



Australian Capital Territory

# Education (Participation) Amendment Act 2009

A2009-40

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Australian Capital Territory

# Education (Participation) Amendment Act 2009

A2009-40

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An Act to amend the *Education Act 2004*, and for other purposes

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

**1 Name of Act**

This Act is the *Education (Participation) Amendment Act 2009*.

**2 Commencement**

This Act commences on 1 January 2010.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

This Act amends the *Education Act 2004*.

*Note* This Act also amends the following legislation (see sch 1):

- *Children and Young People Act 2008*
- *Evidence (Miscellaneous Provisions) Act 1991*.

**4 Main objects of Act  
Section 8 (b)**

*substitute*

- (b) to promote compulsory education by ensuring that—
- (i) children complete year 10; and
  - (ii) children participate in education until they are 17 years old or complete year 12 (whichever happens first), with the opportunity to participate in training or employment after year 10; and
- (ba) to state the circumstances in which school attendance is not required, including providing for suspension and exclusion from school; and

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**5 Chapter 2***substitute***Chapter 2 Compulsory education****Part 2.1 Preliminary—ch 2****9 Meaning of *compulsory education age*—ch 2**

For this chapter, a child is of *compulsory education age* if the child is at least 6 years old and under the age that the first of the following happens:

- (a) the child is 17 years old;
- (b) the child completes year 12.

**9A Meaning of *education course* and *education provider*—Act**

- (1) For this Act, each of the courses mentioned in table 9A, column 2 is an *education course*, and the entity mentioned in column 3 for the course is the provider (the *education provider*) of the course.
- (2) Also, the chief executive may approve another course as an *education course* and an entity as the provider (the *education provider*) of the course.
- (3) An approval is a notifiable instrument.

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

Table 9A

<b>column 1 item</b>	<b>column 2 education course</b>	<b>column 3 education provider</b>
1	a course of study	a school
2	a course of study	a school under a law of a State or another Territory
3	a course of study leading to the completion of year 10 or year 12	a registered training organisation under the <i>Training and Tertiary Education Act 2003</i> or a registered training organisation (however described) under a law of a State or another Territory
4	a vocational education and training course under the <i>Training and Tertiary Education Act 2003</i>	a registered training organisation under the <i>Training and Tertiary Education Act 2003</i>
5	a vocational education and training course (however described) under a law of a State or another Territory	a registered training organisation (however described) under a law of a State or another Territory
6	a higher education course under the <i>Training and Tertiary Education Act 2003</i>	a higher education provider under the <i>Training and Tertiary Education Act 2003</i>
7	a higher education course under the <i>Training and Tertiary Education Act 2003</i>	a university under the <i>Training and Tertiary Education Act 2003</i>

**9B Meaning of *completes year 10*—Act**

- (1) For this Act, a child *completes year 10* at an education provider if the child—
- (a) is awarded or has completed the requirements for being awarded a year 10 certificate (however described) by the provider; or
  - (b) is given or has completed the requirements for being given a high school record (however described) in relation to year 10 by the provider; or
  - (c) is awarded a certificate (however described) approved by the chief executive.

- (2) An approval is a notifiable instrument.

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

- (3) Also, for this Act, a child *completes year 10* if—
- (a) the child is awarded or has completed the requirements for being awarded a year 10 certificate (however described) in a State or another Territory under a law of the State or Territory; or
  - (b) the chief executive is satisfied on reasonable grounds that the child has completed year 10 or its equivalent in the ACT, a State, another Territory or a foreign country.
- (4) A child mentioned in subsection (3) (b) may be given a certificate or record by the chief executive.

*Note* If a form is approved under s 154 for s (4), the form must be used.

**9C Meaning of *completes year 12*—Act**

(1) For this Act, a child *completes year 12* if the child is awarded or has completed the requirements for being awarded—

(a) a year 12 certificate (however described) by the Board of Senior Secondary Studies under the *Board of Senior Secondary Studies Act 1997*; or

(b) a certificate equivalent to a year 12 certificate that shows completion of a higher education pre-entry course; or

**Examples**

1 the Certificate of General Education for Adults (at Certificate II or above)

2 the International Baccalaureate

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(c) a certificate equivalent to a year 12 certificate issued under the AQF; or

**Example**

the Australian Qualification Framework (AQF) Certificate II

(d) a certificate (however described) approved by the chief executive.

(2) An approval is a notifiable instrument.

