

2001

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

EDUCATION BILL 2001

**REVISED
EXPLANATORY MEMORANDUM**

**Circulated by Authority of
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Minister for Education**

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EDUCATION BILL 2000

EXPLANATORY MEMORANDUM

OUTLINE

The purpose of the new legislation is to consolidate, update and replace existing legislation for school education.

Background

The Minister for Education and Community Services commenced the process of reviewing school education legislation by establishing a School Legislation Review Committee in September 1998. The Committee's terms of reference were to advise "on the relevance of the provisions in the existing Acts and the key elements of legislation needed to underpin the high quality of schooling in the ACT".

The Committee was chaired by Professor Don Aitkin, Vice Chancellor of the University of Canberra. Membership included representatives from organisations in the Government and non-Government school sectors representing parents, Government school boards, non-Government schools, teachers and principals as well as the Executive Director of the ACT Regional Chamber of Commerce and Industry and the Department of Education and Community Services.

The Review Committee published an options paper as a basis for consultations which were made through submissions and workshops. It also examined and reported on existing state and territory legislation and other relevant ACT and Commonwealth law.

The Committee's report to the Minister, "School Legislation in the ACT" was published in June 2000.

The Education Bill 2001 is based on the recommendations of the Review Committee.

Aims and purpose of the legislation

The new legislation is intended to create a framework for the provision and operation of school education that will facilitate the extensive changes that are demanded of school education now and in the future. The law is largely non prescriptive, enabling schools to exploit new modes of delivery be it from off campus suppliers, through the Internet or through communications and information technologies such as interactive television, not yet in the market place.

The new legislation incorporates the values and principles that underpin education in an open, democratic society and recognises the rights and obligations of parents and Government in providing a high quality education for children.

The new law facilitates diversity and choice.

It provides powers and provisions for the operation of Government schools, registration of non-Government schools and registration of home schooling.

The proposed legislation will bring together and replace existing legislation for Government and non-Government schooling.

DETAILS

Detailed explanation of each section of the Bill follows.

CHAPTER 1 GENERAL

PART 1.1 Preliminary

Section 1 Name of Act

Names the Act

Section 2 Commencement

States the date on which the legislation takes effect.

Section 3 Dictionary

Refers to the Dictionary at the end of the Act containing defined terms used in the Act.

Section 4 Notes

States that the notes provided in the legislation are not part of the law and are intended to assist readers with additional information.

Section 5 Meaning of *parent* and *carer*

This section introduces a standard definition of parent and carer derived from the Children and Young Persons Act 1999 in order to clearly assign responsibility for a child in respect of obligations under this Act to the people who have legal responsibility for the child's care, welfare and upbringing. For example, a person having the legal responsibility for a child may be a natural parent, a foster parent, or any one assigned the responsibility by a court. It does not include the person responsible for the care of a child in a child care centre.

(1) States that in this Act parent includes a carer.

(2) States that in this Act a ***parent*** is a person having parental responsibility for the child under the Children and Young Persons Act 1999 (see Chapter 2 Part 3).

(3) States that in this Act, a ***carer*** is a person who is a carer under the Children and Young Persons Act 1999, section 5.

PART 1.2 - General principles and objects

Section 6 General Principles of the Act

States the principles on which school education is based covering the right of children to receive an education and that education provides a foundation for a democratic society. Other general principles are that school education should:

- aim to develop every child's potential and maximise their educational achievements;
- promote student enthusiasm for lifelong learning and their optimism for the future;
- encourage parents to participate in the education of their children, and recognise their right to choose a suitable educational environment;
- recognise the social, religious, physical, intellectual and emotional needs of all students;

Further principles are that:

- innovation, diversity and opportunity within and among schools should be encouraged;
- effective quality assurance mechanisms should be applied to school education;
- Government funding is directed to children through their schools; and that,
- the partnership between the home, community and educational providers is recognised.

Section 7 Principal objects of this Act

The objects of the Act are to state parent and Government responsibilities in relation to school education, promote compulsory schooling of children and stating when attendance at school does not apply.

The Act provides for the operation and governance of Government schools.

The Act provides for the registration of non-Government schools and the registration of home schooling.

CHAPTER 2: SCHOOL ENROLMENT AND ATTENDANCE

Section 8 Meaning of compulsory school age

Defines "*compulsory school age*" as between the ages of 6 and 15 years old.

Section 9 Compulsory enrolment

This section is intended to require that all children of compulsory school age (between 6 and 15) receive an education recognised by the Government either at a school or at home. It places the responsibility onto parents of all children resident in the Territory to ensure that children are enrolled in a Government school, registered non-Government school or are registered for home schooling.

Parents face a penalty for non compliance.

(1) States the application of the Section to parents of children of compulsory school age.

(2) Requires the parents of children of compulsory school age to enrol them in an appropriate Government or non-Government school at the appropriate educational level, or register them for home schooling. It stipulates the penalty for non compliance

(3) This subsection allows for the case where a child resident in the ACT receives a school education recognised by another Australian jurisdiction (eg by attending a school inter states). It states that Sections (1) and (2) do not apply, when the child lives in the ACT but is enrolled interstate in a school recognised by the law of the State

This subsection also states that Sections (1) and (2) do not apply when an exemption certificate is in force for a child.

Section 10 Compulsory attendance

This section requires parents ensure their children regularly and consistently attend the school at which they are enrolled. Attendance includes all activities of the school relevant to the child, for example, sports day, and a course in which the child is enrolled such as dance or music or vocational training provided off campus.

(1) Defines the application of the Section to the parents of children of compulsory school age enrolled in a Government or non-Government school.

(2) Requires parents to ensure their children attend the school, school activity (or approved educational course) in which they are enrolled and stipulates penalties for non compliance without a reasonable excuse.

A reasonable excuse for non attendance would include illness or an important family event (such as the funeral of a close relative).

Section 11 Information about school age children

This section enables the Chief Executive to follow up children where it is reasonably suspected that they do not receive an education either at a school recognised by the Government or at home by registered home schooling.

This Section enables the Chief Executive to obtain information about children of compulsory school age in order that Sections 9 and 10 dealing with school enrolment and attendance may be enforced.

The Chief Executive is required to give written notice to parents requesting them to supply information about children of school age residing in a house and the section requires parents to comply with the written notice.

A penalty is stipulated for non compliance.

Section 12 Employment of children under school leaving age

The Section proscribes the employment of children under school leaving age to support compulsory schooling and stipulates a penalty for non compliance.

The Section also applies where a child under school leaving age is residing interstate or is enrolled in a school interstate. (For example, it is illegal to employ a child under school age in the ACT whether or not the child's residential address or school is in the ACT or NSW).

Section 13 Exemption Certificates

Provides, for exemption from attendance at school of children under school age through the issuance of an Exemption Certificate by the Chief Executive.

This provision allows children to pursue educational, vocational training or employment opportunities other than at school, before the school leaving age, if this is in the best interests of the child.

It also provides for exemption from school if it is in the child's best interest in order to best provide for the care, health, development and education of the child, for example to receive psychiatric care or other care or assistance.

Section 14 Duration of exemption certificates

Requires exemption certificates to state the period for which the exemption applies. Places a limit on any exemption from schooling for any child.

Section 15 Revocation of exemption certificates

Enables the Chief Executive to cancel an exemption certificate if it was issued in error or the ground on which the certificate was issued ceases to apply.

CHAPTER 3 GOVERNMENT SCHOOLS

Part 3.1 General

Section 16 Principles on which chapter 3 based

States the Principles on which Part 4 is based for the provision of the ACT Government School System.

The principles cover: equity, universality, non discrimination, that Government schooling is free and open to everyone and offers a broad, balanced secular education to all children from preschool to year 12.

It states that the Government school system is committed to maximising student educational achievements and opportunities; developing the emotional, physical and intellectual well being of all students; to parent and carer participation and responsiveness to community needs; to innovation, diversity and choice; and, to preparing students to be effective local and global citizens.

Part 3.2 Establishment and operation of Government schools

Section 17 Establishing Government schools etc

This section provides for the establishment of Government schools and preschools by the Minister. It enables the Minister to decide what kind of school to establish.

Section 17 enables the Minister to establish a school with any combination of educational level from preschool or Kindergarten to Year 12, a special school or other school or school related institution or service.

The latter power enables the Minister to establish institutions and services that support the operation of schools, for example institutions to assist behaviourally disturbed children, institutions providing educational materials and equipment and any other institution or service designed to assist schools and their students.

(1) Enables the Minister to establish Government schools, preschools and other related educational institutions and services.

(2) Enables the Minister to decide what kind of school may be established and the educational levels for the school.

Section 18 Operation of Government schools

Places responsibility for the operation of Government schools onto the Chief Executive. The Chief Executive is responsible to the Minister.

Principals' responsibility is defined in terms of the educational achievements or outcomes of the students at their school. Principals are

also required to assist school boards to carry out their functions as provided in this Act. Finally principals are required to contribute to the educational policies and strategies applicable to the Government school system as a whole.

(1) States that the Chief Executive is responsible to the Minister for the operation of Government schools.

(2) States that principals of Government schools are responsible for the educational outcomes of students, supporting the school board in carrying out its functions and contributing to the educational policies and strategies for the Government school system.

Section 19 Educational instruction to be free

States that the educational instruction provided in a Government school is to be free, subject to the provisions of the Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994 and subject to Section 20.

The Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994 among other things, provides for the registration of providers of overseas students, safeguards the funds of overseas students and regulates the charges for educational services for overseas students.

Section 20 Voluntary financial contributions

Enables schools to invite financial contributions toward the costs of operating the school provided that the contributions are voluntary and that no child enrolled at the school whose parents do not make a contribution is deprived of benefits or services or is approached or harassed. It requires records of contributions to be confidential.

Section 21 Secular instruction

Requires that only secular education be provided by Government schools. Secular education is defined as including non sectarian, non dogmatic and non polemical, general religious education.

Section 22 Curriculum

This section gives the Chief Executive overall responsibility for setting the framework for the curriculum in Government schools and establishing the principles on which the curriculum is based. The Chief Executive also determines the requirements for curriculum development.

Section 23 Religious education

This Section enables children to attend religious classes of reasonable duration in a specified religion provided their parents wish them to do so. Other children are not required to participate.

The Section states that the Chief Executive should ensure that schools make reasonable provision for the religious education of children of any religious persuasion. It also requires that a person providing religious education be recognised and qualified by the relevant religious body and requires the religious education to be authorised by that religious body.

The Section further requires that children attending religious education classes to be separated from other children while attending the classes.

Section 24 Objections to religious education

Requires that a child not receive religious education if the child's parents object.

Section 25 Approved educational courses for children at Government schools

This section enables the Chief Executive and by delegation the principals of Government schools to approve educational courses offered by providers external to Government schools as satisfactory for students attending a Government school. It gives schools flexibility and scope to include courses, such as vocational, specialist courses or courses at a particular level (for example, dance, outdoor education etc) otherwise not available to students at the school. The courses must be of a satisfactory standard, adequately equipped and provided at adequate and safe premises.

(1) This Section enables the Chief Executive to approve an education course that may be provided to a child enrolled at a Government school.

(2) States that approval may be subject to conditions

(3) States that the Chief Executive may approve an educational course only if it meets appropriate standards, that facilities are adequate and the premises where the course is provided meet health and safety standards required by Territory law.

Section 26 Discipline not to include corporal punishment

This Section prevents the use of corporal punishment at a Government school. It requires the Chief Executive to ensure that the discipline policy implemented at a Government school does not allow corporal punishment.

Part 3.3 Attendance at Government schools

Part 3.3 deals with attendance matters for Government schools only.

Section 27 Register of enrolments and attendances for Government schools

This section is part of the machinery for ensuring children of compulsory school age always attend school. It requires principals of Government schools to maintain records of enrolment and attendance.

Section 28 Keeping records of enrolment and attendances for Government schools

Stipulates the contents of records of enrolment and attendances and a penalty for non compliance.

The contents are the name of each child enrolled at the school and a record of their attendance and non attendance at the school.

The Section makes principals of Government schools responsible for the content of the records.

Section 29 Inspection of register of enrolment and attendances for Government schools for Government schools

This section provides for the official inspection of records of enrolment and attendance at a Government school (or courses approved for Government school students) by a person authorised to do so under this Act.

(1) Requires the principal of a Government school or the person giving an approved educational course for a Government school to make the registers of enrolment and attendance available to an authorised person. A maximum penalty is stipulated.

(2) Requires the principal of a Government school or the person giving an approved educational course for a Government school to provide information on enrolments or attendances to the Chief Executive or to an authorised person (Government) on request and stipulates a penalty for non compliance.

(3) Enables an authorised person (Government) to take copies of records of enrolments and attendances.

(4) Requires the principal of a Government school or the person giving an approved educational course to give reasonable assistance to an authorised person (Government) in exercising their functions under this section.

Section 30 Procedures to encourage school attendance

States the procedures to be followed by the principal of a Government school when children do not attend school as required by this Act.

The procedures are intended to assist parents and encourage children to attend school. Parent cooperation is required.

(1) Makes the principal of a Government responsible for procedures to encourage children to attend school regularly and to help parents to encourage their children to attend school.

These procedures may include, for example, prompt follow up of all absences, formal and informal liaison with parents, particular educational assistance, measures to prevent or overcome resistance to schooling as well as sanctions and any other reasonable, economic and effective procedures deemed necessary in the professional judgement of the principal.

(2) Requires the procedures to include referral to entities that may assist the parents in encouraging their children to attend school. This provision ensures that principals will seek additional professional support for children and their families where this would assist in ensuring the attendance of the child at school.

(3) Enables the principal of a Government school to require by written notice the parents of a child not attending school to meet with an authorised person (Government).

This section places an obligation on parents to cooperate in procedures designed to ensure their children regularly and consistently attend school.

Section 31 Suspension, exclusion or transfer of child by Chief Executive

This section applies only to Government schools.

This section allows the Chief Executive to suspend a child from attending a Government school, exclude a child from enrolling at a specific Government school or schools or any Government school or to require the transfer of a child from one Government school to another. These powers may only be exercised in prescribed circumstances.

The powers are intended to both ensure that all Government schools maintain an environment that supports effective teaching and learning free from disruption, violence or threats of violence and that individual students comply with reasonable requirements necessary for their education, the safety and well being of themselves and other students.

The processes are required to include measures to protect the rights of the child who is subject to a suspension, exclusion or transfer as well the child's parents, to a fair hearing, to information about the decision and the

process, to a clear and consistent process, to an appeal and to an opportunity for continuing the child's education.

It is expected that measures will be put in place to assist the child and their parents to enable the child to resume school attendance as soon as possible.

The process may be initiated by a recommendation from a school principal to the Chief Executive when the principal is satisfied that action allowed under this section is appropriate.

The principal must be satisfied that exclusion, suspension or transfer is a last resort, and that all other appropriate remedies (including support and sanctions) for the child's behaviour have been reasonably applied without success.

The Chief Executive is given power to suspend exclude or transfer a child immediately if satisfied that it is necessary and that the rights of the child and the child's parents are respected for a fair hearing, to information about the decision and the process, to a clear and consistent process, to an appeal and to an opportunity for continuing the child's education.

It is expected that measures will be put in place to assist the child and their parents to enable the child to resume school attendance as soon as possible.

This provision allows for the immediate (formal) removal of a child from school when it is appropriate to do so in the interests of the child and the school. This action could be appropriate when a serious event occurs, for example involving arson or serious violence.

(1) States that this section applies under the following conditions.

(a) A child attending a Government school is persistently and wilfully non compliant, acts in a way that threatens the good order of the school, the safety or well-being of another child at the school or a member of staff of the school, displays behaviour that is disruptive to the child's learning or that of other children or threatens to be violent or is violent to someone else at the school.

(b) The principal of the school must be satisfied that action should be taken under this section.

(2) Enables the principal to recommend to the Chief Executive that the Chief Executive suspend the child from the school for a stated period of longer than 5 days; or exclude the child from the school or from all Government schools; or transfer the child to another Government school.

(3) Allows the Chief Executive discretion in responding to the principal's recommendation. It states that after considering the principal's recommendation, the Chief Executive may either give effect to the recommendation or, take any other action mentioned in subsection (2)

that the Chief Executive considers appropriate; or suspend the child for 5 days or less.

(4) States that the Chief Executive may suspend or exclude a child but only if the child's parents are given an opportunity to be consulted, and told in writing about the action that has been taken in relation to their child; and the child is given a reasonable opportunity to continue the child's education during the suspension or exclusion.

Section 32 Suspension of child by a principal of a Government school

This section applies only to Government schools.

This section allows a principal of a Government school to suspend a child from attending a school for up to five (5) days. These powers may only be exercised in prescribed circumstances.

The powers are intended to both ensure that all Government schools maintain an environment that supports effective teaching and learning free from disruption, violence or threats of violence and that individual students comply with reasonable requirements necessary for their education, the safety and well being of themselves and other students.

The processes are required to include measures to protect the rights of the child who is subject to a suspension, exclusion or transfer as well as the child's parents, to a fair hearing, to information about the decision and the process, to a clear and consistent process, to an appeal and to an opportunity for continuing the child's education.

It is expected that measures will be put in place to assist the child and their parents to enable the child to resume school attendance as soon as possible.

The principal must be satisfied that exclusion, suspension or transfer is a last resort, and that all other appropriate remedies (including support and sanctions) for the child's behaviour have been reasonably applied without success.

(1) States that this section applies if section 32 (1) (a) (Suspension, exclusion or transfer of child by Chief Executive) applies to a child attending a Government school; but the principal of the school is of the opinion that the child should be suspended from the school for not longer than 5 days.

(2) Enables the principal to suspend the child for not longer than 5 days.

(3) Requires that the principal take action under subsection (2) only if satisfied that reasonable efforts have been made to change the child's behaviour and that the efforts have proved ineffective.

(4) States that the principal may suspend a child only if:

(a) the child's parents have been given an opportunity to be consulted, and told in writing, about the action that is to be taken in relation to their child; and

(b) the child and the child's parents have been given a reasonable opportunity to attend counselling, undertake special education programs or receive other appropriate assistance; and

(c) the child is given a reasonable opportunity to continue the child's education during the suspension or exclusion.

PART 3.4 SCHOOL BOARDS OF GOVERNMENT SCHOOLS

Division 3.4. Interpretation

Section 33 - Sets out the definition of terms used in Part 3.4

Division 3.4.2: Establishment and membership

Section 34 Establishment of school boards.

This Section formally establishes a school board for each Government school.

