



Western Australia

School Education Act 1999

Incorporating the amendments proposed by
the *School Boarding Facilities Legislation
Amendment and Repeal Bill 2016 Pt. 3*
(Bill No. 221-1)

Note:

Pt. 2 Div. 2-4, Pt. 3 Div. 1-7 and Pt. 4 have been omitted as they are not amended by the Bill.

School Education Act 1999

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Objects of Act	2
4.	Terms used	3
5.	Term used: pre-compulsory education period	5
6.	Term used: compulsory education period	5
8.	Notes not part of Act	6

Part 2 — Education of children during compulsory education period

Division 1 — Compulsory education with alternatives in final years of compulsory education

Subdivision 1 — Enrolment of children of compulsory school age

9.	When enrolment compulsory	7
10.	Ways in which s. 9 satisfied	8
11AA.	Proof of enrolment to be provided	9
11.	Exemption from s. 9(1), Minister may grant etc.	9

Subdivision 1A — Alternatives to the operation of section 9 in final years of compulsory education

11A.	Terms used	10
11B.	Options other than school etc. in final 2 years	11
11C.	Participation s. 11B option to be full-time	12
11D.	Arrangements under s. 11B, parent to notify Minister of etc.	12
11E.	Child enrolled under s. 11B in combination of courses, application of s. 11D to	13
11F.	Notice under s. 11D or 11E, duration and effect of	14
11G.	Employment for s. 11B(1)(d), Minister's approval of required etc.	14
11H.	Child employed with s. 11G approval, parent to notify Minister of etc.	15
11I.	Child to participate in options notified under s. 11D, 11E or 11H	16
11J.	Participation by child, what constitutes	17
11K.	Notice etc. by parent under s. 11D, 11G and 11H, Minister's functions as to	18

Contents

11L.	Independent child, designating child to be	19
11M.	Minister's functions as to this Subdivision	20
11N.	Regulations for this Subdivision	21
	Subdivision 2 — Inquiries to check compliance with sections 9 and 11I	
12.	Authorised persons, authorisation of	21
13.	Authorised person, powers of	21
14.	Authorised person, certificate of authorisation for	22
15.	Pretending to be authorised person, offence	22
	Part 3 — Government schools	
	Division 8 — Parent and community involvement	
	Subdivision 1 — School Councils	
124.	Terms used	23
125.	Each government school to have Council for school	24
126.	Exemptions from and approvals for s. 125	24
127.	Council, members of etc.	24
128.	Council, functions of	25
129.	Additional functions of Council, Minister may approve	26
130.	Additional functions of incorporated Council, Minister may approve	26
131.	Property acquired by incorporated Council vests in Minister	27
132.	Council cannot intervene in certain matters	27
133.	Powers of Council	28
134.	Support services for Council, principal to provide	28
135.	Minister may direct Council	28
136.	Procedures of Council	28
137.	Protection from personal liability	28
138.	Minister may dismiss unincorporated Council	29
139.	Incorporated Council, winding up	29
140.	Regulations about Councils	30
	Subdivision 2 — Parents and Citizens' Associations	
141.	Terms used	30
142.	Forming association	30
143.	Objects of and limits on associations	31
144.	Property acquired by association vests in Minister	31
145.	Association formed after 1 Jan 2001, incorporation of	31
146.	Transitional provisions for association existing at 1 Jan 2001	32
147.	Association to give certain information to principal	32
148.	Winding up association	33
149.	Other associations, forming etc.	33

	Part 5 — Community kindergartens	
	Division 1 — Preliminary	
191.	Term used: governing body	35
	Division 2 — Registration of community kindergartens	
192.	Registration, general provisions as to	35
193.	Application for registration	35
194.	Matters to be considered by Minister	36
195.	Grant or refusal of registration	36
196.	Minister to notify decision within 3 months	37
197.	Certificate of registration; register of registered kindergartens	37
198.	Amending etc. conditions of registration	37
199.	Who can attend registered kindergarten	38
200.	Cancelling registration, Ministers' functions as to	38
201.	Decision as to registration, review of	39
	Division 3 — Operation and management of community kindergartens	
202.	Minister may direct registered kindergarten as to standards	40
203.	Governing body of kindergarten, role of	40
204.	Teaching staff etc., appointment of	40
205.	Teaching staff, functions of	40
206.	Curriculum and enrolment	41
207.	Fee for instruction and charges	41
209.	Person disrupting kindergarten etc.; disseminating information on kindergarten premises	42
210.	Moneys appropriated for kindergartens, allocation of	42
211.	Minister may require kindergarten to account for allocated moneys	42
212.	Regulations about kindergartens	43
	Part 6A — Student residential colleges	
	Division 1 — Preliminary	
213A.	Terms used	44
	Division 2 — Establishment of student residential colleges	
213B.	Establishing student residential colleges	45
213C.	Closing or amalgamating student residential colleges	45
	Division 3 — Administration of student residential colleges	
	Subdivision 1 — Operation and management	
213D.	Operation and management of student residential colleges	46

Contents

213E.	Powers of Minister relating to student residential colleges	46
213F.	Treasurer to consider proposals under s. 213E(2)(c)	47
213G.	When money paid for advertising or sponsorship to be paid to student residential college's General Purposes Fund	48
213H.	Sections 120 and 121 have effect in respect of student residential colleges	48
	Subdivision 2 — Regulations and code of conduct	
213I.	Regulations about student residential colleges	49
213J.	Code of conduct for students	50
	Subdivision 3 — Power of Minister to grant licences	
213K.	Licences by Minister for use of tangible property relating to student residential colleges	51
213L.	When money paid under licence to be paid to a General Purposes Fund	53
	Division 4 — LINC committees	
213M.	LINC committees	53
213N.	Membership of LINC committees	53
213O.	Functions of LINC committees	54
213P.	Regulations about LINC committees	55
	Division 5 — Financial provisions	
	Subdivision 1 — Fund for each student residential college	
213Q.	General Purposes Fund for each student residential college	55
213R.	Funds for other moneys received for a student residential college	56
213S.	Management of college funds	56
213T.	Money to be credited to college funds	56
213U.	Bank account for college funds	57
213V.	<i>Financial Management Act 2006</i> s. 8 and 34, application of to s. 213Q to 213U	58
213W.	Investment of college funds	58
213X.	Dealing with college funds on closure or amalgamation of a college	58
	Subdivision 2 — Student Residential Colleges Fund	
213Y.	Student Residential Colleges Fund	59
213ZA.	Minister's power to borrow money	59
	Part 6 — Administration	
	Division 1 — The Minister	
213.	Terms used	61
214.	"Minister for Education" is body corporate etc.	61
215.	Property vested in Minister	62
216.	Powers of Minister	62
217.	Treasurer to consider proposals under s. 216(2)(c)	63

