

AUSTRALIAN CAPITAL TERRITORY

Education (Amendment) Ordinance 1988

No. 48 of 1988

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 25 July 1988.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

GARY PUNCH
Minister of State for the Arts
and Territories

An Ordinance to amend the *Education Ordinance 1937*

Short title

1. This Ordinance may be cited as the *Education (Amendment) Ordinance 1988*.¹

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister by notice in the *Gazette*.

Principal Ordinance

3. In this Ordinance, "Principal Ordinance" means the *Education Ordinance 1937*.²

(Ord. 18/88)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Interpretation

4. Section 5 of the Principal Ordinance is amended—

- (a) by omitting the definitions of “Department”, “Secretary” and “the Court”; and
- (b) by inserting the following definitions in their respective appropriate alphabetical positions:

“ ‘Authority’ means the Australian Capital Territory Schools Authority;

‘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 in the Territory by the Authority on behalf of the Commonwealth;

‘primary school level’ means the level of education provided by a primary school conducted in the Territory by the Authority on behalf of the Commonwealth;

‘secondary college level’ means the level of education provided by a secondary college conducted in the Territory by the Authority on behalf of the Commonwealth;

‘Secretary’ means Secretary to the Department;

‘the Court’ means the Magistrates Court when known as the Childrens Court by virtue of section 20 of the *Children’s Services Ordinance 1986*;

‘Tribunal’ means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975*.”.

Compulsory enrolment

5. Section 8 of the Principal Ordinance is amended—

- (a) by inserting in subsection (1) “or provisionally registered” after “registered”;
- (b) by omitting subsection (2); and

- (c) by omitting the penalty set out at the foot of subsection (1) and substituting the following:

“Penalty: \$500.”.

Compulsory attendance

6. Section 9 of the Principal Ordinance is amended by omitting the penalty set out at the foot of the section and substituting the following:

“Penalty: \$500.”.

Employment of children under school leaving age

7. Section 9A of the Principal Ordinance is amended—

- (a) by omitting from subsection (1) “Any person who by paid employment or otherwise employs, or permits” and substituting “A person shall not employ, or permit”;
- (b) by omitting from subsection (1) “shall be guilty of an offence”; and
- (c) by omitting the penalty set out at the foot of subsection (1) and substituting the following:

“Penalty: \$500.”.

Register of attendances

8. Section 15 of the Principal Ordinance is amended by omitting the penalty set out at the foot of the section and substituting the following:

“Penalty: \$1,000.”.

Payment by parent towards maintenance of child

9. Section 19 of the Principal Ordinance is amended—

- (a) by omitting from subsection (1) “Two dollars” and substituting “\$50”; and
- (b) by omitting from subsection (2) “Infant Protection Act 1904, of the State of New South Wales, in its application to the Territory” and substituting “*Maintenance Ordinance 1968*”.

Definition of “school”

10. Section 20 of the Principal Ordinance is amended—

- (a) by omitting all the words from and including “an assembly” to and including “Accountancy” and substituting “any institution at which any person provides, or offers to provide, education at primary school level, high school level or secondary college level”;
- (b) by adding at the end of paragraph (a) “or”; and
- (c) by omitting paragraphs (b) and (c).

Schools to be registered

11. Section 21 of the Principal Ordinance is amended—

- (a) by omitting the penalty set out at the foot of subsection (1);
- (b) by omitting from subsection (2) “standard” and substituting “education level or levels”; and
- (c) by omitting the penalty set out at the foot of the section and substituting the following:

“Penalty: \$1,000.”.

Provisional registration

12. Section 22 of the Principal Ordinance is amended—

- (a) by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Where a person has notified the Registrar in writing of his or her intention to commence 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 commence conducting the school, that person may make application in writing to the Registrar for the provisional registration of the school.

“(1A) Where 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 commence 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 commence 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.

“(1B) Where an application has been made under subsection (1) or (1A), 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.

