



Australian Capital Territory

# **Education Act 1937**

**A1937-25**

**Republication No 5**

**Effective: 9 April 2004 – 31 December 2004**

Republication date: 9 April 2004

Last amendment made by A2004-15

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Education Act 1937* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 April 2004. It also includes any amendment, repeal or expiry affecting the republished law to 9 April 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

# Education Act 1937

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An Act relating to education and related matters

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Education Act 1937*.

### 3 Incorporation

This Act shall be incorporated and read as one with the *Public Instruction Act 1880* and the *Free Education Act 1906*.

### 5 Definitions for Act

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

In this Act:

***appropriate government school*** means—

- (a) in relation to a child who has completed his or her high school education—a secondary college conducted on behalf of the Territory; and
- (b) in relation to a child who has completed his or her primary education but has not completed his or her high school education—a high school conducted on behalf of the Territory; and
- (c) in relation to any other child—a primary school conducted on behalf of the Territory.

***authority*** means the Australian Capital Territory Schools Authority.

***authorised person*** means a person authorised by the chief executive to act for this Act.



***corporal punishment*** means physical force applied to punish or correct, and includes any action designed or likely to cause physical pain or discomfort taken for such a purpose.

***court*** means the Childrens Court.

***educational level*** means primary school level, high school level or secondary college level.

***high school level*** means the level of education provided by a high school conducted by the authority on behalf of the Territory.

***primary school level*** means the level of education provided by a primary school conducted by the authority on behalf of the Territory.

***registrar*** means the Registrar of Schools appointed under section 7.

***school-leaving age*** means 15 years old.

***secondary college level*** means the level of education provided by a secondary college conducted by the authority on behalf of the Territory.

***truant*** means a child who habitually disobeys the order of his or her parents or guardian to attend school.

## **7 Appointment of registrar, acting registrar and attendance inspector**

- (1) There shall be a Registrar of Schools, who shall be appointed by the Minister.
- (2) The Minister may appoint an officer to be acting registrar during the absence of the registrar or during any temporary vacancy in the office of registrar, and any acting registrar so appointed shall have and may exercise all the powers and functions of the registrar.
- (3) The Minister may appoint the attendance inspectors and other officers that he or she considers necessary for carrying out this Act.

## Part 2 Compulsory attendance at schools

### 8 Compulsory enrolment

The parent or guardian of any child who is not less than 6 years old nor more than the school-leaving age and who is residing in the ACT, shall, within 7 days of the child's reaching 6 years old or of the commencement of the child's residence in the ACT, whichever is the later, cause the child to be enrolled as a scholar at a school maintained by or on behalf of the Territory or a school registered or provisionally registered under this Act.

Maximum penalty: 5 penalty units.

### 9 Compulsory attendance

Every parent or guardian of a child who is not less than 6 old nor more than the school-leaving age and who is residing in the ACT shall cause the child to attend, as a scholar, the school where the child is enrolled as a scholar under section 8 on every half-day where the school is open.

Maximum penalty: 5 penalty units.

### 9A Employment of children under school-leaving age

- (1) A person shall not employ, or permit to be employed, a child under the school-leaving age during any time during which the parent or guardian of the child—
  - (a) is required by this Act to cause the child to attend a school; or
  - (b) would be required by this Act to cause the child to attend a school if the parent or guardian or the child were resident in the ACT; or

- (c) would, apart from sections 10 and 11, be required by this Act to cause the child to attend a school.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) It shall be a good defence in any prosecution against this section that, at the date alleged in the information—
  - (a) the person charged had reasonable grounds for believing that the child so employed was not of school-going age; or
  - (b) a certificate under section 16 was in force in relation to the child.

## **10 Defence in prosecution against s 8 and s 9**

- (1) Subject to subsection (2), it shall be a good defence in any prosecution for an offence against section 8 or 9 that at the date alleged in the information—
  - (a) the child was receiving regular and efficient instruction on at least 85 days in each half-year in his or her home or at a school outside the ACT, the onus of proof of which shall lie on the parent or guardian; or
  - (b) a certificate under section 16 was in force in relation to the child; or
  - (c) there was not an appropriate government school situated—
    - (i) if the child was under 12 years old—within 3 km; or
    - (ii) if the child was 12 years old or older—within 5 km;of the place of residence of the child by the nearest practicable route.
- (2) The defence mentioned in subsection (1) (c) does not apply if, on the day of the alleged offence—

- (a) the child could have travelled to an appropriate government school by catching a single bus; and
- (b) the total of the distance from the child's home to the closest bus stop (for that bus) and the distance from the appropriate government school to the closest bus stop (for that bus) was not more than—
  - (i) if the child was under 12 years old—3km; or
  - (ii) if the child was 12 years old or older—5km.