218.	Licences by Minister for use of tangible property, other than property relating to student residential colleges	64
220.	When money paid under licence to be paid to school's General Purposes Fund	65
221.	When money paid for advertising or sponsorship to be paid to school's General Purposes Fund	66
222.	Exempting school from Act, Minister's powers as to	66
223.	Decision as to individual student, review of by Minister	67
224.	Delegation by Minister	68
225.	Subdelegation by CEO, Minister may permit	68
226.	Documents presumed duly executed	69
227.	Application of <i>Financial Management Act 2006</i>	69
	Division 2 — The department	
228.	Department to assist in administration of Act, other than in relation to non government schools and students attending non government schools	69
229.	Term used: chief executive officer	69
230.	Delegation by chief executive officer	70
231.	Minister may direct chief executive officer	70
232.	Chief executive officer may direct principal	70
233.	CEO's Instructions, issue of etc.	70
	Division 3 — Staff employed in the department	
234.	Terms used	71
235.	Categories of staff to be employed	71
236.	Engaging etc. teaching staff, other officers and wages staff	71
237.	Teaching staff, classes of	72
238.	Transfer etc. of teacher to another category of employee	72
239.	Teaching staff and other officers, substandard performance by and discipline of	73
240.	Employee may be ordered to leave school premises	73
	Division 4 — Advisory panels	
241.	Advisory panels, establishing etc.	74
	Part 7 — Miscellaneous	
242.	Disclosure of official information restricted	76
243.	Prosecutions and s. 109 recovery action, who may commence; evidentiary matters	77
244.	Regulations	77
245.	Review of Act	78
246.	Repeal, savings and transitional	78

Schedule 1 — Transitional provisions

**Division 1 — Transitional provisions for the
commencement of this Act**

1.	Terms used	79
2.	<i>Interpretation Act 1984</i> not affected	79
3.	Property vested in Minister at 1 Jan 2001	79
4.	Delegation in force at 1 Jan 2001 under repealed Act s. 6AA	79
5.	Agreement or licence in force at 1 Jan 2001 under repealed Act s. 6A	79
6.	Licence in force at 1 Jan 2001 under repealed Act s. 6B	80
7.	Staff appointed etc. as at 1 Jan 2001 under repealed Act s. 7(2)	80
8.	Inquiry incomplete at 1 Jan 2001 under repealed Act s. 7C	80
9.	Enrolment in effect at 1 Jan 2001	81
10.	Government school in existence at 1 Jan 2001 under repealed Act s. 9	81
11.	Efficient school registered at 1 Jan 2001 under repealed Act s. 32B	81
12.	Certain pre-school centres at 1 Jan 2001 continued as registered schools	81
13.	Certain care-centres and pre-school centres as at 1 Jan 2001 continued	82
15.	Notices etc. in force at 1 Jan 2001 under repealed Act s. 9A	82
16.	Approved account as at 1 Jan 2001 under repealed Act s. 9B	82
17.	Decision as to home education in force at 1 Jan 2001 under repealed Act s. 14(a)	82
18.	Direction in force at 1 Jan 2001 under repealed Act s. 20A	83
19.	Student suspended or excluded as at 1 Jan 2001	83
20.	School decision-making group in being at 1 Jan 2001 under repealed Act Part VA	83
21.	Parents and Citizens' Association in being at 1 Jan 2001 under repealed Act Part VI	83
22.	Repeal of <i>Industrial Relations Act 1979</i> s. 23B, transitional	84
23.	Transitional regulations	84

**Division 2 — Transitional provisions for the
*Education and Care Services National Law
(WA) Act 2012***

24.	Term used: commencement	85
25.	Registration extended for a period of time	85

	Division 3 — Transitional provisions for the <i>School Education Amendment Act 2014</i>	
26.	Terms used	85
27.	<i>Interpretation Act 1984</i> not affected	85
28.	Pending applications and reviews of certain decisions	85
29.	Application for imminent renewal of registration	86
30.	Advance determinations under former provisions continue	86
31.	Directions in force before commencement	86
32.	Transitional regulations	87
	Division 4 — Transitional provisions for the <i>School Boarding Facilities Legislation Amendment and Repeal Act 2016</i>	
33.	Terms used	87
34.	Hostels	88
35.	Hostel land	88
36.	Former Authority abolished	89
37.	Staff members of former Authority	89
38.	Transfer of assets, liabilities, proceedings, remedies and immunities	89
39.	Completion of things commenced	90
40.	Continuing effect of things done	90
41.	Exemption from State tax	90
42.	Agreements, instruments and documents	91
43.	Registration of documents	92
44.	Saving	92
45.	Transitional regulations	93
	Notes	
	Compilation table	95
	Provisions that have not come into operation	97

School Education Act 1999

An Act to make provision —

- for education in school or by home education with education, training and employment alternatives at the senior secondary level; and
 - for the establishment and operation of government schools and for parent and community involvement in school affairs; and
 - for the registration of non-government schools and the funding of such schools; and
 - for the registration of community kindergartens; and
 - for the establishment and administration of student residential colleges; and
 - ~~• for administrative responsibilities for school education; and~~
 - for the use of property that is vested in the Minister; and
- to repeal the *Education Act 1928* and consequentially amend certain other Acts ², and to make related provisions.

[Long title amended by No. 22 of 2005 s. 14; No. 28 of 2014 s. 22; School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 6.]

Part 1 — Preliminary

What this Part is about

This Part provides for some matters that are relevant to the Act generally.

In particular it deals with —

- the commencement of the Act on a day, or of different provisions on different days, fixed by proclamation (section 2);
- the objects of the Act (section 3);
- the definition of terms used in the Act (section 4) (but where a definition only applies to a particular Part, Division, Subdivision, Schedule or section, it is placed in that Part, Division, Subdivision, Schedule or section);
- the meanings of some terms used in the Act which, because of their length, are better placed in separate sections (sections 5, 6 and 7);
- the status of notes in the Act (section 8).

1. Short title

This Act may be cited as the *School Education Act 1999* ¹.

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation ¹.

3. Objects of Act

(1) The objects of this Act include the following —

- (a) to recognize the right of every child in the State to receive a school education; and
- (b) to allow that education to be given in a government school, a non-government school or at home; and
- (c) to provide for government schools that meet the educational needs of all children; and
- (ca) to provide for education, training and employment alternatives at the senior secondary level; and
- (d) to acknowledge the importance of the involvement and participation of a child's parents in the child's [education](#); ~~and education~~.
- (e) [to provide for student residential colleges that offer residential accommodation for students to attend, and participate in an educational programme of, a school.](#)

- (2) Any person who has a function under this Act is to seek to ensure that the objects stated in subsection (1) are achieved.