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

(3) Also, for this Act, a child *completes year 12* if—

(a) the child is awarded or has completed the requirements for being awarded a year 12 certificate (however described) in a State or another Territory under a law of the State or Territory; or



- (b) the chief executive is satisfied on reasonable grounds that the child has completed year 12 or its equivalent in the ACT, a State, another Territory or a foreign country.
- (4) A child mentioned in subsection (3) (b) may be given a certificate or record by the chief executive.

*Note* If a form is approved under s 154 for s (4), the form must be used.

- (5) In this section:

*AQF*—see the *Training and Tertiary Education Act 2003*, dictionary.

## **9D Guidelines—certain chief executive functions**

- (1) The chief executive may make guidelines about the exercise of the chief executive's functions under the following provisions:
- section 10 (5) (c) (Child of compulsory education age—enrolment and registration requirement);
  - section 10A (3) (Child of compulsory education age—enrolment and registration requirement);
  - section 10D (4) (Child of compulsory education age—participation requirement);
  - section 14D (3) (Approval statement—compliance requirement).
- (2) A guideline is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (3) The chief executive must comply with any guidelines.

## **Part 2.2                    Compulsory education requirements**

### **Division 2.2.1            Enrolment, registration and attendance requirements**

#### **10                    Child of compulsory education age—enrolment and registration requirement**

- (1) This section applies if a child—
  - (a) lives in the ACT; and
  - (b) is of compulsory education age.
- (2) The child's parents must do either or both of the following:
  - (a) enrol the child at an education provider for the purpose of the provider's education course not later than 14 days after the day the course starts;
  - (b) apply to register the child for home education not later than 10 school term days after the first of the following happens:
    - (i) the start of the school year;
    - (ii) the day the child begins to live in the ACT.
- (3) Also, the child's parents must enrol the child under subsection (2) (a) not later than 10 school term days after—
  - (a) the day the child turns 6 years old; or
  - (b) for a child who has not completed year 10—the day the child begins to live in the ACT.

- (4) If the child's enrolment at an education provider is cancelled by the child's parents, the parents must do either or both of the following within 14 days after the day the enrolment is cancelled:
- (a) enrol the child at another education provider for the purpose of the provider's education course;
  - (b) apply to register the child for home education.
- (5) This section does not apply if—
- (a) an exemption certificate is in force for the child; or
  - (b) the child is participating in a training or employment alternative in accordance with part 2.4 (After year 10—training and employment alternatives); or
  - (c) the child's parents have an excuse for not complying with this section that the chief executive is satisfied is a reasonable excuse.

*Note 1* The chief executive must comply with any guidelines about the exercise of the chief executive's functions under s (5) (c) (see s 9D).

*Note 2* For offences in relation to this requirement, see pt 2.6 (Offences—parents).

## **10A Child of compulsory education age—school attendance requirement**

- (1) This section applies if a child—
- (a) lives in the ACT; and
  - (b) is of compulsory education age; and
  - (c) is enrolled at a school.
- (2) The child's parents must ensure that the child—
- (a) attends the school on every day, and during the times on every day, when the school is open for attendance; and

- (b) attends every activity of the school (including attendance at an approved educational course) that the school requires the child to attend.
- (3) This section does not apply if the child's parents have an excuse for not complying with this section that the chief executive is satisfied is a reasonable excuse.

*Note 1* The chief executive must comply with any guidelines about the exercise of the chief executive's functions under s (3) (see s 9D).

*Note 2* For offences in relation to this requirement, see pt 2.6 (Offences—parents).

## **Division 2.2.2 Participation requirement**

### **10B Meaning of *participates* in education course—div 2.2.2**

For this division, a child *participates* in an education course if the child complies with—

- (a) the provider's requirements about physically attending, at particular times, the provider's premises or another place; or
- (b) for an education course that is completed by distance education (however described)—the provider's requirements for distance education.

#### **Examples—par (b)**

- 1 complete and return the assigned work for the course
- 2 communicate with or contact the provider for the purpose of participating in the course
- 3 attend the provider for 1 week twice a year

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**10C      Meaning of *full-time participation* in education course—  
div 2.2.2**

- (1) For this division, *full-time participation* in an education course means participation in the course—
  - (a) at a level that is full-time under the requirements of the course;  
or
  - (b) for at least 25 hours each week.
- (2) Also, for this division, *full-time participation* in an education course includes—
  - (a) part-time participation in 2 or more education courses to an extent that is at least equivalent to full-time participation in 1 education course; and
  - (b) participation in any combination of the following that is equivalent to full-time participation in 1 education course:
    - (i) an education course;
    - (ii) a training alternative;
    - (iii) an employment alternative.