Section 35 Functions of school boards

This section states the functions of school boards of Government schools to be responsible for the general oversight of the operation of schools by:

- establishing the direction and priorities of the school,
- monitoring school performance,
- developing and maintaining the curriculum,
- establishing budgetary policies and approving budgets,
- establishing policies for the efficient use of school assets and management of risk,
- developing relations with the community and
- making recommends to the Chief Executive.

The Chief Executive may direct the school board and the board must comply with a direction (in writing) of the Chief Executive.

The Chief Executive is allowed discretion in responding to a recommendation from a school board and need not implement such a recommendation.

(2) Enables the Chief Executive to give written directions to school boards and,

(3) requires school boards to give effect to directions from the Chief Executive.

(4) States that the Chief Executive is not required to act on a recommendation of a school board or to implement a policy of a school board.

Section 36 Declaration of parents and citizens associations

By this Section the responsible Minister may declare a parents and citizens association for a school to be the association for the purposes of this division in providing for parent and citizen representation on School Boards.

Section 37 Constitution of school boards generally

(1) This section details the constitution of school boards that will apply to most schools. Schools excepted are small schools (as defined in Section 33) and schools which are identified as exceptions under Section 39.

(2) The membership of a school board is defined as comprising:

- the principal of the school,
- one member appointed by the Chief Executive,
- two members elected by the staff of the school,
- three members elected by the parents and citizens association of the school and,
- for a school prescribed in the regulations, two members elected by students of the school.

(3) An eligible staff member is defined as a person employed as a member of staff of the school.

(4) An eligible student member is defined as a student at the school.

(5) The period of appointment of appointed members, staff members, parent and citizen members and student members is limited to the "prescribed period" (as defined at Section 33).

(6 & 7) These subsections enable school boards to second people to the board temporarily. A school board is allowed to appoint people as members for up to 12 months provided there are no more than 4 members appointed by the board at the same time.

Section 38 Constitution of school board of small schools

(1) This section details the membership of the school boards of small schools (as defined in Section 33) but excepts schools to which section 39 applies.

(2) The school board of a small school shall comprise the school principal, one staff member appointed by the Chief Executive, two members elected by the parents and citizens association of the school and members appointed by the board.

(3) Only a person who is a member of staff of the school is eligible to be a staff member.

(4) This sub Section allows for the staff member to be appointed in a way stated in the regulations.

(5) Limits the term of office of the appointed member, staff member and parent and citizen member to the "prescribed period" as defined in Section 33.

(6 & 7) These subsections enable school boards of small schools to second people to the board temporarily. A school board of a small school is allowed to appoint people as members for up to 12 months provided there are no more than 2 members appointed by the board at the same time.

Section 39 Constitution of school boards of school related institutions and other schools in special circumstances

This section allows the Chief Executive to determine the composition of a school board of a school or school related institution but only with the written approval of the Minister. The Chief Executives determination must be in writing.

(1, 2 & 3) These provisions allow discretion for exceptional cases when it is not appropriate that the composition of a school board detailed in sections 37 or 38 apply to a school or school related institution.

(4) This subsection requires the Minister to consider whether each of the members of a school board applying for most schools as detailed in section 37 should apply in a particular case where the Chief Executive is seeking to determine its constitution.

In deciding whether to approve the determination the Minister is required to consider whether the principal and an appointee of the Chief Executive should be a member.

The Minister should also consider whether the staff at the school or institution and the parents and citizens and students associated with the school or institution should be consulted on the constitution and if so take into accounts their comments,

The Minister should also take account of the administrative needs and educational or related objectives or any special characteristics of the school or other institution.

(5) This subsection states that the term of office of an appointed member of a school board is to be stated in the instrument of their appointment.

(6) States that a declaration made under sub section (1) is a disallowable instrument.

Section 40 Ending of appointment of members of school board

Section 40 provides for the Chief Executive to end the appointment of school board members in defined circumstances as follows:

- where a school board member ceases to be eligible to be appointed or elected to the position;

- if a member of a school board other than the school principal, has been absent from 3 consecutive meetings (without reasonable excuse or leave from the board); or,
- where a member has contravened section 44 regarding disclosure of interest.

The Chief Executive may also end the appointment of a member other than the school principal for misbehaviour, physical or mental incapacity.

Section 41 Chairperson and deputy chairperson of school boards

School boards are required to elect a chairperson and deputy chairperson who must not be the school principal or a member of staff of the school. It also requires the school board to advise the Chief Executive of the elections.

Division 3.4.3: Proceedings of school boards

Section 42 Time and place of meetings of school boards

- (1) and (2) Allow school boards to set the time and place of meetings provided that a meeting is held at least four times a year.
- (3) The Section also allows the chairperson to call a meeting at any time, and requires the chairperson to call a meeting if asked by the Minister or Chief Executive or 3 members of the board to do so.
- (4) Principals are enabled to call meetings of the school board if the chairperson is not available.

Section 43 Procedures governing proceedings of school boards

- (1) (2) and (3) provide for the chairing of all meetings of school boards. The chairperson is required to preside at all meetings at which they are present. In the absence of the chairperson, the deputy chairperson is to preside. In the absence of both the chairperson and the deputy chairperson a member chosen by the members present is to preside.
- (4) Prescribes the quorum of a meeting, stating that business may be carried out only if there are three members present including at least one staff member and at least one parent and citizen member.
- (5) States that members (except the members appointed by the board) may vote on matters to be decided by the board.
- (6) States that a decision of the board is to be by majority voting. Where votes are evenly divided the member presiding has the casting vote.
- (7) Enables a school board to conduct meetings by telephone, closed circuit communication or any form of communication.

(8) States that a member participating in a meeting conducted under subsection (7) is taken to be present at that meeting.

(9) Allows a resolution agreed in writing by all members of a board (except board appointed members) and notice of the resolution is given under procedures decided by the board, then the resolution is a valid resolution even though it was not passed at a meeting of the board.

This subsection facilitates the conduct of meetings by any means of communication allowed under sub section 7

(10) Requires school boards to keep minutes of all meetings.

(11) Allows the school board to decide its own procedures.

Section 44 Disclosure of interest by members of school boards

This section requires members to disclose direct or indirect financial interests relevant to the business of the school board and states the procedures to be followed.

The provision is intended to enable a school board to always act in the best interests of the school regardless of any financial interest of individual board members.

(1) States that this section applies to a member of a school board if the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the board; and the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.

(2) States that members must disclose an interest that may conflict with the proper exercise of the member's functions, to the other members at a meeting of the school board as soon as practical after the member becomes aware of the facts.

(3) The disclosure must be minuted and the member with a financial interest must not be present when relevant issues are discussed or take part in a decision on the issue.

(4) Requires that any other member that has a direct or indirect financial interest must not be present when relevant issues are discussed or take part in a decision on the issue.

(5) Requires that within 14 days of the end of the financial year the school board must give the Chief Executive a statement of any disclosure of interest made under sub section (2) during the financial year.

Division 3.4.4: Financial matters

Section 45 School boards to approve budgets

- (1) Requires school boards of Government schools to approve a budget for each year.
- (2) States that the budget must be approved before a date stated by the Chief Executive.
- (3) States that the budget must be in a form and compiled according to accounting or other policies and practices required by the Chief Executive.
- (4) Enables the Chief Executive to ask that a budget be approved for part of a year.
- (5) Requires the school board to comply with the Chief Executive's request.
- (6) States that school funds may not be expended otherwise than in accordance with an approved budget.

Section 46 Application of moneys of school

The Section stipulates that a school may expend money only to pay costs, charges and liabilities incurred by the school.

Section 47 School boards to approve financial statement and report

This section sets out the duties of school boards regarding their functions to establish budgetary policies, approve budgets and establish policies for the efficient use of school assets and management of risk. It also requires school boards to provide annual financial information and an annual report of its activities to the Chief Executive.

It covers the requirements for school boards:

- to approve school budgets by a date stipulated by the Chief Executive,
- to approve a financial statement in a form stated by the Chief Executive; and,
- to approve an annual report in a form and by the date stated by the Chief Executive as soon as practical after the end of each year.

Annual reports must include financial statements for the year approved under sub Section (1).

School boards must give a copy of financial statements and annual reports to the Chief Executive.

Section 48 School boards to make available summaries of budget and annual report

This Section ensures that parents, staff and students of the school have access to budgets, other financial information and annual reports of the activities of the school and school board.

(1) and (2) require school boards to make available summaries of the school budget and annual report to parents, staff and students of the school.

PART 3.5: GOVERNMENT SCHOOL EDUCATION COUNCIL

Division 3.5.1: Establishment and membership

Section 49 Establishment of council

This Section establishes the Government School Education Council.

Section 50 Functions of council

(1) and (2) The functions of the Council are to advise the Minister on any aspect of the government school system and, on the request of the Minister, to inquire into and advise on any aspect of the government school system.

(3) The council may also exercise other functions given to it under this Act or other Territory law allowing flexibility for adaptation of the council to future circumstances and needs.

Section 51 Membership of council

Defines the membership of the Government School Education Council to comprise the Chief Executive and members appointed by the Minister under Section 52.

Section 52 Appointed members of the council

(a) and (b) require the Minister to appoint a chairperson and a deputy chairperson for the council.

(c) States that the Minister is required to appoint 3 people who in the opinion of the Minister are experienced in one or more of the areas of business and commerce, public policy, early childhood care, education and the special needs of young people. These members are termed the **"educational needs members"**.