[Section 3 amended by No. 22 of 2005 s. 15; [School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 7.](#)]

4. Terms used

In this Act, unless the contrary intention appears —

apprentice means an apprentice under a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2;

chief executive officer —

- (a) in Part 4, has the meaning given by section 151; and
- (b) otherwise has the meaning given by section 229;

child means a person who has not reached the age of 18;

child of compulsory school age means a child who under section 9(1) is required to be enrolled in an educational programme and includes a child to whom section 10(2) applies;

compulsory education period has the meaning given by section 6;

Council, in relation to a government school, means the Council established under section 125 for the school;

department—

- (a) in Part 4, means the department of the Public Service principally assisting the Minister in the administration of that Part; and
- (b) otherwise has the meaning given by section 228;

disability means a condition —

- (a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of those impairments; and
- (b) which is permanent or likely to be permanent; and
- (c) which may or may not be of a chronic or episodic nature; and
- (d) which results in —
 - (i) a substantially reduced capacity of a person for communication, social interaction, learning or mobility; and
 - (ii) the need for continuing support services;

s. 4

early education period for a child means the period before the child's pre-compulsory education period;

educational programme means an organized set of learning activities designed to enable a student, or a child enrolled at a community kindergarten, to develop knowledge, understanding, skills and attitudes relevant to the student's or child's individual needs;

final years of compulsory education for a child means the final 2 years of the compulsory education period for the child;

General Purposes Fund, in relation to a school, means the fund referred to in section 109;

government school means a school established under section 55;

intake area for a government school means the area defined under section 60(1)(b) for that school;

local-intake school means a school to which a declaration under section 60(1) applies;

non-government school means a school registered under section 160;

parent, in relation to a child, means a person who at law has responsibility —

- (a) for the long-term care, welfare and development of the child; or
- (b) for the day to day care, welfare and development of the child,

except in sections 9(2), 10(1)(b), 25, 27, 38(1) and Division 6 of Part 2 where it has only the meaning given by paragraph (b);

pre-compulsory education period has the meaning given by section 5;

principal —

- (a) in relation to a non-government school, means the person who is in charge of the school; and
- (b) in relation to a government school, has the meaning given by section 62;

regulations means regulations under section 244;

school means a government school or a non-government school;

school fund means the General Purposes Fund and a fund referred to in section 110;

school year, in relation to a government school, means the school year determined by order under section 117;

student means a person who is enrolled at a school;

student residential college has the meaning given in section 213A;

teacher, in relation to a government school, means a member of the teaching staff;

teaching staff means persons appointed as such under section 236(2).

[Section 4 amended by No. 22 of 2005 s. 5 and 16; No. 44 of 2008 s. 61(2); No. 11 of 2012 s. 37; No. 46 of 2012 s. 4; School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 8.]

5. Term used: pre-compulsory education period

The pre-compulsory education period for a child is as follows —

- (a) until 31 December 2012 —
 - (i) from the beginning of the year in which the child reaches the age of 4 years and 6 months; and
 - (ii) until the end of the year in which the child reaches the age of 5 years and 6 months;
- (b) from 1 January 2013 —
 - (i) from the beginning of the year in which the child reaches the age of 4 years and 6 months; and
 - (ii) until the end of that year.

[Section 5 inserted by No. 46 of 2012 s. 5.]

6. Term used: compulsory education period

- (1) The compulsory education period for a child is as follows —

- (a) until 31 December 2012 —
 - (i) from the beginning of the year in which the child reaches the age of 6 years and 6 months; and
 - (ii) until the end of the year in which the child reaches the age of 17;
- (b) from 1 January 2013 until 31 December 2013 —
 - (i) from the beginning of the year in which the child reaches the age of 5 years and 6 months; and
 - (ii) until the end of the year in which the child reaches the age of 17;
- (c) from 1 January 2014 —

s. 8

- (i) from the beginning of the year in which the child reaches the age of 5 years and 6 months; and
- (ii) until —
 - (I) the end of the year in which the child reaches the age of 17 years and 6 months; or
 - (II) the child reaches the age of 18, whichever happens first.

- (2) If a child satisfies the minimum requirements for graduation from secondary school established under the *School Curriculum and Standards Authority Act 1997* before the end of the compulsory education period under subsection (1), this Act applies in respect of the child as if the compulsory education period for the child ended when the requirements were satisfied.
[Section 6 inserted by No. 46 of 2012 s. 5.]

[7. Deleted by No. 22 of 2005 s. 6.]

8. Notes not part of Act

Notes in this Act are provided to assist understanding and do not form part of the Act.

Part 2 — Education of children during compulsory education period

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 9.]

~~**Part 2 — Enrolment and attendance**~~

What this Part is about

This Part deals with —

- the compulsory enrolment of all children in an educational programme (Division 1);
- procedures for the enrolment of children at a government or non-government school (Division 2);
- attendance requirements for students enrolled at a government or a non-government school (Division 3);
- the absence of students from government schools for a religious or cultural observance (Division 4);
- absenteeism in relation to both government and non-government schools (Division 5);
- the provision of education by parents to their children in the home (Division 6).

Division 1 — Compulsory education with alternatives in final years of compulsory education

[Heading inserted by No. 46 of 2012 s. 6.]

Subdivision 1 — Enrolment of children of compulsory school age

9. When enrolment compulsory

- (1) A child is to be enrolled in an educational programme for each year of the compulsory education period for that child.
- (1a) Subsection (1) has effect subject to sections 11F(2) and 11H(5) and (6).

Note for this subsection:

The effect of the provisions mentioned in subsection (1a) is that if a child in either of the final years of compulsory education is, in accordance with Subdivision 1A, participating in an option or in options under that Subdivision and the required notice has been given and remains in force, the child does not have to be enrolled or to be provided with home education under section 9.

School Education Act 1999

Part 2 Education of children during compulsory education period

Division 1 Compulsory education with alternatives in final years of compulsory education

s. 10

- (2) A parent of a child must ensure that subsection (1) is complied with.
Penalty: a fine of \$2 500.
- (3) A prosecution for an offence against subsection (2) is not to be commenced against a parent unless the chief executive officer has given a certificate to the effect that reasonably practicable steps have been taken to secure compliance with subsection (1) by the parent.
- (4) Where in any proceedings a document is produced purporting to be a certificate given under subsection (3) the court is to presume, unless the contrary is shown, that the document is such a certificate.
[Section 9 amended by No. 84 of 2004 s. 80; No. 22 of 2005 s. 18; No. 28 of 2014 s. 23 and 35.]

10. Ways in which s. 9 satisfied

- (1) The duty imposed by section 9 is satisfied in respect of a child by —
- (a) the enrolment of the child at a school; or
 - (b) the registration under section 48 of a parent as the child's home educator and the continuation in effect of that registration.
- (2) The reference to enrolment in subsection (1)(a) includes enrolment of a child in either of the final years of compulsory education for part-time studies if the extent of those studies when taken with an option or options under section 11B will meet the requirements of section 11C and regulations made for the purposes of that section.
[Section 10 amended by No. 22 of 2005 s. 19; No. 46 of 2012 s. 7.]

11AA. Proof of enrolment to be provided

- (1) If the chief executive officer is of the opinion that section 9(1) is not being complied with in respect of a child to whom it applies, then the chief executive officer, by notice in writing to a parent of the child, may request the parent to provide —
 - (a) proof that the child is enrolled in a school for the current year; or
 - (b) proof that a parent of the child is currently registered under section 48 as the child's home educator.
- (2) A parent to whom notice is given under subsection (1) must provide the chief executive officer with the proof requested —
 - (a) in writing; and
 - (b) within the time specified in the notice.

Penalty: a fine of \$2 500.

[Section 11AA inserted by No. 28 of 2014 s. 24.]

