

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

Overview of Bill

The objects of this Bill are:

(a) to amend the Education Act 1990:

(i) to facilitate the identification and management of students whose enrolment at a school would pose a risk to the health or safety of any person, and

(ii) to empower the Governor to make regulations under that Act with respect to the publication of information contained in periodic reports to parents on student achievement, and

(iii) to facilitate successful prosecutions for failure to enrol school-age children for school or to register them for home schooling, and

(iv) to make miscellaneous minor amendments, and

(b) to amend the Education Regulation 2001 so as to make provision, consistent with the power conferred as referred to in paragraph (a) (ii), with respect to the publication of results of annual assessments of academic achievement contained in such reports to parents, and

(c) to amend the Education (School Administrative and Support Staff) Act 1987 so as to provide for the sub-delegation of functions that have been delegated under that Act by the Director-General of the Department of Education and Training, and

(d) to amend the Teaching Service Act 1980 so as:

(i) to provide that regulations currently made by the Director-General of the Department of Education and Training are in future to be made by the Governor, and

(ii) to confirm the validity of existing regulations that have been made under that Act, whether by the Governor or by the Director-General, and of anything done or omitted to be done under those regulations, and to ensure that those regulations continue to have effect as if they had been made by the Governor, and

(e) to amend the Freedom of Information Act 1989 so as to include a document containing information provided about a student under Division 2 of proposed Part 5A of the Education Act 1990 as an exempt document for the purposes of the Freedom of Information Act 1989.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act (except for section 7 and Schedules 1 [5] and 5) on the date of assent to the proposed Act. The excepted provisions commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Education Act 1990 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the Education Regulation 2001 set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the Education (School Administrative and Support Staff) Act 1987 set out in Schedule 3.

Clause 6 is a formal provision that gives effect to the amendments to the Teaching Service Act 1980 set out in Schedule 4.

Clause 7 is a formal provision that gives effect to the amendments to the Freedom of Information Act 1989 set out in Schedule 5.

Clause 8 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides

that the repeal of an amending Act does not affect the amendments made by that Act.
Schedule 1 Amendment of Education Act 1990

Amendments concerning identification and management of risk

Schedule 1 [5] inserts proposed Part 5A (proposed sections 26A–26K) in the Education Act 1990 (the Principal Act).

Proposed section 26A inserts definitions for the purposes of the proposed Part, including a definition that makes it clear that the term enrolment, when used in the proposed Part, includes both prospective enrolment and continuing enrolment.

Proposed section 26B specifies that information may be obtained under Division 2 (Obtaining information about students) of the proposed Part solely for the purposes of:

- (a) assisting the Director-General (the Director-General) of the Department of Education and Training (the Department) or schools to assess whether the enrolment of a particular student at a school is likely to constitute a risk to the health or safety of any person (a risk assessment), and
- (b) developing strategies to deal with any such risk.

However, the proposed section makes it clear that nothing in proposed Division 2 operates to prevent the provision or disclosure of information as required or permitted by or under any other Act or law.

Proposed section 26C provides that information may be obtained under the proposed Division from certain specified agencies (relevant agencies), and permits further such agencies to be prescribed by the regulations. The proposed section also permits any one or more relevant agencies to enter into memoranda of understanding, in accordance with the guidelines, for the provision of information to schools, approved authorities for systems of non-government schools (non-government schools authorities) and the Department. (Proposed section 26J provides for the issue of guidelines.)

Proposed section 26D provides for information in relation to particular students to be requested and obtained, by any school, non-government schools authority or the Department, from any relevant agency. The information sought must be information that would assist in making an assessment, or developing or maintaining strategies, of the kind referred to in proposed section 26B. The agency making the request may provide the agency of which the request is made with such information about the student as may assist that agency to provide the information sought.

Information obtained under the proposed section may be passed on to other schools, non-government schools authorities and the Department (and to any other person or body as permitted by the guidelines). A school may provide information of that kind about a student to another school at which the student enrolls without the need for any request from the other school (and regardless of whether the information was obtained under proposed section 26D or otherwise).

However, the proposed section makes it clear that the section does not authorise or require the provision of information if disclosure of the information is prohibited by other laws specified in the proposed section or if the guidelines authorise the agency to refuse to provide the information.

Proposed section 26E makes it clear that the provision of information in good faith and with reasonable care under Division 2 does not constitute an offence or give rise to any liability, unless disclosure of the information is prohibited by other laws specified in the proposed section.

Proposed section 26F clarifies the relationship between proposed Division 3 (Directions about enrolment at government schools) and section 34 (Admission to government schools) of the Principal Act.

Proposed section 26G permits the Director-General to direct that a student is not to be enrolled at any government school other than a government school of a kind specified in the direction. Such a direction may be given only if the Director-General

believes on reasonable grounds that the enrolment of the student otherwise than as permitted by the direction would constitute a risk to the health or safety of any person.

Proposed section 26H requires the Director-General to give written notice of any such direction to the student concerned and (unless the guidelines otherwise provide) to the parents or a parent of the student.

Proposed section 26I provides for the variation and revocation of directions.