*Note*      A child needs the chief executive's approval to participate in a training or employment alternative (see pt 2.4 (After year 10—training and employment alternatives)).

**10D      Child of compulsory education age—participation  
requirement**

- (1) This section applies if a child—
  - (a) lives in the ACT; and
  - (b) is of compulsory education age; and
  - (c) is enrolled at an education provider other than a school for the purpose of the provider's education course.

- (2) The child's parents must ensure that the child participates in the education course.
- (3) Also, the child's participation must be—
  - (a) full-time participation (the *full-time participation requirement*); or
  - (b) if an exemption certificate is in force for the child for the course—participation in accordance with the certificate.
- (4) This section does not apply if the child's parents have an excuse for not complying with this section that the chief executive is satisfied is a reasonable excuse.

*Note 1* The chief executive must comply with any guidelines about the exercise of the chief executive's functions under s (4) (see s 9D).

*Note 2* For offences in relation to this requirement, see pt 2.6 (Offences—parents).

## **11 Participation requirement—absence**

A child's participation in an education course is taken for this Act to continue during an absence that is—

- (a) allowed under the requirements of the course or by the provider of the course; or
- (b) required under a territory law or a law of the Commonwealth, a State or another Territory.

### **Example—par (b)**

Will is absent from an education provider because a public health direction under the *Public Health Act 1997* requires that he be confined to home for 2 weeks.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**11A Participation requirement—suspension**

- (1) This section applies if a child participating in an education course stops attending the provider because the child has been suspended from attending the provider.
- (2) The child's participation in the course is taken for this Act to continue during the suspension period.

**11B Participation requirement—exclusion**

- (1) This section applies if a child participating in an education course stops attending the provider because the child has been excluded from attending the provider.
- (2) The child's participation in the course is taken for this Act to continue—
  - (a) at the same level as before the exclusion; and
  - (b) for the time reasonably required for the child to resume participation in an education course or apply for approval to participate in a training or employment alternative under part 2.4 (After year 10—training and employment alternatives).

**Division 2.2.3 Information requirement****11C Giving information notice**

- (1) This section applies if a child—
  - (a) lives in the ACT; and
  - (b) is at least 6 years old but under 17 years old.
- (2) The chief executive may give a written notice (an *information notice*) to the child's parents if the chief executive believes on reasonable grounds that—
  - (a) the child is not enrolled at an education provider; or

- (b) the child is not registered for home education; or
- (c) if the child is enrolled at a school—the child is not attending the school; or
- (d) if the child is enrolled at an education provider other than a school for the purpose of the provider’s education course—the child is not participating in the course or the child is contravening section 10D (3) (Child of compulsory education age—participation requirement); or
- (e) the child is not participating in a training or employment alternative in accordance with part 2.4 (After year 10—training and employment alternatives).

*Note* For how documents may be served, see the Legislation Act, pt 19.5.

#### **11D Contents of information notice**

- (1) An information notice in relation to a child must—
  - (a) state that it is an information notice under this Act; and
  - (b) state the information sought; and
  - (c) state what the child’s parents need to do to comply with the notice; and
  - (d) state the period for complying with the notice; and
  - (e) contain a statement to the effect that failure to comply with the notice is an offence.
- (2) The information notice may include any other information the chief executive considers appropriate.



**11E Extension of time for compliance with information notice**

- (1) This section applies if a child's parents have been given an information notice.
- (2) The chief executive may, by written notice given to the child's parents, extend the compliance period for the information notice on the chief executive's own initiative or if asked by the parents.
- (3) However, the chief executive may extend the compliance period only if the period has not ended.
- (4) In this section:

*compliance period* means the period stated in the information notice under section 11D (1) (d), and includes the period as extended under this section.

**11F Revocation of information notice on compliance**

If the chief executive is satisfied on reasonable grounds that an information notice given to a child's parents has been complied with, the chief executive must revoke the notice by written notice given to the parents.

**Part 2.3 Exemption certificates**

**11G Meaning of *full-time participation requirement*—pt 2.3**

In this part:

*full-time participation requirement*—see section 10D (3).