## **11 Good defence to prosecution against s 9**

It shall be a good defence in any prosecution for an offence against section 9 that at the date alleged in the information—

- (a) the child was prevented from attending school by sickness, danger of infection or temporary or permanent infirmity, and, within 7 days after the date when the sickness, danger, or infirmity occurred or arose, the defendant gave or caused to be given written notice of the sickness, danger or infirmity to the teacher of the school that the child attended immediately before that date; or
- (b) the child had not been absent for more than 6 half-days when the school was open during the 3 months immediately before that date.

## **12 Certain averments to be evidence**

- (1) In a prosecution for an offence against section 8, 9 or 9A in relation to a child, all or any of the following averments by the informant may be included in the information and, if included in the information, are prima facie evidence of the matter or matters averred:
  - (a) that, at the date of the alleged offence, the child was of, above or under the age stated in the information;

- (b) that, at the date of the alleged offence, the child was residing in the ACT;
  - (c) that at the date of the alleged offence, the child was not enrolled as a scholar at a school maintained by or on behalf of the Territory or a school registered under this Act;
  - (d) that the child was employed at the time of the alleged offence.
- (2) This section applies to a matter so averred although evidence is given in support or rebuttal of the matter averred or of any other matter.

**13            2 hours attendance constitutes half-day's attendance**

For this Act, an attendance for not less than 2 hours during the period for which a school is open on any half-day shall constitute attendance on that half-day, but any child having received the teacher's sanction to leave school on any half-day before the completion of the hours appointed shall be deemed to have attended on that half-day.

**14            Certificate of school principal to be evidence**

A certificate purporting to be signed by the principal or principal teacher of a school maintained by or on behalf of the Territory or a school registered under this Act stating—

- (a) that a child is or is not enrolled as a scholar at the school; or
- (b) the particulars of attendance of a child at the school;

shall be evidence of the facts stated in the certificate.

**15            Register of attendances**

- (1) The proprietor or principal teacher of every school shall—
- (a) keep a register of the attendance of scholars at his or her school; and

- (b) at the request of the registrar, any attendance inspector or any authorised person, produce the register to him or her and permit him or her to inspect and make extracts from the register; and
- (c) give to the registrar, when required to do so by the registrar, certificates and returns relating to enrolments and attendances of scholars at the school.

*Note* If a form is approved under s 37 (Approved forms) for par (a) or (c), the form must be used.

- (2) If the proprietor or teacher fails to carry out any of the provisions of this section, or falsifies any such register or return, he or she commits an offence.

Maximum penalty: 10 penalty units.

## **16 Exemption certificates**

- (1) The chief executive or an authorised person may grant a certificate exempting a child from the attendance at school required by this Act if he or she is satisfied—
  - (a) that the child receives efficient instruction at home or elsewhere; or
  - (b) that conditions exist that make it necessary or desirable that the certificate should be granted; or
  - (c) that there is not adequate school accommodation; or
  - (d) that the child is 14 years old or older and has completed the primary school course of study in a school maintained by or on behalf of the Territory or a school registered under this Act, or has been educated up to a standard accepted by the chief executive or an authorised person as equivalent and that the home conditions of the child are such as to warrant exemption.
- (2) A certificate granted under this section shall be in force for the period mentioned in the certificate and no longer.

**18 Truants**

- (1) If, in any prosecution under this Act for failing to cause a child to attend a school, there is evidence of the service of a notice on the parent or guardian that it is intended to charge that the child is a truant, and the court is satisfied that the child is a truant, it may release the child on probation on the terms and conditions and for the period that the court considers appropriate, or may order him or her to be sent to an institution selected by the Minister for the detention of truants.
- (2) A child sent to any such institution under any such order shall be there detained until he or she reaches the school-leaving age, provided that the child may be transferred by the Minister to any other institution.
- (3) If a child has, under this section, been detained in any such institution for any period deemed sufficient by the Minister, the Minister may grant a licence under which the child may leave the institution.
- (4) Any child permitted to leave any such institution under such a licence shall regularly attend the school specified in the licence, and the teacher in charge of the school shall, if the child is absent from the school on any occasion, report to the registrar.
- (5) If, in the opinion of the registrar, the child is not attending the school regularly, the Minister may withdraw the licence and order the child to be again sent to an institution selected by the Minister.
- (6) In the selection of any institution under this section, the Minister shall have regard to the expressed desire of the parent or guardian of the child as to the religious training of the child or, in the absence of any such expressed desire, to the desire of the authorities controlling an institution of the religious denomination to which the child belongs.

