercise of its powers and the performance of its functions, subject to the directions of the Minister.



**10Q Confidentiality**

A member must not disclose information obtained in the course of his or her duties as a member unless the disclosure is:

- (a) made in the course of his or her duties as a member; and
- (b) authorised by the Board.

**10R Protection of members**

A member is not personally liable in respect of any matter or thing done by him or her if the matter or thing was done in good faith for the purpose of exercising the powers or performing the functions of the Board.

**10S Staff and costs etc. of Board**

- (1) The Board may, with the approval of the CEO , for the purposes of the effective exercise of its powers and performance of its functions, make use of the administrative and professional staff within the department administering this Act.
- (2) The Minister may approve the payment of costs and expenses reasonably incurred by the Board in the exercise of its powers and the performance of its functions.

**10T Reports**

The Board must, as soon as practicable after 31 December in each year, prepare and give to the Minister a report on its activities during the year ending on that date.

**Part 3 Advisory councils****11 General power to establish advisory councils**

- (1) The Minister may establish advisory councils to give advice or make recommendations on matters related to the provision of education services in the Territory.
- (2) An advisory council may be established:
  - (a) to give advice or make recommendations generally on questions affecting education in the Territory, or a particular aspect of education in the Territory, as they arise; or
  - (b) to investigate and give advice or make recommendations on a particular question (including, for example, on a question

arising from a review of a decision under section 68J).

- (3) An advisory council consists of such members as the Minister considers appropriate and appoints to the council.

## **12            Procedures of advisory council**

Subject to the Minister's directions, an advisory council may determine its own procedures.

## **13            Provision of support to advisory council**

The Minister may:

- (a) provide secretarial, administrative or other assistance to an advisory council; or
- (b) approve the payment of costs and expenses reasonably incurred in carrying out the functions of an advisory council.

# **Part 4            Enrolment, attendance and participation**

## **Division 1       Preliminary matters**

### **19            Definitions**

In this Part:

*attends*, see section 19A.

*authorised person*, see section 25.

*compliance notice*, see section 23A(2).

*compulsory school age*, see section 20(1).

*eligible option*, see section 20(3)(a).

*home education*, for a child, means education of the child conducted by one or both of the child's parents, or a registered teacher, primarily based at the child's usual place of residence, but does not include education through a distance education centre.

*information notice*, see section 23(2).

*living independently*, in relation to a child, see section 19C.

*second or subsequent offence*, see section 19B.

## 19A        **Attending school**

- (1) A child ***attends*** a school if the child is present at the school in which the child is enrolled at the times during a school day when instruction is provided at the school for the child.
- (2) Also, a child is taken to attend school if the child is participating in a school activity that is not located at the school.

*Examples for subsection (2)*

- 1    *A school camp.*
- 2    *An excursion organised by the school.*

## 19B        **Meaning of *second or subsequent offence***

An offence is a ***second or subsequent offence*** for a person if:

- (a) the person is, after the commencement of this section, found guilty of an offence against this Part; and
- (b) the person has previously been found guilty of an offence of the same nature, whether in relation to the same child or another child.

## 19C        **Child living independently**

- (1) A child is ***living independently*** if the child is of or above the age of 14 years and not living with a parent.
- (2) The child is also taken to be living independently, although living with a parent, if the parent is unable to control the child's behaviour to the extent necessary to ensure compliance with this Part.

## 19D        **Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Part.

*Note for section 19D*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## Division 2        **Compulsory education**

### 20        **Compulsory school age**

- (1) A child is of ***compulsory school age*** if the child is of or above the age of 6 years and below the minimum school leaving age.

- (2) The minimum school leaving age is the earlier of the following:
  - (a) the age when the child completes year 10 of secondary education;
  - (b) the age of 17 years.
- (3) However, a child who completes year 10 of secondary education and is below the age of 17 years is of compulsory school age unless:
  - (a) the child participates on a full-time basis in one of the following options (an *eligible option*):
    - (i) approved education or training;
    - (ii) if the child is of or above the age of 15 years – paid employment or a combination of approved education or training and paid employment; or
  - (b) the child is exempt from participating in an eligible option.
- (4) If a child is not of compulsory school age because of participation in an eligible option, the child does not become of compulsory school age merely because the child stops participating unless the break in participation totals more than 3 months in any 12-month period.
- (5) The completion of year 10 of secondary education is:
  - (a) the completion of year 10 of secondary education in the Territory or the equivalent in a State or another Territory; or
  - (b) the completion of education approved by the CEO in special circumstances for a particular child.
- (6) Participation in approved education or training is participation in any of the following:
  - (a) year 11 or 12 of secondary education in the Territory or the equivalent in a State or another Territory;
  - (b) an educational program or course of study or instruction provided by the Charles Darwin University or Batchelor Institute of Indigenous Tertiary Education;
  - (c) a higher education course accredited under the *Higher Education Act*;
  - (d) an accredited course or approved apprenticeship under the *Northern Territory Employment and Training Act*;

- (e) other education or training approved by the CEO by *Gazette* notice;
  - (f) other education or training at an institution in a State or another Territory where the education or training would, if provided in the Territory, comply with the requirements of this Part.
- (7) The CEO may exempt a child from participating in an eligible option for a specified period if satisfied it is appropriate to do so because of special circumstances.

*Example for subsection (7)*

*The child is seriously ill.*

- (8) The exemption must be given by written notice to a parent of the child or, if the child is living independently, the child.
- (9) A regulation may be made about the following:
- (a) whether a child completes year 10 of secondary education;
  - (b) whether a child is participating in an eligible option.
- (10) Subject to the Regulations, participation on a full-time basis in paid employment is participation for an average of 25 hours a week.

## **20A        Compulsory enrolment**

- (1) A parent who has the actual custody of a child of compulsory school age must enrol the child in:
- (a) a Government school; or
  - (b) a non-Government school registered under Part 7.

Maximum penalty:        For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

- (2) If a child of compulsory school age is living independently, the child must enrol himself or herself in a school mentioned in subsection (1)(a) or (b).

Maximum penalty:        For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict

liability.

- (4) Subsections (1) and (2) do not apply in relation to a child:
- (a) who is complying with special arrangements made under Part 5 for the child; or
  - (b) who is enrolled in a school in a State or another Territory and receiving education or training that, if provided in the Territory, would comply with the requirements of this Part; or
  - (c) for whom the parent is providing home education in accordance with an approval under section 20E.
- (5) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes a reasonable excuse.

## **20B            Direction about enrolment**

- (1) This section applies if the CEO reasonably believes:
- (a) the enrolment of a child in a particular Government school may constitute a risk to the child, staff or other students; or
  - (b) the enrolment of a child in other than a particular Government school may constitute a risk to the child, staff or other students; or
  - (c) a particular Government school may be better able to meet the special needs of a child than other Government schools.
- (2) The CEO may direct that:
- (a) the child is not to be enrolled in a specified Government school; or
  - (b) if the child is to be enrolled in a Government school – the child must be enrolled in a specified Government school; or
  - (c) if the child is enrolled in a Government school – the child is to be enrolled instead in a specified Government school on and from the date specified in the direction.
- (3) The direction must be by written notice given to:
- (a) a parent having actual custody of the child; or
  - (b) if the child is living independently – the child.
- (4) The child must not be enrolled in a Government school in

contravention of the direction.

(5) This section does not limit Part 5.

(6) In this section:

*risk* includes risk of physical or psychological harm.

## **20C            Compulsory attendance at school**

(1) This section applies in relation to a child of compulsory school age who is enrolled in a school.

(2) A parent who has the actual custody of the child must ensure the child attends the school each day, or each part of a day, on which instruction is provided for the child.

Maximum penalty:            For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

(5) Without limiting subsection (4), it is a reasonable excuse if the defendant establishes that he or she is unable to control the child's behaviour to the extent necessary to ensure the child attends school.

(6) If the child is living independently, the child must attend the school each day, or each part of a day, on which instruction is provided for the child.

Maximum penalty:            For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

(8) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.

(9) Subsections (2) and (6) do not apply if:

(a) the child is exempted from attendance, or prohibited from attending, under this Part; or

- (b) a parent of the child or, if the child is living independently, the child, gives a reason acceptable to the principal of the school for the child's absence; or
- (c) the child's absence is on a day, or part of a day, of significance to the child's ethnic group and a parent of the child or, if the child is living independently, the child, gives the reason for the absence to the principal of the school.

(10) In this section:

*school* does not include a distance education centre.

## **20D            Compulsory participation at distance education centre**

- (1) This section applies in relation to a child of compulsory school age who is enrolled in a distance education centre.
- (2) A parent who has the actual custody of the child must ensure the child reasonably attends to all course requirements of the educational instruction provided by the distance education centre.

Maximum penalty:            For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.
- (5) Without limiting subsection (4), it is a reasonable excuse if the defendant establishes that he or she is unable to control the child's behaviour to the extent necessary to ensure the child reasonably attends to all course requirements of the educational instruction provided by the distance education centre.
- (6) If the child is living independently, the child must reasonably attend to all course requirements of the educational instruction provided by the distance education centre.

Maximum penalty:            For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.



- (8) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.
- (9) Subsections (2) and (6) do not apply if:
  - (a) the child is exempted under this Part from course requirements of the educational instruction provided by the distance education centre; or
  - (b) a parent of the child or, if the child is living independently, the child, gives a reason acceptable to the principal of the distance education centre for the child's non-attendance to the course requirements.

## **20E        Home education**

- (1) A parent of a child of compulsory school age who proposes to provide home education for the child must, before providing the home education:
  - (a) apply to the CEO for approval to provide home education; and
  - (b) give the CEO details of the proposed home education.
- (2) To determine whether the proposed home education is suitable, the CEO may direct a departmental officer to enquire into the proposal and give a report about the proposed education.
- (3) If the CEO is satisfied home education proposed for a child is suitable, the CEO may approve the home education.
- (4) The approval must be in writing and is subject to the following conditions:
  - (a) the approval is for one school year only;
  - (b) the parent must allow inspections from time to time by departmental officers;
  - (c) any other conditions the CEO considers appropriate and specifies in the notice of approval.

**20F            Exemption by Minister**

The Minister may exempt a child of compulsory school age from attendance at school, or from course requirements of educational instruction provided by a distance education centre, for a specified period if satisfied it is appropriate to do so because of special circumstances.

*Example for section 20F*

*The child is seriously ill.*

**20G            Child may be withdrawn from specified course**

- (1) A parent of a child enrolled in a Government school may request the principal of the school to withdraw the child from the whole or a specified part of a specified course of instruction provided for the child at the school.
- (2) The principal:
  - (a) may agree to the request and make the necessary arrangements to comply with it if satisfied it is appropriate to do so; and
  - (b) must make the necessary arrangements to comply with the request if:
    - (i) the course of instruction specified in the request is a course of religious instruction; or
    - (ii) the parent claims to have a conscientious objection to the child attending the course or part of the course and the course is not an essential part of the curriculum.

**20H            Person not to attend school in certain circumstances**

- (1) This section applies if the principal of a Government school reasonably believes a person enrolled at that school is suffering from an infectious or contagious disease.
- (2) The principal may give written notice directing that the person is not to attend school for a specified period to:
  - (a) for a child:
    - (i) a parent having actual custody of the child; or
    - (ii) if the child is living independently – the child; or
  - (b) for a person who is not a child – the person.

- (3) If the principal is given a certificate signed by a medical practitioner certifying the person is fit to attend school, the principal must permit the person to attend the school even if the specified period has not ended.

## **Division 3            Suspension and expulsion**

### **21            Suspension by principal**

- (1) This section applies if the principal of a Government school is satisfied a person who is enrolled in the school should be suspended from attending the school because the person's presence would be harmful to the health or moral welfare of other persons at the school.

*Examples for subsection (1)*

*The person is insolent, repeatedly disobedient, conducts himself or herself immorally or is guilty of a serious breach of discipline.*

- (2) The principal may, by written notice given to the person, suspend the person from attendance at the school.
- (3) The principal must, as soon as practicable, give a copy of the notice of suspension and a report of the circumstances to:
- (a) the CEO; and
  - (b) if the suspended person is a child – a parent who has the actual custody of the child.
- (4) The suspension has effect:
- (a) for the period, not exceeding 1 month, specified in the notice of suspension; or
  - (b) if the Minister expels the person within the period mentioned in paragraph (a) – until the expulsion.

### **21A            Expulsion by Minister**

- (1) If the Minister considers it necessary in the interests of other persons attending a Government school, the Minister may, by written notice given to a person, expel the person from the school in which the person is enrolled.
- (2) The Minister must, as soon as practicable after expelling a child who is not living independently, give a copy of the notice of expulsion to a parent who has actual custody of the child.
- (3) The Minister may review the expulsion and may revoke the expulsion if satisfied the person should be no longer expelled from the school.

- (4) The Minister must give a notice of revocation of the expulsion to:
- (a) for a child who is not living independently – a parent having actual custody of the child; or
  - (b) in any other case – the expelled person.

**21B            Parent to ensure non-attendance**

- (1) This section applies if a parent has been notified:
- (a) under section 20H that a child is not to attend a school for a period; or
  - (b) under section 21 that a child is suspended from a school for a period; or
  - (c) under section 21A that a child is expelled from a school.
- (2) The parent must ensure the child does not attend school:
- (a) during the period specified in the notice (unless a certificate mentioned in section 20H(3) has been given); or
  - (b) while the child is expelled from the school.