“(2) Where the Minister, having received a report on a school by a panel of authorised persons appointed under subsection (1B), is satisfied that—

- (a) the school will provide adequate facilities and protection for the safety, health and welfare of its students;
- (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 such standards approved by the Minister in relation to schools as 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 the purposes of this section and to issue a certificate, or an additional certificate, of provisional registration of the school.”;

- (b) by inserting in subsection (3) “and shall issue a certificate, or an additional certificate, of provisional registration of the school” after “section”; and
- (c) by omitting subsection (5) and substituting the following subsections:

“(5) A certificate, or an additional certificate, of provisional registration issued under subsection (3) shall—

- (a) specify the location at which 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 such standards approved by the Minister in relation to schools as 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.

“(6) Provisional registration of a school shall remain in force until the expiration of the period of 12 months after the date on which the relevant certificate was issued or until the registration of the school under section 23, whichever first occurs.

“(7) The Minister may, upon application in writing by a person, approve a period as the prescribed period for the purpose of a notice under subsection (1) or (1A), as the case may be, to be given by that person.

“(8) In determining whether to approve a period under subsection (7), 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.

“(9) In this section, ‘prescribed period’, in relation to a notice under subsection (1) or (1A), means—

- (a) where the first day of the school year or the school term in which it is proposed to commence conducting the relevant school is during 1988—7 days;
- (b) where the first day of the school year or the school term in which it is proposed to commence conducting the relevant school is during 1989—9 months or such lesser period as the Minister approves under subsection (7) in relation to that notice;
- (c) where the first day of the school year or the school term in which it is proposed to commence conducting the relevant school is during 1990—21 months or such lesser period as the Minister approves under subsection (7) in relation to that notice; or
- (d) in any other case—2 years or such lesser period as the Minister approves under subsection (7) in relation to that notice.”.

Registration

13. Section 23 of the Principal Ordinance is amended—

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) Where 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 expiration of the period of 8 months after the date on which the school was so provisionally registered.

“(1A) Where 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.

“(1B) Where the Minister, having received a report on a school by a panel of authorised persons appointed under subsection (1A), is satisfied that the school is maintained and conducted in accordance with the conditions referred to in paragraph 22 (5) (b), the Minister shall direct the Registrar to issue a certificate of registration of the school for such period, not exceeding 5 years, as is specified by the Minister.

“(1C) Where the Minister gives a direction under subsection (1B), the Registrar shall issue a certificate in accordance with the direction.”;

- (b) by omitting from subsection (2) “sub-section (1)” and substituting “subsection (1C)”; and
- (c) by adding at the end the following subsection:

“(3) A certificate of registration issued under subsection (1C) shall—

- (a) specify the location at which 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 such standards approved by the Minister in relation to schools as 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.”.

Substitution

14. Sections 24, 25 and 26 of the Principal Ordinance are repealed and the following sections substituted:

Reports

“24. (1) Where the Minister receives a report for the purposes of 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.

Renewal of registration

“25. (1) The proprietor or principal teacher of a school registered under this Ordinance may apply for the renewal of the registration of that school before the expiration of the period of registration or of the last period of renewal of registration of that school, as the case may be.

“(2) Where 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) Where 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 such period, not exceeding 5 years, as is specified by the Minister, being a period commencing on the expiration of the period of registration or of the last period of renewal of registration.

“(4) Where the Minister gives a direction under subsection (3), the Registrar shall renew the relevant registration in accordance with the direction.

“(5) Where 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 the purposes of this Ordinance for the period specified in that notification.

Extension of period of provisional registration or registration

“26. Where an application under subsection 23 (1) for the registration of a school, or an application under subsection 25 (1) for the renewal of the registration of a school, has been made before the expiration of the period during which, but for this subsection, the provisional registration, or the registration, of the school would have remained in force, then, notwithstanding

subsections 22 (6), 23 (2) and 25 (5) but otherwise subject to this Ordinance, 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 subsection 23 (1C) or the applicant is notified of the period of renewal of the registration pursuant to subsection 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 subsection 23 (1B) or to renew the registration of the school under subsection 25 (3), as the case requires.”.

