

Education Amendment (Non-Government Schools Registration) Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Education Act 1990* to provide more rigorous standards for registration of non-government schools by:

- (a) enhancing the criteria for the registration of non-government schools, including new requirements relating to teaching staff standards and annual public reporting, and
- (b) reducing, from 2 years to 12 months, the maximum period for which the initial period of registration for a non-government school may be granted, and
- (c) reducing, from 6 years to 5 years, the maximum period for which the renewal of registration of a non-government school may be granted, and
- (d) making it clear that the initial period of registration for a non-government school is given on a provisional basis, and
- (e) providing that the Minister for Education and Training may, on the recommendation of the Board of Studies, reduce the duration of the initial period of provisional registration, or the period of renewal of registration, of a non-government school, and
- (f) providing that the Board of Studies may reduce the period of accreditation of a non-government school, and
- (g) requiring the Board of Studies and at least one responsible person for a school to be notified if the proprietor, principal or member of a governing body of a non-government school is convicted of certain offences, becomes bankrupt or otherwise takes the benefit of any law for the relief of bankrupt or insolvent debtors or becomes a mentally incapacitated person, and
- (h) providing daily penalties for certain continuing offences.

The Bill also amends the *Education Act 1990*:

- (a) to provide for courses of study in key learning areas in both government and non-government schools to be based on, and taught in accordance with, syllabuses developed or endorsed by the Board of Studies and approved by the Minister for Education and Training, and
- (b) in other minor and consequential respects described in the Outline of provisions below.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Education Act 1990*.

Schedule 1 Amendments

Schedule 1 [1] amends section 3 of the *Education Act 1990* (the *Principal Act*) to insert definitions of **distance education** and **responsible person**, which are used in proposed sections 47 (b), (c) and (k) (**Schedule 1 [9]**) and 63A (**Schedule 1 [20]**).

A **responsible person** for a school is defined to mean:

- (a) the proprietor of a school and, if the proprietor is a corporation, each director or person concerned in the management of the school, or

- (b) a member of the governing body of a school, or
- (c) the principal of a school.

Sections 8 and 10 of the Principal Act provide for the minimum curriculum requirements for primary school children and secondary school children (during Years 7 to 10), respectively. The requirements (which apply to both government and non-government schools) provide that courses of study in a key learning area may (but need not) be taught in accordance with a syllabus developed or endorsed by the Board of Studies and approved by the Minister for Education and Training (see sections 8 (1) (f) and 10 (1) (e)). **Schedule 1 [4]** amends section 8 (1) (f) of the Principal Act in relation to the primary education curriculum to provide that courses of study in a key learning area are to be based on, and taught in accordance with, such a syllabus. **Schedule 1 [6]** makes an equivalent change to section 10 (1) (e) of the Principal Act in relation to the secondary education curriculum for Years 7 to 10.

Schedule 1 [2] amends the definition of *proprietor* in section 3 (1) as a consequence of proposed section 47 (a) (to be inserted by **Schedule 1 [9]**).

Schedule 1 [3] amends section 3 of the Principal Act to provide that notes included in the Act do not form part of the Act.

Schedule 1 [5] amends section 8 of the Principal Act to provide that the Board may approve a modification to such syllabus to enable a part of a course of study in a key learning area for primary education at a non-government school that if taught in accordance with the syllabus without the modification would be incompatible with the educational philosophy or religious outlook of the school to be taught compatibly with that educational philosophy or religious outlook.

The part of the course of study at that school is to be taught in accordance with the syllabus as modified. **Schedule 1 [7]** inserts proposed section 10 (3) into the Principal Act to make similar provision in relation to secondary education during Years 7 to 10 at a non-government school.

Schedule 1 [8] amends section 44 of the Principal Act to provide that a nongovernment school that withdraws from a system of non-government schools and intends to apply for registration as an individual non-government school must make the application for registration within 1 month after ceasing to be a member of the system.

Schedule 1 [9] replaces section 47 of the Principal Act. Proposed section 47 provides that the requirements for the registration of a non-government school are as follows:

- (a) if the school is seeking to become registered as an individual school—the school's proposed proprietor must be a corporation or other form of legal entity approved by the Minister,
- (b) each responsible person for the school, and any other person or body having similar functions in relation to the school as those of such a responsible person, is of good character,
- (c) any refusal to register, or cancellation of registration, of the school or any other school under section 56 or 59 occurring during the period of 5 years immediately before the application for registration is made has not been largely attributable to the actions of a responsible person or proposed responsible person for the school, or any other person or body having similar functions in relation to the management or operation of the school as those of a responsible person,
- (d) teaching staff for the school:
 - (i) have attained the standard of professional teacher competence determined by the Minister, or
 - (ii) are working towards the standard of professional teacher competence determined by the Minister and are under the direct, onsite

supervision of teaching staff who have attained the necessary standard of professional teacher competence,

