

# SCHOOL EDUCATION AMENDMENT BILL 2014

## EXPLANATORY MEMORANDUM

### OVERVIEW

The *School Education Act 1999* (the Act) recognises the right of every child in the State to receive a school education and provides the basis for education to be provided in a government school, a non-government school or approved alternative. Specifically, the Act makes provision for:

- the establishment and operation of government schools and for parent and community involvement in school affairs;
- the registration and regulation of non-government schools and the funding of such schools; and
- the registration and regulation of community kindergartens.

The Bill amends the Act to enable a number of significant government initiatives to be implemented.

In December 2011 the Premier and Minister for Education announced that Year 7 government school students would move to secondary schools in 2015. This would support the implementation of the Australian Curriculum and bring Western Australia's government schools into line with those in other Australian states and territories, as well as most non-government schools in the State.

The Amendments will enable secondary school charges to be levied in respect of Year 7 students in government secondary schools.

In December 2010 the Premier announced the establishment of ten Child and Parent Centres (CPCs) on government school sites and in February 2013 a further six were announced. Of the 16, five are at regional schools and 11 at metropolitan schools.

The objective of CPCs is to prepare children and their parents for success at school. It is necessary to provide specific authority in the Act for the Minister for Education to be the contracting party for CPCs and the licensor of the use of the land. This is achieved through amendment of Part 6 of the Act to provide for joint arrangements and the licencing of those joint arrangements.

The Act requires all children of compulsory school age to be enrolled in an educational program and to attend regularly. Prosecutions for failing to enrol and for non-attendance have proven cumbersome and amendments are made to enable effective enforcement of compulsory schooling.

To address non-enrolment, the Bill includes a new provision requiring a parent to provide proof of enrolment or proof of registered home schooling on receiving a written request.

To address non-attendance, Attendance Panel procedures are amended to allow greater flexibility in facilitating attendance, reduce reporting obligations and incorporate responsible parenting agreements into the process.

The Bill strengthens the protection of government school students by enabling the Director General of Education to order a government school staff member to leave and remain away from the premises of all government schools when she suspects that the continued presence of that person constitutes a risk to the safety and welfare of students generally.

Part 4 – Non-government schools – is substantially amended to streamline procedures, improve efficiency and fairness to schools, reduce regulatory burden and enable the registration standards for non-government schools to meet contemporary expectations.

The primary registration decision-maker will become the Chief Executive Officer (CEO) of the responsible department – the Department of Education Services (DES). Registration includes renewal of registration, inspections with and without notice, giving quality improvement notices, imposing conditions on registration, giving directions and cancelling registration. In making registration decisions, the CEO is required to apply the registration standards determined by the Minister. Schools aggrieved by decisions of the CEO may seek review by the Minister.

The Minister will retain responsibility for advance determinations (approval of new school planning proposals or significant registration changes), registration standards, school funding and loans, and school system agreements.

The advance determination stage will be wholly separated from the registration stage. An advance determination is required before a proposed new school can be established and apply for registration; or an existing school can make a significant registration change and apply for a registration amendment.

Advance determinations will be made by the Minister in accordance with a policy direction to be published in the *Government Gazette*. The question for the Minister is whether the new school would have an adverse effect on the viability of an existing school. Significant registration change applications will be judged on the same basis.

A school aggrieved by the Minister's decision on its advance determination application has a right of review by applying to the Minister. On any review application, the Minister must refer the matter for advice to a Non-government School Registration Advisory Panel.

## **CLAUSE NOTES**

### **Part 1 – Preliminary**

#### **1. Short title**

The Act will be the *School Education Amendment Act 2014*.

#### **2. Commencement**

Provides for the amending Act to come into operation as follows:

- a) Part 1 on the day the Act receives Assent;
- b) section 29 on the day the Act receives Assent, if that is on or before 1 January 2015; alternatively, if the Act receives Assent on a later date, section 29 will be deemed to have commenced on 1 January 2015;
- c) the rest of the Act on a day or days fixed by proclamation.

## **Part 2 – School Education Act 1999 amended**

### **Division 1 - Preliminary**

#### **3. Act amended**

Part 2 amends the *School Education Act 1999*.

