

NORTHERN TERRITORY OF AUSTRALIA

EDUCATION LEGISLATION AMENDMENT ACT 2023

Act No. 27 of 2023

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 27 of 2023

An Act to amend the *Education Act 2015* and the *Education Regulations 2015*

[Assented to 3 November 2023]
[Introduced 30 August 2023]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Education Legislation Amendment Act 2023*.

2 Commencement

This Act commences on 2 January 2024.

Part 2 Amendment of Education Act 2015

3 Act amended

This Part amends the *Education Act 2015*.

4 Section 4 amended (Guiding principles)

(1) Section 4(1)(g)

omit

outcomes.

insert

outcomes;

- (2) After section 4(1)(g)

insert

- (h) the document issued by the Australian Human Rights Commission outlining national principles for the operation of child safe organisations.

5 Section 5 amended (Definitions)

- (1) Section 5, definitions ***compliance notice, not operated for profit, Panel*** and ***system school***

omit

- (2) Section 5

insert

assessor means an assessor appointed under section 123B.

compliance notice:

- (a) for Part 7 – see section 155A; or
(b) for Part 8 – see section 172(2).

initial assessment, for Part 7, see section 121.

second compliance notice, for Part 7, see section 155B(2)(a).

- (3) Section 5, definition ***governing body***

omit

125(a)

insert

121A(1)

6 Section 91 amended (Suspension by principal)

Section 91(1), example

omit, insert

Example for subsection (1)

The student has repeatedly engaged in behaviour that negatively impacts on the psychological welfare of other students at the school.

7 Section 92 amended (Exclusion by CEO)

Section 92(2), after "court"

insert

or otherwise withdrawn

8 Section 121 amended (Definitions)

- (1) Section 121, definitions **governing body, not operated for profit, Panel, special investigation** and **system school**

omit

- (2) Section 121

insert

compliance notice, see section 155A.

governing body, of a non-Government school, see section 121A(1).

initial assessment means an assessment of a non-Government school carried out under section 146.

second compliance notice, see section 155B(2).

special investigation means a special investigation mentioned in section 145B(4) or 147.

9 Section 121A inserted

After section 121

insert

121A Governing bodies

- (1) A non-Government school must be administered by a body corporate (a ***governing body***), whose directors:
 - (a) must be fit and proper persons to be directors of the governing body; and
 - (b) must between them possess the skills and experience necessary for the proper administration of the school.
- (2) A governing body may administer more than one non-Government school.

10 Section 123 amended (Registrar of non-Government schools)

Section 123(3)

omit

11 Sections 123A, 123B, 123C and 123D inserted

After section 123, in Part 7, Division 1

insert

123A Functions of registrar

The registrar has the following functions:

- (a) to appoint assessors under section 123B and to direct an assessor accordingly;
- (b) to develop and approve standards for registration of non-Government schools under section 123D;
- (c) to conduct pre-application assessments under section 128;
- (d) to approve or refuse applications for registration under section 137;
- (e) to approve systems of self-assessment under section 145;
- (f) to authorise special investigations under sections 145B(4) and 147(3);

- (g) to establish a schedule of routine assessments under section 147(1);
- (h) to vary, suspend or cancel the registration of non-Government schools under Division 9;
- (i) to determine reviews of reviewable decisions under section 156B;
- (j) to maintain a register of non-Government schools under section 157.

123B Appointment of assessors

- (1) The registrar may appoint a person to be an assessor.
- (2) The registrar must not appoint a person to be an assessor unless satisfied the person has the knowledge and skills the registrar considers necessary for an assessor.
- (3) The appointment of an assessor may be subject to conditions specified by the registrar.
- (4) Without limiting subsection (3), a condition may provide that an assessor may:
 - (a) conduct initial assessments, routine assessments, special investigations or reviews of applications for registration or variations of registration of non-Government schools generally; or
 - (b) conduct a particular initial assessment, routine assessment, special investigation or review of an application for registration or variation of registration or a particular aspect of an initial assessment, routine assessment, special investigation or review of an application for registration or variation of registration.
- (5) When performing functions under this Act an assessor must act independently and not as a representative of either of the following:
 - (a) any body of which the assessor is an employee, officer or member;
 - (b) the non-Government education sector.

