



New South Wales

# Education Amendment (Reduction of Financial Assistance to Wealthy Non-government Schools) Bill 2001

## Explanatory note

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

## Overview of Bill

The object of this Bill is to set out the wishes of Parliament in relation to:

- (a) limiting the provision of financial assistance, by way of per capita grants under section 21 of the *Education Act 1990* (***the Act***), to wealthier non-government schools, and
- (b) allocating the funds saved by any such limitation to the Priority Schools Funding Program for Public Schools.

The Bill also requires non-government schools that receive financial assistance by way of per capita grants under section 21 of the Act to make financial and other reports publicly available.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on the day that is 28 days after the date of assent, unless the Act is commenced sooner by proclamation.

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

## Schedule 1 Amendments

**Schedule 1 [1], [2] and [4]** insert Division headings in Part 4 (The Minister's functions) of the Act.

**Schedule 1 [3]** inserts proposed section 20A in the Act. The proposed section declares that it is the wish of Parliament that the program directed at government schools and known as the Priority Schools Funding Program for Public Schools be augmented, annually, by an amount of money (adjusted for inflation) equal to the amount that would have been saved from funding to non-government schools in the financial year ended 30 June 2001 had proposed section 21B (which is inserted by Schedule 1 [6]) been in force in respect of that financial year.

**Schedule 1 [5]** amends section 21 (Financial and other assistance in respect of non-government school children) to make it clear that it is the wish of Parliament that financial assistance be provided to non-government schools by way of per capita grants under that section only in accordance with the wishes of Parliament as set out in proposed section 21B, even if provision of the assistance in accordance with those wishes would contravene other provisions of section 21.

**Schedule 1 [6]** inserts proposed sections 21A–21E in Division 3 (Assistance in respect of non-government school children) of the Act.

Proposed section 21A defines certain terms for the purposes of Division 3.

Proposed section 21B declares that the following are the wishes of Parliament:

- (a) that financial assistance to non-government schools by way of per capita grants under section 21 of the Act be limited, in the financial year commencing 1 July 2002 and in subsequent financial years, to:

- (i) those schools whose annual fees per pupil do not exceed \$7,000 (in the case of primary schools) or \$8,000 (in the case of secondary schools), and
  - (ii) in the case of a primary school whose annual fees per pupil are \$5,000 or more but not more than \$7,000—an annual amount per pupil equal to one half of (\$7,000 minus the annual fee), and
  - (iii) in the case of a secondary school whose annual fees per pupil are \$5,500 or more but not more than \$8,000—an annual amount per pupil equal to one half of (\$8,000 minus the annual fee),
- (b) that financial assistance by way of a per capita grant under section 21 of the Act not be provided, in respect of a particular financial year, to a non-government school unless the school provides the Director-General of the Department of Education and Training (the ***Director-General***) with written notice of the annual fee proposed to be charged by the school in respect of the financial year concerned at least 6 months before its commencement.

The proposed section also confers a discretion on the Minister to require the repayment of a proportion of financial assistance paid to a non-government school that charges an annual fee, in a particular financial year, that exceeds the proposed fee notified to the Director-General in respect of the year concerned.

Proposed section 21C provides that any annual reports or other reports as to academic or financial matters that are required of government schools on or after 1 July 2002 are also to be required of non-government schools receiving financial assistance by way of per capita grants under section 21 of the Act.

The proposed section also requires a non-government school that receives financial assistance by way of a per capita grant under section 21 of the Act during a particular financial year (commencing with the year ending 30 June 2002) to produce an audited, certified financial statement that discloses all the income and expenditure of the school during the financial year concerned.

The proposed section declares that it is the wish of Parliament that financial assistance not be provided, in the immediately-following financial year, to a non-government school that fails to make a statement or report required of it publicly available within the time specified in the section. However, provision is made for assistance to be restored on a proportional basis if the statement or report is made publicly available at a later time.

Proposed section 21D is concerned with financial assistance that is not paid directly to non-government schools but is paid, instead, to an organisation for the benefit of the schools. The proposed section requires organisations that receive financial assistance under section 21 (6) during the financial year ending 30 June 2002 (or

Explanatory note

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any subsequent financial year) to make publicly available an audited, certified financial statement that details the way in which the financial assistance was expended. (The provisions of proposed section 21C concerning the cessation of financial assistance to individual schools that fail to provide the requisite statement are also applied in respect of the organisations.) The proposed section also declares that it is the wish of Parliament that (effectively) the Minister reduce the financial assistance provided to any such organisation if the financial statement produced by the organisation discloses that the financial assistance was provided to schools other than those that would have been entitled (in accordance with the wishes of Parliament as expressed in proposed section 21B) to receive the assistance by way of a direct per capita grant under section 21.