### **Division 2 – Amendments about the registration of non-government schools**

#### **4. Section 150 amended**

A number of necessary terms are added to and defined in section 150. The definition of “governing body” is amended to allow for the possibility that a school may be a member of a school system, which has a governing body, but nevertheless retain a separate, individual, governing body.

#### **5. Section 153 amended**

Section 153 governs the relationship between the Minister responsible for the Act and the chief executive officer (CEO) of the Department responsible for assisting the Minister in the administration of Part 4 – Non-government schools. It is amended to remove the Minister’s ability to direct the CEO in the performance of certain functions from which an aggrieved school or school proponent has a right of review by the Minister.

Section 153 is further amended to require any direction by the Minister to the CEO to be laid before each House of Parliament and published in the Department’s annual report.

#### **6. Part 4 Division 2 heading replaced**

Division 2 is to be headed “Offences”.

#### **7. Section 154 amended**

Section 154 creates the offence of operating an unregistered school. It is amended to clarify which establishments must be registered. Government schools, community kindergartens, child care services and education and care services are excluded from this requirement and other non-school educational establishments can be excluded by regulation. The daily penalty is increased from \$50 to \$200.

#### **8. Sections 155 to 162 deleted and sections 155 to 156C, Part 4 Division 3A, Part 4 Division 3B Subdivision 1, Part 4 Division 3B Subdivision 2 heading and sections 161 to 163A inserted**

Amendments are made to the arrangements for advance determinations, registration, renewal and registration change applications, school standards and requirements and the register of non-government schools.

Section 155, creating the offence of making false representations, is amended in line with amendments to section 154.

Section 156A requires every school to be conducted in accordance with the information registered in respect of it. Failure to do so is an offence.

Section 156B requires changes to the constitution or membership of a school's governing body to be notified to the CEO. Failure to notify is an offence.

Section 156C enables the Minister or CEO to require school governing bodies to provide information relevant to registration or funding. Failure to do so is an offence. This requirement is currently in section 181 which is to be deleted.

Division 3A – School planning proposals require an advance determination – is inserted.

Section 156 defines a “school planning proposal” as a proposal to establish a non-government school or to make a significant registration change to a registered school. What is a “significant” registration change will be as prescribed.

Section 157A outlines what is required for an advance determination application about a school planning proposal. These applications are made to the Minister.

Section 157B enables the Minister to make an advance determination on an application if satisfied that it is satisfactory taking into account the policy direction outlined in section 157C.

Section 157C requires the Minister to issue a policy direction about advance determinations, stipulates what the Minister must have regard to or address in the policy direction and requires it to be published in the *Government Gazette*.

Section 157 requires the Minister to give notice of his decision on an advance determination application not later than 6 months after the application is made.

Division 3B – Registration of non-government schools – is inserted.

Subdivision 1 – Applications and requirements – is inserted.

Section 158A sets out when an advance determination is required before an application can be made: namely, for registration or a significant registration change.

Section 158 outlines what is required for a registration application.

Section 159A outlines what is required for a renewal of registration application.

Section 159B outlines what is required for a registration change application, including a significant registration change application.

Section 159 lists the matters on which the Minister may determine standards for non-government schools. New to this list is paragraph (1)(l) “the arrangements for preventing child abuse at schools and for responding to any such abuse which may occur”.

Section 160 lists the matters of which the CEO must be satisfied before approving an application for registration or renewal of registration. New to this list are paragraph (1)(e) “the day-to-day management and control of the school by the principal will be separate from the overall governance of the school by its governing body” and paragraph (1)(f) setting out four matters for which the governing body is to be accountable. Subsection (1) further requires the CEO to consider the prior conduct of business associates of each governing body member when assessing the latter's fitness and propriety.

Subsection (4) lists the options for the CEO should he not be satisfied as required under subsection (1). He may approve the application but give a quality improvement notice, impose a condition on registration or give a direction; or he may refuse the application.

Section 161A sets out the matters of which the CEO must be satisfied before approving an application for registration change. It also lists the same options should the CEO not be satisfied as required.