### **11H Exemption certificate—application**

- (1) A child or the child's parents may apply to the chief executive for a certificate (an *exemption certificate*) exempting the child from—
  - (a) the requirement to be enrolled at an education provider or registered for home education; or  
*Note* See s 10 (Child of compulsory education age—enrolment and registration requirement).
  - (b) the full-time participation requirement.  
*Note* See s 10D (Child of compulsory education age—participation requirement).
- (2) Application may be made for either or both of the following:
  - (a) exempting the child until the child is 17 years old or for a shorter period;
  - (b) exempting the child from the full-time participation requirement.
- (3) An application made by a child must contain the signed consent of the child's parents.
- (4) However, subsection (3) does not apply if the chief executive is satisfied on reasonable grounds that it is not appropriate to require the signed consent.  
*Note* If a form is approved under s 154 for this provision, the form must be used.

### **12 Exemption certificate—requirement for further information**

- (1) The chief executive may give an applicant mentioned in section 11H (1) a written notice requiring the applicant to give the chief executive stated further information or documents that the chief executive reasonably needs to decide the application.

- (2) If the applicant does not comply with the requirement, the chief executive may refuse to consider the application further.

## **12A Exemption certificate—issue**

- (1) The chief executive may—
- (a) issue an exemption certificate for a child if the chief executive is satisfied on reasonable grounds that it is in the child's best interests to issue the certificate; or
  - (b) refuse to issue an exemption certificate for a child.
- (2) Without limiting subsection (1) (a), in deciding whether it is in a child's best interests to exempt the child, the chief executive may consider the following:
- (a) the child's health;
  - (b) the child's education;
  - (c) the child's sense of racial, ethnic, religious or cultural identity;
  - (d) the child's development;
  - (e) whether the exemption would benefit the child.

### **Example—par (e)**

Felicity's education alternative finishes shortly before she turns 17. The chief executive is satisfied that exempting Felicity from participating in another education alternative until she turns 17 benefits her, because it means that she is not compelled to participate in another education alternative for a short time just to comply with the participation requirement.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) An exemption certificate for a child may be issued for either or both of the following:
- (a) exempting the child until the child is 17 years old or for a shorter period;
  - (b) exempting the child from the full-time participation requirement.

**12B Exemption certificate—form**

An exemption certificate issued for a child must—

- (a) state the day it is issued; and
- (b) state the child's name; and
- (c) state the period for which it is in force; and
- (d) for an exemption from the full-time participation requirement—state the exemption and the extent to which the child must participate; and
- (e) state any condition to which it is subject; and
- (f) contain any other particulars prescribed by regulation.

**12C Exemption certificate—conditions**

The chief executive may issue an exemption certificate subject to any condition that the chief executive believes on reasonable grounds is appropriate.

**12D Exemption certificate—duration**

An exemption certificate may be issued for a child until—

- (a) the end of the period stated in the certificate; or
- (b) the ground for the issue of the certificate no longer applies in relation to the child.

**13 Exemption certificate—revocation**

The chief executive may revoke an exemption certificate issued for a child if—

- (a) the certificate is issued in error; or
- (b) the ground for the issue of the certificate no longer applies in relation to the child; or
- (c) a condition of the certificate has been contravened.

**Part 2.4 After year 10—training and employment alternatives****Division 2.4.1 Definitions—pt 2.4****13A Meaning of *training alternative* and *training alternative provider*—Act**

- (1) For this Act, each training mentioned in table 13A, column 2 is a *training alternative*, and the entity mentioned in column 3 for the training alternative is the provider (the *training alternative provider*) of the training alternative.
- (2) Also, the chief executive may approve other training as a *training alternative*, and an entity as the provider (the *training alternative provider*) of the training alternative.
- (3) An approval is a notifiable instrument.

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

Table 13A

column 1 item	column 2 training alternative	column 3 training alternative provider
1	work-related training under the <i>Training and Tertiary Education Act 2003</i>	employer with whom child has approved training contract under the <i>Training and Tertiary Education Act 2003</i> in relation to the work-related training
2	work-related training (however described) under a law of a State or another Territory	provider (however described) under a law of the State or other Territory

### 13B Meaning of *employment alternative*—Act

For this Act, each of the following is an *employment alternative*:

- (a) performance of paid work under a contract of service (whether written or unwritten);
- (b) performance of paid work under a contract for services (whether written or unwritten).

*Note* The *Children and Young People Act 2008*, ch 21 deals with the employment of children and young people.