123C Code of conduct

- (1) An assessor must, when performing the assessor's functions under this Act, comply with any code of conduct prescribed for assessors under the Regulations.
- (2) An assessor commits an offence if the assessor fails to comply with subsection (1).

Maximum penalty: 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 has a reasonable excuse.

Note for subsection (4)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

123D Standards for registration

- (1) The registrar may develop and approve standards for registration of non-Government schools.
- (2) The standards for registration of non-Government schools must be published on the Agency's website.

12 Section 125 replaced

Section 125

repeal, insert

125 Registration requirements

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

- (a) the school must be accountable for its safe, legal and financially viable operation and have in place corporate governance arrangements to support its safe, legal and financially viable operation;
- (b) the school must have curricula, teaching and assessment policies and practices and engage sufficient staff to effectively deliver education services for each stage of schooling delivered by the school and to monitor its education achievements;

- (c) the school must provide a safe, healthy and supportive learning environment that minimises the risk of harm to students and promotes the wellbeing of students;
- (d) the school must comply with any standards for registration of schools, as approved by the registrar from time to time under section 123D;
- (e) any other requirements prescribed by regulation.

13 Section 128 amended (Preliminary assessment)

- (1) Section 128, heading

omit

Preliminary

insert

Pre-application

- (2) Section 128(1)(a)

omit

preliminary

insert

pre-application

- (3) Section 128(2)

omit

make an

insert

make a pre-application

14 Section 129 amended (Application for registration)

After section 129(4)

insert

- (5) The application must include information as to how the school proposes to meet the registration requirements.

15 Section 130 repealed (Matters to be addressed in application)

Section 130

*repeal***16 Section 131 amended (Notice to applicant)**

Section 131(4)

*omit***17 Part 7, Division 4 replaced**

Part 7, Division 4

*repeal, insert***Division 4 Review of application by assessor****133 Review of application by assessor**

- (1) As soon as practicable after giving a notice under section 131(3) for an application, the registrar must refer the application to one or more assessors and direct the assessor or assessors to review and make recommendations to the registrar on the application within a reasonable period specified in the direction.
- (2) The assessor or assessors must carry out the review and make recommendations to the registrar by the end of the period specified in the direction.

134 Publication of application

- (1) On receiving a referral of an application under section 133(1), an assessor or assessors must publish, in the way the assessor or assessors considers appropriate, 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 assessor or assessors must:
 - (a) provide the applicant with copies of any submissions made in response to the invitation; and
 - (b) allow the applicant a reasonable opportunity to respond to the submissions.

135 Matters to be considered

In considering the application, the assessor or assessors must have regard to the following:

- (a) the expected capacity of the applicant to comply with:
 - (i) the registration requirements; and
 - (ii) any other requirements under any law of the Territory that relate to the proposal;
- (b) the expected effects of the proposal on the educational system in the Territory and on the existing schools in the area in which the school is to be located;
- (c) the level of community support for the proposal and public comments on, or criticisms of, the proposal;
- (d) the expected impact of the proposal on government infrastructure, services and resources;
- (e) a matter relating to any of paragraphs (a) to (d), or any other matter, prescribed by regulation.

18 Section 137 amended (Registrar's decision)

- (1) Section 137(2)(a)

omit

136

insert

135

- (2) Section 137(2)(b)

omit

Panel

insert

assessor or assessors

(3) Section 137(3)

omit

subsection (1)

insert

subsection (1)(a)

(4) After section 137(3)

insert

(3A) As soon as practicable after making a decision under subsection (1)(b), the registrar must give a decision notice to the applicant.

19 Section 140 amended (Provision of financial assistance and other support)

(1) Section 140(3)

omit

is not operated for profit.

insert

is:

(a) an entity registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth); or

(b) an entity registered under a law in force in the Territory that is in the nature of an entity mentioned in paragraph (a).