Section 161B requires the CEO to notify an applicant for registration or registration change of the outcome within 6 months from the making of the application.

Subdivision 2 – Registration and certificates of registration – is inserted.

Section 161 sets out the information which must be on the register of non-government schools kept by the CEO.

Section 162 requires the CEO to issue a registration certificate on registration, renewal of registration or registration change.

Section 163A requires governing bodies to surrender their registration certificates in certain circumstances. Failure to do so is an offence.

#### **9. Section 163 amended**

The maximum registration period is reduced from 7 years to 5 years in line with current practice.

#### **10. Part 4 Division 3B Subdivision 3 heading inserted**

Subdivision 3 – Notices, conditions, directions and cancellations – is inserted.

#### **11. Sections 164 to 167 replaced**

The disciplinary options available to the CEO where schools fail to meet minimum standards or requirements are rationalised and a new lesser option is recognised.

Section 164 enables the CEO to assess the suitability of the governing body of a registered school at any time and to take action if he is not satisfied. Actions he can take are to give a quality improvement notice, impose a condition on registration, give a direction or cancel the registration of the school.

Section 165A creates quality improvement notices which are not mandatory. These notices are not published on the register or the school's registration certificate.

Section 165 amends the provision for imposing conditions on registration when the CEO is not satisfied under section 160(1) to include the possibility that the CEO may impose a condition when a governing body has not complied with a quality improvement notice.

Section 166 enables the CEO to give a direction in circumstances where he is not satisfied under section 160(1) or that a condition on the school's registration is not being complied with.

Section 167A prevents a school to which a direction has been given from accepting children for enrolment until the direction is withdrawn.

Section 167 enables the CEO to cancel a school's registration at any time if he is satisfied the governing body is not complying with the Act, a condition or a direction, or that it is in the best interests of the students, or if he is not satisfied under section 160(1).

**12. Part 4 Division 3C heading inserted**

Division 3C – Review of decisions under Divisions 3A and 3B – is inserted.

**13. Section 168 amended**

The list of decisions of which a governing body may seek a review is expanded. Applications for review are to be made to the Minister in writing within 20 days of receipt of written notice of the decision.

**14. Section 169 amended**

Section 169(2) is amended to insert terminology – “governing body of the system” - to be used throughout Division 3 concerning non-government school systems which may be recognised by the Minister.

**15. Section 172 amended**

Section 172(1) provides for notice to be given to the Minister by a school intending to withdraw from a recognised school system. Subsection (2) enables such a school to obtain registration with a new governing body by making a renewal application within one month of withdrawing from the system. Subsection (3) requires the Minister to notify the governing body of the system about the notice received under subsection (1).

**16. Section 174 amended**

Section 174 lists matters which either must or may be included in an agreement between the Minister and the governing body of a school system (a “system agreement”). Section 174(1) is amended in line with changes made elsewhere in the Bill and to include a requirement that a system agreement is to include provision as to the methods by which the governing body of the system will ensure that satisfactory levels of care are maintained for the children in the schools in the system. Subsection (2) enables the Minister to delegate responsibility for registration and performance review of the schools in the system to the governing body of the system. It further enables a system agreement to make provision for the manner in which compliance by the governing body with the agreement is to be audited and reported to the Minister.

**17. Part 4 Division 4 heading replaced**

Division 4 is to be headed “Inspection of registered schools”.

**18. Section 176 amended**

Section 176 is amended to enable the CEO to authorise a person as an inspector of non-government schools for specified purposes which now include not only to inquire into any matter referred to in section 160(1) but also, where there has been non-compliance, to inquire into the causes of the failure to comply. These inspections can be undertaken with 7 days' notice.

## **19. Section 177 amended**

Enables inspections for the same purposes to be made without notice if the CEO is of the opinion that it is necessary because the health or welfare of a person may be at risk.

## **20. Sections 180 and 181 deleted**

Section 180 currently requires a school to give notice of a move to new premises. Such a move will become a registration change for which an application is required under section 159B.

Section 181 currently enables the Minister to require governing bodies to provide information relevant to registration or funding. That requirement will now be located in new section 156C and, for system schools, section 174(1)(c).