Maximum penalty:            For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.
- (5) Without limiting subsection (4), it is a reasonable excuse if the defendant establishes that he or she is unable to control the child's behaviour to the extent necessary to ensure the child does not attend school.
- (6) If a child living independently has been given a notice mentioned in subsection (1), the child must not attend school as mentioned in subsection (2).

Maximum penalty:            For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.

- (8) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.

## **21C            Re-enrolment after expulsion**

If a person has been expelled from a Government school, the person must not be enrolled in a Government school unless:

- (a) the Minister gives permission for the enrolment; or
- (b) the school is a distance education centre.

*Note for section 21C*

*If the expelled person is a child of compulsory school age, this Part continues to apply in relation to the child despite the expulsion.*

## **Division 4            Further education or training**

### **22            Parents to ensure participation in eligible option**

- (1) This section applies if a child:
- (a) completes year 10 of secondary education under section 20 and is below the age of 17 years; and
  - (b) is not exempt from participating in an eligible option.
- (2) A parent of the child who has the actual custody of the child must ensure the child participates in an eligible option.

Maximum penalty:        For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.
- (5) Without limiting subsection (4), it is a reasonable excuse if the defendant establishes that he or she is unable to control the child's behaviour to the extent necessary to ensure the child participates in an eligible option.
- (6) If the child is living independently, the child must participate in an eligible option.

Maximum penalty:        For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.
- (8) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.

## **22A        Enquiries about participation in eligible option**

- (1) For the effective administration of this Part in relation to the requirement for a child to participate in an eligible option, the CEO may make the enquiries the CEO considers appropriate.
- (2) If the CEO has information that a person is the provider of an eligible option to a child, the CEO may ask the person to give relevant information about the child's participation in an eligible option.
- (3) The request must be made by written notice given to the person.
- (4) The person must comply with the notice.

Maximum penalty:        For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) The CEO may also ask a child to give relevant information about the child's participation in an eligible option.
- (7) The request must be made by written notice given to the child.
- (8) The child must comply with the notice.

Maximum penalty:        For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (9) An offence against subsection (8) is an offence of strict liability.
- (10) It is a defence to a prosecution for an offence against subsection (4) or (8) if the defendant establishes a reasonable excuse.
- (11) Subsections (2) and (6) do not limit subsection (1).

(12) In this section:

*provider*, of an eligible option to a child, means a person who:

- (a) provides the child with approved education or training under section 20(6); or
- (b) employs the child.

## **Division 5            Enforcement powers**

### **23            Information notice**

- (1) This section applies if the CEO reasonably believes section 20A, 20C, 20D, 20E or 22 is not being complied with in relation to a child.
- (2) The CEO may give a written notice (an *information notice*) requiring specified information to one of the following:
  - (a) a parent having actual custody of the child;
  - (b) if the child is living independently – the child.
- (3) The information notice must:
  - (a) specify that it is an information notice under this section; and
  - (b) indicate the provision or provisions of this Act the CEO believes are not being complied with; and
  - (c) specify the information required; and
  - (d) specify what must be done by the person given the notice in order to comply with it; and
  - (e) specify the period for complying with the notice; and
  - (f) contain a statement to the effect that failure to comply with the notice is an offence.
- (4) The information notice may include any further information the CEO considers appropriate.
- (5) A parent given an information notice must comply with it.

Maximum penalty:        For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.



- (6) A child given an information notice must comply with it.

Maximum penalty:        For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (7) An offence against subsection (5) or (6) is an offence of strict liability.
- (8) It is a defence to a prosecution for an offence against subsection (5) or (6) if the defendant establishes a reasonable excuse.

### **23A        Compliance notice**

- (1) This section also applies in the circumstances mentioned in section 23(1), whether or not an information notice has been given in the circumstances.
- (2) The CEO may give written notice (a ***compliance notice***) to one of the following:
- (a) a parent having actual custody of the child;
  - (b) if the child is living independently – the child.
- (3) The compliance notice must:
- (a) specify that it is a compliance notice under this Act; and
  - (b) include a brief description of the failure to comply with this Act for which the notice is given; and
  - (c) specify what must be done by the person given the notice in order to comply with it; and
  - (d) specify the period for complying with the notice; and
  - (e) contain a statement to the effect that failure to comply with the notice is an offence.
- (4) The compliance notice may include any further information the CEO considers appropriate.
- (5) If the CEO considers it appropriate, the CEO may extend the period mentioned in subsection (3)(d) on the CEO's own initiative or on request by the person given the compliance notice.
- (6) However, the period cannot be extended if the period for compliance has ended.

- (7) A parent given a compliance notice must comply with it.

Maximum penalty:        For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

- (8) A child given a compliance notice must comply with it.

Maximum penalty:        For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (9) An offence against subsection (7) or (8) is an offence of strict liability.

- (10) It is a defence to a prosecution for an offence against subsection (7) or (8) if the defendant establishes a reasonable excuse.

- (11) If the CEO is satisfied the compliance notice has been complied with, the CEO must revoke the notice by written notice given to the parent or child given the compliance notice.

### **23B        Compulsory conference**

- (1) This section applies if the CEO reasonably believes a provision of this Part is not being complied with in relation to a child.

- (2) The CEO may, by written notice, direct any of the following persons to attend a compulsory conference addressing the issues the CEO believes necessary to achieve compliance with the provision:

- (a) a parent or parents of the child;
- (b) the child concerned;
- (c) other persons the CEO considers appropriate.

*Examples for subsection (2)(c)*

*A social worker, child psychologist, school principal, church representative, traditional elder.*

- (3) The child may attend the conference without being accompanied by a parent in any of the following circumstances:

- (a) the child is living independently;
- (b) the child requests that parents, or a particular parent, not be present and the CEO agrees to the request;

- (c) the CEO considers the conference is more likely to be successful without the presence of parents or a particular parent.
- (4) If a child attends the conference without being accompanied by a parent because of circumstances mentioned in subsection (3), any direction to a parent to attend is taken to be withdrawn.
- (5) If the child requests the presence of another person (***a support person***) at the conference, the CEO may agree to the request if the CEO considers the conference is more likely to be successful with the presence of the support person.
- (6) The conference must be conducted by a departmental officer.
- (7) The purpose of the conference is to ensure the child receives education or training in accordance with this Part.
- (8) For achieving the purpose, in the conduct of the conference the parties may do any of the following:
  - (a) seek to identify and resolve issues in dispute in relation to education or training for the child;
  - (b) seek to identify any services that can be provided to the child or the child's family to facilitate education or training for the child;
  - (c) make recommendations to the CEO the conference participants consider appropriate;
  - (d) formulate undertakings for a family responsibility agreement under Part 6A of the *Youth Justice Act*, or orders for a family responsibility order under that Act.
- (9) Despite the *Information Act*, participants in the conference, or other persons for the purposes of the conference, may disclose to each other information about the child and the child's family that may reasonably assist in achieving the purpose of the conference.
- (10) Evidence of things said or admissions made in the conference, or in documents prepared for the conference, other than any written undertakings prepared during or following the conference, is not admissible in any court proceeding.
- (11) A parent directed to attend the conference must comply with the direction.

Maximum penalty:            For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

- (12) A child directed to attend the conference must comply with the direction.

Maximum penalty:        For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (13) An offence against subsection (11) or (12) is an offence of strict liability.
- (14) It is a defence to a prosecution for an offence against subsection (11) or (12) if the defendant establishes a reasonable excuse.

### **23C        Truancy from school or eligible option**

- (1) This section applies if an authorised person:
- (a) sees a child apparently of compulsory school age in a public place; and
  - (b) reasonably believes the child should either be attending a school or participating in an eligible option.
- (2) The authorised person may require the child to:
- (a) state his or her name, address and age; and
  - (b) state the name of the school (if any) in which the child is enrolled and give details of any eligible option in which the child participates; and
  - (c) explain why the child is absent from school or is not presently participating in an eligible option.
- (3) The child must comply with the requirement.
- Maximum penalty:        1.5 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.
- (5) If it appears to the authorised person that the child is of compulsory school age and the officer is not satisfied with the explanation given by the child, the authorised person may do any of the following:
- (a) accompany the child to the school in which the child is enrolled and into the care of the school principal;

- (b) accompany the child to the child's home or another place the authorised person considers appropriate in the circumstances;
- (c) take any action the authorised person considers appropriate in relation to non-participation by the child in an eligible option.

**23D        Authorised person may require information about enrolment or eligible option**

- (1) An authorised person may, at any time between 8 am and 7 pm during any day, call at an address which has been given under section 23C(2) or otherwise obtained, and require any person apparently of or above the age of 14 years present at that address to state:
  - (a) the full names of all children of compulsory school age who ordinarily reside at that address; and
  - (b) the names of the schools in which those children are enrolled, or other places at which any of the children participate in an eligible option.
- (2) An adult required to give information mentioned in subsection (1) must comply with the requirement.

Maximum penalty:        For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

- (3) A child required to give information mentioned in subsection (1) must comply with the requirement.

Maximum penalty:        For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant establishes a reasonable excuse.

**23E        Authorised person may direct child be enrolled**

- (1) If an authorised person reasonably believes a child of compulsory school age is not enrolled in any school, the authorised person may, by written notice:

- (a) direct a parent of the child to enrol the child in a school within 10 school days after the notice is given; or
  - (b) if the child is living independently – direct the child to enrol in a school within 10 school days after the notice is given.
- (2) A parent given a direction under subsection (1)(a) must comply with it.

Maximum penalty:        For a first offence – 15 penalty units.

For a second or subsequent offence –  
20 penalty units.

- (3) A child given a direction under subsection (1)(b) must comply with it.

Maximum penalty:        For a first offence – 1.5 penalty units.

For a second or subsequent offence –  
2 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant establishes a reasonable excuse.
- (6) A person given a direction under subsection (1) must, if requested, give the authorised person sufficient evidence of the enrolment.
- (7) If the authorised person considers it appropriate, the authorised person may extend the period mentioned in subsection (1) by no more than 10 school days.

## **Division 6            Offences and evidentiary matters**

### **24            Employment of children**

- (1) This section applies in relation to a child of compulsory school age who has not completed year 10 of secondary education.
- (2) A person must not employ, or permit to be employed, the child during a time of a school day when the child is required to attend school.

Fault elements:

The person:

- (a) intentionally employs the child; and
- (b) is reckless as to whether the child:
  - (i) is of compulsory school age; and
  - (ii) has completed year 10 of secondary education; and
- (c) knows the day is a school day.

Maximum penalty:        For a first offence – 50 penalty units or imprisonment for 3 months.

For a second or subsequent offence –  
100 penalty units or imprisonment for  
6 months.

- (3) Also, a person must not employ, or permit to be employed, the child at any time in employment likely to cause the child to be:
  - (a) unfit or unable to attend school at the times the child is required to attend school; or
  - (b) unfit or unable to understand instruction provided for the child when attending the school.

Fault elements:

The person:

- (a) intentionally employs the child; and
- (b) is reckless as to whether the child is or will be unfit or unable to attend school or understand instruction.

Maximum penalty:        For a first offence – 50 penalty units or imprisonment for 3 months.

For a second or subsequent offence –  
100 penalty units or imprisonment for  
6 months.

- (4) Subsections (2) and (3) do not apply if an exemption under subsection (5) applies in relation to the child.
- (5) The Minister may grant an exemption for a child from all or any of the provisions of subsection (2) or (3) if satisfied it is appropriate to do so because of special circumstances.

## **24A        Obstruction of authorised officer**

- (1) A person must not obstruct an authorised officer acting in an official capacity.

Fault elements:

The person:

- (a) knows the authorised officer is acting in an official capacity;  
and
- (b) intentionally obstructs the authorised officer.

Maximum penalty:        For a first offence committed by:

- (a) an adult – 25 penalty units; or
- (b) a child – 2.5 penalty units.

For a second or subsequent offence  
committed by:

- (a) an adult – 30 penalty units; or
- (b) a child – 3 penalty units.

- (2) In this section:

***obstruct***, includes hinder and resist.

## **24B        Misleading information**

- (1) A person must not give misleading information to an authorised officer acting in an official capacity.

Fault elements:

The person:

- (a) intentionally gives the information to the authorised officer;  
and
- (b) is reckless as to whether the information is misleading; and
- (c) knows the authorised officer is acting in an official capacity.

Maximum penalty:        For a first offence committed by:

- (a) an adult – 25 penalty units; or



(b) a child – 2.5 penalty units.

For a second or subsequent offence committed by:

(a) an adult – 30 penalty units; or

(b) a child – 3 penalty units.

- (2) A person must not give a document containing misleading information to an authorised officer acting in an official capacity.

Fault elements:

The person:

- (a) intentionally gives the document to the authorised officer; and
- (b) is reckless as to whether the document contains misleading information; and
- (c) knows the authorised officer is acting in an official capacity.

Maximum penalty:      For a first offence committed by:

(a) an adult – 25 penalty units; or

(b) a child – 2.5 penalty units.

For a second or subsequent offence committed by:

(a) an adult – 30 penalty units; or

(b) a child – 3 penalty units.