11. Exemption from s. 9(1), Minister may grant etc.

- (1) The Minister may by instrument —
 - (a) exempt a child from section 9(1) if the Minister is satisfied that it is in the best interests of the child to do so; and
 - (b) at any time revoke an exemption.
- (2) Section 9(1) does not apply to a child who is exempted by the Minister under subsection (1) if the conditions of the exemption are being complied with.
- (3) An exemption may be limited in its operation to a specified period.
- (4) The Minister may —
 - (a) make the exemption subject to any condition; and
 - (b) impose any further condition or vary or revoke a condition at any time.
- (5) Without limiting the Minister's ability to obtain advice or information, he or she may obtain advice from an advisory panel under section 241 for the purposes of any decision required to be made under this section.
- (6) In the case of children enrolled at non-government schools, the Minister may by instrument delegate the powers conferred on

School Education Act 1999

Part 2 Education of children during compulsory education period

Division 1 Compulsory education with alternatives in final years of compulsory education

s. 11A

him or her by this section to the chief executive officer referred to in section 151.

Subdivision 1A — Alternatives to the operation of section 9 in final years of compulsory education

[Heading inserted by No. 46 of 2012 s. 8.]

11A. Terms used

(1) In this Subdivision —

course includes a programme or activity;

parent, in relation to a child, means —

- (a) a person who at law has responsibility for the long-term care, welfare and development of the child; or
- (b) a person who at law has responsibility for the day-to-day care, welfare and development of the child; or
- (c) if, in the opinion of the Minister, there is no person to whom paragraph (a) or (b) applies who is reasonably available at the relevant time, an adult person who is responsible for the child;

participate has the meaning provided for by section 11J and regulations made for the purposes of that section;

provider has the meaning given to that term in subsection (2).

(2) In this Subdivision —

provider, in relation to a person who comes within a description in the first column of the Table to this definition, means a person or body specified in the second column of the Table opposite that description.

Table

- | | | |
|----|---|---|
| 1. | A student undertaking a course of study at a university. | The university. |
| 2. | A student undertaking a higher education course registered under section 23 of the <i>Higher Education Act 2004</i> . | The education institution that provides the course. |

- | | |
|--|--|
| 3. A student undertaking an approved VET course within the meaning given to that term by the <i>Vocational Education and Training Act 1996</i> section 5(1). | The registered training provider (within the meaning given to that term by that Act section 5(1)), or a person referred to in section 58A(2) of that Act, who provides the course. |
| 4. An apprentice. | The employer. |
| 5. A student undertaking a course prescribed by order made under section 11B(2). | The provider specified in the order in respect of the course. |

[Section 11A inserted by No. 22 of 2005 s. 20; amended by No. 44 of 2008 s. 61(3).]

11B. Options other than school etc. in final 2 years

- (1) In the final years of compulsory education a child may, despite section 9(1), participate in one or more of the following options —
 - (a) undertaking —
 - (i) a course of study provided by a university established under a written law or under a law of another State, or of a Territory, of the Commonwealth; or
 - (ii) a higher education course registered under section 23 of the *Higher Education Act 2004*;
 or
 - (b) undertaking an approved VET course within the meaning given to that term by the *Vocational Education and Training Act 1996* section 5(1); or
 - (c) being an apprentice; or
 - (d) being employed under a contract of employment otherwise than in a capacity mentioned in paragraph (c), but subject to approval being in force under section 11G; or
 - (e) undertaking a course prescribed under subsection (2).
- (2) The Minister may, by order published in the *Gazette*, prescribe —
 - (a) a course; or

School Education Act 1999

Part 2 Education of children during compulsory education period

Division 1 Compulsory education with alternatives in final years of compulsory education

s. 11C

- (b) a class or description of courses,
that does not otherwise come within subsection (1), to be an option for the purposes of that subsection.
- (3) An order under subsection (2) is to specify for a course the person or body that is the provider of the course.
- (4) An order under subsection (2) is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
[Section 11B inserted by No. 22 of 2005 s. 20; amended by No. 44 of 2008 s. 61(4); No. 46 of 2012 s. 9.]

11C. Participation s. 11B option to be full-time

- (1) Participation in an option, or a combination of options, provided for by section 11B(1) must be on a full-time basis.
- (2) The regulations may make provision for —
 - (a) circumstances and arrangements that are to be taken to comply with the requirements of subsection (1); and
 - (b) rules or criteria that are to be taken into account in determining whether arrangements and circumstances so comply.
- (3) Enrolment of a child as mentioned in section 10(2) is to be treated for the purposes of this section as if it were an option provided for by section 11B(1).

[Section 11C inserted by No. 22 of 2005 s. 20.]

11D. Arrangements under s. 11B, parent to notify Minister of etc.

- (1) Where a child —
 - (a) is enrolled in a course or a combination of courses; or
 - (b) becomes an apprentice as mentioned in section 11B(1),a parent of the child must give notice to the Minister as soon as is practicable after the arrangements are made.
- (2) A notice must include particulars of the arrangements made for the child.
- (3) A parent of a child may, by further notice given to the Minister, cancel a notice given under subsection (1).

- (4) Except as may be provided by the regulations, notice must be given to the Minister by a parent of the child concerned of —
 - (a) any variation of the arrangements notified under subsection (1); or
 - (b) if the arrangements relate to, or will as varied relate to, a combination of courses, any variation proposed to be made.
- (5) If a child in respect of whom a notice has been given under this section ceases to be enrolled in a course or to be an apprentice as mentioned in section 11B(1), a parent of the child must give notice to the Minister of the cessation as soon as is practicable after it occurs.
- (6) A notice under a provision of this section must be in a form approved by the Minister for the purposes of that provision.
- (7) Subject to section 11E, a notice under this section comes into force when it is given to the Minister.

[Section 11D inserted by No. 22 of 2005 s. 20; amended by No. 44 of 2008 s. 61(5) and (6).]

11E. Child enrolled under s. 11B in combination of courses, application of s. 11D to

- (1) This section applies to a notice under section 11D(1) relating to the enrolment of a child in a combination of courses.
- (2) Such a notice must also include particulars of any enrolment of the child for part-time studies at a school.
- (3) A notice to which this section applies does not come into force unless the Minister gives the parent concerned a formal written acknowledgment of the choice of courses to which the notice relates.
- (4) Except as may be provided by the regulations, a proposed variation notified by a parent under section 11D(4)(b) is of no effect for the purposes of this Subdivision unless the Minister gives the parent a formal written acknowledgment of the proposal.
- (5) The Minister is to give a formal written acknowledgment under subsection (3) or (4) if the Minister is satisfied that participation by the child concerned —
 - (a) in the combination of courses; or

School Education Act 1999

Part 2 Education of children during compulsory education period

Division 1 Compulsory education with alternatives in final years of compulsory education

s. 11F

- (b) in the combination of courses as varied,
meets the requirements of section 11C and regulations made for the purposes of that section.
- (6) In making a decision under subsection (5) the Minister is to take into account, where applicable —
 - (a) any enrolment of the child for part-time studies at a school; and
 - (b) any part-time employment approved under section 11G.
- (7) The Minister may require the parent to give further information or documents to enable the Minister to make a decision under subsection (5).
- (8) A notice to which this section applies comes into force when the Minister gives a formal written acknowledgment in respect of the notice.

[Section 11E inserted by No. 22 of 2005 s. 20.]

11F. Notice under s. 11D or 11E, duration and effect of

- (1) A notice that comes into force under section 11D or 11E remains in force until —
 - (a) the child concerned ceases to participate, as required by section 11I, in the option or any of the options notified, including any variation that has taken effect and any option taken into account under section 11E(6); or
 - (b) the notice is cancelled; or
 - (c) the end of the compulsory education period of the child,whichever happens first.
- (2) While a notice is in force, section 9(1) does not apply to the child concerned.

