



## NSW Legislative Council Hansard

### Education Legislation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 16 November 2006.

#### Second Reading

**The Hon. JOHN DELLA BOSCA** (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [3.12 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

As the Education Legislation Amendment Bill was amended in the other place subsequent to its introduction, I would like to make some brief comments about those amendments and, as the bulk of this speech is the same as that given by the Minister in the other place, I shall seek leave to have the remainder incorporated into the record.

One of the key objectives of the bill is to improve the management of students whose enrolment at government or non-government schools is likely to pose a risk to the health or safety of any person arising out of the behaviour of the student. The bill will do this by facilitating the provision of information to schools from government agencies, and by empowering the Director General of the Department of Education and Training, as a last option, to direct a student who seeks enrolment in, or is already attending, a government school to an educational setting that can more effectively manage the risk that student poses.

I am aware that concerns have been expressed that the bill gives insufficient guidance to protect the rights of families or students with disabilities to be consulted about provisions related to information and the direction by the director general. I make it abundantly clear that this legislation is not about excluding students from public education. It is about keeping our schools safe and identifying the environment in which a student can be effectively assisted in continuing their education. I assure the House that extensive consultation on the content of the guidelines—with relevant agencies, with groups representing parents, disability advocates and unions—will occur prior to their finalisation.

The Government amended the original bill in order to provide clarification of several issues. Firstly, the information to be sought under proposed section 26B is in relation to assessing whether the enrolment provides a risk to the health and safety of any person in relation to the behaviour of the student. This will ensure that the provisions are relevant to the handful of students whose violent behaviour poses a risk to others. Secondly, the bill will specifically provide for students and their parents, including carers, to be consulted during the process of the assessment of any risk, including disclosure of any relevant information obtained under the provisions. Thirdly, the bill will provide that before a direction is made by the director general, students and their parents will be given access to information, will be given written notice of the grounds for the proposed direction, will be given the opportunity to make representations, and that the director general must take these into account.

The bill provides that the guidelines will provide for some exceptional circumstances in which a student or parent will not be consulted or provided with access to information, given written notice of a direction, or given the opportunity to make representations. This would be applied in circumstances that are expected to be extremely unusual: for the protection of the child, such as when the child is part of a witness protection program and has been separated from one or both of their parents; when a non-custodial parent has a court order against them; where there is a real risk based on the circumstances of the case that a parent or student may endanger the safety of a third party if the content of the information became known to them; or as otherwise prohibited by law.

The Education Legislation Amendment Bill contains reforms that are commonsense, practical improvements that will strengthen the public education system in New South Wales. I commend the bill to the House. As the remainder of the speech is the same as was given in the other place, I seek leave to incorporate the balance of it in *Hansard*.

#### Leave granted.

As we all know, a quality education gives young Australians the best possible start to life and the lemma Government remains committed to ensuring that students receive an education of the highest quality and are supported to achieve their educational potential.

The Government also recognises that safety and security in our schools is essential to ensure the delivery of a quality education and everything that schools do—for the excellent and creative work of students we see in classrooms every day; for the inspiring guidance that teachers are providing their students; and for the

participation of parents in their children's education.

Improving safety in schools enhances a school's capacity to focus on its core function—teaching and learning.

And of course, like all employers, the Department of Education and Training has an obligation to ensure the safety of all those who work at and attend its schools—employees, students and visitors.

And schools are safe places.

However safety in a school can be threatened by the propensity for violent behaviour by a tiny proportion of very disruptive students. In such circumstances one student can disrupt the learning environment for everyone else.

To ensure the safety of students and school staff it is essential that if such a student is identified, then schools are able to obtain sufficient relevant information about any risk to health and safety posed by that student's behaviour to enable the school to develop strategies to avoid, prevent or minimise any such risk and support the student.

Let me make it abundantly clear, this is not about excluding students from public education.

It is about keeping our schools safe and identifying the environment in which a student can be most effectively assisted in continuing their education.

Accordingly the Government will amend the Education Act 1990 to enhance the ability of schools to manage the risk posed by violent students.

The bill also makes some other important changes to the Education Act 1990 with respect to compulsory schooling and student reports, to the Education (School Administrative and Support Staff) Act 1987 with respect to delegations, and amends the Teaching Service Act 1980 with respect to the making of regulations under the Act. The Bill will:

- amend the Education Act to facilitate the identification and management of students whose enrolment at a school could pose a risk to health or safety of any person by improving the process for the flow of information to schools from government agencies;
- empower the Director-General of the Department of Education and Training, as a last option, to direct a student who seeks enrolment in, or is already attending, a government school to an education environment that can more effectively manage the risk that the student poses;
- enhance the Department of Education and Training's ability to deal with parents who fail to comply with their legal obligation to enrol their child in a school or register their child for home schooling;
- extend the protection currently applying to the results of the basic skills tests, the Higher School Certificate and School Certificate to school student reports and assessments that are to be produced in compliance with the *Commonwealth Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004*;
- deal with regulations made under the Teaching Service Act; and
- amend the Education (School Administrative and Support Staff) Act to streamline the way the Director-General of Education and Training can delegate his functions under the Act.