- (3) Subsection (2) does not apply if the person or child, when giving the document:
- (a) draws the misleading aspect of the document to the authorised officer's attention; and
  - (b) to the extent to which the person can reasonably do so – gives the authorised officer the information necessary to remedy the misleading aspect of the document.
- (4) In this section:

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

## **24C            Evidentiary certificates**

- (1) In a legal proceeding, a certificate purporting to be signed by the principal of a school stating that the child named in it did or did not attend that school on the date or dates specified in it is evidence of the matters specified.
- (2) In a legal proceeding, a certificate purporting to be signed by an authorised person and stating any of the following matters is evidence of the matter:
  - (a) a specified person is a parent of a specified child;
  - (b) a specified child is of, above, or below, a specified age;
  - (c) at a specified time a specified child was or was not enrolled in a specified school;
  - (d) a specified person is the principal of a specified school;
  - (e) at a specified time instruction was provided for a specified child at a specified school.

## **Division 7            Administrative matters**

### **25            Authorised persons**

- (1) Each of the following is an *authorised person*:
  - (a) a police officer;
  - (b) a person appointed by the CEO as an authorised person under subsection (2).
- (2) The CEO may appoint a person to be an authorised person for this Act.

### **25A          Identity card**

- (1) The CEO must give an authorised person (other than a police officer) an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must:
  - (a) show a recent photograph of the authorised person; and
  - (b) show the card's date of issue; and
  - (c) be signed by the authorised person.

- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.
- (4) An authorised person (other than a police officer in uniform) may exercise a power in relation to a person only if the authorised person produces his or her identity card to the person for inspection.
- (5) A person (other than a police officer) who ceases to be an authorised person must return the person's identity card to the CEO within 21 days after the cessation.

Maximum penalty:        20 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subsection (5) if the defendant establishes a reasonable excuse.

## **25B        Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as an authorised officer.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

***exercise***, of a power, includes the purported exercise of the power.

***performance***, of a function, includes the purported performance of the function.

## **25C        Information sharing**

- (1) Despite the *Information Act*, a person or body may disclose to the CEO any relevant information:
  - (a) to assist the CEO to ascertain:
    - (i) the age, identity or whereabouts of a child who may not be receiving compulsory education or may not be participating in an eligible option; or
    - (ii) the reasons why the child may not be receiving that education or participating in an eligible option; or
  - (b) that might otherwise assist the CEO in the administration of

this Part.

- (2) The relevant information may be disclosed:
  - (a) at the request of the CEO or on the discloser's own initiative; and
  - (b) if the discloser is an individual – anonymously.
- (3) The CEO, in a request for relevant information, may include information about a child or a child's family that may assist the person or body to provide the requested information.
- (4) An individual who discloses relevant information under this section in good faith, in relation to the disclosure:
  - (a) is not criminally or civilly liable; and
  - (b) is not subject to disciplinary proceedings; and
  - (c) does not commit a breach of professional ethics.
- (5) The identity of an individual who discloses relevant information must not be disclosed unless the CEO considers disclosure of the identity is warranted due to exceptional circumstances.
- (6) The CEO may also disclose relevant information, or other information known to the CEO, to another Agency or body (including from another jurisdiction) if:
  - (a) the Agency or body has responsibilities in relation to children (whether specifically or generally); and
  - (b) the CEO considers the disclosure is appropriate to assist the Agency or body in meeting those responsibilities.
- (7) In this section:

***another jurisdiction*** means the Commonwealth, a State or another Territory.

***body*** includes the Police Force.

## Part 5 Children with special learning needs

### 33 Definition

In this Part, ***handicapped child*** means a child whose educational progress will, by reason of the child's mental or physical handicap, suffer unless the child has access to special educational

arrangements.

### **34 Advisory committees**

- (1) For Part, the Minister may establish an advisory committee to provide advice and make recommendations with respect to the performance of the Minister's functions and the exercise of the Minister's powers under this Part.
- (2) An advisory committee constituted under this section:
  - (a) consists of such members as the Minister thinks fit to appoint to the committee; and
  - (b) subject to any directions of the Minister, may determine its own procedure.
- (3) The members of an advisory committee constituted under this section hold office at the pleasure of the Minister.

### **35 Minister may provide for education of children**

- (1) The Minister may make such provision for or in relation to the education of a class or classes of children to whom this Part relates or children to whom this Part relates generally as the Minister considers necessary or desirable.
- (2) Without limiting the generality of subsection (1), the Minister may make arrangements with the Government of a State or with a body or institution in a State:
  - (a) for or in relation to the education in that State of children to whom this Part relates; and
  - (b) for the payment of expenses for or in relation to that education.
- (3) In this section, *children to whom this Part relates* means:
  - (a) handicapped children; and
  - (b) children whose educational progress will, by reason of some special factor, other than a physical or mental handicap, in relation to the children, suffer unless the children have access to special educational arrangements.

### **36 Parent may request special arrangements**

- (1) Where it appears to:
  - (a) a parent who has the actual custody of a child of compulsory

school age; or

- (b) the principal of the school at which a child of compulsory school age is enrolled;

that the child is a handicapped child or that the educational progress of the child will, by reason of some special factor, other than a physical or mental handicap, suffer unless the child has access to special educational arrangements:

- (c) that parent; or

- (d) that principal;

may request the Minister to make special arrangements for or in relation to the education of the child.

- (2) Where it appears to a parent who has the actual custody of a child who is not of compulsory school age that the child is a handicapped child, the parent may request the Minister to make special arrangements for or in relation to the education of the child.

### **37 Minister's power to make special arrangements**

The Minister may, upon receiving a request under section 36(1) or (2), by order in writing, make such special arrangements for or in relation to the education of the child as the Minister considers necessary or desirable and as are:

- (a) in the case of a request under section 36(1):
  - (i) agreed to by the parent who has the actual custody of the child; or
  - (ii) authorised under section 38; or
- (b) in the case of a request under section 36(2) – agreed to by the parent who has the actual custody of the child.

### **38 Referral to Supreme Court**

- (1) Where the Minister and the parent who has actual custody of a handicapped child of compulsory school age cannot reach agreement in relation to proposed special arrangements for or in relation to the education of the child, the Minister may refer the proposed arrangements to the Supreme Court.
- (2) Subject to this Act, the Supreme Court may, in relation to any proposed arrangements referred to it under subsection (1):

- (a) authorise the making of the arrangements; or
  - (b) vary the arrangements in such manner as it thinks fit, and authorise the making of the arrangements so varied; or
  - (c) substitute such arrangements as it considers necessary or desirable for the arrangements, and authorise the making of the arrangements so substituted; or
  - (d) refuse to authorise the arrangements.
- (3) In exercising the jurisdiction conferred by this section, the Supreme Court must have regard to the responsibility of parents to educate their children and give due weight to the wishes of a parent who has the actual custody of a child who is the subject of a referral to the Court under this section.
- (4) Rules made under the *Supreme Court Act* may include Rules for or with respect to referrals to the Supreme Court under this section.
- (5) Unless the Supreme Court otherwise orders, the costs of and incidental to a referral to that Court under this section are to be paid by the Territory.

## **39        Special arrangements to include provision for visits**

The Minister must not make special arrangements under section 37 for or in relation to the education of a child which require the child to reside at a place other than the usual place of residence of the parent who has actual custody of the child unless those arrangements include provision for visits of reasonable frequency and duration by that parent to the child or by the child to that parent.

## **Part 6            Colleges**

### **Division 1        Definitions**

#### **40        Definitions**

In this Part:

***by-laws*** means by-laws made by a council under section 60H.

***chairperson*** means the chairperson of a council appointed under section 45(1)(a) or (2)(a).

***council*** means the council of a college.

**Director** means the Director of a college appointed under section 51.

**member** means a member of a council.

**rules** means rules made by a council under section 60J.

**vice-chairperson** means the vice-chairperson of a council elected under section 45(3).

## **Division 2                      Establishment, functions and powers of colleges**

### **41                      Establishment of colleges**

- (1) The Minister:
  - (a) may, by *Gazette* notice, declare an institution established for the provision of educational services in an academic, vocational or practical discipline or of a recreational nature to persons who have attained the age of 15 years, to be a college; and
  - (b) must, in a notice under paragraph (a), specify the name by which the college is to be known.
- (2) The Minister must not declare an institution to be a college if it is wholly maintained otherwise than by Territory or Commonwealth funding.
- (3) A college:
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property, and of suing and being sued.
- (4) All courts, judges and persons acting judicially must take judicial notice of the common seal of a college affixed to a document and presume that it was duly affixed.

### **42                      Functions of colleges**

The functions of a college are:

- (a) to conduct educational programs, training and research of such kinds, at such levels, and in such fields of science, technology and trades, the arts, administration, commerce,



and other fields of knowledge or the application of knowledge, as the council of the college may with the approval of the Minister determine or as the Minister may require; and

- (b) to use and develop the facilities and resources of the college to advance knowledge and skills in the fields in which the college is concerned, and to provide consultancy services in such fields; and
- (c) to keep under review the particular education, training and employment needs of the communities served by the college, and the courses of instruction, study and training required to be provided to satisfy those needs, and to submit any proposals arising from a review to the Authority for consideration by the Authority and the giving to the Minister of such advice with respect to the proposals as the Authority thinks fit.

#### **43 Powers of colleges**

- (1) Subject to this Part, a college has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of its functions and the exercise of its powers.
- (2) Without limiting the generality of subsection (1), a college may, for the purpose of carrying out its functions or exercising its powers (including powers conferred on it elsewhere in this Part or by any other Act):
  - (a) make arrangements with other educational institutions for the establishment in the college of courses of lectures or studies for degrees, diplomas, certificates or other awards; and
  - (b) co-operate with other institutions that provide facilities for teaching or research; and
  - (c) make such awards, either in relation to the passing of examinations or otherwise in connection with the education and training provided by the college, as are provided for by by-laws of the college; and
  - (d) enter into contracts; and
  - (e) purchase, take on lease or otherwise acquire, and sell, grant leases of or otherwise dispose of, real or personal property; and
  - (f) erect buildings; and

- (g) occupy, use and control any land or building owned or held under lease and made available for the purposes of the college; and
- (h) create, develop, apply for, obtain and hold intellectual and industrial property and rights, and enter into agreements or arrangements for the commercial exploitation of any such property or rights on such terms as to royalties, lump sum payments or otherwise as the council of the college thinks fit; and
- (j) accept gifts, grants, bequests, devises and assignments made to the college, whether on trust or otherwise, and act as trustee of moneys or other property vested in the college on trust; and
- (k) establish and maintain libraries, laboratories and museum facilities in connection with the college; and
- (m) establish and maintain residential accommodation for staff and students of the college and other persons attending it.

### **Division 3            College councils**

#### **44            College affairs to be conducted by council**

- (1) Subject to this Act, the affairs of a college are to be conducted by its council.
- (2) All things done by a council, or in the name or on behalf of a college with the express or implied authority of its council, are taken to have been done by the college.
- (3) A council:
  - (a) must, in the discharge of its responsibility for the efficient and effective administration of the college and the efficient and effective management of its finances and facilities, make the fullest practicable use of services and resources available to the council through the Agency and, where a college is an Agency within the meaning of the *Public Sector Employment and Management Act*, the Public Sector as defined in that Act; and
  - (b) is in the exercise of its powers and the performance of its functions subject to the directions of the Minister.

#### **45            Composition of council**

- (1) Subject to this Part, a council consists of:

- (a) a chairperson appointed by the Minister; and
  - (b) the CEO or the CEO's nominee; and
  - (d) the Director of the college; and
  - (e) a member of the teaching staff of the college elected by that staff; and
  - (f) a student of the college elected by the students of the college; and
  - (g) a person with expertise in the field of higher education appointed by the Minister; and
  - (h) up to 10 other persons appointed by the Minister, being persons who, in the opinion of the Minister, will contribute to the exercise and performance of the powers and functions of the council.
- (2) Despite subsection (1), where a college is an Agency within the meaning of the *Public Sector Employment and Management Act*, the council consists of:
- (a) a chairperson appointed by the Minister; and and
  - (b) the Director of the college; and and
  - (c) a member of the teaching staff of the college elected by the staff; and and
  - (d) a student of the college elected by the students of the college; and and
  - (e) a person nominated by the CEO ; and and
  - (f) a person with expertise in the field of higher education appointed by the Minister; and
  - (g) the members, if any, appointed under the Regulations.
- (3) A council must elect one of its members as vice-chairperson to act in the place of the chairperson during the absence or inability to act of the chairperson.
- (4) The students of a college may elect a person to act in the office of the person elected under subsection (1)(f) or (2)(d), and a person so elected may act in that office, during the absence or inability to act of the person elected under that subsection.

**46                      Terms of office of appointed and elected members**

- (1) Subject to this Part, a member of a council appointed under section 45(1)(a), (g) or (h) or (2)(a), (e), (f), (g) holds office for the period, not exceeding 3 years, specified in the instrument of appointment.
- (2) Subject to this Part, a member elected under section 45(1)(e) or (f) or 45(2)(c) or (d) holds office for a period of one year or such other period not exceeding 3 years as may be prescribed by by-laws of the college.
- (3) An appointed or elected member is, on the expiry of his or her term of office, eligible for re-appointment or re-election if he or she still has at that time any qualification necessary under section 45 for appointment or election as the case may be.