(d) The Minister is also required to appoint 7 people who in the opinion of the Minister represent industry, school boards, parents and teachers in the ACT. These members are termed the **"organisations members"**.

Section 53 Term of appointment to council

This section specifies the term of appointment of a member as 3 years.

It states the information required on the instrument of appointment as being the term of appointment; whether the member is the chairperson, deputy chairperson, educational needs members or organisations member. For educational needs members or organisations members the instrument of appointment may state the group represented by the member.

Section 54 Ending of appointment to council

This section gives the Minister powers to end an appointment to the council in specified circumstances. The specified circumstances are that the Minister is satisfied that a member no longer represents a relevant organisation or group, misbehaviour by the member; or that the member has or contravened section 58 (Disclosure of interests by members of council).

Section 55 Conditions of appointment generally of appointed members

Allows appointments to be made under conditions decided by the Minister.

Division 3.5.2: Proceedings of council

Section 56 Time and place of meetings

Allows the council to decide the time and place of meetings provided that it meets at least once every three months.

This Section also allows the chairperson to call a meeting at any time and requires the chair to call a meeting if asked to do so by the Minister or at least 7 members.

If the chairperson is not available, then the deputy chairperson may call a meeting.

Section 57 Procedures governing proceedings of council

(1), (2) and (3) These sub Section provide for meetings of the council to be presided by the chairperson whenever present, or in the absence of the chairperson, the deputy chairperson. In the absence of both of these officers, the members chose a fellow member to preside.

(4), (5) and (6) Specify that a quorum for conducting business at meetings is 7 members, stipulates that questions are decided by majority vote and that all members may vote on a decision. The member presiding has the casting vote in the event that voting is equally divided.

(7) and (8) Enable the council to conduct meetings by telephone, closed circuit communication or any form of communication and a member participating in such a meeting is taken to be present at the meeting.

(9) States that when a resolution is agreed in writing by all members of the council and the notice of the resolution is given under procedures decided by the council, then the resolution is a valid resolution even though it was not passed at a meeting of the board. This makes the provisions under sub sections 7 and 8 effective for the purpose of carrying on the business of the council.

(10) Requires the council to keep minutes of all meetings.

(11) Allows the council to decide the procedures to be followed at meetings.

Section 58 Disclosure of interests

The purpose of this section is to enable council to advise and inform the Minister in the interests of Government schooling regardless of any financial interests of individual members of the council.

(1) Requires members to disclose direct or indirect financial interests relevant to council business and states the procedures to be followed.

(2) States that as soon as practical after a member of the council becomes aware of the facts the member must disclose to the other members at a meeting of the council any financial interest that the member has that may conflict with the proper exercise of their functions.

(3& 4) The disclosure must be minuted and the member with a financial interest must not be present when relevant issues are discussed. The member must not take part in any decision on issues relevant to that interest, that may affect the interest or be affected by the interest.

(5) Requires that within 14 days of the end of the financial year the chair of the council must give the Chief Executive a statement of any disclosure of interest made under sub section (2) during the financial year.

Division 3.6.1 Authorised persons (Government)

This division applies only to Government schools.

Its application for provisions in Chapter 4 (Non-Government schools) of this Act is excluded.

This division enables the Chief Executive to appoint authorised persons to carry out inspections of Government school premises and documents in order to obtain information relevant to compliance by Government schools with the requirements of this Act, except for Chapter 4 (Non-Government schools).

The powers and responsibilities of the Chief Executive in relation to authorised persons are stated.

The powers and responsibilities of authorised persons are stated.

Section 59 Appointment of authorised persons (Government)

(1) Enables the Chief Executive to appoint a person as an authorised person (Government) under this Act except for Chapter 4 (Non-Government schools). The appointment must be in writing.

(2) Allows the regulations to prescribe a person to be an authorised person for this Act or for a provision of this Act except for Chapter 4 (Non-Government schools).

An authorised person must be an Australian citizen or a permanent resident of Australia.

The Chief Executive must after inquiry certify in writing that the person is suitable to perform the duties of an authorised person having regard in particular to whether the person has had any criminal conviction, the person's employment record; and whether the person has satisfactorily completed adequate training relevant to the functions that the authorised person is proposed to perform.

Section 60 Identity cards for authorised persons (Government)

(1) Requires the Chief Executive to issue identity cards to an authorised person which must include a recent photograph of the authorised person, their name, the dates of issue and expiry and other information prescribed under the regulations.

(2) Requires an authorised person to return an identity card when they have ceased to be an authorised person within 21 days. A penalty for non compliance is stipulated.

Division 3.6.2 Inspection powers for Government schools

Section 61 Power not to be exercised before an identity card is shown.

Requires an authorised person (Government) to show an identity card to a person before exercising any powers under this Act in relation to that person.

Section 62 Entry to Government schools

This section enables an authorised person to enter a Government school at any time.

Section 63 Powers on entry

This section enables an authorised person (Government) to inspect a Government a school or anything in it including the registers of enrolment and attendance.

Division 3.6.3 Miscellaneous**Section 64 Protection of members of school boards**

This section protects from civil liability people who are, or have been members of school boards acting in good faith in exercising their duties. However any liability that would, apart from this provision attach to a person, is made to attach to the Territory

CHAPTER 4: NON-GOVERNMENT SCHOOLS

Part 4.1 General

Section 65 Meaning of school in Chapter 4

States that Chapter 4 does not apply to a Government school or to schools excluded by regulation.

Section 66 Principles on which Chapter 4 is based

Chapter 4 is based on a recognition of the diversity of different religious and educational philosophies represented in the non-Government school sector and that the diversity reflects parent preferences for particular styles of education for their children.

It is stated that the non-Government schools sector is committed to developing the spiritual, physical, emotional and intellectual welfare of its students; valuing diversity, innovation and opportunity; maximising student outcomes; promoting the partnership between home and school; and, preparing students for their full participation in all aspects of a democratic society.

Section 67 Registrar

The Section requires the Minister to appoint a Registrar of Non-Government Schools.

Section 68 Functions of registrar

This Section states the functions of the registrar to register non-Government schools and keep a register of registered non-Government schools.

It also provides for future adaptation of the office of registrar by enabling the registrar to undertake other functions under this or other Territory laws.

Section 69 Register of non-Government schools

Requires the registrar to keep a register of non-Government schools.

Section 70 Approved educational courses for children at non-Government schools

This section enables principals of non-Government schools to approve educational courses offered by providers external to the non-Government school as satisfactory for students attending the school. It gives non-Government schools flexibility and scope to include courses, such as vocational, specialist courses or courses at a particular level (for example, dance, outdoor education etc) otherwise not available to students at the

school. The courses must be of a satisfactory standard, adequately equipped and provided at adequate and safe premises.

(1) This Section enables the principal to approve an education course that may be provided to a child enrolled at a Government school.

(2) States that approval may be subject to conditions

(3) States that the principal may approve an educational course only if it meets appropriate standards, that facilities are adequate and the premises where the course is provided meet health and safety standards required by Territory law.

This Section allows non-Government schools to utilise for their curriculum on and off campus, educational courses from a variety of sources and suppliers.

Part 4.2 Registration

Section 71 Schools to be registered

(1) Requires all non-Government schools in the Territory to be provisionally registered or registered schools.

(2) Requires that children must only be enrolled at a school at an educational level for which the school is provisionally registered or registered.

Penalties are stipulated for contravening these provisions.

Section 72 Application for provisional registration

Enables an application to be made to the registrar to conduct a non-Government school in the Territory.

The application is made for the initial provisional registration of the school.

It requires the applicant to give written notice of their intention to apply and to state the educational levels intended to be offered at the proposed school and the location of the proposed school.

A notification period applies. The notice of intention to conduct a school must be made to the Minister at least the "prescribed period" before the first day of the school year or school term when it is proposed to begin conducting the school.

The prescribed period is defined as 2 years or a lesser period approved by the Minister.

Section 73 Provisional registration

This section applies when an application for provisional registration has been made under Section 72 and states the procedures applying for the consideration of an application for the provisional registration of a school.

The Minister is required to appoint a panel to prepare a report to him on the application. The school must be provisionally registered if after considering the report the Minister is satisfied that the school meets the criteria for provisional registration.

If the minister is not satisfied that the school meets the criteria for provisional registration the Minister must direct the registrar to refuse to register the school.

The section also stipulates how a school is to be provisionally registered by entering the particulars of the school required under the regulations on the register of non-Government schools and giving the proprietor of the school a certificate of registration.

The criteria for the provisional registration of a school are as follows:

- (a) the school will have adequate facilities and equipment for the health, safety and welfare of its students;
- (b) the nature and content of education offered at the school will be satisfactory;
- (c) the teaching staff will be efficient and effective;
- (d) the manner of conduct of the school will be satisfactory; and,
- (e) the disciplinary policy of the school will exclude the use of corporal punishment.

Section 74 Application for registration

This section enables the proprietor of a school that has been provisionally registered for at least 8 months to make written application for registration. The application must state the education levels for which the school is provisionally registered.

Section 75 Registration

This section applies when an application for registration has been made under Section 74 and states the procedures applying to the consideration of an application for the registration of a school.

The Minister is required to appoint a panel to prepare a report to him on the application. The school must be registered if after considering the report the Minister is satisfied that the school meets the criteria for registration.