### 13C Meaning of *full-time participation in training or employment alternative*—pt 2.4

- (1) For this part, *full-time participation* in a training or employment alternative means participation in the alternative—
  - (a) at a level that is full-time under the requirements of the alternative; or
  - (b) for at least 25 hours each week.

- 
- (2) Also, for this part, *full-time participation* in a training or employment alternative includes—
- (a) part-time participation in 2 or more of a particular alternative to an extent that is at least equivalent to full-time participation in 1 of the particular alternatives; and
  - (b) participation in any combination of training and employment alternatives to an extent that is at least equivalent to full-time participation in 1 training or employment alternative.

**Example—s (2) (a)**

part-time participation in 2 or more training alternatives to an extent that is at least equivalent to full-time participation in 1 training alternative

**Example—s (2) (b)**

part-time participation in a training alternative and part-time participation in an employment alternative for a combined total of at least 25 hours each week

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **Division 2.4.2 Approval to participate in training and employment alternatives**

### **13D Approval statement—application**

- (1) A child or the child's parents may apply to the chief executive for a statement (an *approval statement*) approving the child's participation in a training or employment alternative during the child's post-year 10 period.
- (2) Application may be made for either or both of the following:
  - (a) approving the child's participation in a training or employment alternative for all or part of the child's post-year 10 period;
  - (b) approving that the child's participation in a training or employment alternative be other than full-time participation.

- (3) An application made by a child must contain the signed consent of the child's parents.
- (4) However, subsection (3) does not apply if the chief executive is satisfied on reasonable grounds that it is not appropriate to require the signed consent.
- (5) For this section, a child's *post-year 10 period* starts when the child completes year 10 and ends when the first of the following happens:
  - (a) the child completes year 12;
  - (b) the child is 17 years old.

*Note* If a form is approved under s 154 for this provision, the form must be used.

#### **14 Approval statement—requirement for further information**

- (1) The chief executive may give an applicant mentioned in section 13D (1) a written notice requiring the applicant to give the chief executive stated further information or documents that the chief executive reasonably needs to decide the application.
- (2) If the applicant does not comply with the requirement, the chief executive may refuse to consider the application further.

#### **14A Approval statement—issue**

- (1) The chief executive may—
  - (a) issue an approval statement for a child if the chief executive is satisfied on reasonable grounds that it is in the child's best interests to issue the statement; or
  - (b) refuse to issue an approval statement for a child.
- (2) Without limiting subsection (1) (a), in deciding whether it is in a child's best interests to issue an approval statement for the child, the chief executive may consider the following:
  - (a) the child's health;



- (b) the child's education;
- (c) the child's sense of racial, ethnic, religious or cultural identity;
- (d) the child's development;
- (e) whether the training or employment alternative for which the statement is sought would benefit the child.

**Example—par (e)**

Thomas is 15 years old, has completed year 10 and wants to be a chef. Thomas has been offered an apprenticeship with a chef. The chief executive decides that it is in Thomas's best interests to issue an approval statement for him, because it means that Thomas can pursue the career path that he wants to pursue.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) An approval statement may be issued for a child for either or both of the following:
  - (a) approving the child's participation in a training or employment alternative for all or part of the child's post-year 10 period;
  - (b) approving that the child's participation in a training or employment alternative be other than full-time participation.
- (4) In this section:  
*post-year 10 period*—see section 13D (5).

**14B Approval statement—form**

An approval statement issued for a child must—

- (a) state the day it is issued; and
- (b) state the child's name; and
- (c) state the period for which it is in force; and

- (d) if the child's approved participation in a training or employment alternative is other than full-time participation—state the approval and the extent to which the child is required to participate in the alternative; and
- (e) state any condition to which it is subject; and
- (f) contain any other particulars prescribed by regulation.

**14C Approval statement—conditions**

- (1) An approval statement issued for a child is subject to a condition that—
  - (a) the child's participation is full-time participation unless otherwise stated in the statement; or
  - (b) if the statement contains a statement mentioned in section 14B (d)—the child must comply with the stated participation requirement.
- (2) An approval statement that approves a child's participation in a training alternative is also subject to each of the following conditions:
  - (a) that the child is enrolled with the training alternative provider;
  - (b) that the child complies with the training alternative provider's attendance requirements.
- (3) The training alternative provider's attendance requirements are the requirements about physically attending, at particular times, the provider's premises or another place.

- (4) The chief executive may issue an approval statement subject to any condition that the chief executive believes on reasonable grounds is appropriate.