- (7) Where, under this section, the court orders a child to be detained in an institution, the court may commit the child to an institution or a State institution until the child reaches the school-leaving age.
- (8) If a child, who has been released on probation, breaks, or is reasonably suspected of having broken, the terms or conditions of his or her release, the court at any time by notice given in the way as the court directs to the parent or guardian of the child, or to the child himself or herself, may direct that the child appear or be brought before the court at a time and place named in the notice and, if the child does not so appear or is not so brought before the court, it may issue a summons for the appearance of the child, or if the circumstances so require issue a warrant for the apprehension of the child.
- (9) On a child appearing or being brought before the court under subsection (8), the court may, if it is satisfied that there has been a breach of the terms or conditions on which the child was released, deal with the child in the same way as if he or she had not been released on probation.
- (10) In this section:

***institution***—see the *Children and Young People Act 1999*, dictionary.

***State institution***—see the *Children and Young People Act 1999*, section 65.

## **19 Payment by parent towards maintenance of child**

If it appears to the court, on complaint by or on behalf of the Minister, that any parent is of ability to maintain or to contribute to the maintenance and training of his or her child during his or her detention as a truant, the court may order the parent to pay to the Territory or to such person or authority as the Minister appoints, a reasonable sum not exceeding \$50 per week for or towards the maintenance and training of the child.



## Part 3 Registered schools

### 20 Definition of *school* for pt 3

In this part:

*school* means any institution at which any person provides, or offers to provide, education at primary school level, high school level or secondary college level, but does not include—

- (a) a school established or maintained by or on behalf of the Territory; or
- (b) a school exempted by the Minister under section 20A (Exemption of schools from pt 3).

### 20A Exemption of schools from pt 3

- (1) The Minister may, in writing, exempt schools from this part.
- (2) An exemption is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### 21 Schools to be registered

- (1) A person shall not establish, maintain or conduct any school unless it is registered or provisionally registered in accordance with this part.

Maximum penalty: 50 penalty units.

- (2) The proprietor or principal teacher of any school shall not receive or permit to be received into any school any child for the purposes of education beyond the education level or levels in relation to which the school is registered or provisionally registered under this part.

Maximum penalty: 10 penalty units.

## **22 Provisional registration**

- (1) If a person has notified the registrar in writing of his or her intention to begin conducting a school at the educational level or levels specified in the notice not later than the prescribed period before the first day of the school year or the school term in which it is proposed to begin conducting the school, that person may apply in writing to the registrar for the provisional registration of the school.
- (2) If a school is—
  - (a) provisionally registered under this section; or
  - (b) registered under section 23;and the proprietor or principal teacher of the school—
  - (c) wishes to change the educational level or levels of the school; and
  - (d) has notified the registrar in writing of his or her intention to begin conducting the school at the educational level or levels specified in the notice not later than the prescribed period before the first day of the school year or the school term in which it is proposed to begin conducting the school at the specified educational level or levels;he or she may apply in writing to the registrar for an additional provisional registration of the school.
- (3) If an application has been made under subsection (1) or (2), the Minister shall appoint a panel of authorised persons to report to the Minister on the proposed school or the proposed educational level or levels of the school.
- (4) If the Minister, having received a report on a school by a panel of authorised persons appointed under subsection (3), is satisfied that—
  - (a) the school will provide adequate facilities and protection for the safety, health and welfare of its students; and

- (b) the nature and content of the instruction to be offered at the school is satisfactory; and
- (c) the proposed organisation and equipment of the school, the efficiency of the teaching staff and the proposed manner of conduct of the school are in accordance with the standards approved by the Minister in relation to schools that are applicable to schools of the kind to which the application relates;

the Minister shall direct the registrar to enter the name of the school on the list of schools kept for this section and to issue a certificate, or an additional certificate, of provisional registration of the school.

- (5) If the Minister gives a direction under subsection (4), the registrar shall enter the name of the school on the list of schools kept for this section and shall issue a certificate, or an additional certificate, of provisional registration of the school.
- (6) A school the name of which appears on the list referred to in subsection (5) shall be taken to be provisionally registered.
- (7) A certificate, or an additional certificate, of provisional registration issued under subsection (5) shall—
  - (a) specify the location where the school is to be established, maintained and conducted and the educational level or levels of the school; and
  - (b) be subject to the following conditions:
    - (i) the school shall provide adequate facilities and protection for the safety, health and welfare of its students;
    - (ii) the nature and content of the instruction offered at the school shall be satisfactory;
    - (iii) the organisation and equipment of the school, the efficiency of the teaching staff and the manner of conduct of the school shall be maintained in accordance with the

standards approved by the Minister in relation to schools that are applicable to the school;

- (iv) the school shall be maintained and conducted at the location specified in the certificate;
  - (v) the school shall only provide education appropriate to the educational level or levels specified in the certificate;
  - (vi) any disciplinary policy implemented at the school shall preclude corporal punishment.
- (8) Provisional registration of a school shall remain in force until the end of the period of 12 months after the date when the relevant certificate was issued or until the registration of the school under section 23, whichever first occurs.
- (9) The Minister may, on written application by a person, approve a period as the prescribed period for the purpose of a notice under subsection (1) or (2) to be given by that person.
- (10) In determining whether to approve a period under subsection (9), the Minister shall have regard to the immediate need for the proposed school, or the proposed educational level or levels of the school, in the relevant location.
- (11) In this section:
- prescribed period***, in relation to a notice under subsection (1) or (2), means—
- (a) if the first day of the school year or the school term in which it is proposed to begin conducting the relevant school is during 1988—7 days; or
  - (b) if the first day of the school year or the school term in which it is proposed to begin conducting the relevant school is during 1989—9 months or any lesser period the Minister approves under subsection (9) in relation to that notice; or

- (c) if the first day of the school year or the school term in which it is proposed to begin conducting the relevant school is during 1990—21 months or any lesser period the Minister approves under subsection (9) in relation to that notice; or
- (d) in any other case—2 years or any lesser period the Minister approves under subsection (9) in relation to that notice.