(2) After section 140(4)

insert

(5) For subsection (1)(a), government financial assistance may be subject to a funding agreement providing for the following:

(a) the details and purpose of the financial assistance;

(b) any conditions on which the financial assistance is being provided.

20 Section 145 amended (Annual self-assessment)

(1) Section 145(1)(b)

omit

for each

insert

once during each

(2) Section 145(2)

omit, insert

- (2) The governing body of a registered non-Government school commits an offence if the body fails to give the registrar the results of a self-assessment before the end of the calendar year in which the self-assessment is conducted.

Maximum penalty: 100 penalty units.

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

- (4) The governing body of a non-Government school must, when giving the registrar the results of a self-assessment, inform the registrar if there is any risk to the school's long-term viability.

21 Sections 145A and 145B and Part 7, Division 7A inserted

After section 145, in Part 7, Division 7

insert

145A Notification of certain matters

- (1) The governing body of a registered non-Government school must notify the registrar, in writing, as soon as practicable after either of the following occurs:

- (a) any change to the hours and days of operation of the school;
- (b) any incident that requires the school to close or reduces the number of students attending the school for a period.

Example for subsection (1)(b)

A flood or fire that requires a school to close its premises (or part of its premises) while repairs are undertaken.

- (2) The governing body of a registered non-Government school commits an offence if the body fails to notify the registrar under subsection (1).

Maximum penalty: 100 penalty units.

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

145B Complaints management

- (1) The governing body of a registered non-Government school must establish and maintain a policy for managing complaints made in relation to the school.

- (2) The complaints policy must provide for the timely management of complaints and for procedural fairness in the management of complaints.

- (3) Subject to subsection (4), if the registrar receives a complaint in relation to a registered non-Government school, the registrar must refer the complaint to:

- (a) the governing body of the school; or
- (b) the principal of the school.

Note for subsection (3)

The registrar may have additional obligations under the Care and Protection of Children Act 2007 in relation to a complaint.

- (4) The registrar may authorise a special investigation into a registered non-Government school without referring the complaint under subsection (3) if the registrar is of the opinion that:

- (a) a serious incident has occurred or is occurring that may impact on the safety, health or wellbeing of a student at the school; or
- (b) a breach of the registration requirements has occurred or is occurring that may impact on the safety, health or wellbeing of a student at the school.

Division 7A Suspension, exclusion and expulsion

145C Suspension by principal

- (1) This section applies if the principal of a registered non-Government school is satisfied that a student who is enrolled in the school should be suspended from attending the school because the student's presence is likely to constitute a risk of physical or

psychological harm to other persons at the school.

Example for subsection (1)

The student has repeatedly engaged in behaviour that negatively impacts on the psychological welfare of other students at the school.

- (2) The principal may, by written notice given to the student, suspend the student from attending the school either wholly or to the extent specified in the notice.
- (3) A notice of suspension may include any conditions the principal considers appropriate with which the student must comply.
- (4) If the suspended student is a child not living independently, the principal must, as soon as practicable, give a copy of the notice of suspension and a report of the circumstances to a parent who has daily care and control of the student.
- (5) The suspension has effect for the period, not exceeding 20 school days, specified in the notice of suspension.

145D Exclusion by principal

- (1) This section applies if a student who is enrolled in a registered non-Government school is charged with an offence, whether committed in or outside the Territory, punishable by a term of imprisonment of more than 2 years.
- (2) The principal of the school may, as specified in a written notice given to the student, exclude the student, until the charge is determined by a court or otherwise withdrawn, from:
 - (a) the whole or part of any land, premises or facility occupied or used by the school; or
 - (b) participation in any program or activity conducted by or on behalf of the school.
- (3) The principal may give a notice under subsection (2) only if of the opinion that it is necessary to do so because the student's presence is likely to constitute an unacceptable risk of physical or psychological harm to other persons at the school.
- (4) The principal must, as soon as practicable after excluding a student, give a copy of the notice of exclusion to:
 - (a) the registrar; and
 - (b) if the excluded student is a child not living independently – a parent who has daily care and control of the student.

