

1995
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Moore)

Education (Amendment) Bill 1995

A BILL

FOR

An Act to amend the *Education Act 1937*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Education (Amendment) Act 1995*.

5 Principal Act

2. In this Act, "Principal Act" means the *Education Act 1937*.¹

Insertion

3. After Part III of the Principal Act the following Part is inserted:

"PART IIIA—BOARD OF REVIEW

10 Interpretation

"30B. In this Part—

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‘application for review’ means an application under subsection 30D (1);

‘Association’ means the organisation known as the Association of Independent Schools (A.C.T.);

5 ‘government school educationalist’ means a person who, in the opinion of the Minister, by reason of the person’s qualifications, training and teaching experience, is qualified to serve as a member of a Board of Review to represent the interests referred to in paragraph 30G (1) (a);

10 ‘independent school educationalist’ means a person who, in the opinion of the Minister, by reason of the person’s qualifications, training and teaching experience, is qualified to serve as a member of a Board of Review to represent the interests referred to in paragraph 30G (1) (b);

15 ‘legal practitioner’ means a person enrolled as a legal practitioner (however described) of the High Court, of another federal court or of the Supreme Court of the Territory, a State or another Territory;

‘relevant decision’, in relation to a Board of Review, means the decision referred to in subsection 30D (1) in respect of which the members of the Board have been appointed;

20 ‘school’ means an institution at which a person provides, or offers to provide, education at primary school level, high school level or secondary college level;

25 ‘school concerned’ means the school in relation to a student of which a decision has been made that is the subject of an application for review;

‘suspension’, in relation to a student enrolled at a school, means a decision made on behalf of the school prohibiting the student from attending the school.

Decisions to which this Act applies

30 “30C. This Act applies to a decision—

(a) in respect of students enrolled at any school—

(i) suspending a student for a period which exceeds 10 school days; or

35 (ii) suspending a student for a period during a school term which, when added to other periods of suspension during that term, exceeds 10 school days;

- (b) in respect of students enrolled at a school conducted by the Authority—
 - (i) directing that a student enrolled at a school be enrolled at another school; or
 - 5 (ii) to exclude a student from all schools conducted by the Authority; and
- (c) in respect of students enrolled at a school not conducted by the Authority—to expel a student from the school.

Application for review

- 10 “30D. (1) Where a decision to which this Act applies has been made in relation to a student, the student or the student’s parents or guardian may, by notice in writing to the Authority, apply to have that decision reviewed.

“(2) An application for review of a decision shall be made within 7 days after the day on which the student is notified of the decision.

15 Minister and affected persons and organisations to be notified

“30E. Where the Authority receives an application for review of a decision it shall notify each of the following that a Board of Review is required to be appointed to review the decision:

- (a) the Minister;
- 20 (b) the Attorney-General;
- (c) the Community Advocate;
- (d) the Association.

Function and powers of the Board of Review

- 25 “30F. (1) The function of a Board of Review is to determine whether the relevant decision is a fair decision.

“(2) In determining whether the relevant decision is fair, a Board of Review shall take into account—

- (a) the seriousness of the misconduct alleged against the student and, in the case of misconduct involving more than one person, the part played by the student;
- 30 (b) the steps taken by the school concerned—
 - (i) to inform students that behaviour of that type, in the circumstances in which it occurred, would be treated as misconduct; and
 - 35 (ii) to inform students of the penalty for that behaviour;

- (c) the way in which behaviour of that type has been dealt with in the past;
- 5 (d) whether the student was given a reasonable opportunity to make a reply to the allegations of misconduct before the decision was made;
- (e) in the event that the student denies the misconduct alleged against him or her, whether it is reasonably likely that the student was guilty of that misconduct;
- 10 (f) the previous behaviour of the student and, in particular, whether the misconduct in question is isolated in character;
- (g) in the event that the student has misbehaved on previous occasions, the extent to which attempts have been made to improve the behaviour of the student in consultation with the student's parents or guardian; and
- 15 (h) the circumstances of the student's life (including his or her home life).

“(3) Where a Board of Review determines that the relevant decision is fair, the Board, in writing, shall record that determination.

- 20 “(4) Where a Board of Review determines that the relevant decision is not fair—

- (a) the Board shall be taken to have set aside that decision; and
- (b) the Board, in writing, shall record that determination.

- 25 “(5) Where a Board of Review sets aside a decision it may remit the matter for reconsideration in accordance with any directions or recommendations of the Board.

“(6) A Board of Review shall cause a copy of its determination to be given to—

- (a) the applicant; and
- (b) the governing body of the school concerned.

30 **Constitution of Board of Review**

“30G. (1) A Board of Review shall consist of—

- (a) a government school educationalist appointed by the Minister to represent the interests of schools conducted by the Authority;
- 35 (b) an independent school educationalist appointed by the Minister to represent the interests of schools not conducted by the Authority;
- (c) a legal practitioner appointed by the Attorney-General;

- (d) the Community Advocate or a member of the staff of the Community Advocate appointed by the Community Advocate; and
- (e) a person appointed by the Association.

5 “(2) If the Association fails to appoint a person to a Board of Review within 14 days after receiving a notification under section 30E, the Board of Review to review the relevant decision shall be taken to be constituted only by the members referred to in paragraphs (1) (a), (b), (c) and (d).

Reconstitution of Board of Review in certain cases

10 “30H. (1) This section applies to a Board of Review that is constituted in accordance with subsection 30G (1) or (2) and to a Board of Review so constituted that has been reconstituted under this section.