- (e) educational facilities are adequate for the courses of study provided at the school,
- (f) school premises and buildings are satisfactory,
- (g) a safe and supportive environment is provided for students by means including:
 - (i) school policies and procedures that make provision for the welfare of students, and
 - (ii) persons who are employed at the school being employed in accordance with the *Child Protection (Prohibited Employment) Act 1998*, and
 - (iii) school policies and procedures that ensure compliance with relevant notification requirements imposed in relation to persons employed at the school by Part 3A of the *Ombudsman Act 1974* and Part 7 of the *Commission for Children and Young People Act 1998*,
- (h) school policies relating to discipline of students attending the school that are based on principles of procedural fairness, and that do not permit corporal punishment of students,
- (i) if the school provides boarding facilities, whether itself or by contractual arrangement—school policies and procedures that are satisfactory to ensure the safety and welfare of boarders,
- (j) compliance with the requirements set out in Part 3 relating to:
 - (i) in the case of a school providing primary education—the minimum curriculum for a school providing primary education, or
 - (ii) in the case of a school providing secondary education for children during Year 7 to Year 10—the minimum curriculum for a school providing any such secondary education, or
 - (iii) in the case of a school providing secondary education for children during Year 11 and Year 12—the curriculum for students who are candidates for the Higher School Certificate,
- (k) school policies and procedures are appropriate to ensure the personal and social development of students who are undertaking all or a significant part of their courses of study by means of distance education,
- (l) school policies and procedures that ensure that its participation in annual reporting (of a kind determined by the Minister following consultation with persons recognised by the Minister as having appropriate expertise in accountability matters) to publicly disclose the educational and financial performance measures and policies of the school and to provide data to the Minister that is relevant to the Minister’s annual report to Parliament on the effectiveness of schooling in the State.

Schedule 1 [10] amends section 49 of the Principal Act to provide that an application for the initial registration of a non-government school must be made to the Minister for Education and Training not later than 31 March in the calendar year before the year it is intended to commence operating the school.

Schedule 1 [12] amends section 52 of the Principal Act to reduce, from 2 years to 12 months, the maximum period for which the initial period of registration for a non-government school may be granted.

Section 59 of the Principal Act provides that the Minister may, on the recommendation of the Board of Studies, cancel the registration of a nongovernment school. **Schedule 1 [13], [17] and [18]** insert proposed sections 52 (4)–(6), 57 (3) and (4) and 57A, respectively, into the Principal Act to provide that, as an alternative to cancelling a non-government school’s registration, the Minister may reduce the duration of the school’s period of registration (whether

the registration is the initial registration or a renewal of registration). The Minister may reduce the initial period of registration or renewal of registration on the recommendation of the Board. The Board may make such a recommendation only after notifying the school of the matters that need to be attended to so as to avoid the reduction. **Schedule 1 [11] and [15]** make consequential amendments. **Schedule 1 [11]** also makes it clear that initial registration is given on a provisional basis.

Schedule 1 [14] inserts proposed section 54A into the Principal Act. Proposed section 54A provides for the renewal of registration of a non-government school. Specifically the proposed section provides that:

- (a) an application for renewal of registration of a non-government school must be made at least 9 months before the school's existing registration expires (unless otherwise determined by the Board of Studies), and
- (b) the application must include information demonstrating that the school continues to satisfy the requirements for registration and that since the school's registration was granted or last renewed, the school has complied with the terms of registration.

Schedule 1 [16] amends section 57 of the Principal Act to reduce, from 6 years to 5 years, the maximum period for which the renewal of registration of a nongovernment school may be granted. **Schedule 1 [22]** makes a consequential amendment to section 78 with respect to exemption from the requirement to be registered under the Act.

Schedule 1 [19] amends section 60 of the Principal Act to exclude a relocation of any premises or building of the school that is unconnected with boarding facilities provided by the school for students from the requirement under the section to give notice of the relocation of a school.

Schedule 1 [20] inserts proposed section 63A into the Principal Act. Proposed section 63A provides that the Board of Studies and at least one responsible person for a school is to be notified if a responsible person or person or body having similar functions in relation to the management or operation of the school as a responsible person for a school:

- (a) is convicted of an offence punishable by imprisonment for 12 months or more, or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (c) if the person is a corporation—is the subject of a winding up order or has had a controller or administrator appointed, or
- (d) becomes a mentally incapacitated person.

Schedule 1 [21] amends section 65 of the Principal Act to provide an additional maximum daily penalty of 5 penalty units for the continuing offence of conducting a non-government school unless the school is registered under the Act.

Schedule 1 [23] amends section 87 of the Principal Act to reduce, from 6 years to 5 years, the maximum period for which the accreditation of a non-government school may be granted. Accreditation of a non-government school allows the school to provide courses of study for students in Year 10 for the purpose of presenting candidates for the School Certificate, or Year 11 or 12 for the purpose of presenting candidates for the Higher School Certificate.

Section 91 of the Principal Act provides that the Board may cancel the accreditation of a non-government school if it is satisfied that the requirements of the Principal Act relating to the courses of study to be undertaken by candidates for a School Certificate or Higher School Certificate are not being complied with by the school. **Schedule 1 [24]** inserts proposed section 87A into

the Principal Act to provide that as an alternative to cancelling a nongovernment school's accreditation the Board may reduce the duration of the school's period of accreditation.

Section 93 of the Principal Act requires a person who conducts a nongovernment school that is not, or that ceases to be, accredited to present candidates for the School Certificate or Higher School Certificate to notify the parents of the candidates that the school is not accredited for that purpose.

Schedule 1 [25] amends section 93 to require the school to also notify the parents of the consequences for the candidates of the school not being accredited.

Schedule 1 [26] amends section 93 of the Principal Act to provide an additional maximum daily penalty of 5 penalty units for the continuing offence of conducting a non-government school for the education of candidates for the School Certificate or Higher School Certificate unless the school is accredited under the Act.

Schedule 1 [27] inserts proposed section 124A into the Principal Act. Proposed section 124A makes provision with respect to continuing offences under the Act or regulations.

Schedule 1 [28] amends section 131 of the Principal Act to enable rules to be made by the Board of Studies with respect to registration and accreditation requirements under Parts 7 and 8 of the Act.

Schedule 1 [29] amends Schedule 3 to the Principal Act to provide power to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [30] amends Schedule 3 to the Principal Act to insert a proposed Part 6 to provide for savings and transitional provisions consequent on the enactment of the proposed Act.