**47                      Vacation of office and filling of casual vacancies**

- (1) This section does not apply to the members of a council specified in section 45(1)(b), (c) and (d) or (2)(b) as members ex officio.
- (2) The Minister must remove a member of a council from office if the member:
  - (a) is convicted in the Territory of an offence punishable by imprisonment, or is convicted elsewhere than in the Territory of an offence which, if committed in the Territory, would be an offence so punishable; or
  - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, or compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (c) is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of performing his or her duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment; or
  - (d) knowingly contravenes section 50; or
  - (e) ceases to hold the qualification, if any, necessary under section 45 for his or her appointment or election as the case may be.
- (3) The Minister may remove a member from office if the member:

- (a) has, in the opinion of the Minister, been guilty of grave misconduct or wilful neglect in the discharge of the member's office; or
  - (b) is, in the opinion of the Minister, physically or (even if the case does not fall within subsection (2)(c)) mentally incapable of performing the duties of the office; or
  - (c) has, except with the leave of the council, been absent from 3 consecutive meetings of the council of which notice has been given to him or her personally or by post.
- (4) A member may resign the office by writing signed by him or her and delivered to the Minister.
- (5) Where a vacancy occurs in the office of a member elected under section 45(1)(e) or (f) or (2)(c) or (d) otherwise than by the expiry of his or her or her term of office, the Minister may appoint a person to fill the vacancy for the unexpired portion of that term.

#### **48        Council meetings and procedure**

- (1) The chairperson of a council:
- (a) must call such meetings of the council as are necessary for the exercise of its powers and the performance of its functions, but so that the interval between one meeting and the next does not exceed 4 months; and
  - (b) where requested to do so by a notice signed by not less than one third of the members for the time being holding office, must call a special meeting of the council within 7 days after that on which the chairperson receives the notice.
- (2) Where there is no chairperson, or the chairperson is for any reason not available for subsection (1), references in that subsection to the chairperson include references to the vice-chairperson.
- (3) The Minister may if he or she considers it necessary to do so call a meeting of a council.
- (4) A meeting of a council is to be presided over by the chairperson or, in the chairperson's absence, by the vice-chairperson or, in the absence of both the chairperson and the vice-chairperson, by a member elected for the purpose by the members present at the meeting.
- (5) At a meeting of a council, 50% of the members for the time being holding office constitute a quorum.

- (6) Questions arising at a meeting of a council are to be determined by a majority of the votes of the members present and voting, and:
  - (a) in the event of there being an equality of votes on a question, the matter must be deferred for consideration at the next meeting of the council held on a subsequent day; and
  - (b) if at that next meeting the same question is put and there is again an equality of votes, the person presiding at the meeting has a casting vote.
- (7) Subject to this Part and any by-laws of the college, a council may itself determine the procedure to be followed at or in connection with its meetings.

#### **49            Committees**

- (1) A council may establish such committees as it thinks fit, but must appoint a member of the council to each committee.
- (2) A person may be appointed as a member of a committee established under subsection (1) whether or not the person is a member of the council by which it is established.

#### **50            Disclosure of interest**

- (1) A member of a council who has a direct or indirect pecuniary interest in:
  - (a) a matter being considered or about to be considered at a meeting of the council; or
  - (b) a thing being done or about to be done by the council;

otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 members and of which the person is not a director, must, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the council.

- (2) A disclosure by a member at a meeting of a council that he or she:
  - (a) is a member, or is in the employment, of a specified company or other body; or
  - (b) is a partner, or is in the employment, of a specified person; or
  - (c) has some other specified interest relating to a specified company or other body or a specified person;

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body, or to that person, which may arise after the date of the disclosure.

- (3) A council must record particulars of all disclosures made under this section in a book kept for the purpose and that book must be open at all reasonable times to the inspection of any person on payment of such fee, if any, as is determined from time to time by the council.
- (4) After a member of a council has, or is taken to have, disclosed the nature of an interest in a matter or thing under this section, the member must not, unless the council (in the absence of the member) otherwise determines:
  - (a) be present during any deliberation of the council, or take part in a decision of the council, in relation to that matter; or
  - (b) exercise a function under this Part in relation to that thing.
- (5) A reference in this section to a council includes a reference to a committee of a council.

## **Division 4                College principals, staff etc.**

### **51                Appointment of Director**

- (1) The Minister may appoint a person nominated by a council to be the Director of the college.
- (2) The Administrator shall not appoint a Chief Executive Officer under section 19 of the *Public Sector Employment and Management Act* in respect of a college that is an Agency within the meaning of that Act, unless the person has been nominated by the council of the college to be the Director of the college.
- (3) The functions of a Director are:
  - (a) to represent the council by which the Director was nominated; and
  - (b) to execute the policy decisions of the council by which the Director was nominated; and
  - (c) such other functions as are conferred on the Director by this Act or any other Act.
- (4) Subject to this Act, the Director has power to do all things that are necessary or convenient to be done for or in connection with, or incidental to, the performance of the Director's functions.

**52                      Other staff etc.**

- (1) Subject to subsections (2) and (3), a council may:
- (a) employ such staff (whether on a permanent, part-time or casual basis); and
  - (b) otherwise contract or arrange for the services of such persons (including consultants and advisers);

as the council considers necessary to enable it to carry out the functions of the college or to secure the efficient and effective administration and maintenance of the college.

- (2) The terms and conditions of any contract of employment or other contract or arrangement under subsection (1) are to be such as are determined by the council with the approval of the Commissioner within the meaning of the *Public Sector Employment and Management Act*.
- (3) Subsections (1) and (2) do not apply to a college that is an Agency within the meaning of the *Public Sector Employment and Management Act*.

**Division 5                      Financial etc. provisions**

**55                      College fees and charges**

- (1) Subject to this section, fees or charges are payable to a college at such rates, for such courses of study or instruction of the college, for admission to such examinations conducted by the college and in relation to such other facilities or privileges of the college as are determined by its council.
- (2) A student to whom a college has granted a scholarship or bursary in accordance with any by-law is exempt from payment of fees and charges to the extent of the exemption applicable under the scholarship or bursary.
- (3) A college may exempt a student from the payment of the whole or any part of a fee or charge otherwise payable by the student if it considers that the payment of the whole or part of the fee or charge, as the case may be, would cause substantial hardship to the student.
- (4) There is also payable to a college fees of such amounts as are determined by its council for the provision by the college of consultancy services.



**56                      Payments to council members in respect of attendance at meetings**

- (1) Subject to subsection (3), the chairperson and other members of a council appointed by the Minister, and the member of a council elected by the students of the college, are to be paid by the council in respect of their attendance at council meetings remuneration, allowances and expenses at such rates, or of such amounts, as are determined by the Minister.
- (2) A determination under subsection (1) may make different provision with respect to different members of a council.
- (3) Subsection (1) does not apply to a member who is an employee as defined in the *Public Sector Employment and Management Act*.

**58                      Proper accounts to be kept**

The CEO must cause to be kept proper accounts and records of the transactions and affairs of a college and do all things necessary to ensure that all payments out of the moneys of the college are correctly made and properly authorised and that adequate control is maintained over the property of, or in the custody of, the college and over the incurring of liabilities by the college.

**59                      Gifts etc. and trust funds**

- (1) In exercising its powers to acquire, hold, deal with or dispose of real or personal property, a college may agree to and carry out the conditions of a gift, grant, bequest, devise, purchase, lease or other means by which it acquires or holds property, and the council of the college may create and administer such trust fund or funds for that purpose, or for any other purpose, as it thinks fit.
- (2) Subsection (1) does not apply to grants or other receipts from the Territory or the Commonwealth.

**60A                    Budget and financial information**

- (1) A council:
  - (a) must in each financial year, adopt for the next following financial year a budget for all funds of the college, other than those to which paragraph (b) relates, and must approve all amendments to the budget and control the expenditure of the college so that it conforms as nearly as practicable to the approved budget; and

- (b) must review periodically (and not less than annually) funds available to the college by way of bequest, donation or special grant and the expenditure of those funds, and, subject to the terms of a trust and before any such expenditure is made, approve the proposed disposition of those funds.
- (2) As soon as practicable after adopting or amending a budget under subsection (1)(a), a council must forward to the CEO a copy of the budget or amendment, as the case may be.
- (3) The CEO must if the Minister so directs after consultation with the Authority require a council, by notice in writing, to vary a budget in a manner specified in the notice, and the council must comply with the requirement.
- (4) The CEO may at any time require a council to provide the CEO with such information as, in the CEO's opinion, is necessary to enable the CEO to accurately assess the financial affairs of the college, and the council must provide that information accordingly.

#### **60B            Annual report**

- (1) The Director of a college that is an Agency for the purposes of the *Financial Management Act* shall, within the period of 6 months immediately following the end of the financial year or such other period as the Minister determines, prepare a report on the operations of the college during the financial year and forward it to the Minister.
- (2) The Minister shall table the report under subsection (1), together with the financial statement and report of the Auditor-General on the financial statement required under section 10 or 11 of the *Financial Management Act*, in the Legislative Assembly within 6 sitting days of the Assembly after the delivery of the later of the reports to the Minister.

### **Division 6            Miscellaneous**

#### **60C            Trading, &c., corporations**

A council may with the approval of the Treasurer establish by incorporation, or participate in the establishment of, such trading, research or other corporations as the council thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the college.

**60D            Delegation**

- (1) A council may by instrument in writing delegate to the Director of the college, a Chief Executive Officer within the meaning of the *Public Sector Employment and Management Act* or a person any of its powers or functions under this Act other than this power of delegation and the power of the council to make by-laws.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall for the purposes of this Act be deemed to have been exercised or performed by the council.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the council.

**60E            Terms of contract and execution of documents**

- (1) A deed, instrument, contract or agreement relating to any property or matter which, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of a college in writing under its common seal.
- (2) An instrument, contract or agreement relating to any property or matter which, if made by or between individuals would be required to be in writing signed by the parties to be charged therewith, may be made on behalf of a college in writing by a person acting under the authority, express or implied, of its council.
- (3) A contract relating to any property or matter which, if made between individuals, would by law be valid although made by parol only (and not reduced to writing) may be made on behalf of a college by a person acting under the authority, express or implied, of its council.
- (4) A contract entered into or an instrument, contract or agreement signed in relation to any property or obligation of a college shall be deemed to have been entered into or signed with the express authority of its council if it is entered into or signed in accordance with a resolution of the council for the time being in force.

**60F            Protection of members**

No action or proceeding, civil or criminal, shall be commenced or lie against a member of a council for or in respect of an act or thing done or omitted to be done in good faith:

- (a) by him in his capacity as such a member; or
- (b) by the college or that council,

in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Part.

**60G            Validity of proceedings**

No proceedings of a council or of a committee of a council, and no act done by the Director of a college as a delegate of its council, shall be invalidated by reason only of:

- (a) a defect in the appointment or election of, or a disqualification of, a member of the council;
- (b) a defect in the convening or conduct of a meeting of the council or of a committee of the council;
- (c) there being a vacancy in the membership of the council or of a committee of the council; or
- (d) a contravention or non-compliance with section 50 by a member of the council or of a committee of the council.

**60H            By-laws**

- (1) A council may make by-laws, not inconsistent with this Part, prescribing matters:
  - (a) required or permitted by this Part to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) Without limiting the generality of subsection (1), a council's by-laws may in particular make provision relating to:
  - (a) the use and custody of the common seal of the college;
  - (b) the method of election of members of the council, including procedures relating to nominating, enrolling and voting and the counting of votes and the declaration of polls;
  - (c) the manner and time of convening, holding and adjourning the meetings of the council, voting at such meetings, the powers and duties of the chairman or other person presiding at a meeting, and the conduct and recording of the business thereat;
  - (d) the appointment of committees of the council, and the quorum, powers and duties of such committees;

- (e) the admission of students to courses conducted by the college;
  - (f) the holding of, and admission of persons to, examinations of the college;
  - (g) the awards of the college and the requirements for making them;
  - (h) the granting of scholarships, bursaries and prizes by the college;
  - (j) the admission of students of other educational institutions to a corresponding status or of graduates of other educational institutions to a corresponding qualification of the college without examination;
  - (k) the establishment, management and control of libraries and museums in connection with the college;
  - (m) the establishment, management and control of halls of residence established, and other accommodation provided, by the college;
  - (n) the control and investment of the property of the college, including property held on trust or subject to a condition;
  - (p) the protection of the property of or under the control of the college from trespass, damage or misuse;
  - (q) the regulation and control of access to, and the use of, land and buildings the property of or under the control of the college and the conduct of persons and the presence and use of vehicles thereon;
  - (r) student discipline; and
  - (s) the making of rules.
- (3) Without limiting the generality of subsection (1), a by-law may:
- (a) provide, in the case of an offence of:
    - (i) bringing a vehicle onto or parking or standing a vehicle on a site in breach of a by-law;
    - (ii) driving a vehicle on a part of a site in breach of a by-law;

- (iii) driving a vehicle on a part of a site at a speed in excess of a speed that, in relation to that part, is prescribed, determined by a method prescribed or fixed by a person authorized by a by-law so to do in respect of the site or that part;
- (iv) driving a vehicle on a part of a site contrary to a direction, whether given by a person authorized by a by-law so to do or by a traffic control device on the site; or
- (v) doing on a site with or in respect of a vehicle such other act as is prescribed,

that the person who was in charge of the vehicle at the material time or the owner of the vehicle (whether or not he was in charge of the vehicle at the material time) shall be liable to be punished for the offence;

- (b) define who is the owner of a vehicle for the purposes of the by-laws;
  - (c) provide for the removal or disposal of a vehicle:
    - (i) parked or left standing on a site in such a position as to obstruct, interfere with or cause danger to other vehicles on the site or to users of the site; or
    - (ii) apparently abandoned on a site; and
  - (d) prescribe the proof that is necessary or sufficient to establish a matter relevant to an offence created by the by-laws.
- (4) A by-law referred to in subsection (3)(a) shall not be so construed that the owner of a vehicle and the person in charge of it at the time an offence was committed with or in respect of the vehicle shall both be liable for the one offence.
- (5) In subsection (3), **site** means land or a building the property of or under the control of the college.
- (6) By-laws under this section are not subordinate legislation for the purposes of section 57 of the *Interpretation Act*.
- (7) Section 63 of the *Interpretation Act* does not apply to by-laws under this section.