- (5) A notice given to a student under subsection (2) or a parent under subsection (4) must also set out the right the student or parent has to apply for a review of the decision to exclude the student.

Note for subsection (5)

Section 145G requires each registered non-Government school to have a policy that provides for reviews of decisions under this section.

145E Expulsion by principal

- (1) If the principal considers it necessary in the interests of other persons present at a registered non-Government school, the principal may, by written notice given to a student enrolled in the school, expel the student from the school.
- (2) The principal must, as soon as practicable after expelling a student, give a copy of the notice of expulsion to:
- (a) the registrar; and
 - (b) if the excluded student is a child not living independently – a parent who has daily care and control of the student.
- (3) A notice given to a student under subsection (1) or a parent under subsection (2) must also set out the right the student or parent has to apply for a review of the decision to expel the student.

Note for subsection (3)

Section 145G requires each registered non-Government school to have a policy that provides for reviews of decisions under this section.

145F Management of behaviour

- (1) The governing body of a registered non-Government school must have a policy relating to the management of the behaviour of students enrolled in the school.
- (2) In making a decision under this Division, the principal must have regard to the following matters:
- (a) the age of the student;
 - (b) the developmental stage of the student;
 - (c) whether the student is a child with special learning needs;
 - (d) the mental health and wellbeing of the student;
 - (e) the physical health and wellbeing of the student;
 - (f) any relevant religious or cultural considerations;

- (g) the student's home environment and the arrangements in place for the student's care;
- (h) the policy mentioned in subsection (1).

145G Review policy

- (1) The governing body of a registered non-Government school must have a policy in place to provide for the review of the following decisions:
 - (a) a decision to exclude a student under section 145D;
 - (b) a decision to expel a student under section 145E.
- (2) The policy must provide for:
 - (a) reviews of the merits of decisions; and
 - (b) reviews to be carried out in a timely manner and in accordance with the rules of procedural fairness.

22 Section 146 replaced

Section 146

repeal, insert

146 Initial assessment for compliance with registration requirements

- (1) An initial assessment of a registered non-Government school must be carried out at any time within 6 months to 2 years after the school is registered under section 137(1)(a).
- (2) The initial assessment is to assess the school's compliance with the registration requirements.
- (3) The registrar must direct one or more assessors to carry out the initial assessment.

23 Section 147 amended (Routine assessment and special investigation)

- (1) Section 147(1)
 - omit*
 - program

insert

schedule

- (2) Section 147(2)

omit

all words after "with the"

insert

schedule for each non-Government school:

- (a) 5 years after the date on which the initial assessment for the school was carried out; and
- (b) 5 years after the date on which the most recent assessment of the school was carried out under this section.

24 Section 148 amended (Assessor's powers)

- (1) Section 148(1)

omit, insert

- (1) An assessor may enter a non-Government school for the purposes of carrying out a review of an application made under section 133 or 154, an initial assessment, a routine assessment or a special investigation at any time during a school day or, if the school is not operating, on a day on which the school would ordinarily be providing, or is planning to provide, instruction for students.

- (2) Section 148(4)(a), (b) and (c), before "assessment"

insert

review,

25 Section 149 amended (Assessor's report)

- (1) Section 149(1), (2) and (3), after "assessor"

insert

or assessors

- (2) Section 149(1)
omit
routine assessment or
insert
review of an application made under section 133 or 154, an initial assessment, a routine assessment or a
- (3) Section 149(1)(a), before "assessment"
insert
review,
- (4) Section 149(2)
omit
routine assessment or special
insert
review, assessment or
- (5) Section 149(3)(a)
omit
routine
insert
review or
- (6) Section 149(3)(a), after "completing the"
insert
review or