## **21. Schedule 1 Division 3 inserted**

Division 3 of Schedule 1 sets out the transitional provisions for the 2014 amendments.

Clause 26 defines the terms “commencement” and “former provisions”.

Clause 27 stipulates that the *Interpretation Act 1984* is not affected unless expressly provided otherwise.

Clause 28 provides that advance determination and registration applications made before commencement of the Amendment Act but not decided at that time will be decided in accordance with the provisions applicable before the amendments were made.

Clause 29 makes the same provision for renewal applications in the same circumstances and also for renewal applications made after commencement where registration will expire within 12 months of commencement.

Clause 30 provides that advance determinations made before commencement continue in force in accordance with their terms.

Clause 31 stipulates that the ban on new enrolments in section 167A will not apply to a direction given before commencement.

Clause 32 enables transitional regulations to be made.

## **Division 3 – Other amendments**

### **22. Long title amended**

The Act’s long title is amended to include that it also makes provision “for the use of property that is vested in the Minister”.

### **23. Section 9 amended**

Section 9 requires all children to be enrolled in an educational program for each year of their compulsory education period. Subsection (3) enables a parent to be prosecuted for failing to enrol a child when the Director General of Education is satisfied that “all reasonably practicable steps” have been taken to secure compliance. Clause 23 deletes the word “all”.

**24. Section 11AA inserted**

Requires parents to provide proof of enrolment or registered home schooling on request. Failure to do so is an offence.

**25. Section 11M amended**

Section 11M(3) requires the Minister to consult with named persons and bodies with respect to certain matters in registered non-government schools. Paragraph (a) amends the title “Director of Catholic Education in Western Australia” to “Executive Director Catholic Education in Western Australia”.

**26. Section 26 amended**

New subsection (3) is added to enable an Attendance Panel to advise a parent to enter into and comply with a responsible parenting agreement under the *Parental Support and Responsibility Act 2008*.

**27. Section 40 amended**

New subsection (3A) is added to enable an Attendance Panel to advise a parent to enter into and comply with a responsible parenting agreement under the *Parental Support and Responsibility Act 2008*.

**28. Section 42 amended**

Section 42 is amended to require “reasonably practicable steps” rather than “all reasonably practicable steps” to be taken before a prosecution can be commenced for non-attendance at school.

Subsection (4) is deleted, removing the requirement for the Attendance Panel to produce a second report.

New subsection (6) requires a court dealing with the matter to presume, unless the contrary is shown, that a document purporting to be a certificate under this section is such a certificate.

**29. Section 97 amended**

The definition of “first charges payment year” is amended to enable secondary school fees and charges to be levied in respect of Year 7 students.

**30. Section 213 amended**

The term “joint arrangement” is inserted and defined. Joint arrangements can be entered into by the Minister for purposes that are complementary and beneficial to the purposes of school education with respect to property vested in the Minister (“joint use property”).

**31. Section 216 amended**

The Minister is enabled to do all things necessary or convenient for the purpose of carrying out joint arrangements as well as for the purposes of school education.



### **32. Sections 218 and 219 replaced**

New section 218 applies to licences granted by the Minister for the use of tangible property vested in him. It makes provision for two categories of licence: licences that do not interfere with the normal operations of the school (subsections (4) & (5)) and joint arrangement licences (subsection (6)).

### **33. Section 220 amended**

References to section 218 are aligned with the amendment of that section.

### **34. Section 240 amended**

Enables the Director General of Education to order a staff member to leave and remain away from the premises of all government schools when she suspects that staff member may have committed a breach of discipline and that his or her presence on the premises of any government schools constitutes a risk to the safety or welfare of students generally.

### **35. Various penalties amended**

The term “a fine of” is inserted after the word “Penalty” in several sections.

## **Part 3 – School Curriculum and Standards Authority Act 1997 amended**

### **36. School Curriculum and Standards Authority Act 1997 amended**

Stipulates that Part 3 amends that Act.

### **37. Section 3 amended**

Section 3 of the *School Curriculum and Standards Authority Act 1997* is amended consequentially. The amended definition of “governing body” is inserted.