Proposed section 21E is a transitional provision, requiring the proprietor or principal of each non-government school that received financial assistance by way of a per capita grant under section 21 in the financial year ended 30 June 2001 to provide the Director-General with written notice of the annual fee charged by the school in respect of that financial year.



New South Wales

# Education Amendment (Reduction of Financial Assistance to Wealthy Non-government Schools) Bill 2001

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New South Wales

# Education Amendment (Reduction of Financial Assistance to Wealthy Non-government Schools) Bill 2001

No , 2001

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## A Bill for

An Act to amend the *Education Act 1990* in relation to the provision of financial assistance to wealthy non-government schools and in relation to the program known as the Priority Schools Funding Program for Public Schools; to require a non-government school receiving certain financial assistance under the *Education Act 1990* to make reports and financial statements in respect of the school publicly available; and for related purposes.

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|---|--------|
| <b>The Legislature of New South Wales enacts:</b>   | 1      |
| <b>1    Name of Act</b>   | 2      |
| This Act is the <i>Education Amendment (Reduction of Financial Assistance to Wealthy Non-government Schools) Act 2001</i> . | 3<br>4 |
| <b>2    Commencement</b>  | 5      |
| This Act commences on the day that is 28 days after the date of assent, unless commenced sooner by proclamation.            | 6<br>7 |
| <b>3    Amendment of Education Act 1990 No 8</b>  | 8      |
| The <i>Education Act 1990</i> is amended as set out in Schedule 1.  | 9      |

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## Schedule 1 Amendments

1

(Section 3)

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### [1] Part 4, Division 1

3

Insert before section 19:

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#### Division 1 General

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### [2] Part 4, Division 2

6

Insert before section 20:

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#### Division 2 Assistance to government school children

8

### [3] Section 20A

9

Insert after section 20:

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#### 20A Priority Schools Funding Program for Public Schools

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It is the wish of Parliament that, in addition to the funds  
provided (whether by the Commonwealth Government or  
otherwise) for the program directed at government schools and  
known as the Priority Schools Funding Program for Public  
Schools, there also be provided to that program (in the financial  
year commencing 1 July 2002 and in each subsequent financial  
year), for the purpose of reducing the sizes of the classes in  
schools that benefit from the program, an amount of money  
that is equal to the following:

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- (a) the amount of financial assistance provided to  
non-government schools by way of per capita grants  
under section 21 in the financial year ended  
30 June 2001,

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less:

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Schedule 1 Amendments

|     |  |                                  |
|-----|--|----------------------------------|
| (b) | the amount (in so far as that amount is calculable) of financial assistance that would have been so provided had section 21B been in force so as to apply in respect of that financial year,   | 1<br>2<br>3<br>4                 |
|     | compounded by the annual percentage increase (if any) in the Consumer Price Index (All Groups Index) for Sydney last issued by the Australian Statistician before the financial year in which the money is to be provided (or, if the Australian Statistician ceases to issue that index, by a percentage prescribed by the regulations).    | 5<br>6<br>7<br>8<br>9<br>10      |
| [4] | <b>Part 4, Division 3</b>  | 11                               |
|     | Insert before section 21:  | 12                               |
|     | <b>Division 3 Assistance in respect of non-government school children</b>  | 13<br>14                         |
| [5] | <b>Section 21 Financial and other assistance in respect of non-government school children</b>  | 15<br>16                         |
|     | Insert after section 21 (5):   | 17                               |
|     | (5A) Further, it is the wish of Parliament that financial assistance be provided to non-government schools by way of per capita grants under this section only in accordance with the wishes of Parliament as set out in section 21B, even if provision of the assistance in accordance with those wishes contravenes subsection (2) or (3). | 18<br>19<br>20<br>21<br>22<br>23 |
| [6] | <b>Sections 21A–21E</b>  | 24                               |
|     | Insert after section 21:   | 25                               |
|     | <b>21A Definitions</b>   | 26                               |
|     | (1) In this Division:  | 27                               |
|     | <i>Director-General</i> means the Director-General of the Department of Education and Training.  | 28<br>29                         |
|     | <i>primary education</i> means education provided in any one or more of Kindergarten and Years 1, 2, 3, 4, 5 and 6.  | 30<br>31                         |