## **23 Registration**

- (1) If a school is provisionally registered under section 22, the proprietor or principal teacher of the school may apply for the registration of the school at any time after the end of the period of 8 months after the date the school was so provisionally registered.
- (2) If an application has been made under subsection (1), the Minister shall appoint a panel of authorised persons to report to the Minister on the school.
- (3) If the Minister, having received a report on a school by a panel of authorised persons appointed under subsection (2), is satisfied that the school is maintained and conducted in accordance with the conditions referred to in section 22 (7) (b), the Minister shall direct the registrar to issue a certificate of registration of the school for the period, not exceeding 5 years, specified by the Minister.
- (4) If the Minister gives a direction under subsection (3), the registrar shall issue a certificate in accordance with the direction.
- (5) If a certificate is issued under subsection (4) in relation to a school, the school is a registered school for the purposes of this Act for the period specified in the certificate.
- (6) A certificate of registration issued under subsection (4) shall—
  - (a) specify the location where the school is to be maintained and conducted and the educational level or levels of the school; and
  - (b) be subject to the following conditions:

- (i) the school shall provide adequate facilities and protection for the safety, health and welfare of its students;
- (ii) the nature and content of the instruction offered at the school shall be satisfactory;
- (iii) the organisation and equipment of the school, the efficiency of the teaching staff and the manner of conduct of the school shall be maintained in accordance with the standards approved by the Minister in relation to schools that are applicable to the school;
- (iv) the school shall be maintained and conducted at the location specified in the certificate;
- (v) the school shall only provide education appropriate to the educational level or levels of the school specified in the certificate;
- (vi) any disciplinary policy implemented at the school shall preclude corporal punishment.

## **24 Reports**

- (1) If the Minister receives a report for section 22 or 23, in relation to a school, the Minister shall cause a copy of the report to be served on the applicant for provisional registration or for registration of the school, as the case requires.
- (2) A copy of a report may be served on a person under subsection (1) by delivering the copy to that person personally or by post addressed to that person at his or her last-known professional or residential address.

## **25 Renewal of registration**

- (1) The proprietor or principal teacher of a school registered under this Act may apply for the renewal of the registration of that school

before the end of the period of registration or of the last period of renewal of registration of that school, as the case may be.

- (2) If an application has been made under subsection (1), the Minister shall appoint a panel of authorised persons to report to the Minister on the school.
- (3) If the Minister, having received a report on a school by a panel of authorised persons appointed under subsection (2), is satisfied that the school is maintained and conducted in accordance with the conditions to which its registration is subject, the Minister shall direct the registrar to renew the registration for the period, not exceeding 5 years, specified by the Minister, being a period beginning on the end of the period of registration or of the last period of renewal of registration.
- (4) If the Minister gives a direction under subsection (3), the registrar shall renew the relevant registration in accordance with the direction.
- (5) If the registrar renews the registration of a school under subsection (4), the registrar shall notify the applicant in writing of the period of renewal and the school is a registered school for this Act for the period specified in that notification.

## **26 Extension of period of provisional registration or registration**

If an application under section 23 (1) for the registration of a school, or an application under section 25 (1) for the renewal of the registration of a school, has been made before the end of the period during which, apart from this subsection, the provisional registration, or the registration, of the school would have remained in force, then, notwithstanding sections 22 (8), 23 (5) and 25 (5) but otherwise subject to this Act, the provisional registration, or the registration, of the school shall, by force of this section, be taken to have been extended until—

- (a) a certificate of the registration of the school is issued under section 23 (4) or the applicant is notified of the period of renewal of the registration under section 25 (5), as the case requires; or
- (b) the Minister refuses to direct the registrar to issue a certificate of registration of the school under section 23 (3) or to renew the registration of the school under section 25 (3), as the case requires.

## **27 Cancellation of provisional registration or registration of school**

- (1) The Minister may cause a provisionally registered or registered school to be inspected by an authorised person.
- (2) The Minister may make inquiries in relation to—
  - (a) the conduct of a school that is provisionally registered or registered under this Act; and
  - (b) without limiting paragraph (a), any matter that is relevant to a condition to which the certificate of provisional registration or registration of a school is subject.
- (3) The Minister may cancel the provisional registration or the registration of a school if he or she is satisfied—
  - (a) that there is a failure to comply with a condition to which the certificate of provisional registration or registration of the school is subject; or
  - (b) that the proprietor or principal teacher has contravened, or failed to comply with, this Act.