[Section 11F inserted by No. 22 of 2005 s. 20.]

11G. Employment for s. 11B(1)(d), Minister's approval of required etc.

- (1) A child is not to be employed as mentioned in section 11B(1)(d), whether or not the employment is in combination with any other option, unless the approval of the Minister has been obtained under this section and remains in force.

- (2) On application made by a parent of a child in a form approved by the Minister, the Minister may, by notice in writing to the applicant, give approval to the child being employed by a specified employer.
- (3) If application is made for the approval of part-time employment, the Minister is to give approval only if the Minister is satisfied that the employment and participation in another option or other options chosen will meet the requirements of section 11C and regulations made for the purposes of that section.
- (4) In making a decision under subsection (3) the Minister is to also take into account any enrolment of the child for part-time studies at a school.
- (5) The Minister may —
 - (a) make an approval subject to any condition; and
 - (b) at any time by notice to a parent of the child concerned impose any further condition or vary or revoke a condition.
- (6) The Minister may at any time by notice to a parent of the child concerned vary or revoke an approval.
- (7) The Minister may exercise a power under subsection (5)(b) or (6) on application by a parent or on the Minister's own initiative.

[Section 11G inserted by No. 22 of 2005 s. 20.]

11H. Child employed with s. 11G approval, parent to notify Minister of etc.

- (1) Where a child is employed in accordance with an approval under section 11G, a parent of the child must give notice to the Minister as soon as is practicable after the employment starts.
- (2) If a child in respect of whom notice has been given under subsection (1) ceases to be employed in accordance with an approval under section 11G, a parent of the child must give notice to the Minister of the cessation as soon as is practicable after it occurs.
- (3) A notice under subsection (1) or (2) must be in a form approved by the Minister for the purposes of that subsection.

School Education Act 1999

Part 2 Education of children during compulsory education period

Division 1 Compulsory education with alternatives in final years of compulsory education

s. 11I

- (4) A notice duly given under subsection (1) remains in force until —
 - (a) the child concerned ceases to be employed in accordance with the relevant approval; or
 - (b) the relevant approval is revoked under section 11G(6); or
 - (c) the end of the compulsory education period of the child, whichever happens first.
- (5) Where the employment to which a notice under subsection (1) relates is full-time employment, section 9(1) does not apply to the child concerned while the notice is in force.
- (6) Where the employment to which a notice under subsection (1) relates is part-time employment, section 9(1) does not apply to the child concerned so long as —
 - (a) that notice is in force; and
 - (b) there is also in force a notice under section 11D relating to the other option or options mentioned in section 11G(3); and
 - (c) the child is participating in any part-time studies at a school that were taken into account as mentioned in section 11G(4).

[Section 11H inserted by No. 22 of 2005 s. 20.]

11I. Child to participate in options notified under s. 11D, 11E or 11H

- (1) Where a notice has been given under section 11D that a child has been enrolled in a course referred to in section 11B(1)(a), (b) or (e), the child is required to participate in the course.
- (2) Where a notice has been given under section 11D or 11H that a child has become an apprentice or is employed, the child is required to —
 - (a) participate in the apprenticeship; or
 - (b) unless the Minister's approval is revoked under section 11G(6), participate in the employment.
- (3) Where a notice to which section 11E applies has come into force in accordance with that section, the child concerned is required to participate in each of the courses to which the notice relates.

- (4) This section does not apply to a child after the compulsory education period for the child has ended.
- (5) Subsections (1), (2) and (3) apply subject to —
 - (a) any variation that has taken effect; and
 - (b) a notice of cancellation given by a parent.

Note for this section:

If a child stops participating in any of the arrangements made under this Subdivision or in part-time studies at a school, the notice of those arrangements ceases to be in force by operation of section 11F(1) or 11H(4); and, if that happens, section 9(1a) no longer applies and the child has to be enrolled at a school as a full-time student or provided with home education.

[Section 11I inserted by No. 22 of 2005 s. 20; amended by No. 44 of 2008 s. 61(7).]

11J. Participation by child, what constitutes

- (1) A child is taken to be participating in a course for the purposes of this Subdivision if the child —
 - (a) is enrolled in the course with the relevant provider; and
 - (b) is complying with —
 - (i) the provider's requirements about physically attending, at particular times, the provider's premises or another place for the purposes of each such course; or
 - (ii) in the case of a course of distance education, the provider's requirements about completing and returning the assigned work for the course; or
 - (iii) in the case of any other external course, the provider's requirements about communicating with or contacting the provider for the purpose of participating in the course.
- (2) For the purposes of this Subdivision, the fact of a child —
 - (a) being an apprentice; or
 - (b) being employed in accordance with an approval under section 11G,

is taken to be participation in the option mentioned in section 11B(1)(c)(i) or (ii) or (d), as the case may be.

- (3) Participation is taken to continue, for the purposes of this Subdivision, during any absence allowed under the

School Education Act 1999

Part 2 Education of children during compulsory education period

Division 1 Compulsory education with alternatives in final years of compulsory education

s. 11K

requirements, terms and conditions of the course, apprenticeship or employment concerned.

- (4) Participation in a course, apprenticeship or employment is taken to continue, for the purposes of this Subdivision, during any period —

- (a) when a child is subject to suspension or exclusion; or
- (b) after a child has been dismissed by an employer,

but, where the child has been excluded or dismissed, this subsection only applies during the period reasonably required for the child to comply with section 9 or participate, as required by section 11C and regulations made for the purposes of that section, in another option or other options provided for by section 11B.

- (5) The regulations may make provision, not inconsistent with this section, for acts, matters and circumstances —

- (a) that are to be taken to constitute participation for the purposes of this Subdivision; or
- (b) that are to be taken not to interrupt such participation.

[Section 11J inserted by No. 22 of 2005 s. 20; amended by No. 44 of 2008 s. 61(8)-(10).]

11K. Notice etc. by parent under s. 11D, 11G and 11H, Minister's functions as to

- (1) Where a parent —

- (a) gives notice to the Minister under section 11D or 11H; or
- (b) makes an application under section 11G,

in respect of a child, the Minister need not inquire —

- (c) whether there is any other person who in relation to the child is within the definition of **parent** in section 11A(1); or
- (d) if there is such a person, whether he or she concurs with the giving of the notice or the making of the application or the information included in the notice or application.

- (2) The Minister may give to a parent a formal acknowledgment under section 11E or a notice under section 11G in respect of a child without being concerned —
 - (a) to inquire whether there is any other person who in relation to the child may be within the definition of **parent** in section 11A(1); or
 - (b) to give notice to another person whom he or she knows to be within that definition.
- (3) The Minister may —
 - (a) require a person who gives a notice or makes an application referred to in subsection (1) to provide the Minister with evidence or information to satisfy the Minister that the person comes within the definition of **parent** in section 11A(1); and
 - (b) decline to deal with the notice or application unless the Minister is so satisfied.
- (4) Nothing in this section affects the operation and enforcement of a Family Court order.

