



New South Wales

Education Amendment (School Safety) Bill 2017

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* as follows:

- (a) to enable the Minister for Education (the **Minister**) to direct a student not to attend school for a specified period if the Minister believes on reasonable grounds that:
 - (i) there is a significant risk that the student will engage in serious violent conduct or the student supports terrorism or violent extremism, and
 - (ii) issuing the direction is necessary to protect the health or safety of school students and staff,
- (b) to require the Minister to assess whether the attendance of the student at school constitutes a health or safety risk and, if appropriate, develop risk management strategies to enable the student to attend school,
- (c) to extend school disciplinary powers to student conduct that significantly affects, or is likely to significantly affect, the health or safety of students or staff, regardless of whether that conduct occurs on or outside school premises or within or outside school hours.

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 proclaimed.

Schedule 1 Amendment of Education Act 1990 No 8

Non-attendance directions

Schedule 1 [13] enables the Minister to direct a student not to attend a particular school (or any school) during a specified period (a *non-attendance direction*) 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 direction is necessary to protect the health or safety of the students or staff of any school.

The Minister is then required to assess whether the attendance of the student at school constitutes a health or safety risk and, if appropriate, develop risk management strategies to enable the student to attend school.

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 loss of life, serious physical or psychological injury or serious damage to property,
- (b) a serious offence of a sexual nature,
- (c) an offence involving serious animal cruelty.

Schedule 1 [16] provides that the Minister is not required to consult with a student, or a parent of the student, before giving the student a non-attendance direction for the first time. **Schedule 1 [14] and [15]** are consequential amendments, which require consultation for subsequent non-attendance directions.

Schedule 1 [18] requires the Minister to give a student, and the parents of the student, written notice of a non-attendance direction and the grounds for the direction and enables the Minister to vary or revoke a non-attendance direction. **Schedule 1 [17] and [19]** are consequential amendments.

Schedule 1 [2] inserts relevant definitions. **Schedule 1 [7]–[10] and [12]** are consequential amendments to existing provisions about enrolment directions. An enrolment direction is issued by the Secretary of the Department of Education (the *Secretary*) and requires a student to attend a specified school because of the student's behaviour. Existing provisions relating to enrolment directions, including in relation to information gathering and guidelines, are being extended to non-attendance directions (see below).

Obtaining information about students

Schedule 1 [4] facilitates the gathering of information about students by the Minister in relation to non-attendance directions by extending existing provisions that relate to enrolment directions. Under the provisions, information about a student may be obtained from various bodies, such as schools, public health organisations, the Department of Family and Community Services and the NSW Police Force. **Schedule 1 [5] and [6]** are consequential amendments.

Schedule 1 [3] provides that the Minister, the Secretary and schools are not required to disclose any information obtained in connection with non-attendance directions to a student, parent or any other person in certain circumstances.

Guidelines

Currently, the Minister may issue guidelines in relation to information gathering and enrolment directions, and compliance with the guidelines is compulsory. Under the amendments in **Schedule 1 [22]–[24] and [26]**, the guidelines will also apply to non-attendance directions. **Schedule 1 [27]** enables guidelines to be issued in relation to applications for internal review of certain non-attendance directions, the provision of education and support to students who are

given a non-attendance direction and the requirements to notify certain agencies when a non-attendance direction is given to a student. **Schedule 1 [25]** is a consequential amendment.

Internal review and administrative review of non-attendance directions

Schedule 1 [21] enables a student, or a parent of the student, who is given a non-attendance direction for a period of more than 5 days, to apply for an internal review of the decision to give the direction. The review must be conducted by a person who is employed in the Department of Education who was not substantially involved in making the decision to give the student the direction. **Schedule 1 [20]** makes it clear that there is no right to apply for a variation or revocation of a non-attendance direction that is for 5 days or less.

Schedule 1 [30] provides that a student, or a parent of the student, who is given a non-attendance direction that results in the student being directed not to attend school for more than 20 school days in a year, may apply to the New South Wales Civil and Administrative Tribunal (*NCAT*) for administrative review of the decision to give the student the non-attendance direction. **Schedule 1 [31]** provides that *NCAT* may confirm the decision or recommend to the Minister that the direction be varied or revoked. **Schedule 1 [32]** provides that 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 in certain circumstances. **Schedule 1 [29]** is a consequential amendment.

School discipline

Schedule 1 [28] extends the Minister's powers in relation to school discipline to include student conduct that significantly affects, or is likely to significantly affect, the health or safety of school students and staff, regardless of whether that conduct occurs on or outside school premises or within or outside school hours.

Other minor amendments

Schedule 1 [11] makes it clear that the existing power of the Secretary to direct that a student must attend a specified school extends to any education facility approved by the Minister, whether it is conducted by the State or not.

Schedule 1 [1] provides that a compulsory schooling order (made by the Children's Court on the application of the Secretary) does not have effect to the extent that it is inconsistent with a non-attendance direction.