## **28 List of registered schools**

The registrar shall cause to be kept a list of registered primary schools and a list of registered secondary schools.



**29 Inspection of school buildings**

- (1) An authorised person may, at any hour in the daytime, enter any building and premises where a school is held for the purpose of ascertaining whether the building and premises are provided with proper access, drainage, light, ventilation and sanitary conveniences.
- (2) If the Minister considers that the building or premises are not so provided or are in disrepair, he or she may give the proprietor or head teacher notice to provide proper access, drainage, light, ventilation or sanitary conveniences, or to place the building or premises in proper repair.
- (3) If, within 1 month or any further time the Minister directs, the notice has not been complied with to the satisfaction of the Minister, the school, if registered, shall cease to be registered.

**30 Review of decisions**

Application may be made to the administrative appeals tribunal for a review of a decision of the Minister—

- (a) refusing to direct the registrar to enter the name of a school on the list of provisionally registered schools and to issue a certificate, or an additional certificate, of provisional registration under section 22 (4); or
- (b) refusing to grant an exemption under section 22; or
- (c) refusing to direct the registrar to issue a certificate of registration under section 23 (3); or
- (d) directing the registrar to issue a certificate of registration under section 23 (3) for a period of less than 5 years; or
- (e) cancelling the provisional registration or registration of a school under section 27 (3); or
- (f) refusing to direct the registrar to renew the registration of a school under section 25 (3); or

- (g) directing the registrar to renew the registration of a school under section 25 (3) for a period of less than 5 years; or
- (h) giving the proprietor or head teacher of a school notice under section 29 (2).

**30A Notification of decisions**

- (1) If the Minister makes a decision mentioned in section 30 (Review of decisions), the Minister must prepare written notice of the decision.
- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (3) A copy of the notice must be given to—
  - (a) for a decision under section 22 (4), 23 (3) or 25 (3)—the applicant; or
  - (b) for a decision under section 27 (3)—the proprietor or principal teacher; or
  - (c) for a decision under section 29 (2)—the proprietor or head teacher
- (4) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## Part 4                      Miscellaneous

### 31                      Filing of excuses for absence of scholars

If, under this Act, written notice is given to a teacher that a child was prevented by any cause from attending school, the teacher shall file the notice for inspection by the registrar or any attendance inspector.

### 32                      Return by parent or guardian

- (1) Whenever the registrar has reason to believe that there is residing in any dwelling house in the ACT any child aged not less than 6 years nor more than the school-leaving age who is not enrolled as a scholar at a school maintained by or on behalf of the Territory or a school registered under this Act, he or she may deliver at that dwelling house to a person apparently over the age of 16 years and apparently an inmate of the dwelling house, or send to that dwelling house or other place as a registered letter addressed to 'the occupier', a form of return providing for the particulars relating to children aged not less than 6 years nor more than the school-leaving age residing in that dwelling house that he or she thinks necessary to be obtained for this Act.
- (2) The parent or guardian of every child aged not less than 6 years nor more than the school-leaving age shall, within 7 days after receipt of a form of return referred to in subsection (1), complete the return and return it to the registrar.
- (3) A person shall not, in any return given under this section, wilfully make any statement or supply any information which is false or misleading.

Maximum penalty: 30 penalty units.

- (4) Proof of delivery or sending of a form of return in accordance with subsection (1) shall be prima facie evidence of receipt of the form by the parent or guardian of any child aged not less than 6 years nor more than 15 years residing in the dwelling house at or to which the form was delivered or sent—
- (a) for delivery—on the day of the delivery; or
  - (b) for sending as a registered letter—on the day the letter would be delivered in the ordinary course of post.

**33                      Orders sending children to institution**

An order made by the court or by the Minister under this Act that a child be sent to an institution shall be forwarded to the person having the chief immediate control of the institution and shall be a sufficient warrant for the detention of the child under this Act.

**35                      Conveyance of students to and from school**

The Minister may, in his or her discretion, make provision for the conveyance of students to and from any school in the ACT, and for that purpose may—

- (a) provide vehicles; and
- (b) provide grants in aid of conveyance; and
- (c) issue travel warrants; and
- (d) determine in what cases the travelling expenses of a student to and from school may be paid.

**35A                    Minister may grant scholarships etc**

The Minister may grant bursaries, exhibitions, free places, prizes, scholarships or other forms of assistance or reward to be used for the benefit of a student at a school, college or university in the ACT on the terms and conditions the Minister determines.

**35B Educational trust funds etc may be transferred to Territory**

A person administering a trust fund or trust property established for the creation of a bursary, exhibition, free place, prize, scholarship or other form of assistance or reward to be used for the benefit of a student at a school, college or university in the ACT or for educational purposes generally may transfer the fund or trust property to the Territory.