Proposed section 26J provides for the issue of guidelines for the purposes of the proposed Part. The guidelines must make provision with respect to various specified matters (and may make provision with respect to other matters). The specified matters include the circumstances in which a person may refuse to provide information sought under proposed Division 2, the way in which risk assessments are to be carried out, who may enter memoranda of understanding on behalf of relevant agencies, who may provide information on behalf of those agencies, the procedures to be followed before directions under proposed section 26G are given, varied or revoked, and the way in which such a direction is to be reviewed following an application for a variation or revocation of it.

The guidelines (and any instrument amending or revoking the guidelines) must be published in the Gazette and must be made publicly available (as in force from time to time) in such manner as the Minister thinks appropriate.

Proposed section 26K makes it clear that it is the duty of any person or agency involved in the administration of the proposed Part (or having functions under it) to comply with any applicable guidelines.

Amendments concerning publication of certain results

Section 18A (Publication of results of certain tests and other matters) of the Principal Act provides that the regulations under the Act may make provision for or with respect to the extent to which the results of certain tests, examinations or assessments may be publicly revealed or must be kept confidential.

Schedule 1 [2] changes the reference in section 18A (1) (b) to "School Certificate and Higher School Certificate examinations or other assessments" to a reference to "School Certificate and Higher School Certificate examinations and related assessments", to make it clear that the assessments concerned are those made in connection with the School Certificate or Higher School Certificate.

Schedule 1 [3] inserts proposed section 18A (1A) in the Principal Act. The proposed subsection extends the regulation-making power in section 18A so as to permit the making of regulations for or with respect to the extent to which the information contained in periodic reports to parents on student achievement may be publicly revealed or must be kept confidential.

Amendment concerning compulsory schooling

Schedule 1 [9] inserts proposed section 123 (4) in the Principal Act. Section 123 deals with evidence in proceedings under the Principal Act. Proposed section 123 (4) provides that, in any proceedings for the offence of failing to enrol a child of compulsory schooling age at a school (or to register the child for home schooling), a certificate purporting to be signed by the Director-General stating that, to the best of the Director-General's belief, on any day specified in the certificate, the child was not so enrolled or registered is admissible in evidence and is prima facie evidence that the child was not so enrolled or registered.

Miscellaneous amendments

Schedule 1 [1] inserts definitions of Director-General (of the Department of Education and Training) and TAFE establishment in section 3 (Definitions) of the Principal Act. Schedule 1 [8] makes amendments consequential on the insertion of the latter definition.

Schedule 1 [4], [6] and [7] make amendments by way of statute law revision.

Schedule 1 [10] amends clause 2 of Schedule 3 to the Principal Act so as to enable

savings and transitional regulations to be made in connection with the enactment of the proposed Act.

Schedule 2 Amendment of Education Regulation 2001

Schedule 2 inserts proposed clause 5 (1) (c) in the Education Regulation 2001. The proposed paragraph provides that results of annual assessments of the academic performance of students contained in reports to parents on student achievement are “results” to which clause 5 applies. Accordingly, those results must not be publicly revealed if the results relating to particular students are revealed, and must not be publicly revealed in a way that ranks or otherwise compares the results of particular schools, except as permitted by the clause.

Schedule 3 Amendment of Education (School Administrative and Support Staff) Act 1987

Amendments concerning delegations

Schedule 3 [1] amends section 34 of the Education (School Administrative and Support Staff) Act 1987 so as to omit words that prevent the sub-delegation of functions that have been delegated under that section.

Schedule 3 [2] further amends section 34 of the Education (School Administrative and Support Staff) Act 1987 so as to provide that a function that has been delegated under that section may be sub-delegated, but only if sub-delegation is authorised by the terms of the original delegation.

Schedule 4 Amendment of Teaching Service Act 1980

Amendments concerning regulations

Schedule 4 [1] omits section 99 of the Teaching Service Act 1980 (the Act) as a consequence of the amendments made to section 100.

Schedule 4 [2] amends section 100 of the Act so as to provide that regulations under that section are to be made by the Governor rather than, as is currently the case, by the Director-General of the Department of Education and Training.

Schedule 4 [3] amends section 100 (1) (j) of the Act so as to omit words that exclude certain matters (being matters for which regulations may currently be made by the Governor under section 99) from the list of matters with respect to which regulations may be made under section 100.

Schedule 4 [4] amends clause 2 of Schedule 3 to the Act so as to enable savings and transitional regulations to be made in connection with the enactment of the proposed Act.

Schedule 4 [5] inserts a new Part 5 into Schedule 3 to the Act. The proposed Part contains a clause that confirms the validity of existing regulations that have been made under the Act, whether by the Governor or by the Director-General, and of anything done or omitted to be done under those regulations, and ensures that those regulations continue to have effect as if they had been made by the Governor.

Schedule 5 Amendment of Freedom of Information Act 1989

Schedule 5 [1] inserts proposed clause 20 (1) (h) in Schedule 1 to the Freedom of Information Act 1989 (the FOI Act) so as to include a document containing information provided about a student under Division 2 of proposed Part 5A of the Principal Act as an exempt document for the purposes of the FOI Act (that is, a document that an agency may refuse to give access to).

Schedule 5 [2] inserts proposed clause 20 (4) in Schedule 1 to the FOI Act to provide that the exemption afforded a document by proposed clause 20 (1) (h) does not apply in relation to the student the subject of the information, the student’s parents or any person nominated in writing for the purposes of the subclause by the student or a parent of the student.