## **60J            Rules**

- (1) A council may make rules (not inconsistent with this Part or any by-law) for carrying into effect any of the provisions of this Part or of by-laws.
- (2) Rules shall be signed by a person authorized by the council to sign them.
- (3) Rules shall be published in such manner as is provided for in by-laws, and shall take effect from the date of publication or, where a later date is provided for in the rules, from that later date.
- (4) It is sufficient compliance with the requirements of subsection (3) if notice of the making of the rules and the place where copies of them may be obtained is published on a board nominated in by-laws as the main notice board of the college.
- (5) Section 63 of the *Interpretation Act* does not apply to rules under this section.
- (6) Rules under this section are not subordinate legislation for the purposes of section 57 of the *Interpretation Act*.

## **60K            Penalties under by-laws and rules**

- (1) A by-law or rule may impose, or empower the council or an officer of the college or a body established in accordance with the By-laws to impose, a penalty not exceeding:
  - (a) in the case of a by-law – \$1,000; and
  - (b) in the case of a rule – \$20,for a contravention of or failure to comply with a by-law or rule.
- (2) A penalty imposed under a power conferred by a by-law or rule is a debt due and payable by the person on whom it is imposed to the college, and in proceedings for its recovery from that person, a certificate signed by an officer of the college and specifying the person or body by whom it was imposed, the date on which it was imposed and the amount thereof shall be prima facie evidence of the matters specified.

## **60M            Removal of collegiate status**

- (1) The Minister may by notice in the *Gazette* declare that a college shall, on a date specified in the notice, cease to be a college for the purposes of this Act.

- (2) On the date specified in a notice under subsection (1), the college to which the notice relates shall cease to be a body corporate and all property, rights and liabilities of the college shall, subject to and in accordance with any regulations under this Act, become property, rights and liabilities of the Territory.

## **Part 7            Non-Government schools**

### **Division 1       Preliminary matters**

#### **61            Definitions**

In this Part:

***director***, of a governing body, means:

- (a) a member of the board or committee of management (whether or not described as a director) of the governing body; and
- (b) any person who is in a position to control or exercise substantial influence over the governing body.

***facilities***, of a non-Government school, means any buildings, structures or other facilities used for the purposes of the school, including, for example, school playgrounds, annexes and residential facilities.

***governing body***, of a non-Government school, see section 61A(a).

***non-Government school*** includes a proposed non-Government school.

***not operated for profit***, see section 63B(3).

***Panel*** means the Registration Assessment Panel mentioned in section 64.

***registration***, in relation to a non-Government school, means a registration of the school under this Part that is in force.

***registration requirements***, see section 61A.

***routine assessment*** means a routine assessment mentioned in section 68A(1).

***special investigation*** means a special investigation mentioned in section 68A(3).



***system school*** means a school that is one of a number of non-Government schools for which a single organisation has overall management, policy and planning responsibilities.

***unregistered non-Government school*** means a non-Government school that is not registered under this Part or whose registration under this Part is not in force (for example, because it is suspended).

***variation***, of the registration of a non-Government school, means the variation of the conditions of the school's registration or any other matter on the basis of which the school is registered (including, for example, the school's location).

## 61A        Registration requirements

The following are the ***registration requirements*** for a non-Government school:

- (a) the school must be administered by a body corporate (the ***governing body***), whose directors:
  - (i) must be persons of good character; and
  - (ii) must collectively possess the skills and experience necessary for the proper administration of the school;
- (b) the governing body's philosophy and objects and the school's educational programs must be consistent with the principles mentioned in section 61B as required by that section;
- (c) the school's methods of governance must be appropriate to its educational programs and the year levels and number of its students;
- (d) the school's facilities must:
  - (i) be appropriate and adequate for the purposes of its educational programs and year levels and number of its students; and
  - (ii) must comply with any relevant requirements of the laws of the Territory;
- (e) the school must be adequately insured for its facilities and for any liabilities that may arise from the conduct of its activities;
- (f) the school must have adequate financial and other resources for its operation;

- (g) the school must have a business plan and a budget that makes appropriate provision for each year of its operation;
- (h) the school's staff establishment (including its structure and size) must be appropriate and adequate for the school's educational programs and the year levels and number of its students;
- (i) the school's staff:
  - (i) must be of good character; and
  - (ii) for its teaching staff – must be registered with the Teacher Registration Board of the Northern Territory and must maintain appropriate standards of professional competence;
- (j) the school's curriculum and methods of student assessment must meet the requirements of the Northern Territory Board of Studies established by section 10B;
- (k) the school must have appropriate procedures for its financial management, performance management and accountability, including, for example, procedures for the following:
  - (i) the development and implementation of a strategic management plan;
  - (ii) the assessment of the school's performance against goals set out in the strategic management plan and against national benchmarks;
  - (iii) the keeping of financial and other records about the school (including complying with the requirements in sections 67A and 67B);
  - (iv) the reporting on the school's performance to the community and Chief Executive Officer (including complying with the requirements in sections 67A, 67B and 67C);
- (l) the school must comply with the current policy of the Northern Territory government in relation to the age of school entry for students;
- (m) the school's policy for the discipline of students must be based on procedural fairness and must not involve corporal punishment;

- (n) the school must have adequate provision for meeting the needs of any of its students who has a disability;
- (o) the school must have adequate safeguards for the health, safety and wellbeing of its staff and students, including, for example, the following:
  - (i) an adequate occupational health and safety manual for its staff;
  - (ii) appropriate procedures to ensure a criminal history report is obtained for each member of its staff;
  - (iii) an adequate contingency plan for emergencies;
- (p) the school must have appropriate policies and procedures to deal with complaints and disputes;
- (q) an annual self audit must be conducted for the school in accordance with section 67D;
- (r) any other matter, or a matter relating to a matter mentioned in any of the preceding paragraphs, prescribed by regulation.

#### **61B       Consistency with basic principles**

The philosophy and objects of the governing body of a non-Government school and the school's educational programs (including the way in which they are provided) must be consistent with the following principles:

- (a) governments should be democratically elected;
- (b) the rule of law should prevail and all should be equal before the law;
- (c) there should be freedom of religion, freedom of speech and freedom of association;
- (d) there should be tolerance of diverse religious, political, social and cultural beliefs and practices, to the extent to which they are consistent with civilised values.

## **Division 2            Requirement for registration**

### **62            Non-Government school must be registered**

An unregistered non-Government school must not be operated in the Territory.

*Note*

*The governing body must ensure compliance with the registration requirements and the conditions of the school's registration (see section 67).*

### **62A            Consequences of non-registration**

- (1) The governing body of an unregistered non-Government school commits an offence if the school is operated in the Territory.

Maximum penalty:        250 penalty units.

- (2) The head teacher of an unregistered non-Government school commits an offence if:

(a) the school is operated in the Territory; and

(b) the head teacher knows the school:

(i) is an unregistered non-Government school; and

(ii) is operated in the Territory.

Maximum penalty:        20 penalty units.

### **62B            Misrepresentation of status of school**

A person must not knowingly represent that an unregistered non-Government school is registered.

Maximum penalty:        50 penalty units.

## **Division 3            Application for registration**

### **63            Preliminary assessment**

- (1) A person intending to apply for the registration of a non-Government school may ask the Chief Executive Officer:

(a) to make a preliminary assessment of any of the following:

(i) the effects of the registration on the educational system in the Territory;

- (ii) any other matter that may be relevant for the application;  
and
- (b) to indicate whether the application is likely to fail because of any adverse findings of that assessment.
- (2) The Chief Executive Officer may make an assessment, and give an indication, as the Chief Executive Officer considers appropriate.

#### **63A Application for registration**

- (1) A person may apply to the Chief Executive Officer for the registration of a non-Government school.
- (2) The application must be in writing and accompanied by any fee prescribed by regulation.
- (3) The application must be made at least one year before the school begins to provide educational programs.
- (4) However, the Chief Executive Officer may reduce that period in appropriate cases.

#### **63B Matters to be addressed in application**

- (1) The application must set out the proposal for the school in relation to all of the following:
  - (a) the composition of the governing body of the school (including information about each of its directors' skills and experience that is relevant to the proposal);
  - (b) how the governing body's philosophy and objects (including any particular cultural or religious interest connected with the philosophy or objects) and the school's educational programs will be consistent with the principles mentioned in section 61B;
  - (c) the school's methods of governance;
  - (d) a description of the following:
    - (i) the school's location and catchment area (including the population projections for the area and expected effects of the proposal on the existing schools in the area);
    - (ii) the school's educational programs and the year levels and number of its students;
  - (e) the school's facilities, any plans for their maintenance, renovation and expansion and related construction schedules;

- (f) the insurance coverage for the school's facilities and for any liabilities that may arise from the conduct of its activities;
- (g) the school's financial and other resources for its operation, the extent to which government financial assistance and other support will be sought, and whether or not the school will be operated for profit (see subsection (3));
- (h) the school's business plans and budgets for the first 5 years of its operation (including projections of its capital and recurrent expenditure and sources of its income for each of the 5 years);
- (i) the school's staff establishment (including its structure and size);
- (j) the school's policy and procedures for ensuring:
  - (i) its staff are of good character; and
  - (ii) its teaching staff are registered with the Teacher Registration Board of the Northern Territory and maintain appropriate standards of professional competence;
- (k) the school's curriculum and methods of student assessment;
- (l) the school's procedures for financial management, performance management and accountability, including, for example, procedures for the following:
  - (i) the development and implementation of a strategic management plan;
  - (ii) the assessment of the school's performance against goals set out in the strategic management plan and against national benchmarks;
  - (iii) the keeping of financial and other records (including complying with the requirements in sections 67A and 67B);
  - (iv) the reporting on the school's performance to the community and Chief Executive Officer (including complying with the requirements in sections 67A, 67B and 67C);
- (m) the school's policy in relation to the age of school entry for its students;

- (n) the school's policy for the discipline of its students;
  - (o) the school's provision for meeting the needs of any of its students who has a disability;
  - (p) the school's policy and procedures for safeguarding the health, safety and wellbeing of its staff and students, including, for example, the following:
    - (i) an occupational health and safety manual for its staff;
    - (ii) procedures to ensure a criminal history report is obtained for each member of its staff;
    - (iii) a contingency plan for emergencies;
  - (q) the school's policy and procedures for dealing with complaints and disputes;
  - (r) the school's plan for maintaining a system of self audit in accordance with section 67D;
  - (s) any other matter, or a matter relating to a matter mentioned in any of the preceding paragraphs, prescribed by regulation.
- (2) Without limiting subsection (1), the application must demonstrate how the applicant proposes to ensure compliance with the registration requirements.
- (3) In this Act, a non-Government school is ***not operated for profit*** if profits made from the operation of the school are used entirely to advance the school's philosophy and objects as stated by its governing body for the purposes of this Act.

### **63C Notification to applicant**

- (1) The Chief Executive Officer must give written notice to the applicant of the receipt of the application as soon as practicable after the Chief Executive Officer is satisfied the application contains the information required by this Act.
- (2) The Chief Executive Officer must refer the application to the Panel as soon as practicable after giving the notice.

### **63D Chief Executive Officer may ask for additional information**

- (1) The Chief Executive Officer may, by written notice to the applicant, ask the applicant to give further information relevant to the application within a reasonable period specified in the notice.

- (2) The Chief Executive Officer may do so whether or not the notice under section 63C has been given to the applicant.
- (3) The application lapses if the applicant fails to give the information within the specified period.

## **Division 4                      Registration Assessment Panel**

### **64                      Registration Assessment Panel**

- (1) The Registration Assessment Panel is established.
- (2) The Panel consists of:
  - (a) representatives of one or more Agencies as decided by the Minister; and
  - (b) representatives of the non-Government school sector as decided by the Minister.
- (3) The members of the Panel are to be appointed by the Minister.
- (4) A member of the Panel holds office on the conditions decided by the Minister.

### **64A                      Panel's functions**

The Panel must:

- (a) review, and make recommendations to the Chief Executive Officer on, all applications for the registration or variation of the registration of a non-Government school referred to it by the Chief Executive Officer; and
- (b) do so within a reasonable period specified by the Chief Executive Officer.

### **64B                      Advertisement of application**

- (1) When an application is referred to the Panel, the Panel must publish a notice:
  - (a) giving details of the application; and
  - (b) inviting written submissions from interested members of the public within a reasonable period specified in the notice.



(2) The Panel must:

- (a) provide the applicant with copies of submissions made in response to the invitation; and
- (b) allow the applicant a reasonable opportunity to respond to the submissions.

