

Passed by both Houses



New South Wales

Education Amendment (School Safety) Bill 2017

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2017

Clerk of the Parliaments



New South Wales

Education Amendment (School Safety) Bill 2017

Act No , 2017

An Act to amend the *Education Act 1990* to make further provision in relation to the health and safety of school students and staff; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Education Amendment (School Safety) Act 2017*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Education Act 1990 No 8

[1] Section 22D Compulsory schooling orders

Omit “under section 26H” from section 22D (13) (a).

Insert instead “or the Minister under Division 3 of Part 5A”.

[2] Section 26A Definitions

Insert in alphabetical order:

direction means an enrolment direction or a non-attendance direction.

enrolment direction means a direction given by the Secretary under section 26H.

non-attendance direction means a direction given by the Minister under section 26HA.

relevant decision-maker means:

- (a) in relation to an enrolment direction—the Secretary, or
- (b) in relation to a non-attendance direction—the Minister.

[3] Section 26AA

Insert after section 26A:

26AA Restriction on disclosing certain information

Despite this or any other Act or law, the Minister, the Secretary or a school is not required to disclose information obtained under or in connection with this Part to any student, parent or other person if there are reasonable grounds to believe that to do so would:

- (a) endanger a person’s life or physical safety, or
- (b) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or
- (c) prejudice the investigation of a contravention (or possible contravention) of a law in any particular case, or
- (d) not be in the public interest.

[4] Section 26B Purpose of obtaining information about students

Omit section 26B (1). Insert instead:

- (1) Information may be obtained under this Division solely for the following purposes:
 - (a) assisting the Minister, the Secretary or schools:
 - (i) to assess whether the enrolment or attendance of a particular student at a school is likely to constitute a risk (because of the behaviour of the student) to the health or safety of any person (including the student), and
 - (ii) to develop and maintain strategies to eliminate or minimise any such risk,
 - (b) assisting the Minister to exercise functions under section 26HA relating to non-attendance directions.

[5] Section 26D Obtaining information about particular students

Omit “such information about a particular student as would assist in making an assessment, or developing or maintaining strategies, of the kind referred to in section 26B” from section 26D (1).

Insert instead “information about a particular student for the purposes referred to in section 26B (1)”.

[6] Section 26E Consultation during assessment of risk and development of strategies

Insert “the Minister,” after “section 26B,”.

[7] Part 5A, Division 3, heading

Omit “at government schools”. Insert instead “and attendance”.

[8] Section 26H Enrolment directions

Insert “(an *enrolment direction*)” after “direction” in section 26H (1).

[9] Section 26H (2)

Omit “A direction under this section”. Insert instead “An enrolment direction”.

[10] Section 26H (2A)

Insert after section 26H (2):

- (2A) An enrolment direction must specify a school of a kind that is appropriate for the age of the student and that is within a reasonable distance of the student’s home.

[11] Section 26H (3)

Omit “a direction in force under this section”. Insert instead “an enrolment direction”.

[12] Section 26H (4)

Insert “, or otherwise approved by the Minister,” after “State”.

[13] Section 26H (4)

Omit “a direction under this section”. Insert instead “an enrolment direction”.

[14] Section 26HA

Insert after section 26H:

26HA Non-attendance directions

- (1) The Minister may, by notice in writing, direct a student not to attend school during a specified period (a *non-attendance direction*). A non-attendance direction may specify a particular school or schools or any school.
- (2) The Minister may give a non-attendance direction to a student only if:
 - (a) the Minister believes on reasonable grounds that:
 - (i) there is a significant risk that the student will engage in serious violent conduct, or
 - (ii) the student supports terrorism or violent extremism, and
 - (b) the Minister believes on reasonable grounds that issuing the non-attendance direction is necessary to protect the health or safety of the students or staff of any school.

- (3) While a non-attendance direction in relation to a student is in force, the Minister:
- (a) must assess whether the attendance of the student at school constitutes a risk to the health or safety of any person (including the student), and
 - (b) must, if appropriate, develop strategies to eliminate or minimise that risk and to enable the student to attend school, and
 - (c) must, in accordance with the guidelines, develop and implement a plan to support the student while the student is not attending school under the direction.
- Note.** Information about students may be obtained under Division 2 for the purposes of assisting the Minister in exercising functions under this section.
- (4) In subsection (2) (a) (i), *serious violent conduct* means conduct constituting any of the following offences (regardless of whether the student cannot, or might not, be held to be criminally responsible for the conduct):
- (a) an offence involving:
 - (i) loss of a person's life or serious risk of loss of a person's life, or
 - (ii) serious physical or psychological injury to a person or serious risk of such injury to a person, or
 - (iii) serious damage to property in circumstances endangering the safety of any person,
 - (b) a serious offence of a sexual nature,
 - (c) an offence involving serious animal cruelty.
- (5) At the end of each school year, the Minister is to publish on the Department's website the number of non-attendance directions given by the Minister during that school year.