If the minister is not satisfied that the school meets the criteria for registration the Minister must direct the registrar to refuse to register the school.

The section stipulates how a school is to be registered by entering the particulars of the school required under the regulations on the register of non-Government schools and giving the proprietor of the school a certificate of registration.

The criteria for the provisional registration of a school are as follows:

- (a) the school will have adequate facilities and equipment for the health, safety and welfare of its students;
- (b) the nature and content of education offered at the school will be satisfactory;
- (c) the teaching staff will be efficient and effective;
- (d) the manner of conduct of the school will be satisfactory; and,
- (e) the disciplinary policy of the school will exclude the use of corporal punishment.

Section 76 Application for registration at additional educational levels

This section allows the proprietor of a registered non-Government school to apply to change the educational level offered at the school. For example a school offering Years 7 to 10 may decide to offer the additional levels of 5 and 6 or may seek to offer years 11 and 12. A school may apply to offer any additional educational levels.

The proprietor of a registered non-Government school must give the registrar written notice of intention to begin conducting education at the proposed and stated additional educational level or levels at the school.

A notification period applies such that the notice is given at least the prescribed period before the first day of the school year or term when it is proposed conducting education at the additional educational level or levels.

The **prescribed period** is defined as 2 years or a lesser period approved by the Minister.

Section 77 Registration at additional educational levels

This section applies when an application for registration at additional educational levels has been made under Section 76 and states the procedures applying to the consideration of an application for the registration of additional educational levels at a school.

The Minister is required to appoint a panel to prepare a report to him on the application. The school must be registered for the additional educational if after considering the report the Minister is satisfied that the school meets the criteria for registration at the additional educational levels.

The section stipulates how a school is to be registered by entering the particulars of the school required under the regulations on the register of non-Government schools and giving the proprietor of the school a certificate of registration that includes the additional educational level.

The new certificate that includes the additional educational levels replaces the schools previous certificate of registration and the proprietor must return the existing certificate within 14 days of receiving the new certificate.

If the minister is not satisfied that the school meets the criteria for registration mentioned in sub section (7), the Minister must direct the registrar to refuse to register the school at the additional education level.

The criteria for the registration of a school at an additional educational level are as follows:

- (a) the school has adequate facilities and equipment for the health, safety and welfare of its students taking into account the additional educational level;
- (b) the nature and content of education offered at the school is satisfactory for the additional educational level, and,
- (c) the teaching staff are efficient and effective for the additional educational level.

Section 78 Conditions of provisional registration and registration

The conditions of provisional registration or registration of a school are as follows:

- (a) the school has adequate facilities and equipment for the health, safety and welfare of its students;
- (b) the nature and content of education offered at the school is satisfactory is for the education levels for which the school is provisionally registered or registered;

- (c) the teaching staff are efficient and effective;
- (d) the school is conducted in a satisfactory way; and,
- (e) the disciplinary policy of the school excludes the use of corporal punishment.

Section 79 Certificate of provisional registration or registration

This states that information required on a certificate of provisional registration or registration of a non-Government school is as follows:

- (a) the entity responsible for the operation of the school;
- (b) the educational level or levels for which the school is provisionally registered or registered;
- (c) the location of the school;
- (d) the term of provisional registration or registration; and
- (e) any other particulars required under the regulations.

The registrar may include other particulars the registrar considers appropriate.

The proprietor of a provisionally registered school or registered school must tell the registrar of a change of any of the particulars of the certificate within 1 month of the change.

Section 80 Duration of provisional registration and registration

Provisional registration ends either when the school is registered or at the end of 12 months whichever occurs first.

A school registration is for up to 5 years as stated in the registration certificate for the school.

Section 81 Cancellation of provisional registration or registration

This Section enables the Minister to cancel the provisional registration or registration of school if satisfied on reasonable grounds that the school has contravened a condition of provisional registration or registration or the school's proprietor or principal has otherwise contravened this Act.

The procedures to be followed for cancellation are stipulated. Before cancelling provisional registration or registration the Minister must give the proprietor written notice stating the grounds on which it is proposed to cancel the provisional registration or registration. The notice must contain the facts that establish the grounds and advise that the proprietor or principal may respond in writing to the Minister within 14 days after receiving the notice.

The Minister must take account of any response to a notice to cancel before deciding whether to cancel provisional registration or registration.

The Minister must give written notice of the decision whether to cancel.

The cancellation of provisional registration or registration takes effect from the date when the notice of cancellation is given to the proprietor or a later date stated on the written notice.

Section 82 Application for renewal of registration

Enables the proprietor of a registered non-Government school to apply in writing for renewal of registration of the school.

Section 83 Renewal of registration

This section applies when a proprietor of a school has applied for renewal of registration under section 82.

Registration of the school must be renewed if the Minister is satisfied that the school meets the criteria for renewal of registration.

Registration is renewed by the registrar entering the particulars of the school required under the regulations on the register of non-Government schools; and giving the proprietor of the school a certificate of registration of the school.

If the Minister is not satisfied that the school meets the criteria for registration must not be renewed.

The criteria for the renewal of registration of a school are as follows:

- (a) the school has adequate facilities and equipment for the health, safety and welfare of its students;
- (b) the nature and content of education offered at the school is satisfactory for the educational levels for which renewal of registration is sought,
- (c) the teaching staff are efficient and effective;
- (d) the school is conducted in a satisfactory way; and,
- (e) the disciplinary policy of the school excludes the use of corporal punishment.

Part 4.3 Attendance at non-Government schools

Section 84 Register of enrolments and attendances for non-Government schools

This section requires the principal of a non-Government school and a person providing an approved educational course for a non-Government

school to keep a register of enrolments and attendances. A penalty is stipulated.

Section 85 Keeping records of enrolment and attendances for non-Government schools

Requires principals of non-Government schools and a person providing an approved educational course for a non-Government school to keep records of student enrolments and attendances.

Stipulates the contents of records of enrolment and attendances and a penalty for non compliance.

The contents are the name of each child enrolled at the school and a record of their attendance and non attendance at the school.

The Section makes principals of non-Government schools and people providing courses for non-Government schools responsible for the content of the records.

A penalty is stipulated for non compliance.

Section 86 Inspection of register of enrolment and attendances for non-Government schools

This section provides for the inspection of records to support compulsory education.

Requires the principal of a non-Government school, or the person giving an approved educational course (non-Government), to allow an authorised person (non-Government) to inspect registers of enrolment and attendance. A penalty is stipulated for non compliance.

This section also requires a principal of a non-Government school, or the person giving an approved educational course (non-Government) to provide information about enrolments or attendances at the school during a stated period or at a stated time if requested to do so by the Minister or an authorised person (non-Government). A penalty applies if the information is not provided without reasonable excuse.

An authorised person (non-Government) is enabled to make copies of all or part of a register of enrolments and attendances.

Requires the principal of a non-Government school or the person giving an approved educational course (non-Government) to give reasonable assistance to an authorised person (non-Government) in exercising their functions under this section.

Section 87 Procedures to encourage school attendance

States the procedures to be followed by the principal of a non-Government school when children do not attend school as required by this Act.

The procedures are intended to assist parents and encourage children to attend school and require parent cooperation.

(1) Makes the principal of a non-Government responsible for procedures to encourage children to attend school regularly and to help parents to encourage their children to attend school.

These procedures may include, for example, prompt follow up of all absences, formal and informal liaison with parents, particular educational assistance, measures to prevent or overcome resistance to schooling as well as sanctions and any other reasonable, economic and effective procedures deemed necessary in the professional judgement of the principal.

(2) Requires the procedures to include referral to entities that may assist the parents in encouraging their children to attend school. This provision ensures that principals will seek additional professional support for children and their families where this would assist in ensuring the attendance of the child at school.

(3) Enables the principal of a non-Government school to require by written notice the parents of a child not attending school to meet with an authorised person (Government).

This section places an obligation on parents to cooperate in procedures designed to ensure their children regularly and consistently attend school.

Part 4.4 Non-Government Schools Ministerial Advisory Committee

Division 4.4.1 Establishment and membership

Section 88 Establishment of committee

Establishes a Non-Government Schools Ministerial Advisory Committee

Section 89 Functions of committee

(1) and (2) The functions of the Committee are to advise the Minister on any aspect of non government schooling and, on the request of the Minister, to inquire into and advise on any aspect of non government schooling.

(3) The committee may also exercise other functions given to it under this Act or other Territory law allowing flexibility for adaptation of the council to future circumstances and needs.

Section 90 Membership of committee

Defines the membership of the Non-Government Schools Ministerial Advisory Committee to comprise the members appointed by the Minister under Section 91.

Section 91 Appointment of members of the committee

The purpose of this section is to ensure the committee comprises persons who represent the interests of the non-Government school community and the general community.

(a) and (b) Require the Minister to appoint a chairperson and a deputy chairperson for the council.

(c) The Minister is required to appoint 9 people who in the opinion of the Minister represent the general community, non-Government schools and school systems and the parents of children and teachers at non-Government schools. These members are termed "representative members."

Section 92 Term of appointment to council

This section specifies the term of appointment of a member as 3 years.

It also states the information required on the instrument of appointment or letter appointing a member. The information to include is: the term of appointment; whether the member is the chairperson, deputy chairperson, or a representative member and if the latter it may include if relevant, the group represented by the member.