[Section 11K inserted by No. 22 of 2005 s. 20.]

11L. Independent child, designating child to be

- (1) The Minister may designate a child to be an independent child for the purposes of this Subdivision if the Minister is satisfied that the child has the capacity to make his or her own decisions in relation to the provisions referred to in subsection (3).
- (2) The Minister is not to designate a child under subsection (1) —
 - (a) without having taken into account —
 - (i) the existence or absence of a relationship between the child and a parent of the child; and
 - (ii) the nature of the relationship, if any;
 - and
 - (b) unless the Minister is satisfied that no working relationship exists between the child and a parent of the child.
- (3) An independent child may, in relation to the child —
 - (a) give or cancel a notice under section 11D(1) or (3); or
 - (b) give notice of a variation or proposed variation under section 11D(4); or

School Education Act 1999

Part 2 Education of children during compulsory education period

Division 1 Compulsory education with alternatives in final years of compulsory education

s. 11M

- (c) give notice of cessation under section 11D(5); or
- (d) make an application under section 11G(2); or
- (e) give notice of employment or cessation of employment under section 11H,

and the notice or application has effect as if it had been given or made by a parent of the child.

- (4) If an independent child has made an application under section 11G(2) references in section 11G(5) and (6) to a parent are, subject to subsection (5), to be read as references to the child.
- (5) A decision to designate a child as an independent child may be reviewed or revoked by the Minister at any time.
- (6) This section does not apply to a child —
 - (a) who, before the commencement day, is a ward for the purposes of the *Child Welfare Act 1947*³, whether or not the child is under the guardianship of the Director-General as defined in that Act; or
 - (b) for whom, after the commencement day, the CEO as defined in section 3 of the *Children and Community Services Act 2004* has parental responsibility under that Act.

- (7) In subsection (6) —

commencement day means the day on which section 250 of the Act mentioned in subsection (6)(b) comes into operation.

[Section 11L inserted by No. 22 of 2005 s. 20.]

11M. Minister's functions as to this Subdivision

- (1) The functions of the Minister include —
 - (a) monitoring, and carrying out planning in relation to, the operation and effectiveness of this Subdivision; and
 - (b) developing strategies to better provide for the education and training of children in the final years of compulsory education.
- (2) The functions of the Minister also include —
 - (a) identifying those children in either of the final years of compulsory education who are not engaged full-time in education, training or employment as provided by this Act; and

- (b) giving such children information about school education and the options that are available under section 11B(1); and
- (c) encouraging and helping parents to assist in the carrying out of the functions mentioned in paragraphs (a) and (b).
- (3) The Minister is to from time to time consult with, and take into account the views of —
 - (a) the Executive Director Catholic Education in Western Australia; and
 - (b) the Association of Independent Schools of Western Australia (Inc.),

on the carrying out of the functions mentioned in subsection (1) in relation to children who are enrolled at schools registered under section 160.

[Section 11M inserted by No. 22 of 2005 s. 20; amended by No. 46 of 2012 s. 10; No. 28 of 2014 s. 25.]

11N. Regulations for this Subdivision

The regulations may make provision for matters that are incidental or supplementary to those provided for by, or are expedient for the operation of, this Subdivision.

[Section 11N inserted by No. 22 of 2005 s. 20.]

Subdivision 2 — Inquiries to check compliance with sections 9 and 11I

[Heading amended by No. 22 of 2005 s. 22.]

12. Authorised persons, authorisation of

The Minister may authorise any person (an *authorised person*) who comes within a class of employees referred to in section 235(1) who has the required expertise to perform this role to exercise the powers conferred by this Subdivision.

13. Authorised person, powers of

- (1) An authorised person may —
 - (a) call at any premises used as a dwelling; and
 - (b) having produced the certificate provided to the authorised person under section 14, require any person on the premises appearing to be over the age of 18 to

School Education Act 1999

Part 2 Education of children during compulsory education period

Division 1 Compulsory education with alternatives in final years of compulsory education

s. 14

answer any relevant question, whether orally or in writing.

- (2) A question is relevant only if it is reasonably connected with finding out whether there is living at the premises —
- (a) any child of compulsory school age who is not enrolled in an educational programme; or
 - (b) any child in respect of whom notice has been given under section 11D or 11H and who is not complying with section 11I, as the case may be.
- (3) A person to whom a requirement under subsection (1)(b) is directed must not —
- (a) fail to comply with the requirement; or
 - (b) in purported compliance give any information that is false or misleading.

Penalty: a fine of \$500.

[Section 13 amended by No. 22 of 2005 s. 23; No. 28 of 2014 s. 35.]

14. Authorised person, certificate of authorisation for

- (1) The Minister is to provide to an authorised person a certificate stating that he or she is an authorised person for the purposes of this Subdivision.
- (2) A certificate purporting to have been issued under this section is evidence in any proceedings that the person concerned is an authorised person.

15. Pretending to be authorised person, offence

A person who is not authorised under section 12 must not pretend to be an authorised person.

Penalty: a fine of \$5 000.

[Section 15 amended by No. 50 of 2003 s. 94(2); No. 28 of 2014 s. 35.]

Part 3 — Government schools

What this Part is about

This Part enacts provisions that apply only to government schools.

In particular it deals with —

- the establishment, closure and amalgamation of government schools, and the designation of schools in some areas as being primarily for the enrolment of students in that area (Division 1);
- the functions of the chief executive officer of the department responsible for government schools and of principals and teachers in those schools (Division 2);
- the curriculum in government schools, the provision of special religious education, and conscientious objection to instruction in particular subjects (Division 3);
- entitlement to enrol at government schools, changing inappropriate enrolments, and the resolution of disputed issues about enrolment (Division 4);
- the suspension and exclusion of students from government schools for breaches of school discipline (Division 5);
- restrictions on the imposition of fees and charges in government schools, and provisions for the management of school funds (Division 6);
- miscellaneous management provisions relating to the operation of government schools and the control of school premises (Division 7);
- provisions as to the establishment and operation of School Councils and relating to Parents and Citizens' Associations for government schools (Division 8).

Division 8 — Parent and community involvement

Subdivision 1 — School Councils

124. Terms used

In this Subdivision —

incorporated association has the same meaning as in the *Associations Incorporation Act 2015* section 3;

school means a government school and includes, where section 125(2) applies, all relevant government schools.

[Section 124 amended by No. 30 of 2015 s. 228(2).]

125. Each government school to have Council for school

- (1) A government school is to have a Council unless it is exempted by the Minister under section 126.
- (2) It is sufficient compliance with subsection (1) for 2 or more government schools, with the approval of the Minister, to have one Council that operates for those schools jointly.

126. Exemptions from and approvals for s. 125

- (1) The Minister may by order published in the *Government Gazette* —
 - (a) exempt a school from the requirements of section 125(1) if the Minister is satisfied that it is not necessary for the school to have a Council —
 - (i) because of its size or nature; or
 - (ii) because the functions to be performed by a Council can be provided by some other means;
 - and
 - (b) give an approval for the purposes of section 125(2); and
 - (c) at any time revoke an order and specify a time by which the school is to comply with section 125(1).
- (2) The Minister may —
 - (a) make an exemption or approval subject to any condition; and
 - (b) impose any further condition or vary or revoke a condition at any time.