[15] Section 26I Representations by student, parents and others

Omit "a direction is given under this Division" from section 26I (1).

Insert instead "an enrolment direction or a non-attendance direction is given".

[16] Section 26I (1)

Omit "Secretary" wherever occurring. Insert instead "relevant decision-maker".

[17] Section 26I (4)

Insert after section 26I (3):

- (4) Without limiting the operation of subsection (2), the Minister is not required to comply with subsection (1) before giving a non-attendance direction to a student for the first time.

[18] Sections 26J and 26K

Omit "under this Division" wherever occurring.

[19] Sections 26J and 26K

Omit "Secretary" wherever occurring. Insert instead "relevant decision-maker".

[20] Section 26K Variation and revocation of direction

Omit "Secretary's" from section 26K (c). Insert instead "relevant decision-maker's".

[21] Section 26K (2)

Insert at the end of section 26K:

- (2) This section does not entitle a student, or a parent of the student, to make an application to vary or revoke a non-attendance direction given to the student for a period of 5 days or less.

[22] Section 26KA

Insert after section 26K:

26KA Internal review of certain non-attendance directions

- (1) If the Minister, or a person acting under a delegation from the Minister, gives a non-attendance direction to a student for a period of more than 5 days, the student, or a parent of the student, may apply for an internal review of the decision to give the direction.
- (2) An application for internal review is to be made in accordance with any requirements specified in the guidelines.
- (3) An application for internal review does not operate to stay the decision to which the application relates, unless the Minister otherwise directs.
- (4) The review must be conducted by a person (other than the person who made the decision) who is directed to do so by the Minister (the *reviewer*). The reviewer must be a person employed in the Department who was not substantially involved in making the decision to which the application relates.
- (5) The reviewer must consider any relevant material submitted by the student or parent.
- (6) The reviewer may, on determining an application for internal review, confirm the decision to which the application relates or recommend to the Minister that the non-attendance direction be varied or revoked.
- (7) This section does not entitle a student, or a parent of the student, to make an application for internal review under this section if the person is entitled to make an application to the Tribunal under section 107 (1) (i) for an administrative review of a decision to give the student a non-attendance direction.

[23] Section 26L Issue of guidelines

Omit “for the purposes of section 26B,” from section 26L (2) (b).

[24] Section 26L (2) (c)

Omit “assessments of the kind referred to in section 26B”.

Insert instead “health and safety risk assessments”.

[25] Section 26L (2) (k) and (l)

Omit “Secretary” wherever occurring. Insert instead “relevant decision-maker”.

[26] Section 26L (2) (m)

Omit “such a direction”. Insert instead “an enrolment direction”.

[27] Section 26L (2) (n) and (o)

Omit “such a direction” wherever occurring. Insert instead “a direction”.

[28] Section 26L (2) (p)–(r)

Insert after section 26L (2) (o):

- (p) applications for internal review under section 26KA of a decision to give a non-attendance direction,
- (q) the provision of education and support (such as programs and services) to a student in relation to whom a non-attendance direction is in force,
- (r) the requirements (if any) to notify relevant agencies when a non-attendance direction is given to a student.

[29] Section 35 Discipline in government schools

Insert after section 35 (1):

- (1A) Subsection (1) extends to the conduct of a student that significantly affects, or is likely to significantly affect, the health or safety of students or staff of any school, regardless of whether that conduct occurs on or outside school premises or within or outside school hours.

[30] Section 107 Applications for administrative reviews of certain decisions

Omit “Division 3 of Part 5A” from section 107 (1) (e1). Insert instead “section 26H”.

[31] Section 107 (1) (i)

Insert after section 107 (1) (h):

- (i) a non-attendance direction given by the Minister under section 26HA that results in the student being directed not to attend school for more than a total of 20 school days in a 12 month-period.

[32] Section 108 Determination of application by Tribunal

Insert after section 108 (1) (a1):

- (a2) in the case of an application for the administrative review of a non-attendance direction given by the Minister under section 26HA—recommend to the Minister that the direction be varied or revoked, or

[33] Section 108 (4)

Insert after section 108 (3) (after the note):

- (4) The Minister is not required under the *Administrative Decisions Review Act 1997*, or any other Act or law, to give reasons for a decision to give a non-attendance direction to a student under section 26HA if the Minister reasonably believes that to do so would:
 - (a) endanger a person’s life or physical safety, or
 - (b) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or

- (c) prejudice the investigation of a contravention (or possible contravention) of a law in any particular case, or
- (d) not be in the public interest.