26 Section 152 repealed (Code of conduct)

Section 152

repeal

27 Part 7, Division 9, Subdivision 1 heading inserted

Before section 153, in Part 7, Division 9

insert

Subdivision 1 Variation, suspension or cancellation of registration by agreement**28 Part 7, Division 9, Subdivision 2 heading inserted**

After section 153

insert

Subdivision 2 Variation of registration by application**29 Section 154 amended (Variation of registration by application)**

- (1) Section 154(1), after "accompanied"

insert

by

- (2) Section 154(2) and (3)(b)

omit

the Panel

insert

one or more assessors

- (3) Section 154(4)(b)

omit, insert

(b) section 129(5) has effect as if:

- (i) it required the application to set out details of the variation and when and how the variation is to take effect; and
- (ii) it required the application to set out the extent to which the matter mentioned in that subsection would be affected by the variation;

(4) Section 154(4)(c)

omit

(other than section 131(4))

(5) Section 154(4)(d)

omit

136 is taken to have effect as if it required the Panel

insert

135 is taken to have effect as if it required the assessor or assessors

30 Section 155 replaced

Section 155

repeal, insert

Subdivision 3 Variation, suspension or cancellation of registration for breach

155 Variation, suspension or cancellation for breach of registration requirement or condition of registration

Subject to this Division, if the registrar is satisfied that a breach of a registration requirement or a condition of the registration has occurred in relation to a registered non-Government school, the registrar may:

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

155A Compliance notice

If the registrar is considering taking action under section 155, the registrar must give the governing body of the registered non-Government school a notice (a **compliance notice**) stating:

- (a) that a breach of a registration requirement or a condition of the registration of the school has occurred; and

- (b) the action the body must take to remedy the breach and the date by which the action must be taken.

155B Show cause notice

- (1) If a governing body given a compliance notice under section 155A does not take the action specified in the notice, the registrar may give the body a notice stating:
 - (a) the proposed action and the grounds for taking the proposed action; and
 - (b) the reasons for the proposed action; and
 - (c) that the body may, within 30 days after the notice is given, give the registrar a written response in relation to the proposed action.
- (2) After considering any written response from the governing body received within the time allowed by subsection (1)(c), the registrar may:
 - (a) give the body a second compliance notice (a **second compliance notice**) stating:
 - (i) that a breach of a registration requirement or a condition of the registration has occurred; and
 - (ii) the action the body must take to remedy the breach and the date by which the action must be taken; or
 - (b) make a decision under section 155 and give the body a decision notice for the decision; or
 - (c) decide not to take an action under section 155 and notify the body of this decision.

155C Second compliance notice

If a governing body given a second compliance notice under section 155B(2) does not take the action specified in the second compliance notice, the registrar may:

- (a) make a decision under section 155 and give the body a decision notice for the decision; or
- (b) decide not to take an action under section 155 and notify the body of this decision.

155D Suspension without compliance notice

- (1) The registrar may suspend the registration of a non-Government school without giving the governing body of the school a compliance notice if the registrar is satisfied that any of the following has occurred:
 - (a) the school is responsible for a serious incident that may impact on the safety, health or wellbeing of a student at the school;
 - (b) the school has breached a registration requirement or a condition of its registration in a manner that may give rise to an immediate risk to the safety, health or wellbeing of a student at the school;
 - (c) the school has a history of failing to comply with the registration requirements or conditions of the registration.
- (2) The registrar must give the body a decision notice for a decision under subsection (1).

155E Notice to parents of variation, suspension or cancellation

The registrar may, if the registration of a non-Government school has been varied, suspended or cancelled under section 155 or 155D, direct the governing body of the school to give written notice of the variation, suspension or cancellation and its effect to the parents of students at the school.

31 Section 156 amended (Reviewable decision)

- (1) Section 156(1)(c)
omit, insert
 - (c) a decision to vary, suspend or cancel the registration of a non-Government school under section 155;
 - (d) a decision to suspend the registration of a non-Government school under section 155D.
- (2) Section 156(2)
omit
Minister
insert
registrar

(3) Section 156(4)

omit

32 Sections 156A and 156B inserted

After section 156, in Part 7, Division 10

insert

156A Assessor to review and make recommendation on reviewable decision

- (1) The registrar must direct an assessor who was not involved in the making of the reviewable decision to review the decision.