**64C            Matters to be considered for application**

In reviewing the application, the Panel must have regard to:

- (a) the applicant's capacity to comply with the registration requirements and any other requirements under a law of the Territory in relation to the proposal; and
- (b) the effects of the proposal contained in the application on the educational system in the Territory and on the existing schools in the school's catchment area; and
- (c) the level of community support for the proposal and public comments on, or criticisms of, the proposal; and
- (d) the impact of the proposal on government infrastructure, services and resources; and
- (e) any other matter, or a matter relating to a matter mentioned in any of the preceding paragraphs, prescribed by regulation.

**Division 5                      Chief Executive Officer's power in relation to application**

**65                      Chief Executive Officer's decision**

- (1) The Chief Executive Officer must, within 9 months after giving notice under section 63C for an application for the registration of a non-Government school:
  - (a) approve the application by registering the school; or
  - (b) refuse the application.
- (2) The Chief Executive Officer must do so having regard to:
  - (a) the matters mentioned in section 64C; and
  - (b) the recommendation of the Panel in relation to the application; and

- (c) any other matters the Chief Executive Officer considers relevant to the application.
- (3) The Chief Executive Officer must, by notice to the applicant, give written reasons for the Chief Executive Officer's decision on the application.
- (4) On the registration of a non-Government school, the Chief Executive Officer must issue a certificate of registration for the school.
- (5) The certificate of registration must contain information as decided by the Chief Executive Officer.

**65A        Imposition of conditions of registration**

In registering a non-Government school, the Chief Executive Officer must impose conditions of the registration, specifying:

- (a) the educational programs the school is authorised to provide; and
- (b) the year levels of the school's students; and
- (c) any other matters decided by the Chief Executive Officer.

**65B        Lapse of registration**

The registration of a non-Government school lapses if the school does not commence operations within 2 years after the registration takes effect.

**Division 6        Financial assistance and other support**

**66        Provision of financial assistance and other support**

- (1) Subject to the Minister's directions and subsection (3), the Chief Executive Officer may:
  - (a) provide government financial assistance to, or withdraw government financial assistance from, a registered non-Government school; and
  - (b) provide other support to, or withdraw the support from, the school.

*Example for subsection (1)(b)*

*The Chief Executive Officer may allow the school to use a building that is under the control of the Agency.*

- (2) Government financial assistance and other support may be provided on conditions decided by the Chief Executive Officer.
- (3) Government financial assistance may be provided for a non-Government school only if it is not operated for profit.
- (4) The Chief Executive Officer may at any time require the governing body of a non-Government school to report on its use of any government financial assistance and other support.

## **Division 7                      Operation of registered non-Government schools**

### **67                      Compliance with registration requirements and conditions of registration**

The governing body of a registered non-Government school must ensure compliance with the registration requirements, and conditions of the school's registration, for the school.

### **67A                      Student records and reports**

- (1) The governing body of a registered non-Government school must ensure records containing information prescribed by regulation about each student enrolled at the school are kept at the school.
- (2) In addition, the governing body must ensure a report about the student is given to a parent of the student:
  - (a) for each semester – no later than 4 weeks after the end of the semester; and
  - (b) if a regulation prescribes an additional report – by the time prescribed by the regulation.
- (3) A report under subsection (2) must include:
  - (a) for a report mentioned in subsection (2)(a):
    - (i) details of the attendance and educational performance of the student during the semester; and
    - (ii) any further information required by the Chief Executive Officer or regulation; and
  - (b) for a report mentioned in subsection (2)(b) – the information prescribed by regulation.
- (4) The governing body must comply with subsections (1) to (3).

Maximum penalty:            100 penalty units.

- (5) An offence against subsection (4) is a regulatory offence.

**67B            Financial records and annual financial statements**

- (1) The governing body of a registered non-Government school must:
- (a) ensure that proper financial records are kept for the school; and
  - (b) give an annual financial statement for the school to the Chief Executive Officer in accordance with subsection (2) for each calendar year during which the school is registered.

Maximum penalty:        100 penalty units.

- (2) The annual financial statement for a calendar year:
- (a) must include details about the income and expenditure of the school during that year, the school's financial position at the end of that year and any other financial information about the school as required by the Chief Executive Officer; and
  - (b) must comply with:
    - (i) any requirements applicable to the governing body under the law governing its incorporation (including, for example, the Corporations Act for a company incorporated under that Act) in relation to the preparation and auditing of such a statement; or
    - (ii) if there are no such requirements – requirements of the Australian Accounting Standards as specified by the Chief Executive Officer; and
  - (c) must be given to the Chief Executive Officer within:
    - (i) 4 months after the end of that year; or
    - (ii) a longer period allowed by the Chief Executive Officer.
- (3) An offence against subsection (1) is a regulatory offence.

**67C            Annual report**

- (1) The governing body of a registered non-Government school must give an annual report for the school to the Chief Executive Officer in accordance with subsections (2) and (3) for each calendar year during which the school is registered.

Maximum penalty:        100 penalty units.

- (2) The report must include:
- (a) the following information in relation to that year:
    - (i) an assessment of the school's performance and its relationship with the parents of its students and the community;
    - (ii) details of major events concerning the school (including, for example, events involving occupational health and safety issues);
    - (iii) the use of any government financial assistance or other support received by the school;
    - (iv) details of the conditions of the school's buildings, structures and other facilities and any plans for new buildings, structures and other facilities for the school;
    - (v) a list of the current staff of the school; and
  - (b) a matter relating to paragraph (a), or any other matter, prescribed by regulation.
- (3) The Governing body must give the annual report to the Chief Executive Officer within:
- (a) 4 months after the end of the year; or
  - (b) a longer period allowed by the Chief Executive Officer.
- (4) An offence against subsection (1) is a regulatory offence.

#### **67D        Annual self audit**

- (1) A registered non-Government school must:
- (a) maintain a system of self audit approved by the Chief Executive Officer for the purpose of:
    - (i) monitoring the school's compliance with the registration requirements and the conditions of its registration; and
    - (ii) monitoring the success of the school's educational programs; and
  - (b) ensure a self audit of the school is conducted for the school in accordance with the approved system for each calendar year.
- (2) An approved system of self audit must comply with the requirements of the Chief Executive Officer.

- (3) The governing body of a non-Government school must, at the Chief Executive Officer's request, give the results of an audit conducted under the approved system to the Chief Executive Officer.

## **Division 8            Assessment and investigation**

### **68            Appointment of assessors**

- (1) The Chief Executive Officer may appoint assessors on conditions decided by the Chief Executive Officer.
- (2) Without limiting subsection (1), the conditions may:
  - (a) provide that the assessor's authority relates to conducting routine assessments or special investigations for non-Government schools generally; or
  - (b) limit the assessor's authority to conducting a particular routine assessment or special investigation, or a particular aspect of a routine assessment or special investigation.
- (3) An employee, officer or member of an organisation that operates or manages system schools may be appointed as an assessor for one or more of those schools.
- (4) In order to facilitate the appointment of assessors, the Minister may:
  - (a) establish and maintain a panel of nominees for appointment; and
  - (b) invite nominations to the panel from non-Government schools on a basis that will provide a fair representation of the non-Government school sector; and
  - (c) direct the Chief Executive Officer to make appointments, or a specified proportion of appointments, from among the members of the panel.

### **68A            Routine assessment and special investigation**

- (1) The Chief Executive Officer must establish a program of routine assessment to ensure that non-Government schools are complying with the registration requirements and conditions of their registration.
- (2) A routine assessment must be carried out in accordance with the program at least once every 5 years for each non-Government school.

- (3) The Chief Executive Officer may, at any time, authorise a special investigation into a suspected non-compliance of the registration requirements in relation to a non-Government school or a condition of the registration of the school.
- (4) The Chief Executive Officer must direct one or more assessors to carry out the routine assessment or special investigation as provided by the assessor's conditions of appointment.

#### **68B        Assessor's powers**

- (1) An assessor may enter a registered non-Government school for the purposes of carrying out a routine assessment or special investigation.
- (2) An assessor must, at least 5 business days before entering the school for subsection (1), give the governing body of the school written notice of the proposed entry.
- (3) However, the assessor may enter a non-Government school for a special investigation without any written notice under subsection (2) if the assessor thinks it might jeopardise the investigation.
- (4) A member of the staff of a non-Government school must, at the request of an assessor:
  - (a) give the assessor information the assessor reasonably requires for a routine assessment or special investigation; and
  - (b) produce documents relevant to a routine assessment or special investigation; and
  - (c) provide other cooperation and assistance the assessor reasonably requires for a routine assessment or special investigation.

Maximum penalty:        20 penalty units.

#### **68C        Assessor's report**

- (1) An assessor must, after completing a routine assessment or special investigation for a non-Government school:
  - (a) prepare a draft report on the assessment or investigation; and
  - (b) give a copy of the draft report to the governing body of the school; and

- (c) allow the governing body a reasonable opportunity to make representations in relation to the draft report within a reasonable time that is specified in the notice.
- (2) The assessor must, having regard to any comment given by the governing body of the school within the specified time, prepare the final report on the routine assessment or special investigation.
- (3) The assessor must give the final report to the Chief Executive Officer:
  - (a) for a routine assessment – within one month (or a longer period allowed by the Chief Executive Officer) after completing the assessment; and
  - (b) for a special investigation – within 7 days (or a longer period allowed by the Chief Executive Officer) after completing the investigation.
- (4) The Chief Executive Officer must, as soon as practicable after receiving the final report, give a copy of it to the governing body of the school.

#### **68D        Identity card**

- (1) When exercising a power or performing a function under this Act, an assessor must carry an identity card provided by the Chief Executive Officer that:
  - (a) states the name and office of the assessor; and
  - (b) includes:
    - (i) the signature of the assessor; and
    - (ii) a photograph of the assessor; and
    - (iii) the verification of the signature and photograph by the Chief Executive Officer.
- (2) A person who ceases to be an assessor must return the identity card to the Chief Executive Officer within 2 weeks after the cessation.

Maximum penalty:        20 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.
- (4) An offence against subsection (2) is a regulatory offence.



- (5) If an assessor requires a person to do a thing in relation to exercising a power under this Act and the person asks the assessor to produce his or her identity card:
- (a) the person is not required to do the thing until the assessor produces the card; and
  - (b) the assessor is authorised to exercise the power when the card is produced.

## **Division 9                      Variation, suspension or cancellation of registration**

### **68E                      Variation, suspension or cancellation of registration by agreement**

The Chief Executive Officer may, by agreement with the governing body of a non-Government school:

- (a) vary the registration of the school; or
- (b) suspend the registration of the school; or
- (c) cancel the registration of the school.

### **68F                      Variation of registration by application**

- (1) The governing body of a non-Government school may, by written application to the Chief Executive Officer, request the Chief Executive Officer to vary the registration of the school.
- (2) The Chief Executive Officer may refer the application to the Panel if the Chief Executive Officer considers it is of sufficient significance to warrant the reference (for example, because it involves expanding the school's operation).
- (3) The following provisions of this Part (the *applied provisions*) apply to the application with the changes mentioned in subsection (4):
  - (a) Divisions 3 and 5;
  - (b) if the Chief Executive Officer refers the application to the Panel – Division 4.
- (4) The changes to the applied provisions are as follows:
  - (a) a reference in the applied provisions (other than section 63C(2)) to an application for the registration of a non-Government school is taken to be a reference to an application for the variation;

- (b) section 63A(3) has effect as if it had required the application to be given to the Chief Executive Officer at least one year before the variation is to take effect;
- (c) section 63B has effect as if:
  - (i) it had required the application to set out details of the variation and when and how the variation is to take effect; and
  - (ii) section 63B(1) had required the application to set out the extent to which the matters mentioned in that section would be affected by the variation;
- (d) section 64C is taken to have effect as if it had required the Panel, in reviewing the application, to have regard to the matters set out in the section only to the extent to which they would be affected by the variation;
- (e) section 65 has effect as if:
  - (i) the reference to registering the school in section 65(1)(a) were a reference to varying the registration of the school; and
  - (ii) the Chief Executive Officer may, under section 65(4) and (5), vary the certificate of registration of the school as the Chief Executive Officer considers appropriate (including, for example, by issuing a replacement certificate of registration);
- (f) section 65A has effect as if it had provided that the Chief Executive Officer may impose conditions of the variation as the Chief Executive Officer appropriate;
- (g) section 65B has effect as if it had provided that an approval of the application ceases to have effect if the variation does not take effect within 2 years after the date of the approval.

**68G Variation, suspension or cancellation for breach of a registration requirement or condition of registration**

- (1) If the Chief Executive Officer is satisfied a breach of a registration requirement or a condition of the registration occurs in relation to a registered non-Government school, the Chief Executive Officer may:
  - (a) vary the registration of the school; or
  - (b) suspend the registration of the school; or

- (c) cancel the registration of the school.
- (2) Before taking an action under subsection (1), the Chief Executive Officer must:
  - (a) notify the school's governing body of the proposed action and of its grounds; and
  - (b) allow the governing body a reasonable opportunity to make representations in relation to the proposed action within a reasonable time that is specified in the notice.