**35C Conditions on which Minister may accept gifts etc for educational purposes**

- (1) If a person—
- (a) gives or bequeaths a sum of money or gives, devises or bequeaths property to the Territory for the purpose of establishing or aiding the endowment of any of the forms of assistance or reward mentioned in section 35A; or
  - (b) transfers a trust fund or trust property to the Territory under section 35B;

the Minister shall give consideration to the wishes of the donor of the gift or of the creator or transferor of the trust fund or trust property about the creation, maintenance or naming of the gift or of the trust fund or trust property.

- (2) Notwithstanding anything to the contrary, the Minister may, in his or her discretion, alter or modify the terms of creation or maintenance of a gift that has been made or of a trust fund or trust property that has been transferred to the Territory under this part.
- (3) If the Territory accepts a gift or the transfer of a trust fund or trust property under this part, the Minister may, in addition to any other powers given to him or her by the donor of the gift or by the creator or transferor of the trust fund or trust property—

- (a) sell, invest or exchange the whole or any part of the gift or of the trust fund or trust property; or
  - (b) invest the whole or any part of the proceeds of sale of the gift or trust property; or
  - (c) apply the whole or any part of the gift or of the trust fund or trust property towards any of the purposes contained in that section; or
  - (d) execute deeds and grant releases;  
on behalf of the Territory.
- (4) Notwithstanding anything to the contrary, the Minister shall not be deemed to be a trustee of any gift made or of any trust fund or trust property transferred to the Territory under this part.

### **36 Prohibition of corporal punishment**

- (1) In civil or criminal proceedings against a member of the staff of a school arising out of physical force applied to a child enrolled as a scholar at the school, it is not a defence that the force was applied to administer corporal punishment to the child and that the degree of force was reasonable in the circumstances.
- (2) In civil or criminal proceedings against a member of the staff of a school arising out of corporal punishment administered to a child enrolled as a scholar at the school, it is not a defence that the corporal punishment was administered by the defendant under a right exercisable in his or her capacity as a member of the staff of the school.
- (3) Subsections (1) and (2) have effect even if a parent or guardian of the relevant child had delegated or purported to delegate to the defendant a right to administer corporal punishment to the child.
- (4) A member of the staff of a school is not to be taken to have administered corporal punishment to a child enrolled as a scholar at

the school only because of action taken solely to prevent personal injury or damage to or the destruction of property.

- (5) Nothing in this section affects any right of a parent or guardian of a child to administer corporal punishment to the child.
- (6) In this section:

***member of the staff***, in relation to a school, includes the head master or principal of the school and any person who performs teaching or other functions at or in connection with the school, whether for remuneration or not.

***school*** means a school—

- (a) conducted and maintained on behalf of the Territory; or
- (b) registered or provisionally registered under this Act.

### **36A Offences on school premises**

- (1) A person must not, without reasonable excuse, trespass on school premises.

Maximum penalty: 5 penalty units.

- (2) A person must not, without reasonable excuse—

- (a) behave in an offensive or disorderly way on school premises;  
or
- (b) fail to leave school premises when directed to do so by a police officer or an authorised person.

Maximum penalty: 10 penalty units.

- (3) In this section:

***authorised person***, for a school, means—

- (a) the person (however described) responsible for the conduct of the school (the ***principal***); or

- (b) a person authorised by the principal to give directions mentioned in subsection (2).

***school*** means a primary school, high school or secondary college—

- (a) conducted on behalf of the Territory; or  
(b) registered or provisionally registered under this Act.

***school premises*** means land (including any building or structure on the land) occupied by a school.

### **37                      Approved forms**

- (1) The registrar may, in writing, approve forms for this Act.  
(2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*        For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

*Note*        A notifiable instrument must be notified under the *Legislation Act 2001*.

### **38                      Regulation-making power**

The Executive may make regulations for this Act.

*Note*        Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.



## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Education Act 1937* No 25 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before becoming Territory enactment

##### **Education Act 1937 No 25**

notified 16 December 1937

commenced 16 December 1937

as amended by

##### **Education Ordinance 1938 No 23**

notified 16 June 1938

commenced 16 June 1938

##### **Education Ordinance 1942 No 6**

notified 3 February 1942

commenced 3 February 1942

##### **Education Ordinance 1947 No 12**

notified 27 November 1947

commenced 27 November 1947

##### **Education Ordinance 1952 No 5**

notified 15 May 1952

commenced 15 May 1952

**Education Ordinance 1956 No 11**

notified 13 December 1956  
commenced 3 December 1956 (s 2)

**Education Ordinance 1958 No 11**

notified 10 July 1958  
commenced 10 July 1958

**Ordinances Revision Ordinance 1959 No 21**

notified 23 December 1959  
commenced 31 December 1959 (s 2)

**Education Ordinance 1964 No 4**

notified 9 April 1964  
commenced 9 April 1964

**Education Ordinance 1966 No 3**

notified 10 February 1966  
commenced 14 February 1966 (s 2)

**Ordinances Revision (Decimal Currency) Ordinance 1966 No 19 (as am by 1967 No 36 and 1978 No 46)**

notified by 23 December 1966  
commenced 23 December 1966

**Education Ordinance 1971 No 28**

notified 28 October 1971  
commenced 1 November 1971 (s 2)