**Example—s (4)**

Farouk wants to participate part-time in an education course and part-time in an employment alternative (he wants to work at least 10 hours each week). Under this Act, an approval statement is not required for an education course, but is for an employment alternative. The chief executive issues an approval statement for the employment alternative that states that Farouk's approved participation in that employment is part-time, and that he must participate in that employment for at least 10 hours each week. The chief executive also puts a condition on the approval statement that Farouk must participate in the education course for at least 15 hours each week.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**14D Approval statement—compliance requirement**

- (1) This section applies if an approval statement is issued for a child.
- (2) The child's parents must ensure that the child complies with the statement, including any conditions of the statement.
- (3) This section does not apply if the child's parents have an excuse for not complying with this section that the chief executive is satisfied is a reasonable excuse.

*Note 1* The chief executive must comply with any guidelines about the exercise of the chief executive's functions under s (3) (see s 9D).

*Note 2* For offences in relation to this requirement, see pt 2.6 (Offences—parents).

**15 Approval statement—duration**

An approval statement may be issued for a child until—

- (a) the end of the period stated in the statement; or
- (b) the ground for the issue of the statement no longer applies in relation to the child.

**15A Approval statement—revocation**

The chief executive may revoke an approval statement issued for a child if—

- (a) the statement is issued in error; or
- (b) the ground for the issue of the statement no longer applies in relation to the child; or
- (c) a condition of the statement has been contravened.

**15B Return to education while approval statement in force**

- (1) This section applies if—
  - (a) an approval statement is in force for a child; and
  - (b) the child is enrolled at an education provider for the purpose of the provider's education course.
- (2) The child's parents must tell the chief executive in writing about the enrolment.

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### **Division 2.4.3      Training and employment alternatives—deemed participation**

#### **15C      Training and employment alternatives—absence**

A child's participation in a training or employment alternative is taken for this Act to continue during an absence that is—

- (a) allowed under the requirements of the alternative; or
- (b) required under a territory law or a law of the Commonwealth, a State or another Territory.

**Example—par (b)**

Sarah is absent from a training alternative provider because a personal protection order prohibits her from attending the provider.

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

#### **15D      Training alternative—suspension**

- (1) This section applies if a child participating in a training alternative stops attending the training alternative provider because the child has been suspended from attending the provider.
- (2) The child's participation in the alternative is taken for this Act to continue during the suspension period.

#### **16      Training alternative—exclusion**

- (1) This section applies if a child participating in a training alternative stops attending the training alternative provider because the child has been excluded from attending the provider.

- (2) The child's participation in the training alternative is taken for this Act to continue—
  - (a) at the same level as before the exclusion; and
  - (b) for the time reasonably required for the child to—
    - (i) enrol in an education course; or
    - (ii) apply for approval to participate in another training alternative or an employment alternative.

**16A Employment alternative—termination**

- (1) This section applies if a child participating in an employment alternative stops working because the child's employment has been ended other than by the child.
- (2) The child's participation in the employment alternative is taken for this Act to continue—
  - (a) at the same level as before the termination; and
  - (b) for the time reasonably required for the child to—
    - (i) enrol in an education course; or
    - (ii) apply for approval to participate in another employment alternative or a training alternative.

## Part 2.5 Compliance notices

### 16B Giving compliance notice

The chief executive may give a notice (a *compliance notice*) to a child's parents if the chief executive believes on reasonable grounds that the parents have contravened or are contravening—

- (a) section 10 (Child of compulsory education age—enrolment and registration requirement); or
- (b) section 10A (Child of compulsory education age—school attendance requirement); or
- (c) section 10D (Child of compulsory education age—participation requirement); or
- (d) section 14D (Approval statement—compliance requirement).

*Note* For how documents may be served, see the Legislation Act, pt 19.5.

### 16C Contents of compliance notice

- (1) A compliance notice in relation to a child must—
  - (a) state that it is a compliance notice under this Act; and
  - (b) include a brief description of the contravention of this Act in relation to which the notice is given; and
  - (c) state what the child's parents need to do to comply with the notice; and
  - (d) state the period for complying with the notice; and
  - (e) contain a statement to the effect that failure to comply with the notice is an offence.
- (2) The compliance notice may include any other information the chief executive considers appropriate.

**16D Extension of time for compliance with compliance notice**

- (1) This section applies if a child's parents have been given a compliance notice.
- (2) The chief executive may, by written notice given to the child's parents, extend the compliance period for the compliance notice on the chief executive's own initiative or if asked by the parents.
- (3) However, the chief executive may extend the compliance period only if the period has not ended.
- (4) In this section:

*compliance period* means the period stated in the compliance notice under section 16C (1) (d), and includes the period as extended under this section.