### **Information**

The Bill amends the Education Act to enable informed decisions to be made by government and non-government schools about risks to safety.

This will be achieved by providing that information may be obtained from schools and relevant agencies for the purpose of assisting schools assess whether the enrolment of a particular student is likely to constitute a risk to others.

The agencies currently identified are the government and non-government schools, the Department of Education and Training, Department of Ageing, Disability and Home Care, Department of Community Services, Public Health organisations, TAFE, Department of Juvenile Justice and NSW Police. It will be possible to identify other agencies in the Education Regulation should that prove necessary.

The information to be obtained must be solely for the purpose of the assessment of a risk that the enrolment of a particular student at a school may constitute to the health and safety of any persons (including the student)

and developing strategies to eliminate or minimise any such risk.

The bill provides that information may not be disclosed if it is prohibited by sections 20G, 20P or 23 of the Health Administration Act 1982, dealing with a range of provisions designed to protect the investigation of adverse clinical events via the work of specially privileged committees, Quality Assurance Committees and Root Cause Analysis Teams and section 29 (1) (f) of the Children and Young Persons (Care and Protection) Act 1998 which protects the identity of people who make mandatory reports to DOCS about children who are at risk of harm.

Guidelines will be published by the Minister that deal with:

- The general principles that a person must bear in mind when exercising a function under this Part such as the importance of safety, the need to ensure that students are assisted to achieve their educational potential and the obligation to not unlawfully discriminate;
- The matters that are likely to constitute a risk to the health or safety of any person;
- The way in which risk assessments are to be carried out;
- The kind of information that may, or must, be sought;
- Who may make a request for information and who may provide it;
- The circumstances in which a person may refuse to provide information that has been requested;
- The way in which information is to be kept and the length of time it is to be kept;
- The circumstances (if any) in which the information may be further passed on and to whom it may be passed on;
- The circumstances in which consultations are to be held with students about whom information has been obtained and their parents;
- Memoranda of understanding between relevant agencies with respect to passing on relevant information.

An extensive consultation process will be undertaken during the development of these guidelines.

This consultation process will not only involve the government agencies that are directly involved in this process and non-government schools but will include the Attorney General's Department, the Privacy Commissioner, the Commissioner for Children and Young People and other key government agencies

Representatives of the various groups representing parents and those who advocate for those with a disability, disorder and/or syndrome who may be affected by the changes and unions will be an important part of the consultation process.

### **Enrolment Form**

The bill will complement recent changes the department has made to seek additional information from parents at enrolment.

A new application form to enrol in a government school has been developed which in part seeks information which can assist identify students who may pose a risk to the health and safety of staff, other students at the school and themselves.

The new form has been designed to ensure that schools can identify students with additional needs so that appropriate support can be put in place.

### **Directions regarding enrolment**

Information obtained from parents, other schools or agencies will assist government schools assess the risks posed to the health and safety of others by the handful of students to whom these provisions will be applied.

In many cases this will involve instituting a behaviour management plan at the very school that the student enrolls in and attends.

The risk assessment and management process may conclude however, that a student cannot be safely accommodated in the school of their choice.

In such circumstances it may prove necessary to direct such a student to a particular education environment—one at which they can be safely supported and educated.

It is anticipated that such a direction would only rarely need to be issued.

It would certainly only be issued after an assessment had been undertaken of the risk posed by the student in the education environment they seek to enter, and it has been concluded that the risk posed by the student cannot be safely managed in that environment.

Parents will be consulted throughout this process, and their agreement will be sought.

And our experience is that the vast bulk of parents will agree with a recommendation made by the department about where their child can be safely supported and educated.

If the student's parents refuse to accept the department's recommendation about a more suitable education environment, then a direction can be issued.

The guidelines will also deal with the procedures to be followed before the Director-General can issue a direction about enrolment at government schools, and how that direction may be reviewed.

This is not about excluding students from public education.

It is about identifying the form of education that can most safely accommodate the individual student and other students and staff at the school.

The NSW public education system is large and complex—we educate 741,000 students in over 2,200 schools in a wide range of circumstances right across NSW.

This bill will assist the department manage that complexity so as to deliver quality education to all its students.

Our students, their parents and teachers deserve no less.