**Education Ordinance 1976 No 13**

notified 13 April 1976  
commenced 13 April 1976

**Education (Amendment) Ordinance 1977 No 63**

notified 14 December 1977  
commenced 14 December 1977

**Ordinances Revision Ordinance 1978 No 46**

notified 28 December 1978  
commenced 28 December 1978

## Endnotes

3 Legislation history

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**Children's Services (Miscellaneous Amendments) Ordinance 1986  
No 14 s 6**

notified 4 June 1986

commenced 26 April 1988 (s 2 and Cwlth Gaz 1988 No S116)

**Education (Amendment) Ordinance 1988 No 48**

notified 3 August 1988

commenced 1 September 1988 (Cwlth Gaz 1988 No GN32)

**Self-Government (Consequential Amendments) Ordinance 1989  
No 38 s 20, sch 1**

commenced 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

s 20, sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

**Legislation after becoming Territory enactment**

**Director of Public Prosecutions (Consequential Provisions) Act 1990  
No 23 sch**

notified 25 June 1990 (Gaz 1990 No S32)

s 1, s 2 commenced 25 June 1990 (s 2 (1))

sch commenced 1 July 1990 (s 2 (2) and Gaz 1990 No S44)

**Public Sector Management (Consequential and Transitional  
Provisions) Act 1994 No 38 sch 1 pt 30**

notified 30 June 1994 (Gaz 1994 No S121)

s 1, s 2 commenced 30 June 1994 (s 2 (1))

sch 1 pt 30 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

**Administrative Appeals (Consequential Amendments) Act 1994 No 60  
sch 1**

notified 11 October 1994 (Gaz 1994 No S197)

s 1, s 2 commenced 11 October 1994 (s 2 (1))

sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

**Education (Amendment) Act 1997 No 19**

notified 29 May 1997 (Gaz 1997 No S136)

commenced 29 May 1997 (s 2)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Children and Young People (Consequential Amendments) Act 1999 No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)

s 1, s 2 commenced 10 November 1999 (s 2 (1))

sch 2 commenced 10 May 2000 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)

commenced 10 November 1999 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 117**

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 117 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

**Education Amendment Act 2001 No 51**

notified 12 July 2001 (Gaz 2001 No 28)

commenced 12 July 2001 (IA s 10)

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.18**

notified 5 September 2001 (Gaz 2001 No S65)

s 1, s 2 commenced 5 September 2001 (s 2(1))

pt 3.18 commenced 5 September 2001 (s 2 (1))

**Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-14 sch 2 pt 2.30**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.30 commenced 9 April 2004 (s 2 (1))

**4 Amendment history****Title**

title am 2001 No 51 s 3

**Repeal**

s 2 am 1959 No 21  
om 2001 No 44 amdt 1.1261

## Endnotes

4 Amendment history

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### Parts

s 4 sub 1964 No 4  
om 1976 No 13

### Definitions for Act

s 5 am 1942 No 6  
sub 1952 No 5  
def **appropriate government school** ins 1977 No 63 s 3  
am 1989 No 38 sch 1  
def **authority** ins 1988 No 48 s 4  
def **authorised person** ins 1976 No 13 s 3  
am 1989 No 38 sch 1; 1994 No 38 sch 1 pt 3  
def **corporal punishment** ins 1997 No 19 s 4  
def **court** ins 1999 No 64 sch 2  
def **department** ins 1976 No 13 s 3  
om 1988 No 48 s 4  
def **educational level** ins 1988 No 48 s 4  
def **high school level** ins 1988 No 48 s 4  
am 1989 No 38 sch 1  
def **inspector of schools** ins 1964 No 4 s 3  
om 1976 No 13 s 3  
def **primary school level** ins 1988 No 48 s 4  
am 1989 No 38 sch 1  
def **secondary college level** ins 1988 No 48 s 4  
am 1989 No 38 sch 1  
def **secretary** ins 1976 No 13 s 3  
sub 1988 No 48 s 4  
om 1989 No 38 sch 1  
def **the court** sub 1958 No 11 s 2  
am 1986 No 14 s 6  
sub 1998 No 48 s 4  
om 1999 No 64 sch 2  
def **tribunal** ins 1988 No 48 s 4  
sub 1989 No 38 sch 1  
om 1994 No 60 sch 1

### Exercise of powers and functions by state authorities

s 6 om 1976 No 13

### Compulsory enrolment

s 8 sub 1942 No 6  
am 1966 No 19 (as am by 1967 No 36 and 1978 No 46); 1976  
No 13; 1988 No 48; 1989 No 38 sch 1; 1998 No 54 sch

### Compulsory attendance

s 9 am No 23, 1938  
sub 1942 No 6  
am 1966 No 19 (as am by 1967 No 36); 1988 No 48; 1998 No  
54 sch

**Employment of children under school-leaving age**

s 9A ins 1947 No 12  
am 1964 No 4; 1966 No 19 (as am by 1967 No 36); 1976 No 13; 1988 No 48; 1998 No 54 sch