Example for subsection (1)

An assessor is involved in the making of a decision to refuse an application for the registration of a non-Government school if the assessor reviewed the application under section 133.

- (2) An assessor directed to review the decision under subsection (1) must have the knowledge and skills necessary to conduct the review.
- (3) A review under this section is a review of the merits of the decision.
- (4) In conducting a review of a decision, an assessor must comply with the rules of procedural fairness.
- (5) The assessor, within 1 month after conducting a review of decision, must give a report to the registrar in relation to the review and recommend that the registrar do one of the following:
- (a) confirm the decision;
 - (b) vary the decision;
 - (c) set aside the decision and substitute a different decision.

156B Decision on review

- (1) After considering an assessor's report and recommendation under section 156A(5), the registrar must do one of the following:
- (a) confirm the reviewable decision;
 - (b) vary the reviewable decision;
 - (c) set aside the reviewable decision and substitute a different decision.

- (2) The registrar must give the applicant for the review a decision notice for the decision.

33 Section 158 amended (Confidentiality of information)

After section 158(3)(a)(i)

insert

- (ia) under section 170A(1); or

34 Part 7, Division 12 replaced

Part 7, Division 12

repeal, insert

161 Information sharing – data about enrolments and attendance

- (1) The CEO may request the following information from a governing body of a non-Government school:
- (a) data recorded in the enrolment and attendance register at one or more schools governed by the governing body;
 - (b) specific data related to enrolments or attendances of students at one or more schools governed by the governing body during a specified period or at a specified time.
- (2) The governing body must disclose the information to the CEO.
- (3) This section does not limit any power or obligation under another Act to give information.

35 Section 170 amended (Information sharing)

- (1) Section 170, heading, after "**sharing**"

insert

– information for Part 4

- (2) Section 170(1), after "Despite"

insert

Part 5 of

36 Section 170A inserted

After section 170, in Part 8, Division 3

insert

170A Information sharing – principals

- (1) Despite Part 5 of the *Information Act 2002*, the principal of a school may disclose the following information about a student who attended the school to the principal of any other school to which the student subsequently transfers or proposes to transfer:
- (a) information to assist with the transfer of the student to the other school;
 - (b) information the principal considers relevant to ensure the safety and wellbeing of the student or other students attending the other school.

Note for subsection (1)

The principal of a school attended by a student may disclose information under this subsection whether or not the student transfers to the subsequent school immediately after attending the first-mentioned school.

- (2) An individual who discloses 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.
- (3) This section does not limit any power or obligation under another Act to give information.

37 Section 173 amended (Compulsory conference)

Section 173(9), after "Despite"

insert

Part 5 of

38 Section 177 amended (Meaning of *Tribunal reviewable decision*)

(1) Section 177(h)

omit

student.

insert

student;

(2) After section 177(h)

insert

(i) a decision of the registrar under section 156B(1).

39 Section 178 amended (Meaning of *affected person*)

(1) Section 178(e)

omit

child.

insert

child;

(2) After section 178(e)

insert

(f) for a decision mentioned in section 177(i) – the applicant for the review under section 156.

40 Section 184 amended (Protection from liability)

(1) Section 184(1)(e)

omit

(2) Section 184(1)(f)

omit

appointed under section 146

41 Part 9, Division 3 inserted

After section 193

insert

**Division 3 Transitional matters for Education Legislation
Amendment Act 2023****194 Definition**

In this Division:

amending Act means the *Education Legislation Amendment Act 2023*.

195 Registration requirements

For the period commencing on the commencement of section 12 of the amending Act (the ***commencement***) and ending on 31 December 2024, a registered non-Government school is taken to comply with the registration requirements under section 125 of the Act as in force immediately after the commencement, if the school complies with the registration requirements under section 125 of the Act as in force immediately before the commencement.