Section 93 Ending of appointment to committee

This section gives the Minister powers to end an appointment to the committee in specified circumstances. The specified circumstances are that the Minister is satisfied that a member no longer represents a relevant organisation or group, misbehaviour by the member; or that the member has or contravened section 97 (Disclosure of interests by members of council).

Section 94 Conditions of appointment generally of committee members

Allows appointments to be made under conditions decided by the Minister.

Division 4.4.2 Proceedings of committee

Section 95 Time and place of meetings

Allows the committee to decide the time and place of meetings provided that it meets at least once every three months.

Section 96 Procedures governing proceedings of committee

This section requires the committee to keep minutes of all meetings but otherwise allows the committee to decide the procedures to be followed at meetings.

Section 97 Disclosure of interests

The purpose of this section is to enable the committee to advise and inform the Minister in the interests of Government schooling regardless of any personal financial interests of individual members of the committee.

(1) Requires members to disclose direct or indirect financial interests relevant to council business and states the procedures to be followed.

(2) States that as soon as practical after a member of the council becomes aware of the facts the member must disclose to the other members at a meeting of the council any financial interest that the member has that may conflict with the proper exercise of their functions.

(3&4) The disclosure must be minuted and the member with a financial interest must not be present when relevant issues are discussed. The member must not take part in any decision on issues relevant to that interest, that may affect the interest or be affected by the interest.

(5) Requires that within 14 days of the end of the financial year the chair of the council must give the Chief Executive a statement of any disclosure of interest made under sub section (2) during the financial year.

Part 4.5 Other provisions

Division 4.5.1 Authorised persons (non-Government)

This part enables the Minister to appoint authorised persons (non-Government) to carry out inspections of premises and documents in order to obtain information relevant to compliance by schools, other organisations and persons with the requirements of any provision of Chapter 4 of this Act.

The powers and responsibilities of the Minister in relation to authorised persons (non-Government) are stated.

The powers and responsibilities of authorised persons (non-Government) are stated.

The rights and responsibilities of non-Government school principals or proprietors are stated in relation to the exercise of their responsibilities by authorised persons (non-Government).

Section 98 Appointment of authorised persons (non-Government).

(1) Enables the Minister to appoint a person as an authorised person (non-Government) for Chapter 4 or a provision of Chapter 4 of this Act. The appointment must be in writing.

(2) Allows the regulations to prescribe a person to be an authorised person (non-Government) for Chapter 4 or a provision of Chapter 4 of this Act.

An authorised person (non-Government) must be an Australian citizen or a permanent resident of Australia.

The registrar must after inquiry, certify in writing that the person is suitable to perform the duties of an authorised person (non-Government) having regard in particular to whether the person has had any criminal conviction, the person's employment record; and whether the person has satisfactorily completed adequate training relevant to the functions that the authorised person (non-Government) is proposed to perform.

Section 99 Identity cards

(1) Requires the registrar to issue identity cards to an authorised person (non-Government) which must include a recent photograph of the authorised person (non-Government), their name, the dates of issue and expiry and other information prescribed under the regulations.

(2) Requires an authorised person (non-Government) to return an identity card to the registrar when they have ceased to be an authorised person (non-Government) within 21 days. A penalty for non compliance is stipulated.

Division 4.5.2 Inspection powers for non-Government schools

Section 100 Power not to be exercised before an identity card is shown.

Requires an authorised person (non-Government) to show an identity card to a person before exercising any powers under Chapter 4 of this Act in relation to that person.

An authorised person (non-Government) is forbidden to remain in a non-Government school entered under this division, if the authorised person does not produce an identity card when requested to do so by the principal.

Section 101 Entry to non-Government schools for routine inspection

Gives power to an authorised person (non-Government) to enter the premises of a non-Government school at any time they are being used as a school, to carry out a routine inspection of the school to find out whether the school is complying with this Act.

Section 102 Entry to non-Government schools with consent

This section allows an authorised person (non-Government) to enter a non-Government school other than for a routine inspection, only with the consent of the principal.

It also enables an authorised person (non-Government) to enter a non-Government school without consent to seek consent to enter.

Section 103 Consent to entry

(1) States that this Section applies when an authorised person (non-Government) intends to seek consent to enter a non-Government school.

(2) Requires that before asking for consent to enter, an authorised person (non-Government) must inform the principal of a non-Government school the reason for the entry and that they are not required to give consent.

(3) States that if consent is given, the authorised person (non-Government) may ask the principal to sign a written acknowledgement.

(4) States that the written acknowledgement must state that the principal was told the reason for the entry, that consent to entry is not compulsory and may be refused, that the principal gives consent to enter and the date and time the consent is given.

(5) States that the principal must be given a copy of the acknowledgement if they have signed it.

(6) States that a court may presume that a principal did not consent when:

(a) a question arises, in a proceeding in the court, whether the principal or parent consented to the authorised person (non-Government) entering the school or premises under this Act;

(b) an acknowledgment under this section is not produced in evidence for the entry; and

(c) it is not proved that the principal or parent consented to the entry.

Section 104 Powers on entry

The purpose of this section is to enable an authorised person (non-Government) to collect information required to find out whether a school is complying with the provisions of this Act

This section enables an authorised person (non-Government) who has entered a non-Government school under sections 101 or 102 to inspect the premises of the school or anything in them including registers of enrolment and attendance.

Division 4.5.3 Miscellaneous**Section 105 Inspection of register of non-Government schools**

This section enables a person to inspect the register of non-Government schools without charge and, enables a person to copy all or part of a register on payment of a reasonable charge for copying costs.

CHAPTER 5 HOME SCHOOLING

Part 5.1 Registration

Section 106 meaning of *home schooling*

Defines *home schooling* to mean schooling provided by the child's parents in the child's home.

Section 107 Application for registration for home schooling

Enables parents to apply in writing to the Chief Executive for registration for home schooling their children.

Section 108 Criteria for registration of home schooling

This section enables the Chief Executive to register a child for home schooling if satisfied that the conditions for home schooling are met.

It also enables an authorised person (Government) to inspect the premises at which home schooling takes place or is proposed and any educational courses, materials and other records to find out whether the conditions for home schooling will be met.

Section 109 Conditions of registration for home schooling

States the conditions for registration of home schooling as follows:

- (a) that the parents of the child provide a satisfactory education program;
- (b) the premises and the facilities at the premises where home schooling takes place are adequate for the home schooling;
- (c) the course of education provided to the child, premises and facilities are subject to annual review by the Chief Executive;
- (d) arrangements for home schooling may be reviewed at any time by an authorised person (Government);
- (e) the parents comply with this Act; and
- (f) an authorised person (Government) may have reasonable access to the premises where home schooling is provided to ascertain whether conditions are being complied with.

Section 110 Registration of child

If the Chief Executive approves the registration of a child for home schooling then the Chief Executive is responsible for ensuring that the particulars of the home schooling arrangements as specified in the regulations are entered in a register kept under Section 115 and that a

certificate of registration that states the term of the registration is given to the parents.

Section 111 Period of registration

The term of registration for home schooling is to be no longer than two years.

Section 112 Cancellation of registration

This Section states the process for a cancellation of registration for home schooling by the Chief Executive.

- (1) Enables the Chief Executive to cancel a registration for home schooling if satisfied that there are reasonable grounds that a parent has contravened a condition of registration.
- (2) This section requires that before cancelling a registration the Chief Executive must give the parent a written notice that states the grounds for cancellation, the facts that establish the grounds and advising the parent that they may provide a written response within 14 days of receiving the notice.
- (3) States that in considering whether to cancel registration, the Chief Executive is required to take account of any written response from parents given in accordance with sub section (2).
- (4) States that the Chief Executive must give the parent's written notice of the decision.
- (5) States that cancellation takes effect on the day the parents are given the written notice or on the day stated in the notice.

Section 113 Certificate of registration for home schooling

States that a certificate of registration for home schooling must include: the name of the child registered for home schooling, the name of the child's parents or parent, where the home schooling is to be given and the parts of the premises used for home schooling, the period of registration and the conditions of registration.

Section 114 Annual home schooling reports

Requires the parents of a child registered for home schooling to give an annual report about the educational progress of the child to the Chief Executive.

Section 115 home schooling register

The Chief Executive is required to maintain a home schooling register.

Part 5.2 Inspection powers for home-schooling premises

Section 116 Power not to be exercised before an identity card is shown.

Requires an authorised person (Government) to show an identity card to a person before exercising any powers under Chapter 5 of this Act in relation to that person.

An authorised person (Government) is forbidden to remain on premises entered under this part, if the authorised person (Government) does not produce an identity card when requested to do so by the occupier.

Section 117 Entry to home schooling premises for routine inspection

The purpose of this section is to enable an authorised person (Government) to enter only those parts of a house used for home schooling and to enable the authorised person to assess whether this Act is being complied with.

The section gives power to an authorised person (Government) to enter the parts of premises stated in a certificate of registration for home schooling as the parts of the premises used for home schooling at any time they are being used for home schooling under this Act, to carry out a routine inspection of the school to find out whether the school is complying with this Act.

Section 118 Entry to home schooling premises with consent

This section allows an authorised person (Government) to enter home schooling premises other than for a routine inspection, only with the consent of a parent of the child registered for home schooling.

It also enables an authorised person (Government) to enter a non-Government school without consent to seek consent to enter.