**17 Revocation of compliance notice on compliance**

If the chief executive is satisfied on reasonable grounds that a compliance notice given to a child's parents has been complied with, the chief executive must revoke the notice by written notice given to the parents.

**Part 2.6 Offences—parents**

**17A Contravention of information and compliance notices**

- (1) A child's parents commit an offence if—
  - (a) an information notice is given to the parents; and
  - (b) the parents fail to comply with the notice.

Maximum penalty: 5 penalty units.

- (2) A child's parents commit an offence if—
  - (a) a compliance notice is given to the parents; and



(b) the parents fail to comply with the notice.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply if the child's parents have a reasonable excuse for failing to comply with the notice.
- (5) Without limiting subsection (4), it is a reasonable excuse for a parent of the child (the *stated parent*) that—
- (a) the child lives with another parent and the stated parent believes on reasonable grounds that the other parent is complying with the notice; or
  - (b) the stated parent is not reasonably able to control the child's behaviour to the extent necessary to comply with the notice.

## **6 New section 146A**

*insert*

### **146A Student transfer register**

- (1) The chief executive must establish procedures for recording the transfer of students between schools in the ACT.
- (2) The principal of a school must comply with any procedures for recording the transfer of students to and from the school that the chief executive—
- (a) establishes under subsection (1); and
  - (b) notifies to the principal.

- (3) In this section:

*school* means a government school or non-government school.

**7 New section 153A**

*insert*

**153A Evidence—certificate signed by principal etc**

- (1) This section applies in relation to a proceeding for an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) A certificate that appears to be signed by the principal of a government school, the principal of a non-government school, the person giving an approved educational course (government) or the person giving an approved educational course (non-government) and that states any of the following matters, is evidence of the matters:
- (a) that a stated child was or was not enrolled at the school or course;
  - (b) that a stated child did or did not attend the school or course.
- (3) A certificate that appears to be signed by the registrar (however described) of an education provider or training alternative provider and that states any of the following matters, is evidence of the matters:
- (a) that a stated child was or was not enrolled with the provider;
  - (b) that a stated child did or did not attend the provider.
- (4) A certificate that appears to be signed by a child's employer or purported employer in relation to an employment alternative and that states any of the following matters, is evidence of the matters:
- (a) that a stated child was or was not employed with the employer or purported employer;
  - (b) that a stated child worked for stated hours.

- (5) A certificate mentioned in this section may state a matter by reference to a date or period.

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**8 New chapter 9**

*insert*

## **Chapter 9                      Transitional—Education (Participation) Amendment Act 2009**

### **300                      Meaning of *amending Act*—ch 9**

In this chapter:

*amending Act* means the *Education (Participation) Amendment Act 2009*.

### **301                      Application of amending Act**

- (1) The amendments made by the amending Act do not apply in relation to a child if on 1 January 2010—
- (a) the child is at least 15 years old; and
  - (b) the child is not—
    - (i) enrolled at a school; or
    - (ii) registered for home education (however described) in the ACT or elsewhere.
- (2) However, the amendments made by the amending Act apply in relation to the child if after 1 January 2010 the child is—
- (a) enrolled at a school; or
  - (b) registered for home education (however described) in the ACT or elsewhere.

- (3) In this section:

*school* means—

- (a) a government school; or
- (b) a non-government school; or
- (c) a school (however described) under the law of a State, another Territory or a foreign country.

**302 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the amending Act.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

**303 Expiry—ch 9**

- (1) This chapter expires 2 years after the day it commences.
- (2) This chapter (other than section 302) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**9 Reviewable decisions  
Schedule 1, items 1 and 2**

*substitute*

1	12A	issue exemption certificate for shorter period than applied for	applicant	chief executive
1A	12A	issue exemption certificate exempting child from full-time participation requirement— participation stated in certificate	applicant	chief executive
1B	12A	refuse to issue exemption certificate	applicant	chief executive
1C	12C	issue exemption certificate subject to condition	applicant	chief executive
1D	13	revoke exemption certificate	child's parents	chief executive
1E	14A	issue approval statement for shorter period than applied for	applicant	chief executive

1F	14A	issue approval statement approving other than full-time participation— participation stated in statement	applicant	chief executive
1G	14A	refuse to issue approval statement	applicant	chief executive
1H	14C (4)	issue approval statement subject to condition	applicant	chief executive
2	15A	revoke approval statement	child's parents	chief executive

## 10 Dictionary, note 2

*insert*

- foreign country

## 11 Dictionary, new definitions

*insert*

***approval statement***, for division 2.4.2 (Approval to participate in training and employment alternatives)—see section 13D.