127. Council, members of etc.

- (1) The membership of a Council for a school is to be drawn from —
 - (a) the parents of students at the school except where the majority of the students at the school are 18 years of age or more; and
 - (b) other members of the general community; and
 - (c) the staff of the school; and
 - (d) where the school is of a prescribed class, students at the school, but no student under 18 years of age can be a member of an incorporated Council.
- (2) The principal for the time being of a school is automatically a member of the Council for that school.

- (3) A person who —
- (a) is the principal of, or on the staff of, a school which has a Council; and
 - (b) is also a person described in subsection (1)(a) or (b),
- can only be a member of the Council in his or her capacity as the principal or a staff member.
- (4) Persons referred to in subsection (1)(a) and (b) must form the majority of members of a Council.
- (5) Subject to this section —
- (a) the procedure for the establishment of Councils; and
 - (b) the number of members and composition of Councils; and
 - (c) the manner in which persons become members; and
 - (d) the term of office of members; and
 - (e) matters relating to ineligibility for, and cessation or termination of, membership,
- are to be as prescribed by the regulations.
- (6) The Chairperson of the Council is to be elected by and from its members.

128. Council, functions of

The functions of a Council for a school are —

- (a) to take part —
 - (i) in establishing, and reviewing from time to time, the school's objectives, priorities and general policy directions; and
 - (ii) in the planning of financial arrangements necessary to fund those objectives, priorities and directions; and
 - (iii) in evaluating the school's performance in achieving them;
- and
- (b) to promote the school in the community; and
 - (c) to take part in formulating codes of conduct for students at the school; and

- (d) to determine, in consultation with students, their parents and staff of the school, a dress code for students when they are attending or representing the school; and
- (e) to carry out the functions given by sections 70, 99(4), 100(3), 108(2) and 216(5); and
- (f) to undertake such other functions prescribed by the regulations for the purposes of this section.

129. Additional functions of Council, Minister may approve

- (1) This section applies to any Council.
- (2) With the approval of the Minister, a Council for a school may —
 - (a) take part in the selection of, but not the appointment of, the school principal or any other member of the teaching staff; and
 - (b) carry out any other function prescribed by the regulations for the purposes of this section.
- (3) An approval is only to be given for the purposes of [subsection \(2\)](#) ~~subsection (1)~~ if the Minister is of the opinion that it will be in the best interests of the students that the Council have the function to which the approval relates.
- (4) The Minister may —
 - (a) make an approval subject to any condition; and
 - (b) at any time —
 - (i) impose any further condition or vary or revoke a condition; or
 - (ii) revoke an approval.

[\[Section 129 amended by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 10.\]](#)

130. Additional functions of incorporated Council, Minister may approve

- (1) Regulations may be made prescribing functions that a Council may perform only if it has the approval of the Minister in terms of subsection (2).

- (2) An approval referred to in subsection (1) is to be given by the Minister only if in his or her opinion the performance by the Council of the function to which the approval relates will —
 - (a) improve an educational programme of the school or the management of the school's facilities; and
 - (b) be in the best interests of the students.
- (3) An approval referred to in subsection (1) —
 - (a) is to be conditional on the Council —
 - (i) having a constitution containing provisions approved by the Minister; and
 - (ii) becoming an incorporated association under the *Associations Incorporation Act 2015* within a period specified by the Minister;
 - and
 - (b) does not have effect until those conditions are satisfied; and
 - (c) may be subject to any other condition.
- (4) The Minister may at any time —
 - (a) impose any further condition or vary or revoke a condition; or
 - (b) revoke an approval.
- (5) While any approval is in force any change to the constitution of the Council, other than an amendment to this Act or the regulations, or any substituted constitution is of no effect until it has been approved by the Minister.

[Section 130 amended by No. 30 of 2015 s. 228(7).]

131. Property acquired by incorporated Council vests in Minister

All property acquired by an incorporated Council for the use of a school is acquired for the purposes of this Act; and section 215 applies to it whether or not public moneys were spent on its acquisition.

132. Council cannot intervene in certain matters

A Council cannot —

- (a) intervene in the control or management of a school unless —
 - (i) the Council is one to which section 130 applies; and

- (ii) the intervention is by way of performing a function prescribed for the purposes of section 130;

or

- (b) intervene in the educational instruction of students; or
- (c) exercise authority over teaching staff or other persons employed at the school; or
- (d) intervene in the management or operation of a school fund.

133. Powers of Council

A Council may do all things necessary or convenient to be done for or in connection with the carrying out of its functions.

134. Support services for Council, principal to provide

The principal of a school is to provide the school's Council with such support services as it may reasonably require.

135. Minister may direct Council

- (1) The Minister may give directions in writing to a Council with respect to the performance of its functions, either generally or in relation to a particular matter, and the Council is to give effect to any such direction.
- (2) A direction under subsection (1) may require a Council to comply with a specified instruction or class of instructions issued by the chief executive officer under section 233.

136. Procedures of Council

Subject to this Act, a Council is to determine its own procedures.

137. Protection from personal liability

- (1) An action in tort does not lie against a person for anything that the person has done in good faith as a member of a Council.
- (2) Subsection (1) does not relieve a Council that is an incorporated association of any liability that it might have for the doing of anything referred to in that subsection.
- (3) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

[Section 137 amended by No. 30 of 2015 s. 228(3).]

138. Minister may dismiss unincorporated Council

- (1) This section does not apply to a Council that by operation of section 130 is an incorporated association.
- (2) If in the opinion of the Minister the conduct of a Council is incompetent, inadequate or improper or a Council is in breach of this Act, the Minister is to give written notice to the Council —
 - (a) setting out particulars of the allegations against it; and
 - (b) requiring that the situation be remedied within the time specified in the notice.
- (3) If the Minister is of the opinion that a Council has not complied with a notice under subsection (2) the Minister may, by order published in the *Government Gazette*, dismiss the Council.
- (4) An order under subsection (3) may make any supplementary or incidental provision that the Minister considers is necessary to allow the dismissal to have effect with the least inconvenience to the school, the students at the school and their parents and the staff of the school.
- (5) Provision may be made under subsection (3) —
 - (a) for ownership of the Council's documents and records; and
 - (b) for custody of them to be given to a specified person or persons.

[Section 138 amended by No. 74 of 2003 s. 107(4); No. 30 of 2015 s. 228(4).]

139. Incorporated Council, winding up

- (1) A Council that, by operation of section 130, is an incorporated association may, if the Council is in breach of this Act or the conduct of the Council is incompetent, inadequate or improper, be wound up by the Supreme Court on the application of the Minister.
- (2) The *Associations Incorporation Act 2015* applies to a Council for the purposes of subsection (1) as if the grounds referred to in that subsection were specified in Schedule 4 to that Act as grounds for winding up.
- (3) This section is in addition to, and does not limit, the application of the *Associations Incorporation Act 2015* to a Council that is an incorporated association.

[Section 139 amended by No. 30 of 2015 s. 228(5), (6) and (7).]