Section 119 Consent to entry

- (1) States that this Section applies when an authorised person (Government) intends to seek the consent of the parent of the child registered for home schooling to enter home schooling premises.
- (2) Requires that before asking for consent to enter, an authorised person (Government) must inform the parent the reason for the entry and that they are not required to give consent.
- (3) States that if consent is given, the authorised person (Government) may ask the parent to sign a written acknowledgement.
- (4) States that the written acknowledgement must state that the parent was told the reason for the entry, that consent to entry is not compulsory and may be refused, that the parent gives consent to enter and the date and time the consent is given.

(5) States that the parent must be given a copy of the acknowledgement if they have signed it.

(6) States that a court may presume that a parent did not consent when:

(a) a question arises, in a proceeding in the court, whether the parent consented to the authorised person (Government) entering the school or premises under this Act;

(b) an acknowledgment under this section is not produced in evidence for the entry; and

(c) it is not proved that the parent consented to the entry.

Section 120 Powers on entry

The purpose of this section is to enable an authorised person (Government) to collect information required to find out whether a school is complying with the provisions of this Act. It restricts the entry and inspection powers only to those parts of the premises stated in the certificate of registration to be used for home schooling.

This section enables an authorised person (Government) who has entered a home schooling premises under sections 117 or 118 to inspect the home schooling premises or anything in them.

CHAPTER 6 MISCELLANEOUS

Part 6.1 Review of Decisions

Section 121 Meaning of reviewable decision for Part 6.1

Specifies the **reviewable decisions** in this act as follows.

(a) A decision of the Minister:

- (i) to direct the registrar to refuse to provisionally register a school (s 73 Provisional registration);
- (ii) to direct the registrar to refuse to register a school (s 75 Registration);
- (iii) to direct the registrar to refuse to register a school with additional educational levels (s 77 Registration at additional educational levels);
- (iv) to direct the registrar to cancel a school's provisional registration or registration (s 81 Cancellation of provisional registration or registration of non-Government schools);
- (v) to refuse to renew the registration of a school (s 83 Renewal of registration); or

(b) A decision of the Chief Executive:

- (i) to refuse to issue an exemption certificate (s 13 Exemption certificates);
- (ii) to revoke an exemption certificate (s 15 Revocation of exemption certificates);
- (iii) to suspend a child for a stated period or to exclude or transfer a child (s 31 Suspension, exclusion or transfer of a child by Chief Executive); or
- (iv) to refuse to register a child for home-schooling (s 108 Criteria for registration for home-schooling).
- (v) to cancel the registration of a child for home-schooling (s 112 Cancellation of registration of child for home-schooling).

Section 112 Notice of decisions to be given to affected people

(1) Identifies the Minister or Chief Executive as the decision maker for the purposes of this section when making a reviewable decision.

Requires the decision maker to give a written notice of the decision to each person whose interests are affected by the decision.

(2) Requires that the notice must be in accordance with the code of practice in force under the Administrative Appeals Tribunal Act 1989 sub section 25 (b) (1).

The notice must tell the person:

(a) whether the person has the right to apply for internal review of the decision or the right to apply to the administrative appeals tribunal for review of the decision and how the application must be made; and,

(b) if the person has the right to apply for an internal review of the decision that the person has the right to apply to the administrative appeals tribunal for review of the decision on the internal review if the person is dissatisfied with that decision; and,

(c) about the options available under ACT laws to have the decision reviewed by a court or the ombudsman.

Section 123 Who may apply for internal review of decisions

(1) States that a person whose interests are affected by a reviewable decision may apply in writing to the decision maker for internal review of the decision.

(2) Requires that the decision maker to arrange for some one else (the internal reviewer) to review the decision.

(3) States that this section does not apply to a decision made personally by the Minister or Chief Executive.

Section 124 Applications for internal review

(1) States that an application for internal review of a decision must be made within:

(a) 28 days after the applicant is told about the decision by the decision maker; or

(b) any longer period allowed by the internal reviewer either before after the end of the 28 day period.

(2) Requires that the application for internal review must state the grounds on which internal review of the decision is sought.

(3) Allows the operation of the decision of a decision to take effect whether or not an application is made for internal review of the decision.

Section 125 Internal Review

(1) Requires the internal reviewer to review the reviewable decision and confirm, vary or revoke the decision within 28 days after the decision maker receives the application for review of the decision.

(2) States that if the decision is not varied or revoked within 28 days the decision is taken to be confirmed by the internal reviewer.

(3) Requires that the internal reviewer must give written notice of the decision on the internal review to the applicant.

(4) States that the notice must be in accordance with the code of practice in force under the Administrative Appeals Tribunal Act 1989 Subsection 25B (1).

Section 126 Review by administrative appeals tribunal of certain decisions

Enables a person to apply in writing to the administrative appeals tribunal for review of decisions made by an internal reviewer, or of a reviewable decision made personally by the Minister or Chief Executive.

Part 6.2 Other Provisions

Section 127 Preschools

Requires the Chief Executive to encourage and provide opportunities for the participation of parents in the conduct of preschools.

Section 128 Offences on school premises

The purpose of this section is to protect school premises from trespass and from offensive or disorderly conduct by people on school premises..

The section:

- forbids a trespass on school premises and stipulates a penalty; and,
- forbids disorderly or offensive conduct on school premises;
- requires a person to leave school premises when asked to do so by a police officer, the school principal or a person authorised by the principal; and,
- stipulates a penalty.

School premises are defined for the purpose of this section as the land including buildings and other structures on the land occupied by a school.

Section 129 Obligations on parents

This section makes it clear that any person who has legal parental responsibility for a child under this Act may be held responsible for carrying out the obligation. Similarly any one who has legal parental responsibility may carry out an obligation in respect of a child.

(1) States that where in this Act an obligation is expressed to apply to the parents of a child any parent may carry out the obligation.

(2) States that for this Act each parent is liable when an obligation laid on the parent of a child is not carried out.

Section 130 Notification of parents

This section makes it clear that any person who has legal parental responsibility for a child under this Act may be given information, required to do something or be advised of anything in respect of the child under to this Act.

This section allows any one of a child's parents to be asked for information, asked to do anything and advised or informed of anything under this Act.

It is not necessary for all of those who have a parental responsibility for the child to be so asked for information, asked to do anything, advised or informed.

States that for this Act, if a notice is required to be given to the parents of a child, or there is an obligation to ask or tell the parents of a child something, it is sufficient if a parent of the child is given notice or asked or told the thing.

Section 131 false or misleading statements

This section proscribes any one from making false or misleading statements, including by omission to the Chief Executive, registrar or to an authorised person.

States that:

(a) persons must not make false or misleading statements to the Chief Executive, registrar or to an authorised person and,

(b) a person must not omit anything from a statement to the to the Chief Executive, registrar or to an authorised person without which the statement would be false or misleading.

States penalties for non compliance.

Section 132 Minister may grant scholarships etc

Enables the Minister to grant scholarships bursaries, free places, exhibitions or other forms of assistance or reward for students at schools, colleges or universities.

Section 133 Educational trust funds may be transferred to the Territory

Enables funds from educational trust funds for bursaries, free places, exhibitions, prizes scholarships or other forms of assistance or reward for students at schools, colleges or universities to be transferred to Territory.

Section 134 Conditions for the acceptance of gifts etc for educational purposes

This section allows the Minister to accept gifts and although it requires the Minister to consider the wishes of the donor, does not bind the Minister to the wishes of the donor or to the terms of any gift or trust fund donated to the Territory.

The section also allows the Minister, on behalf of the Territory, powers to sell, invest or apply part or the whole of the funds for any purpose. The Minister may also execute deeds and grant releases etc and exercise any other powers conferred on the Minister by the donor of a gift or creator or transferor of a trust fund.

- 1) States the application of this section to when a person
 - (a) gives money or property to the Territory for setting up or assisting in the giving of any form of assistance mentioned under section 132; or,
 - (b) transfers a trust fund or trust property to the Territory under section 133.
- (2) Requires the Minister to consider the wishes of a donor of a gift.
- (3) Allows the Minister to alter or modify the terms of creation of a gift or of a trust fund transferred to the Territory.
- (4) Enables the Minister on behalf of the Territory to sell, invest or apply part or the whole of the funds for any purpose mentioned in section 133. The minister may also execute deeds and grant releases etc and exercise any other powers conferred on the Minister by the donor of a gift or creator or transferor of a trust fund.
- (5) States that the Minister is taken not to be a trustee of a gift or trust fund transferred to the Territory under section 133.

Section 135 Approved forms

This section enables the Minister to approve forms for this Act. When the Minister approves a form for a particular purpose, the approved form must be used for that purpose. An approved form is a notifiable instrument.

Section 136 Regulation making power

- (1) Empowers the Executive to make regulations for this Act.
- (2) Enables the regulations to create offences for contravention of regulations but sets the maximum penalty at 10 penalty units.

CHAPTER 7 TRANSITIONAL PROVISIONS

Part 7.1 General

Section 137 Meaning of *former authority*

Defines *former authority* to mean the authority established under the Schools Authority Act 1976 now repealed under this Act.

Section 138 Repeal of Acts

This section repeals the legislation that is replaced by this Act.

States that the following Acts are repealed:

Education Act 1937 No 25

Free Education Act 1906

Public Instruction Act 1880\

Schools Authority Act 1976 No 59

Section 139 Repeal of subordinate laws

This section repeals the subordinate legislation replaced by this Act.