**Defence in prosecution against s 8 and s 9**

s 10 am 1942 No 6; 1956 No 11; 1964 No 4; 1966 No 3; 1971 No 28; 1976 No 13; 1977 No 63; 2001 No 56 amdt 3.252

**Certain averments to be evidence**

s 12 am 1947 No 12  
sub 1952 No 5  
am 1976 No 13; 1989 No 38 sch 1

**Certificate of school principal to be evidence**

s 14 am 1942 No 6; 1976 No 13; 1989 No 38 sch 1

**Register of attendances**

s 15 am 1959 No 21; 1966 No 19 (as am by 1967 No 36); 1976 No 13; 1988 No 48; 1998 No 54 sch; 2001 No 44 amds 1.1262-1.1264

**Exemption certificates**

s 16 am 1942 No 6; 1964 No 4; 1976 No 13; 1989 No 38 sch 1; 1994 No 38 sch 1 pt 30

**Certificate of education up to prescribed standard**

s 17 om 1942 No 6

**Truants**

s 18 am 1942 No 6; 1959 No 21; 1964 No 4; 1978 No 46; 1986 No 14 s 6; 1999 No 64 sch 2

**Payment by parent towards maintenance of child**

s 19 am 1966 No 19 (as am by 1967 No 36); 1988 No 48; 1989 No 38 sch 1; 1999 No 66 s 6, sch 3

**Registered schools**

pt 3 hdg sub 1976 No 13

**Definition of school for pt 3**

s 20 am 1964 No 4; 1988 No 48; 1989 No 38 sch 1; 2001 No 44 amdt 1.1265

**Exemption of schools for pt 3**

s 20A ins 2001 No 44 amdt 1.1266

**Schools to be registered**

s 21 am 1966 No 19 (as am by 1967 No 36); 1976 No 13; 1988 No 48; 1998 No 54 sch

## Endnotes

### 4 Amendment history

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#### **Provisional registration**

s 22                    am 1942 No 6  
                         sub 1976 No 13  
                         am 1988 No 48; 1997 No 19 s 5; ss renum R4 LA

#### **Registration**

s 23                    am 1964 No 4  
                         sub 1976 No 13  
                         am 1988 No 48; 1997 No 19 s 6; ss renum R4 LA

#### **Reports**

s 24                    am 1964 No 4; 1976 No 13  
                         sub 1988 No 48

#### **Renewal of registration**

s 25                    am 1976 No 13  
                         sub 1988 No 48

#### **Extension of period of provisional registration or registration**

s 26                    am 1964 No 4; 1976 No 13  
                         sub 1988 No 48

#### **Cancellation of provisional registration or registration of school**

s 27                    sub 1976 No 13  
                         am 1988 No 48; ss renum R4 LA

#### **List of registered schools**

s 28                    am 1976 No 13

#### **Inspection of school buildings**

s 29                    am 1964 No 4; 1976 No 13

#### **Review of decisions**

s 30                    om 1959 No 21  
                         ins 1976 No 13  
                         sub 1988 No 48  
                         am 1994 No 60 sch 1

#### **Notification of decisions**

s 30A                  ins 1988 No 48  
                         am 1989 No 38 sch 1; 1994 No 60 sch 1  
                         sub 2001 No 44 amdt 1.1267

#### **Return by parent or guardian**

s 32                    sub 1942 No 6  
                         am 1966 No 19 (as am by 1967 No 36); 1976 No 13; 1988 No 48; 1989 No 38 sch 1; 1998 No 54 sch



**False or misleading applications**

s 34 sub 1942 No 6  
 am 1956 No 11; No 3, 1966; 1971 No 28; 1976 No 13  
 om 1977 No 63  
 ins 1988 No 48  
 am 1998 No 54 sch  
 om A2004-15 amdt 2.63

**Conveyance of students to and from school**

s 35 sub 1964 No 4

**Minister may grant scholarships etc**

s 35A ins 1964 No 4

**Educational trust funds etc may be transferred to Territory**

s 35B ins 1964 No 4  
 am 1989 No 38 s 20

**Conditions on which Minister may accept gifts etc for educational purposes**

s 35C ins 1964 No 4  
 am 1989 No 38 sch 1

**Prohibition of corporal punishment**

s 36 om 1990 No 23 sch  
 ins 1997 No 19 s 7

**Offences on school premises**

s 36A ins 2001 No 51 s 4

**Approved forms**

s 37 am 1942 No 6  
 sub 1964 No 4  
 am 1989 No 38 sch 1  
 sub 2001 No 44 amdt 1.1268

**Regulation-making power**

s 38 ins 2001 No 44 amdt 1.1268

## Endnotes

5 Earlier republications□

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### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1990 No 23	31 July 1991
2	Act 1994 No 64	31 January 1995
3	Act 1998 No 54	31 July 1999
4	A2001-56	7 May 2002

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