***secondary education*** means education provided in any one or more of Years 7, 8, 9, 10, 11 and 12.

(2) For the purposes of this Division, the ***annual fee*** for attending a particular non-government school:

(a) is taken to be the average of the fees that are charged for attendance at the school in:

(i) each of the years of primary education that are provided by the school (in the case of a school providing primary education), or

(ii) each of the years of secondary education that are provided by the school (in the case of a school providing secondary education), and

(b) includes:

(i) any fees that are charged for courses or activities offered by the school, whether compulsory or optional (other than fees for excursions, or for music lessons, additional to those provided in the normal curriculum of the school), and

(ii) any other payments that are required to be made to the school by a parent or guardian of a pupil attending the school as a condition, or in consequence, of the pupil's attendance, even if the payments are described or characterised as donations.

(3) However, the annual fee does not include the boarding component of the fees charged by a school that provides boarding facilities for any of its pupils.

(4) For the purposes of this Division, a school providing both primary and secondary education is taken to be 2 separate schools.

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|------------|---|--|
| <b>21B</b> | <b>Restriction on provision of financial assistance to certain non-government schools</b>   | 1<br>2                                       |
| (1)        | It is the wish of Parliament that the Minister not provide any financial assistance to any non-government school by way of a per capita grant under section 21 in the financial year commencing 1 July 2002, or in any subsequent financial year, if the annual fee for attending the school exceeds:   | 3<br>4<br>5<br>6<br>7                        |
| (a)        | in the case of a school providing primary education—\$7,000, or   | 8<br>9                                       |
| (b)        | in the case of a school providing secondary education—\$8,000,  | 10<br>11                                     |
|            | or such other amount as may be prescribed by the regulations for the purposes of paragraph (a) or (b).  | 12<br>13                                     |
| (2)        | It is the further wish of Parliament that financial assistance provided to a non-government school by way of a per capita grant under section 21 in the financial year commencing 1 July 2002, and in any subsequent financial year, not exceed, per child attending the school:  | 14<br>15<br>16<br>17<br>18                   |
| (a)        | in the case of a school providing primary education and charging an annual fee for attending the school of \$5,000 or more but not more than \$7,000—an amount equal to one half of (\$7,000 minus the annual fee), or  | 19<br>20<br>21<br>22                         |
| (b)        | in the case of a school providing secondary education and charging an annual fee for attending the school of \$5,500 or more but not more than \$8,000—an amount equal to one half of (\$8,000 minus the annual fee).   | 23<br>24<br>25<br>26                         |
| (3)        | It is the further wish of Parliament that the Minister not provide any financial assistance to a non-government school by way of a per capita grant under section 21 in the financial year commencing 1 July 2002, or in any subsequent financial year, unless written notice of the annual fee proposed to be charged by the school in respect of the financial year concerned is provided to the Director-General at least 6 months before the commencement of that financial year. | 27<br>28<br>29<br>30<br>31<br>32<br>33<br>34 |
| (4)        | If a non-government school charges, in a particular financial year, an annual fee in excess of that notified to the Director-General under subsection (3) in respect of that year, the  | 35<br>36<br>37                               |

Minister may, at the Minister's discretion, require the repayment by the school of such proportion as the Minister considers appropriate of the financial assistance paid to the school (whether directly or through an organisation referred to in section 21 (6)) during the financial year concerned. It is the wish of Parliament that any such repayment be provided to the Priority Schools Funding Program for Public Schools referred to in section 20A.

**21C Reports and audits by non-government schools receiving per capita grants**

- (1) This section applies in respect of each non-government school that receives financial assistance by way of a per capita grant under section 21, whether that assistance is received directly or through an organisation referred to in section 21 (6).
- (2) If the Minister or the Director-General, on or after 1 July 2002, requires government schools to provide annual reports or other reports in relation to academic or financial matters of the schools, the same requirements (including requirements as to the time at which, and the persons to whom, the reports are to be provided) must be made of each non-government school that is receiving (or received) financial assistance by way of a per capita grant under section 21 during the period in respect of which the reports from the government schools are required.
- (3) A non-government school that receives financial assistance by way of a per capita grant under section 21 during the financial year ending 30 June 2002 (or any subsequent financial year) must, no later than 6 months after the end of the financial year concerned, produce (in addition to any report required of it under subsection (2)), a financial statement that:
  - (a) discloses all income and expenditure of the school during the financial year, and
  - (b) is audited and certified by an appropriately qualified person.
- (4) A non-government school that is required, by or under this section, to provide a report or produce a financial statement must make the report or statement publicly available no later than 14 days after:

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- (a) the report is provided to the Minister or Director-General, or 1  
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- (b) the statement is certified (as referred to in subsection (3) (b)), 3  
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- as the case may be. 5
- (5) If a non-government school to which subsection (4) applies 6  
does not make the report or statement publicly available on or 7  
before the day referred to in that subsection, it is the wish of 8  
Parliament that the Minister not provide any financial 9  
assistance to the school by way of a per capita grant under that 10  
section during the financial year immediately following the day 11  
concerned, except as provided by subsection (6). 12
- (6) Financial assistance by way of a per capita grant under section 13  
21 may be provided, in accordance with the following formula, 14  
to a non-government school that makes a report or a financial 15  
statement publicly available on a day later than the day referred 16  
to in subsection (4): 17

$$\text{Financial assistance} = \frac{G \times (12 - M)}{12} \quad 18$$

where: 19

*G* is the amount of the per capita grant that would have been 20  
provided to the school but for subsection (5), and 21

*M* is the number of months (a part of a month being taken, for 22  
the purposes of the formula, to be one month) that elapsed 23  
between the day referred to in subsection (4) and the day on 24  
which the report or statement was made publicly available. 25

**21D Organisations receiving per capita grants under section 21** 26

- (1) If, during the financial year ending 30 June 2002 (or any 27  
subsequent financial year), financial assistance is paid under 28  
section 21 (6) to an organisation, the organisation must, no later 29  
than 6 months after the end of the financial year concerned, 30  
produce a financial statement that: 31

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- |      |  |                            |
|------|--|----------------------------|
| (a)  | details the way in which the financial assistance was expended, and  | 1<br>2                     |
| (b)  | is audited and certified by an appropriately qualified person.   | 3<br>4                     |
| (2)  | A financial statement required by subsection (1):  | 5                          |
| (a)  | must name each non-government school that benefited directly from the assistance paid to the organisation, and   | 6<br>7                     |
| (b)  | must specify the amount that was paid in respect of each school so named, and  | 8<br>9                     |
| (c)  | must be made publicly available no later than 14 days after the statement is certified (as referred to in subsection (1) (b)).   | 10<br>11<br>12             |
| (3)  | Section 21C (5) and (6) apply to an organisation that receives financial assistance under section 21 (6) in the same way as they apply to a non-government school.   | 13<br>14<br>15             |
| (4)  | If a financial statement required by subsection (1) that relates to the financial year commencing 1 July 2002 (or any subsequent financial year):  | 16<br>17<br>18             |
| (a)  | names, as a direct beneficiary of financial assistance paid to the organisation concerned, a non-government school whose annual fee for attending the school exceeded, during the financial year concerned:            | 19<br>20<br>21<br>22       |
| (i)  | in the case of a school providing primary education—\$7,000, or  | 23<br>24                   |
| (ii) | in the case of a school providing secondary education—\$8,000, or  | 25<br>26                   |
| (b)  | specifies an amount paid in respect of a school named in the statement that exceeds, per child attending the school:   | 27<br>28<br>29             |
| (i)  | in the case of a school providing primary education and charging an annual fee for attending the school of \$5,000 or more but not more than \$7,000—an amount equal to one half of (\$7,000 minus the annual fee), or | 30<br>31<br>32<br>33<br>34 |

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- (ii)      in the case of a school providing secondary      1  
education and charging an annual fee for      2  
attending the school of \$5,500 or more but not      3  
more than \$8,000—an amount equal to one half      4  
of (\$8,000 minus the annual fee),      5

it is the wish of Parliament that the Minister reduce, by an      6  
amount equal to the amount paid to the school contrary to the      7  
wishes of Parliament as expressed in section 21B, the financial      8  
assistance provided to the organisation concerned by way of a      9  
per capita grant under section 21 (6) during the financial year      10  
immediately following the day on which the financial statement      11  
was made publicly available.      12

**21E    Transitional provision**      13

For the purposes of enabling the calculation of the amount      14  
referred to in section 20A (b), the proprietor or principal of a      15  
non-government school that received financial assistance by      16  
way of a per capita grant under section 21 in the financial year      17  
ended 30 June 2001 (whether directly or through an      18  
organisation referred to in section 21 (6)) is to provide the      19  
Director-General, by 1 January 2002 (or by such later date as      20  
the Director-General may allow), with written notice of the      21  
annual fee charged by the school in respect of that financial      22  
year.      23

Maximum penalty: 100 penalty units.      24