States that the following subordinate laws are repealed:

Schools Authority Regulations (subordinate law 1978, Number 11)

Schools Authority Regulations (subordinate law 1979, Number 7)

Section 140 Acts amended Schedule 1

States that Schedule 1 amends the Acts mentioned in that schedule.

Part 7.2 Assets and liabilities of the former Authority

Section 141 Vesting of assets and liabilities of former authority in the Territory

This section transfers the assets and liabilities of the former Schools Authority (extinguished by repeal in sections 138 and 139) to the Territory.

It also provides for any current contractual arrangement to pass from the Schools Authority to the Territory.

(1) States that the assets or liabilities of the former authority vest in the Territory.

(2) Provides that if an asset or liability that vests in the Territory is mentioned in a contract, agreement or arrangement, a reference in the contract, agreement or arrangement to the former authority is, in relation to anything happening or to happen in relation to the asset or liability after the vesting of the asset in the Territory, a reference to the Territory.

Section 142 Evidentiary certificate for vested assets and liabilities

This section enables the Chief Executive to create documents certifying the transfer of assets or liabilities from the former Schools authority to the Territory. It affirms the validity of those documents.

(1) Allows the Chief Executive to certify that an asset or liability has vested in the Territory under section 141 (Vesting of assets and liabilities of former authority in Territory).

(2) States that a certificate under subsection (1) is evidence of the matters it states.

(3) States that a document purporting to be a certificate signed by the Chief Executive under subsection (1) is taken to be such a certificate, and to have been so signed, unless the contrary is proved.

Section 143 Registration of changes in title to certain assets

By this section a registering authority is required to transfer the registration of the assets of the former Schools Authority to the Territory. It further states that even if this transfer is not done by actually changing the register it is taken to have been done by this Act.

(1) Defines a **registering authority** and **registrable asset** for the purpose of this section:

a **registering authority** is the person required or permitted under Territory law to enter the ownership of assets in a register; and

a **registrable asset** is an asset including land the particulars of which under Territory law are required or permitted to be entered in a register.

(2) States the application of the Section to a registrable asset vested in the Territory and for which the Territory has given the registrable authority a certificate under Section 142 (Evidentiary certificate for vested assets and liabilities).

(3) Requires the registrable authority to enter particulars in the register and anything else that needs to be done to record the vesting of the asset in the Territory.

(4) States that the evidentiary validity of a register mentioned in this section is not affected by making an entry in the register, not making an entry in the register or failure by the Territory to give a certificate to the registering authority for the registrable asset.

Section 144 Proceedings and evidence in relation to vested assets and liabilities

(1) States that this section applies in relation to an asset or liability that vests in the Territory under section 115 (Vesting of assets and liabilities of former authority in Territory).

(2) States that if a proceeding had been begun in relation to the asset or liability before it vested in the Territory and the former authority is a party to the proceeding, the Territory is substituted for the former authority as a party to the proceeding.

(3) States that if a proceeding could have been begun by or against the former authority in relation to the asset or liability before it vested in the Territory, the proceeding may be begun by or against the Territory.

(4) States that the Limitation Act 1985 applies to a cause of action that accrued to or against the former authority in relation to the asset or liability as if the cause of action had accrued to or against the Territory when it accrued to or against the former authority.

(5) Enables the court or other entity in which a proceeding is begun or continued by or against the Territory in relation to the asset or liability may give directions about the conduct of the proceeding.

(6) States that any evidence that would have been admissible for or against the former authority in the proceeding is admissible for or against the Territory.

(7) States that in this section "**proceeding**" includes a right of appeal or review (including a right of review under the Ombudsman Act 1989) or any other civil proceeding.

Part 7.3 General Savings

Section 145 Definitions for Part 7.3

Defines:

commencement as the commencement of this Division;

former authority Act as the *Schools Authority Act 1976*;

former education Act as the *Education Act 1937*.

Section 146 Existing schools etc

Continues the legal existence under this Act of all schools established under the *Schools Authority Act 1976* and in existence immediately before this Act.

It similarly provides for the continued legal existence under this Act of a school or other educational or related institution, educational service, or

educational or related service established under the former Schools Authority Act 1976.

(1) Provides for a preschool, primary school, high school or secondary college established under the former authority Act, section 6 (1) (a) (i) that was in existence immediately before the commencement to be taken, after the commencement, to be a school of that kind established under section 17 (1) (Establishing Government schools etc) of this Act.

(2) Provides for a school or other educational or related institution, educational service, or educational or related service established under the former authority Act, section 6, other than section 6 (1) (a) (i), that was in existence immediately before the commencement to be taken, after the commencement, to be a school related educational institution established under section 17 (3) (Establishing Government schools etc) of this Act.

Section 147 Name of schools, institutions and services

Provides for the continued legal use under this Act of the name of a preschool, school, college, institution or service established under the former Schools Authority Act 1976.

(1) Applies this section to a preschool, primary school, high school or secondary college, a school or other educational related institution, or an educational or related service, established under the former authority Act that was in existence immediately before the commencement.

(2) Provides for the continued use of a name given to the preschool, school, college, institution or service under this Act.

Section 148 School boards

Provides for the continued legal existence under this Act of a school board established under the former Schools Authority Act 1976.

States that a school board established under section 37 of the former authority Act is taken, after the commencement, to have been established under section 34 (Establishment of school boards) of this Act.

Section 149 Members of school boards

Provides for the continued membership for the duration of their current term of office of members of school boards appointed under the former Schools Authority Act 1976.

Provides for a member of a school board who was elected or appointed under section 40, 41 or 42 of the former authority Act immediately before the commencement to hold office, after the commencement, as a member elected or appointed under section 37 (Constitution of school boards generally), 38 (Constitution of school boards of small schools), or 39 (Constitution of boards of school related institutions and other schools

in special cases) of this Act for the remainder of the term for which the member was appointed.

Section 150 Exemption certificates

Provides for the an exemption certificate given under section 16 of the former Education Act immediately before the repeal of that Act to continue to be in force under Section 13 this Act for the remainder of the term for which it was given.

Section 151 Registers

This section continues the legal validity of registers of attendance under this Act of any school kept under the former Education Act 1937.

It also provides for the continued legal validity under this Act of any register of all non-Government schools and any register of home register schooling kept under the former Education act 1937.

(1) Provides for a register of attendances kept under the former education Act, section 15 to be taken, after the commencement, to be a register of enrolments and attendances under section 28 (Keeping records of enrolment and attendances) of this Act.

(2) Provides for a list of registered primary schools and a list of registered secondary schools kept under the former education Act, section 28 to be taken, after the commencement, to be a register of non-Government schools kept by the registrar under section 69 (Register of non-Government schools) of this Act.

Section 152 Parents and citizens associations

This section continues the legal validity under this act of a declaration of a parents and citizens association for a Government school made under the former Schools Authority Act 1976.

Provides for a parents and citizens association for a Government school declared under subsection 36 (2) of the former authority Act to be taken, after the commencement, to be the parents and citizens association declared under section 36 (Declaration of parents and citizens associations) of this Act for the school.

Section 153 Expiry of Chapter 7

States that Chapter 7 expires 1 year after it commences.

Section 154 Declared law for Legislation Act 2001, section 88

States that this Act is an Act to which the Legislation Act 2001, section 88
(Repeal does not end transitional or validating effect etc) applies.

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS OF OTHER LAWS

Part 1 Children and Young People Act 1999

[1.1] States that in **Section 330 (e)**, the following is substituted:

"(e) by a Government school or non-Government school under the Education Act 2001, whether provided during or outside school hours; or".

[1.2] States that in **Section 373 (a)** the following is substituted:

"(a) a contravention of the Education Act 2001 in relation to the young child; or".

[1.3] States that in **Section 378** the following is substituted:

"378 Part subject to certain provisions of Education Act

This part has effect subject to the Education Act 2001, sections 10(Compulsory attendance)."

[1.4] States that in the **Dictionary**, definition of ***school***, the following is substituted:

"*school* means:

(a) a Government or non-Government school under the Education Act 2001; or

(b) an educational institution conducted by the Canberra Institute of Technology."

[1.5] States that in the **Dictionary**, definition of ***school-leaving age*** the following is substituted:

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

Part 2 Crimes Act 1900

[1.6] Dictionary, definition of school, substitute:

school means a Government school, non-Government school or school related institution under the Education Act 2001

Part 3 Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994

[1.7] States that in Section 6 (1) (a) the following is substituted:

"(a) a registered non-Government school under the Education Act 2001, other than a non-Government school that is provisionally registered under that Act, and"

[1.8] States that in Section 6 (5) (b) the following is substituted:

"(b) at the time it was approved, the school was provisionally registered, or registered as a non-Government school under the Education Act 2001".

Part 4 Intoxicated Persons (Care and Protection Act) 1994

[1.9] States that in Section 3 (1), definition of school, the following is substituted:

"*school* means a Government school, non-Government school or school related institution under the Education Act 2001."

Part 5 Legislation Act 2001

[1.10] States that in Schedule 1, omit the following:

part 1, items 27 and 54

[1.11] States that in the Schedule renumber items of schedule 1 when Act next republished under the Legislation Act 2001

DICTIONARY

States the meaning of terms used in the Act.

Endnote

Explains that the Interpretation Act 1967 Section 33AA gives the meanings of penalties expressed in penalty units.