196 Applications for registration made but not decided before commencement

- (1) This section applies in relation to an application for registration of a non-Government school that was made but not decided before the commencement of sections 13 to 18 of the amending Act (the ***commencement***).
- (2) The application is to be reviewed and determined in accordance with Part 7, Divisions 3, 4 and 5, of the Act as in force immediately before the commencement.
- (3) The Registration Assessment Panel in existence immediately before the commencement of section 17 of the amending Act must continue to deal with the application in accordance with subsection (2).

197 Application of section 156 to reviewable decisions made before commencement

Section 156 of this Act, as in force immediately before the commencement of section 31 of the amending Act (the **commencement**), continues to apply to a reviewable decision under section 156 that was made before the commencement.

Part 3 Amendment of Education Regulations 2015**42 Regulations amended**

This Part amends the *Education Regulations 2015*.

43 Regulation 41 amended (Code of conduct)

- (1) Regulation 41, heading, after "conduct"

insert

for assessors

- (2) Regulation 41

omit

sections 134(3) and 152 of the Act, the code of conduct

insert

section 123C of the Act, the code of conduct for assessors

44 Part 7 replaced

Part 7

repeal, insert

Part 7 Infringement notice offences**43 Infringement notice offence and prescribed amount payable**

- (1) An ***infringement notice offence*** is an offence against a provision specified in Schedule 3.
- (2) The ***prescribed amount*** for an infringement notice offence is the amount equal to the monetary value of the number of penalty units specified for the offence in Schedule 3.

44 When infringement notice may be given

If an authorised person believes on reasonable grounds that a person has committed an infringement notice offence, the authorised person may give an ***infringement notice*** to the person.

45 Contents of infringement notice

- (1) The infringement notice must specify the following:
 - (a) the name and address of the person to whom it is issued, if known;
 - (b) the date the infringement notice is given to the person;
 - (c) the date and time of the infringement notice offence and the place at which the infringement notice offence occurred;
 - (d) a description of the offence;
 - (e) the prescribed amount payable for the offence;
 - (f) the enforcement agency to which the prescribed amount is payable.
- (2) The infringement notice must include a statement to the effect of the following:
 - (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;
 - (b) the person may elect to have the offence dealt with by a court by:
 - (i) completing a statement of election and giving it to the specified enforcement agency; and
 - (ii) not paying the prescribed amount;
 - (c) if the *Fines and Penalties (Recovery) Act 2001* applies to the infringement notice offence – enforcement action may be taken under that Act if the person does nothing in response to the notice.
- (3) The infringement notice must include an appropriate form for making the statement of election mentioned in subregulation (2)(b)(i).

46 Electronic payment and payment by cheque

- (1) If the person uses electronic means to pay the prescribed amount, payment is not effected until the amount is credited to the payee's bank account.
- (2) If the person tenders a cheque in payment of the prescribed amount, payment is not effected unless the cheque is cleared on first presentation.

47 Expiation of offence

If the prescribed amount for the infringement notice offence is paid in accordance with the infringement notice, the alleged offence is expiated and no further proceedings can be taken in relation to the offence.

48 Withdrawal of infringement notice

- (1) The CEO may withdraw the infringement notice by written notice given to the person.
- (2) The notice must be given:
 - (a) within 28 days after the infringement notice is given to the person; and
 - (b) before payment of the prescribed amount.

49 Application of Part

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.
- (2) This Part does not:
 - (a) require an infringement notice to be given; or
 - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
 - (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

45 Schedule 2 amended (Code of conduct)

- (1) Schedule 2, heading, after "**conduct**"
insert
for assessors
- (2) Schedule 2, item 1
omit
- (3) Schedule 2, item 2
omit
, for the persons to whom it applies,
- (4) Schedule 2, item 2(a) and (b)
omit (all references)
them
insert
assessors
- (5) Schedule 2, item 3
omit
Persons to whom this code of conduct applies
insert
Assessors

Part 4 Repeal of Act**46 Repeal of Act**

This Act is repealed on the day after it commences.