***completes year 10***—see section 9B.

***completes year 12***—see section 9C.

***compliance notice***, for chapter 2 (Compulsory education)—see section 16B.

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**12 Dictionary, definition of *compulsory school age***

*substitute*

*compulsory education age*, for chapter 2 (Compulsory education)—see section 9.

**13 Dictionary, new definitions**

*insert*

*education course*—see section 9A.

*education provider*—see section 9A.

*employment alternative*—see section 13B.

**14 Dictionary, definition of *exemption certificate***

*substitute*

*exemption certificate*, for chapter 2 (Compulsory education)—see section 11H (Exemption certificate—application).

**15 Dictionary, new definitions**

*insert*

*full-time participation*—

(a) in an education course, for division 2.2.2 (Participation requirement)—see section 10C; and

(b) in a training or employment alternative, for part 2.4 (After year 10—training and employment alternatives)—see section 13C.

*full-time participation requirement*, for part 2.3 (Exemption certificates)—see section 11G.

*information notice*, for chapter 2 (Compulsory education)—see section 11C.

*participates*, in an education course, for division 2.2.2 (Participation requirement)—see section 10B.

**16 Dictionary, definition of *school*, paragraph (b)**

*substitute*

(b) for chapter 2 (Compulsory education) and part 6.2 (Other provisions)—means a government school or non-government school; and

**17 Dictionary, definition of *school-leaving age***

*omit*

**18 Dictionary, new definitions**

*insert*

*training alternative*—see section 13A.

*training alternative provider*—see section 13A.



## **Schedule 1      Consequential amendments**

(see s 3)

### **Part 1.1                      Children and Young People Act 2008**

#### **[1.1]      Section 86 (1) and note**

*substitute*

- (1) This section applies if a family group conference agreement proposed under section 85 (2) is about a young person who is 15 years old or older.

#### **[1.2]      Section 397 (d) and note**

*substitute*

- (d) for a voluntary care agreement in relation to a young person who is 15 years old or older, the chief executive—
- (i) obtains the young person's agreement to the voluntary care agreement; or
  - (ii) is satisfied that the young person does not have sufficient maturity or developmental capacity to understand and agree to the proposed voluntary care agreement.

#### **[1.3]      Section 645 (1) (a) and note**

*substitute*

- (a) for a young person who is 15 years old or older—the young person; and

#### **[1.4]      Section 779**

*omit*

**[1.5] Section 780, definition of *work experience* and note**

*substitute*

***work experience*** means the engagement of a child or young person who is under 15 years old by someone if the engagement is—

- (a) arranged by an educational institution where the child or young person is enrolled; and
- (b) part of a work experience program (however described) conducted by the educational institution.

**[1.6] Section 782 (a)**

*substitute*

- (a) for a child or young person under 15 years old who is required to attend a school or participate in an education course under the *Education Act 2004*—it is likely to prejudice the ability of the child or young person to benefit from the education; or

**[1.7] Part 21.4 heading and notes**

*substitute*

**Part 21.4 Employment of children and young people under 15 years old**

*Note* Work safety matters are dealt with in the *Work Safety Act 2008*.

**[1.8] Dictionary, definition of *school-leaving age* and note**

*omit*

**[1.9] Further amendments, mentions of *school-leaving age***

*omit*

school-leaving age

*substitute*

15 years old

*in*

- section 76, definition of *family group conference agreement*
- section 85
- section 87
- section 399
- section 400
- section 795
- section 799
- section 803
- dictionary, definition of *high risk employment*
- dictionary, definition of *light work*

**Part 1.2 Evidence (Miscellaneous Provisions) Act 1991**

**[1.10] Section 74 (2) (b) (iii)**

*substitute*

- (iii) section 803 (Offence—employment of child or young person under 15 years old in high risk employment);

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 15 October 2009.

**2 Notification**

Notified under the Legislation Act on 17 November 2009.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Education (Participation) Amendment Bill 2009, which was passed by the Legislative Assembly on 10 November 2009.

Clerk of the Legislative Assembly

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