Cancellation of provisional registration or registration of school

15. Section 27 of the Principal Ordinance is amended—

- (a) by inserting in subsection (1) “provisionally registered or” before “registered”;
- (b) by inserting after subsection (1) the following subsection:
 - “(1A) The Minister may make inquiries in relation to—
 - (a) the conduct of a school that is provisionally registered or registered under this Ordinance; and
 - (b) without limiting the generality of paragraph (a), any matter that is relevant to a condition to which the certificate of provisional registration or registration of a school is subject.”;
- (c) by inserting in subsection (2) “the provisional registration or” before “the registration”; and
- (d) by omitting paragraph (2) (a) and substituting the following paragraph:
 - “(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”.

Substitution

16. Section 30 of the Principal Ordinance is repealed and the following sections are substituted:

Review of decisions

“30. Application may be made to the 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 subsection 22 (2);
- (b) refusing to grant an exemption under section 22;
- (c) refusing to direct the Registrar to issue a certificate of registration under subsection 23 (1B);
- (d) directing the Registrar to issue a certificate of registration under subsection 23 (1B) for a period of less than 5 years;
- (e) cancelling the provisional registration or registration of a school under subsection 27 (2);
- (f) refusing to direct the Registrar to renew the registration of a school under subsection 25 (3);
- (g) directing the Registrar to renew the registration of a school under subsection 25 (3) for a period of less than 5 years; or
- (h) giving the proprietor or head teacher of a school notice under subsection 29 (2).

Notification of decisions

“30A. (1) Where the Minister makes a decision referred to in section 30, the Minister shall—

- (a) cause a notice of the decision to be published in the *Gazette* and a newspaper circulating in the Territory; and
- (b) cause notice in writing of the decision to be given—
 - (i) in the case of a decision referred to in subsection 22 (2), 23 (1B) or 25 (3)—to the applicant;

- (ii) in the case of a decision referred to in subsection 27 (2)—to the proprietor or principal teacher; or
- (iii) in the case of a decision referred to in subsection 29 (2)—to the proprietor or head teacher.

“(2) A notice referred to in subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 28 (4) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

“(3) The validity of a decision referred to in subsection (1) shall not be taken to be affected by a failure to comply with subsection (2).”.

Return by parent or guardian

17. Section 32 of the Principal Ordinance is amended—

- (a) by omitting the penalty set out at the foot of subsection (2); and
- (b) by omitting the penalty set out at the foot of subsection (3) and substituting the following:

“Penalty: \$500.”.

Insertion

18. After section 33 of the Principal Ordinance the following section is inserted:

False or misleading applications

“34. A person shall not knowingly make, in an application under subsection 22 (1) or (1A), 23 (1) or 25 (1), a statement that is false or misleading in a material particular.

Penalty: \$1,000.”.

Transitional

19. (1) Where, immediately before the commencement of this Ordinance, a school was provisionally registered or registered under the Principal Ordinance, that provisional registration or registration shall, subject to this Ordinance, continue in force for the period for which it would have remained in force if this Ordinance had not been made as if it had been granted for that period under the Principal Ordinance as amended by this Ordinance.

(2) Where, before the commencement of this Ordinance, an application under section 22 of the Principal Ordinance had been made but that application had not been determined before that commencement, that application shall be deemed to have been made under section 22 of the Principal Ordinance as amended by this Ordinance and, for the purposes of the Principal Ordinance so amended, the notice that would have been required under subsection 22 (1) or (1A) of the Principal Ordinance as so amended in relation to that application if that application had been made on the date of commencement of this Ordinance shall be deemed to have been given in accordance with that subsection.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 3 August 1988.
2. No. 25, 1937 as amended by No. 23, 1938; No. 6, 1942; No. 12, 1947; No. 5, 1952; No. 11, 1956; No. 11, 1958; No. 21, 1959; No. 4, 1964; Nos. 3 and 19, 1966; No. 36, 1967; No. 28, 1971; No. 13, 1976; No. 63, 1977; No. 46, 1978; No. 14, 1986.