“(2) Where a person ceases to be a member of a Board of Review before the relevant decision has been reviewed (whether or not the Board has begun the review)—

- 15 (a) if the person was a member referred to in paragraph 30G (1) (a)—the Minister may appoint another government school educationalist to be a member of the Board in place of the first-mentioned person;
- (b) if the person was a member referred to in paragraph 30G (1) (b)—the Minister may appoint another independent school educationalist to be a member of the Board in place of the first-mentioned person;
- 20 (c) if the person was a member referred to in paragraph 30G (1) (c)—the Attorney-General may appoint another legal practitioner to be a member of the Board in place of the first-mentioned person;
- 25 (d) if the person was a member referred to in paragraph 30G (1) (d) and was also a member of the staff of the Community Advocate—the Community Advocate may—
 - (i) assume the office of member referred to in that paragraph; or
 - (ii) appoint another member of his or her staff to that office;
- 30 in place of the first-mentioned person; or
- (e) if the person was a member referred to in paragraph 30G (1) (e)—the Association may appoint another person to be a member of the Board in place of the first-mentioned person.

35 “(3) Where the person who holds the office of Community Advocate also holds the office of member of the Board of Review referred to in paragraph 30G (1) (d) and the person ceases to hold the office of Community Advocate—

- (a) the Community Advocate for the time being may—
- (i) assume the office of member; or
 - (ii) appoint another member of his or her staff to that office;
in place of the first-mentioned person; or
- 5 (b) if the office of Community Advocate is vacant—
- (i) in a case where a person is acting as Community Advocate by virtue of an appointment under section 10 of the *Community Advocate Act 1991* the person so acting may—
 - (A) assume the office of member; or
 - 10 (B) appoint another member of his or her staff to that office;
in place of the first-mentioned person; or
 - (ii) in any other case—the Attorney-General may appoint a
15 member of the staff of the Community Advocate to that office in place of the first-mentioned person.

“(4) If the Association fails to appoint a person under subsection (2) within 7 days after receiving a written request by the Authority to do so, the Board of Review shall be taken to be reconstituted under this section by its remaining members.

- 20 “(5) Where a Board of Review is reconstituted under this section, the Board as reconstituted shall begin or continue (as the case may be) the review and complete the review.

- 25 “(6) Where, under subsection (5), a review is continued by the Board of Review as reconstituted under this section, the Board of Review may, for the purposes of that review, have regard to any record of the review before the Board of Review as previously constituted, including a record of any evidence taken in the review.

Application of subsection 26 (4) of the *Interpretation Act 1967*

- 30 “30I. Nothing in section 30G or 30H limits the application of subsection 26 (4) of the *Interpretation Act 1967*.

Chairperson

“30J. The Chairperson of a Board of Review shall be the member referred to in paragraph 30G (1) (d).

Meetings

“30K. (1) A Board of Review shall hold such meetings as are necessary for the performance of its function.

5 “(2) The Chairperson of a Board of Review may convene meetings of the Board.

“(3) At a meeting of a Board of Review, the Chairperson of the Board and 2 other members constitute a quorum.

“(4) The Chairperson of a Board of Review shall preside at all meetings of the Board.

10 “(5) Questions arising at a meeting of a Board of Review shall be determined by a majority of the votes of the members present and voting.

“(6) The Chairperson of a Board of Review has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

15 “(7) Except as otherwise provided by this Act, the procedure at a meeting of a Board of Review shall be determined by the Board.

Procedure

“30L. (1) A Board of Review shall not make a decision under subsection 30F (3) or (4) unless it has afforded the staff and the governing body of the school concerned a reasonable opportunity—

- 20 (a) to attend a meeting of the Board of Review;
- (b) to address the Board of Review in relation to the review; and
- (c) to place before the Board of Review any document relevant to the review.

“(2) In subsection (1), the reference—

- 25 (a) to the staff of the school includes a former member of the staff; and
- (b) to the governing body of the school includes a former member of the governing body.

30 “(3) Except as provided by this Act, the procedure of the Board shall be as determined by the Board.

Information and documents

“30M. (1) A Board of Review may request a staff member or a board member of the school concerned to—

- 35 (a) furnish to the Board any information known to the member, or to which he or she has access, that relates to the relevant decision; or

- (b) produce to the Board any document in his or her custody or control that relates to the relevant decision;

and the member shall provide the information or produce the documents requested.

5 “(2) In subsection (1)—

‘board member’ means a member of the governing body of the school concerned and includes a former member of the governing body;

‘staff member’ means a member of the staff of the school concerned and includes a former member of the staff.

10 **Publication of decisions**

“30N. (1) Where a Board of Review has determined—

(a) that the relevant decision is a fair decision;

(b) that the relevant decision is not a fair decision and accordingly has been set aside; or

15 (c) that the relevant decision is not a fair decision and accordingly has been set aside and the matter remitted for reconsideration;

it shall, for public information, publish in a newspaper circulating in the Territory a notice to that effect.

20 “(2) A notice referred to in subsection (1) shall name the school concerned and indicate the date of the relevant decision but shall not name the student.

Liability for defamatory statements

25 “30P. (1) A member of a Board of Review is not, in the absence of malice on his or her part, liable to any action for defamation in respect of any statement that he or she makes, orally or in writing, in the course of the performance of his or her duties as member.

“(2) A person is not, in the absence of malice on his or her part, liable to any action for defamation in respect of any statement that he or she makes, orally or in writing, in the course of—

30 (a) furnishing information; or

(b) producing any document in his or her custody or control;

to a Board of Review that relates to the relevant decision.

35 “(3) A person is not, in the absence of malice on his or her part, liable to any action for defamation in respect of the publication of a notice referred to in section 30N.

“(4) Nothing in this section deprives a person of any defence upon which, apart from this section, the person might have relied in a civil or criminal action or proceeding against him or her.”.

NOTE

Principal Act

1. Reprinted as at 31 January 1995.

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