## **Division 10      Review**

### **68H      Reviewable decision**

- (1) Each of the following decisions by the Chief Executive Officer is a *reviewable decision*:
  - (a) a decision refusing an application for the registration of a non-Government school under section 65;
  - (b) a decision refusing an application for the variation of the registration of a non-Government school under section 68F;
  - (c) a decision to vary, suspend or cancel the registration of non-Government school under section 68G.
- (2) The following (an *applicant*) may, in writing, apply to the Minister for the review of a reviewable decision:
  - (a) for a decision mentioned in subsection (1)(a) or (b) – the person making the application mentioned in that section;
  - (b) otherwise – the governing body of the school.
- (3) An application for a review:
  - (a) may only be made within 28 days after the date of the reviewable decision to which the application relates; and
  - (b) must set out in detail the grounds for the application.
- (4) The Minister may, by written notice, require the applicant to give further information relevant to the application within a reasonable period specified in the notice.
- (5) The application lapses if the applicant fails to give the information within the specified period.

**68J            Deciding review**

- (1) The Minister must allow the applicant and Chief Executive Officer a reasonable opportunity to make written representations to the Minister in relation to the review.
- (2) The Minister:
  - (a) must have regard to the representation in considering the application; and
  - (b) may otherwise consider the application in any way the Minister considers appropriate; and
  - (c) after considering the application, must confirm, vary or revoke the reviewable decision.
- (3) The review does not affect the operation or implementation of the reviewable decision.
- (4) However, the Minister may make another decision staying or otherwise affecting the operation or implementation of so much of the reviewable decision as the Minister considers appropriate to effectively decide the application.
- (5) The other decision:
  - (a) is subject to the conditions specified by the Minister; and
  - (b) has effect:
    - (i) for the period specified by the Minister; and
    - (ii) if no period is specified by the Minister – until the application is decided.
- (6) The Minister must give a written notice of the Minister's decision to the applicant specifying the reasons for the decision.

**Division 11            Other matters**

**68K            Register of non-Government schools**

- (1) The Chief Executive Officer must maintain a register of non-Government schools registered under this Part.
- (2) The register must be accessible on the Agency's website.

- (3) The register must contain the information required by the regulations and other information as decided by the Chief Executive Officer.
- (4) The Chief Executive Officer may provide copies of, or extracts from, entries in the register for a reasonable fee decided by the Chief Executive Officer.

**68L      Confidential information**

A person who is, or has been, engaged in duties related to the administration of this Part must not disclose information of a confidential nature coming to the person's attention in the course of those duties except:

- (a) in the ordinary course of carrying out official functions; or
- (b) as authorised or required by the Minister or Chief Executive Officer; or
- (c) as authorised or required by the person in whose favour the duty of confidentiality exists; or
- (d) as otherwise authorised or required by a law in force in the Territory.

Maximum penalty:      200 penalty units.

**68M      Display of certificate of registration**

- (1) The governing body of a registered non-Government school must ensure that the certificate of registration for the school is displayed in a prominent position on the school premises.

Maximum penalty:      5 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

**68N      Misleading information**

- (1) An applicant for the registration, or variation of the registration, of a non-Government school must not give misleading information, knowing it to be misleading, in or in connection with the application.

Maximum penalty:      50 penalty units.

(2) In this section:

*misleading information* means information that is misleading in a material particular because it:

- (a) does not include relevant information; or
- (b) includes false information.

## **Part 8 Courses of instruction**

### **69 General powers of Chief Executive Officer**

- (1) Subject to this section, the Chief Executive Officer shall be responsible to the Minister for:
  - (a) the curricula in accordance with which instruction is provided in Government schools or in accordance with which secondary education is provided by a college; and
  - (b) the standards of education in those schools and the standard of secondary education provided by those colleges.
- (2) Without limiting the generality of subsection (1), the Chief Executive Officer may provide either generally or in relation to a particular educational institution:
  - (a) subject to section 10J(b) and (c), such examination or assessment systems or arrangements as he considers necessary or desirable; and
  - (b) in the case of a Government school – such curriculum guidelines and directions as to the content, methods and evaluation of teaching and learning as he considers appropriate.
- (3) For the purposes of subsection (2)(a), the Chief Executive Officer may make arrangements with one or more educational institutions in Australia, or with one or more of the States that administer education services, for the provision in the Territory of examination systems provided by such an educational institution or in such a State.
- (4) This Part does not apply to or in relation to the University.

## Part 9 School councils

### 70 Interpretation and scope

- (1) In this Part:

*school council* means a school council established under section 71(1) by the Minister and, in respect of subsection (2) and sections 71B, 71D, 71E, 71F, 71G, 71H, 71J, 71K and 71M, includes a school management council and a group school management council established by the Minister under section 71(5).

- (1A) This Part does not apply to or in relation to a college.

- (2) Unless express provision is made to the contrary in this Act or the Regulations, the *Financial Management Act*, *Audit Act* and *Procurement Act* do not apply to or in relation to a school council.

### 71 Establishment of school councils

- (1) Subject to subsection (2), the Minister may, at the request of an interested body:

(a) involved in the management of a Government school; or

(b) from the community served by a Government school,

by notice in the *Gazette*, establish a school council for the Government school.

- (2) The Minister shall not establish under subsection (1) a school council unless he is satisfied that the school council shall be operating, upon its establishment under that subsection, under and in accordance with this Part.

- (3) A school council shall consist of such members as are prescribed.

- (4) The members of a school council shall hold office upon such terms and conditions as are prescribed.

- (5) The Minister may, by notice in the *Gazette*, establish:

(a) a school management council for the Government school; or

(b) a group school management council for the Government schools,

specified in the notice.

- (6) The Minister may establish a school management council or group school management council under subsection (5) notwithstanding that a school council has been established for the Government school or any of the Government schools, as the case may be, in respect of which it is established.
- (7) A school management council shall consist of the head teacher from time to time of the Government school for which it is established or such other person as the Minister may appoint in place of the head teacher.
- (8) A group school management council shall consist of the person appointed by the Minister.
- (9) An appointment under subsection (8) may be made by reference to the person from time to time holding, acting in or performing the duties of an office, designation or position in the Agency.

#### **71A Restrictions on school councils**

- (1) Subject to subsection (2), a school council shall:
  - (a) be constituted in accordance with the Regulations;
  - (b) comply with the terms of reference, if any, determined under section 71D(2) for the school council; and
  - (c) adopt the guidelines, if any, prepared and published under section 71J(1).
- (2) The Minister may, in his discretion, upon such terms and conditions as he thinks fit, exempt a school council from the requirements of subsection (1)(c).

#### **71B Incorporation of school councils**

- (1) A school council shall be:
  - (a) a body corporate with perpetual succession and a common seal; and
  - (b) capable, in its corporate name, of:
    - (i) acquiring, holding and disposing of real and personal property; and
    - (ii) suing and being sued.



- (2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of a school council affixed to a document and shall presume that it was duly affixed.

### **71C Functions of school councils**

- (1) A school council may, in respect of the Government school for which it is established:
- (a) examine the manner in which the educational policies of the Territory are to be implemented at that Government school and, to this end, to advise the head teacher accordingly;
  - (b) inquire into and identify the particular educational needs of the community served by that Government school and advise the Chief Executive Officer of those needs;
  - (c) consider and advise the head teacher and Chief Executive Officer on initiatives in community education and, in particular, on means for improving links between that Government school, parent organizations, other associations and the community in general;
  - (d) assess, from time to time, the needs of that Government school in relation to buildings and facilities, equipment, and needs of students and teachers and other staff and make recommendations to the Chief Executive Officer with respect to the provision of those needs;
  - (e) within the scope allowed by the functions and powers conferred or imposed upon it, determine the purposes for which moneys allocated by the Agency to that Government school are to be expended and to expend those funds accordingly;
  - (f) determine and regulate the conduct of activities for the benefit of the local community served by that Government school at any time when that Government school's buildings or grounds are not required for their usual purposes;
  - (g) exercise general control of the buildings and grounds of that Government school, including, with the consent of the Chief Executive Officer, controlling the conduct of work being carried out to or in relation to those buildings or grounds, upon such terms and conditions as are approved in writing by the Chief Executive Officer;
  - (h) control the manner in which prescribed services are being rendered for that Government school;

- (j) advise the Chief Executive Officer in relation to the job description for the position of head teacher;
  - (k) advise the head teacher in relation to the job descriptions for teaching and ancillary staff;
  - (m) employ, with the consent of the Chief Executive Officer, such persons, as the school council thinks fit, upon such terms and conditions as is approved in writing by the Chief Executive Officer;
  - (n) carry out such activities as are approved by the Chief Executive Officer for the purpose of raising funds to be expended on or in relation to that Government school and to expend such funds accordingly; and
  - (p) perform such other functions as the Minister, by instrument in writing, confers upon the school council.
- (1A) A school management council or group school management council established under section 71(5) may, in respect of the Government school or Government schools, as the case may be, for which it is established, perform the functions conferred on a school council under subsection (1)(b), (d), (e), (f), (g), (h), (m), (n) or (p) as if it were a school council.
- (1B) Where, in respect of a Government school, there is established a school council and a school management council or group school management council, the school council shall not, except with the approval of the Chief Executive Officer, perform a function conferred on it under subsection (1) which is also conferred on the school management council or group school management council under subsection (1A).
- (2) The Minister may enter into discussions with a school council and give such directions as he thinks fit regarding the manner in which the functions of the school council are to be performed.
- (3) In the performance of its functions, a school council shall comply with the directions, if any, given under subsection (2) by the Minister and applicable to that school council.

#### **71D Powers of school councils and terms of reference**

- (1) A school council has power to do such things as are necessary or convenient to be done for, or in connection with, the performance of its functions.
- (2) The Minister may, in respect of a school council, by instrument in writing, determine terms of reference for the school council.

**71E Power to enter into agreements**

Without limiting the generality of section 71D(2), the Minister may, in determining under that section the terms of reference for a school council, determine that the school council shall not, except with the approval in writing of the Minister, enter into an agreement involving the payment by that school council of an amount in excess of an amount specified in that determination by the Minister.

**71F Power to make grants**

The Minister may, upon such terms and conditions as he thinks fit, make a grant of money to a school council.

**71G Moneys of school council**

The moneys of a school council consist of:

- (a) moneys allocated by the Agency to the Government school in respect of which the school council is established;
- (b) moneys raised in pursuance of section 71C(1)(n) by the school council; and
- (c) moneys granted under section 71F to the school council.

**71H Accounts**

- (1) A school council shall cause accounts to be kept in the prescribed manner, or in such manner not inconsistent with the Regulations as is specified in writing by the Chief Executive Officer acting with the advice of the Treasurer, of any moneys received by it and any dealings with those moneys.
- (2) The Chief Executive Officer, or a person authorized in writing for that purpose by the Chief Executive Officer, may, at any time, inspect or audit the accounts of a school council.

**71J Guidelines**

- (1) The Minister may cause to be prepared and published for the guidance of school councils, guidelines, not inconsistent with this Act, for or in relation to the exercise of powers and the performance of functions conferred or imposed by this Act upon school councils.

- (2) Without limiting the generality of subsection (1), guidelines prepared and published in accordance with that subsection may be made for and in relation to such matters as:
- (a) regulating the constitution or establishment of committees to be affiliated with a school council for the purposes of aiding the school council in the exercise of its powers and the performance of its functions;
  - (b) regulating the calling of meetings of school councils and of affiliated committees of school councils and of meetings of citizens and teachers;
  - (c) regulating proceedings and voting at meetings of school councils, affiliated committees of school councils and meetings of citizens and teachers;
  - (d) regulating a school council's provision of meals or refreshments for the staff or students of the Government school for which it is established and the charges it may make therefor;
  - (e) regulating, subject to section 71H, the manner in which a school council shall cause proper accounts to be kept of any moneys received by it and dealings with those moneys and of the auditing of those accounts;
  - (f) prohibiting a school council, or a member of a school council when acting in that capacity, from giving instructions to teachers concerning their professional duties;
  - (g) prohibiting, except with the approval of the Chief Executive Officer in each particular case, a member of a school council from being financially interested, either directly or indirectly, in works or services executed or rendered for the Government school for which it is established and authorized by the school council; and
  - (h) regulating the conduct of inquiries and investigations into complaints against teachers, including the head teacher.

#### **71K Abolition of school council**

- (1) The Minister may, in respect of a school council, where:
- (a) the Government school for which the school council is established is closed;
  - (b) the school council so requests; or

- (c) in the opinion of the Minister, the school council is not complying with the requirements of this Act in so far as those requirements are applicable to that school council,

by instrument in writing, abolish that school council.

- (2) Subject to subsection (3), the money, books, records and property of a school council abolished under subsection (1), and of a Government school referred to in subsection (1)(a), shall be forwarded, as directed by the Minister, by the person or persons having custody thereof and the Minister may apply any such money, books or property for the purposes of any Government school or school council.
- (3) The school council for a Government school referred to in subsection (1)(a) may direct that, upon its abolition, money, books and property belonging to that school council be given to the Minister for the benefit of a specified Government school, or to a specified school council, and that money, books and property shall, accordingly, be used by the Minister for the benefit of the specified Government school, or become the money, books and property of the specified school council, as the case may be.

#### **71M Protection of members**

No action or proceeding, civil or criminal, shall be commenced or lie against a member of a school council for or in respect of an act or thing done or omitted to be done in good faith:

- (a) by him in his capacity as such a member; or
- (b) by the school council,

in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Part.