#### **Other steps taken by Government**

The proposed changes to the Education Act are not the only steps taken by the Government in response to the need to deal with the violent behaviour of some students.

Over the past four years:

- Additional behaviour schools and tutorial centres for students with behaviour difficulties have been established to enable NSW schools to have a range of options available for students who exhibit extreme behaviour problems which disrupt the effective learning of other students and need specialist support;
- new suspension centres have been established by the Government to cater for students on long suspension (5-20 days). These centres assist students to successfully return to school following suspension;
- the Department's special education budget has increased from \$515.1 million in 2002/2003 to \$773.4 million in 2005/06 and represents 8.1 percent of the Department's total recurrent expenditure. The special education budget provides funds for a broad range of services and programs to support students with disabilities enrolled in regular classes, special classes and special schools.

Only a small number of students will be directly affected by the proposed changes, whilst the Government's initiatives to enhance safety at our great public schools will benefit all students and school staff.

These steps maintain our commitment to give our students a quality education.

#### **Freedom of Information Act**

The Freedom of Information Act will be amended to protect the information that will be collected by the Department of Education and Training from non-government schools and government agencies under the information provisions from being accessed through "non-personal FOI applications".

This means that such information is exempted from Freedom of Information requests unless those requests are made by the student that is the subject of the information, their parents or their student or parent's nominee.

This provision will address privacy concerns that individuals may have about sensitive personal information being placed in the public domain.

### **Prosecution of parents who fail to enrol their children in school**

I now wish to turn to another issue which is of particular concern to the lemma Government—the need to deal with parents who fail to comply with their legal and moral obligation to enrol their school aged child in a school or register them for home schooling.

Access to education is vital. The lemma Government is committed to removing any impediments to children accessing education that is caused by their parents' failure to enrol them at a school or register them for home schooling.

Parents who do this can be prosecuted for a breach of their legal obligations under the Education Act.

In the past some prosecutions for non-enrolment have been unsuccessful because magistrates have held that the Department of Education and Training has failed to prove a child is not enrolled in school even with evidence that the child attends no school within a reasonable distance of their home.

The Education Act will be amended to provide that the Director-General of Education and Training can, after reasonable inquiries have been made (including asking the parents and making inquiries of surrounding schools and the Board of Studies), issue a certificate stating that to the best of his belief a student is not enrolled in a government or non-government school or registered for home schooling.

This will be accepted by a Court as evidence that the child is not enrolled at a school or registered for home schooling.

It is then up to the parent to prove to the Court that their child is in fact enrolled or registered for home schooling with the Board of Studies.

### **Student Reports**

The House would be aware that the Government is introducing new plain English student reports in 2006.

The Commonwealth has also required changes be made to student reports by the end of the 2006 school year, linking funding to the education sectors in each State and Territory for the period 2005-2008 to these requirements.

Existing *Education Regulation* provisions exempt production under the *Freedom of Information Act* of a range of test and examination results to prevent publication of "league tables".

The amendments proposed in the Bill to the Education Act and Education Regulation will extend the protections and requirements which currently apply to the basic skills tests, the Higher School Certificate and the School Certificate to student reports.

This is appropriate as student reports contain information pertinent to the personal educational achievement of individual students.

This does not mean there is no information available about results. School reports are produced annually and are available to parents.

Further section 18A(3) of the Education Act requires that a report be made to Parliament so as to allow meaningful and substantial analysis of the effectiveness of schooling in achieving the aims of the Act and the Government.

### **The Teaching Service Regulation**

The *Teaching Service Act* currently gives the Director-General of Education and Training power to make regulations that are then approved by the Governor.

This is inconsistent with the way that regulations are made under the other employment Acts which apply to staff who work in the department which provide for regulations to be made by the Governor.

The Bill will change the Teaching Service Act so that future Regulations will be made by the Governor.

As the validity of the Regulation has been subject to legal challenge on technical grounds provision will be made in the Bill to remove any doubt about its validity or the validity of any action taken under it.

### **Delegations under the *Education (School Administrative and Support Staff) Act***

Currently the Director-General may delegate his functions under the *Education (School Administrative and Support Staff) Act* except the power to delegate. This prevents a delegate from sub-delegating a function. The Bill will amend the Act to give a power to sub-delegate.

All other legislation Department of Education and Training staff are employed under contain a sub-delegation power.

The absence of a sub-delegation power in the *Education (School Administrative and Support Staff) Act* is contrary to the recent significant amendments to create far more consistent employment arrangements for all staff employed by the Department and is also administratively onerous.

The Education Legislation Amendment Bill 2006 contains reforms that are common-sense, practical improvements that will strengthen the public education system in New South Wales.

I commend the Bill to the House.