#### **71N By-laws**

- (1) A school council may make by-laws, not inconsistent with this Part or the Regulations, prescribing matters:
  - (a) required or permitted by this Part to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

- (2) Without limiting the generality of subsection (1), a school council's by-laws may in particular make provision relating to:
  - (a) the protection of school property from trespass, damage or misuse;
  - (b) the regulation or prohibition of access to and use of school property; and
  - (c) the regulation of the conduct of persons or the use of vehicles on school property.
- (3) By-laws shall be signed by a person authorised by the school council to sign them.
- (4) By-laws under this section are not subordinate legislation for the purposes of section 57 of the *Interpretation Act*.
- (5) Section 63 of the *Interpretation Act* does not apply to by-laws under this section.

#### **71P Rules**

- (1) A school council may make rules (not inconsistent with this Part, the Regulations or any by-law) for carrying into effect any of the provisions of this Part or of by-laws.
- (2) Rules shall be signed by a person authorised by the school council to sign them.
- (3) Rules shall be published in such manner as is provided for in by-laws, and shall take effect from the date of publication or, where a later date is provided for in the rules, from that later date.
- (4) It is sufficient compliance with the requirements of subsection (3) if notice of the making of the rules and the place where copies of them may be obtained is published on a board nominated in by-laws as the main notice board of the school council.
- (5) Rules under this section are not subordinate legislation for the purposes of section 57 of the *Interpretation Act*.
- (6) Section 63 of the *Interpretation Act* does not apply to rules under this section.

**71Q Penalties under by-laws and rules**

- (1) A by-law or rule may impose, or empower the school council or an officer of the school council to impose, a penalty not exceeding:
  - (a) in the case of a by-law – \$1,000; and
  - (b) in the case of a rule – \$20;for a contravention of or failure to comply with a by-law or rule.
- (2) A penalty imposed under a power conferred by a by-law or rule is a debt due and payable by the person on whom it is imposed to the school council, and in proceedings for its recovery from that person, a certificate signed by an officer of the school council and specifying the person or body by whom it was imposed, the date on which it was imposed and the amount of the debt, shall be prima facie evidence of the matters specified.

**Part 10 Miscellaneous matters****72 Medical and dental inspections**

- (1) The Minister may cause any Government school to be visited by a medical practitioner, dentist or nurse for the purpose of medical or dental examination of the children who attend the school or for the purpose of advising the head teacher of the school on any matter relating to the health or welfare of the children who attend the school.
- (2) In this section:

***dentist*** means a person registered under the Health Practitioner Regulation National Law:

- (a) to practise in the dental profession as a dentist (other than as a student); and
- (b) in the dentists division of that profession.

***nurse*** means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a student).

**73 Religious instruction in government schools**

- (1) Subject to this section, the Chief Executive Officer may make regular provision for religious instruction to be given to the children in attendance at a Government school under such conditions and at such times during which the school is open for instruction as he thinks fit.
- (2) Upon the request, in writing, of the parents of a child or children in attendance at a Government school, the Chief Executive Officer shall, where he considers it practicable, permit a person who is a minister of religion and is nominated by those parents or a person authorized by such a minister of religion, during school hours, to give to the children in attendance at that Government school whose parents wish them to receive religious instruction from that minister of religion or a person authorized by that minister of religion, religious instruction during not less than half an hour in every week when instruction is provided at the school for children, on such days and at such times as the Chief Executive Officer determines.

**74 Consent for prosecution**

- (1) A legal proceeding for an offence against this Act, other than Part 4, cannot be commenced without the Minister's written consent.
- (2) A legal proceeding for an offence against Part 4 cannot be commenced without the CEO's written consent.
- (3) In a legal proceeding, a document purporting to be the consent of the Minister or CEO is evidence of that consent.

**75 Regulations**

The Administrator may make regulations under this Act.

**Part 11 Transitional matters for Education Amendment (Youth Participation) Act 2009****76 Application of amendments**

The amendments made by the *Education Amendment (Youth Participation) Act 2009* do not apply to a child who attained the age of 15 years before 1 January 2010.



## **Part 12 Transitional matters for Education Amendment (Non-Government Schools) Act 2009**

### **77 Definition**

In this Part:

*amending Act* means the *Education Amendment (Non-Government Schools) Act 2009*.

### **78 Existing registered non-Government schools**

- (1) A non-Government school whose registration under this Act was in force immediately before the commencement of the amending Act is taken to be registered under Part 7 as from the commencement of that Act.
- (2) A condition for the registration of the school in force immediately before that commencement is taken to be a condition for the school's registration under Part 7 for subsection (1).

### **79 Routine assessment**

The Chief Executive Officer must, on and after the commencement of the amending Act, ensure a routine assessment will be carried out in each registered non-Government school in accordance with section 68A in a way that is timely and orderly.

## **Schedule 1 Acts of the State of South Australia**

section 3(1)

*Education Act 1875* (No. 11 of 1875)

*Education Amendment Act 1878* (No. 122 of 1878)

*Education Further Amendment Act 1879* (No. 154 of 1879)

*Education Acts Amendment Act 1891* (No. 507 of 1891)

*Education Acts Amendment Act 1905* (No. 892 of 1905)

## Schedule 2 Ordinances

section 3(2)

*Darwin Community College Ordinance 1973* (No. 42 of 1973)

*Darwin Community College Ordinance (No. 2) 1973* (No. 74 of 1973)

*Education Ordinance 1957* (No. 43 of 1957)

*Education Ordinance 1962* (No. 42 of 1962)

*Education Ordinance 1965* (No. 13 of 1965)

*Education Ordinance (No. 2) 1965* (No. 66 of 1965)

*Education Ordinance 1973* (No. 57 of 1973)

*School Committee Ordinance 1934* (No. 26 of 1934)

*School Committee Ordinance 1956* (No. 30 of 1956)

*School Committee Ordinance 1962* (No. 1 of 1963)

*School Committee Ordinance 1963* (No. 4 of 1964)

*School Committee Ordinance 1972* (No. 27 of 1972)

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## ENDNOTES

## 1

## KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

## 2

## LIST OF LEGISLATION

***Education Act 1979 (Act No. 77, 1979)***

Assent date	2 July 1979
Commenced	ss 61 to 68: 7 May 1982; rem: 20 July 1979 ( <i>Gaz</i> G29, 20 July 1979, p 7)

***Education Act (No. 2) 1979 (Act No. 145, 1979)***

Assent date	12 December 1979
Commenced	12 December 1979

***Remuneration Statutory Bodies Act 1979 (Act No. 9, 1980)***

Assent date	14 January 1980
Commenced	8 February 1980 ( <i>Gaz</i> G6, 8 February 1980, p 6)

***Statute Law Revision Act (No. 3) 1979 (Act No. 37, 1980)***

Assent date	24 April 1980
Commenced	24 April 1980

***Statute Law Revision Act 1980 (Act No. 6, 1981)***

Assent date	9 January 1981
Commenced	9 January 1981

***Education Amendment Act 1981 (Act No. 32, 1981)***

Assent date	30 March 1981
Commenced	27 May 1981 (s 2, s 2 <i>Teaching Service Act 1981</i> (Act No. 41, 1981) and <i>Gaz</i> S4, 27 May 1981)

***Education Amendment Act 1982 (Act No. 95, 1982)***

Assent date	15 December 1982
Commenced	11 February 1983 ( <i>Gaz</i> G6, 11 February 1983, p 8)

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***Education Amendment Act 1983 (Act No. 54, 1983)***

Assent date 8 November 1983  
Commenced 8 November 1983

***Education Amendment Act 1984 (Act No. 4, 1984)***

Assent date 3 April 1984  
Commenced 22 August 1984 (*Gaz* G33, 22 August 1984, p 9)

***Education Amendment Act (No. 2) 1984 (Act No. 36, 1984)***

Assent date 20 July 1984  
Commenced 19 September 1984 (*Gaz* G37, 19 September 1984, p 6)

***Education Amendment Act 1985 (Act No. 1, 1985)***

Assent date 11 March 1985  
Commenced 11 March 1985

***Education Amendment Act (No. 2) 1985 (Act No. 61, 1985)***

Assent date 12 December 1985  
Commenced 16 December 1985 (s 2, s 2 *Advanced Education and Darwin Institute of Technology Act 1985* (Act No. 59, 1985) and *Gaz* S7, 16 December 1985)

***Education Amendment Act 1988 (Act No. 61, 1988)***

Assent date 15 December 1988  
Commenced 1 January 1988 (s 2)

***Education Amendment Act (No. 2) 1988 (Act No. 4, 1989)***

Assent date 8 March 1989  
Commenced 1 July 1989 (s 2)

***Education Amendment Act 1991 (Act No. 64, 1991)***

Assent date 14 November 1991  
Commenced 18 December 1991 (s 2, s 2 *Northern Territory Employment and Training Act 1991* (Act No. 62, 1991) and *Gaz* G50, 18 December 1991, p 7)

***Education Amendment Act (No. 2) 1991 (Act No. 71, 1991)***

Assent date 6 December 1991  
Commenced 20 December 1991 (*Gaz* S65, 20 December 1991)

***Dental (Consequential Amendments) Act 1991 (Act No. 75, 1991)***

Assent date 10 December 1991  
Commenced 31 January 1992 (*Gaz* S7, 31 January 1992)

***Statute Law Revision Act 1992 (Act No. 46, 1992)***

Assent date 7 September 1992  
Commenced 7 September 1992

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date 30 June 1993  
Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993 and *Gaz* S53, 29 June 1993)

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***Education Amendment Act 1994 (Act No. 24, 1994)***

Assent date 18 May 1994  
Commenced 1 July 1994 (*Gaz* G26, 19 June 1994, p 3)

**Amending Legislation**

***Education Amendment Act 1994 Amendment Act 1994 (Act No. 67, 1994)***

Assent date 1 December 1994  
Commenced 1 December 1994 (s 2)

***Education Amendment Act (No. 2) 1994 (Act No. 59, 1994)***

Assent date 24 October 1994  
Commenced 1 January 1995 (*Gaz* G50, 14 December 1994, p 2)

***Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)***

Assent date 21 March 1995  
Commenced 1 April 1995 (s 2, s2 *Financial Management 1995* (Act No. 4, 1995) and *Gaz* S13, 31 March 1995)

***Medical (Consequential Amendments) Act 1995 (Act No. 8, 1995)***

Assent date 10 April 1995  
Commenced 1 June 1995 (s 2, s 2 *Medical Act 1995* (Act No. 7, 1995) and *Gaz* S21, 1 June 1995)

***Statute Law Revision Act 1995 (Act No. 14, 1995)***

Assent date 23 June 1995  
Commenced 23 June 1995

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

***Education Amendment Act 1996 (Act No. 29, 1996)***

Assent date 28 June 1996  
Commenced 28 August 1996 (*Gaz* G35, 28 August 1996, p 3)

***Mental Health and Related Services (Consequential Amendments) Act 1999 (Act No. 11, 1999)***

Assent date 25 March 1999  
Commenced 1 February 2000 (s 2, s 2 *Mental Health and Related Services Act 1998* (Act No. 63, 1998) and *Gaz* G3, 26 January 2000, p 2)

***Statute Law Revision Act 2000 (Act No. 19, 2000)***

Assent date 6 June 2000  
Commenced 12 July 2000 (*Gaz* G27, 12 July 2000, p 2)

***Education Amendment Act 2000 (Act No. 50, 2000)***

Assent date 1 November 2000  
Commenced 1 November 2000

***Statute Law Revision Act 2001 (Act No. 3, 2001)***

Assent date 22 March 2001  
Commenced 22 March 2001

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***Northern Territory Employment and Training Authority (Consequential Amendments) Act 2002 (Act No. 47, 2002)***

Assent date 13 September 2002  
Commenced 6 November 2002 (s 2, s 2 *Northern Territory Employment and Training Authority Act 2002* (Act No. 46, 2002) and *Gaz* G44, 6 November 2002, p 2)

***Education Amendment Act 2002 (Act No. 60, 2002)***

Assent date 7 November 2002  
Commenced 2 April 2003 (*Gaz* G13, 2 April 2003, p 4)

***Higher Education Act 2004 (Act No. 31, 2004)***

Assent date 6 June 2004  
Commenced 27 September 2006 (*Gaz* G39, 27 September 2006, p 5)

***Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)***

Assent date 15 September 2004  
Commenced 27 October 2004 (*Gaz* G43, 27 October 2004, p 3)

***Statute Law Revision Act 2005 (Act No. 44, 2005)***

Assent date 14 December 2005  
Commenced 14 December 2005

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date 8 March 2007  
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***Education Amendment (Non-Government Schools) Act 2009 (Act No. 33, 2009)***

Assent date 9 December 2009  
Commenced 1 January 2010 (s 2)

***Education Amendment (Youth Participation) Act 2009 (Act No. 34, 2009)***

Assent date 9 December 2009  
Commenced 1 January 2010 (s 2)

***Health Practitioner (National Uniform Legislation) Implementation Act 2010 (Act No. 18, 2010)***

Assent date 20 May 2010  
Commenced 1 July 2010 (s 2)

***Statute Law Revision Act 2010 (Act No. 29, 2010)***

Assent date 9 September 2010  
Commenced 13 October 2010 (*Gaz* G41, 13 October 2010, p 2)

***Education Legislation Amendment Act 2011 (Act No. 14, 2011)***

Assent date 19 May 2011  
Commenced 1 June 2011 (*Gaz* G22, 1 June 2011, p 8)

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