140. Regulations about Councils

Without limiting section 127(5), 129(2)(b) or 130, regulations may be made in respect of the functions, powers and duties of Councils and in particular —

- (a) enabling Councils to co-opt members of the local community as members of Councils and prescribing the capacity in which they may be co-opted provided that no co-opted member shall have any voting rights on the Council to which she or he is co-opted; and
- (b) enabling Councils to allow students to attend meetings and take part in discussion but without having a right to vote or being counted in determining a quorum; and
- (c) with respect to the proceedings of Councils; and
- (d) providing in relation to a school dress code referred to in section 128(d) —
 - (i) for the matters which may, or cannot, be provided for in a code; and
 - (ii) for the procedures to be followed by a Council in the formulation and approval of a code; and
 - (iii) enabling the principal of a school to exempt a student at the school from complying with any requirement of a code approved by the school's Council.

Subdivision 2 — Parents and Citizens' Associations

141. Terms used

In this Subdivision —

association, except in section 149, means a Parents and Citizens' Association formed under section 142;

incorporated association has the same meaning as it has in the *Associations Incorporation Act 2015*.

[Section 141 amended by No. 30 of 2015 s. 228(7).]

142. Forming association

Parents and other persons who are interested in the welfare of a government school or a group of government schools may, in accordance with this Subdivision, form a Parents and Citizens' Association for that school or that group of schools.

143. Objects of and limits on associations

- (1) The objects of an association are to promote the interests of the school or group of schools for which it is formed through —
 - (a) cooperation between parents, teachers, students and members of the general community; and
 - (b) assisting in the provision of resources, facilities and amenities for the school or schools; and
 - (c) the fostering of community interest in educational matters.
- (2) An association cannot —
 - (a) intervene in the control or management of a school; or
 - (b) intervene in the educational instruction of students; or
 - (c) exercise authority over teaching staff or other persons employed at the school.
- (3) An association is not to expend its funds that are in excess of administrative costs otherwise than for the benefit of students at a government school.
- (4) The constitution of an association must at all times be consistent with this section.

144. Property acquired by association vests in Minister

All property acquired by an association for the use of a school or group of schools is acquired for the purposes of this Act; and section 215 applies to it whether or not any public moneys were spent on its acquisition.

145. Association formed after 1 Jan 2001, incorporation of

- (1) This section applies to an association formed after the commencement of this Division.
- (2) An association is to become an incorporated association within 3 months after it is formed.
- (3) An association is not to apply for incorporation under the *Associations Incorporation Act 2015* unless the Minister has first approved the provisions of the proposed constitution.
- (4) No provision in an association's constitution has effect until it has been approved by the Minister.

- (5) While any approval is in force any change to an association's constitution or any substituted constitution is of no effect until it has been approved by the Minister.

[Section 145 amended by No. 30 of 2015 s. 228(7).]

146. Transitional provisions for association existing at 1 Jan 2001

- (1) This section applies to an association to which clause 21 of Schedule 1 applies.
- (2) An association that is not incorporated at the commencement of this Division is to become an incorporated association within 2 years from that commencement.
- (3) An association referred to in subsection (2) is not to apply for incorporation under the *Associations Incorporation Act 1987* unless the Minister has first approved the provisions of the proposed constitution.
- (4) No provision in the constitution of an association referred to in subsection (2) has effect until it has been approved by the Minister.
- (5) An association —
- (a) that is referred to in subsection (2); or
 - (b) that is an incorporated association at the commencement of this Division,

is not to apply under the *Associations Incorporation Act 1987* to change or substitute its constitution unless the Minister has first approved the proposed change or substituted constitution.

- (6) Any change to an association's constitution or any substituted constitution is of no effect until it has been approved by the Minister.

147. Association to give certain information to principal

An association for a school or a group of schools must —

- (a) before 30 April in each year notify the principal of the school, or of each of the schools, in writing of the names of the persons who as at 1 April in that year are office-bearers or committee members of the association; and
- (b) give to the principal of the school, or of each of the schools, a copy of the audited annual financial statements of the association as soon as is practicable

after those statements have been approved by the association.

148. Winding up association

- (1) An association that is in breach of this Act may be wound up by the Supreme Court on the application of the Minister.
- (2) The *Associations Incorporation Act 2015* applies to an association for the purposes of subsection (1) —
 - (a) whether or not the association is an incorporated association; and
 - (b) as if a breach referred to in subsection (1) were specified in Schedule 4 to that Act as a ground for winding up,

but in the case of an association that is not an incorporated association, the application of that Act is limited to the purposes of subsection (1).

- (3) In the case of an association that is an incorporated association, this section is in addition to, and does not limit, the application of the *Associations Incorporation Act 2015* to the association.

[Section 148 amended by No. 30 of 2015 s. 228(6) and (7).]

149. Other associations, forming etc.

- (1) Nothing in this Subdivision prevents the formation and carrying on of any other association, in relation to a government school or group of schools, that has as its object or one of its objects the promotion of the interests of the school or the group of schools or students at the school or the groups of schools either generally or in any particular respect.
- (2) An association referred to in subsection (1) is not to have a name that is likely to be misunderstood as referring to an association to which section 142 applies.
- (3) If the Minister is of the opinion that an association referred to in subsection (1) —
 - (a) is being carried on in a way that is not in the interests of the school; or
 - (b) has a name that contravenes subsection (2),

he or she may give directions in writing to the persons who manage the affairs of the association as to any matter relating to the name, constitution, objects or management of the association.

School Education Act 1999

Part 3 Government schools

Division 8 Parent and community involvement

s. 149

- (4) A person to whom a direction is given under subsection (3) must take all steps reasonably available to him or her to comply with it.

Penalty: a fine of \$500.

- (5) If any such direction is not complied with, the association may, on the ground of that non-compliance, be wound up by the Supreme Court on the application of the Minister; and section 148(2) and (3) apply for that purpose with all necessary changes.

[Section 149 amended by No. 28 of 2014 s. 35.]

Part 5 — Community kindergartens

What this Part is about

This Part requires community kindergartens to be registered by the Minister and makes various provisions about their operation and funding.

In particular it deals with —

- the registration of community kindergartens that meet the required standards (Division 2);
- the operation and management of community kindergartens (Division 3);
- the allocation of funds appropriated by Parliament for community kindergartens (section 210).

Division 1 — Preliminary

191. Term used: governing body

In this Part, unless the contrary intention appears —

governing body, in relation to a kindergarten or proposed kindergarten, means the person or body of persons that has the ownership, management or control of the kindergarten or proposed kindergarten.

Division 2 — Registration of community kindergartens

192. Registration, general provisions as to

The Minister may register community kindergartens for the provision of educational programmes for one or both of the following —

- (a) education for children in their pre-compulsory education period;
- (b) education for children in their early education period or for any specified part of that period.

[Section 192 amended by No. 11 of 2012 s. 44; No. 46 of 2012 s. 11.]

193. Application for registration

- (1) The governing body of a kindergarten may apply to the Minister for the kindergarten to be registered as a community kindergarten.

School Education Act 1999

Part 5 Community kindergartens

Division 2 Registration of community kindergartens

s. 194

- (2) An application is to —
 - (a) be made in writing at least 6 months before the day from which registration is sought; and
 - (b) specify the location of all the premises to be used by the kindergarten; and
 - (c) provide any other prescribed information.
- (3) The Minister may require the governing body to provide any other information that he or she considers necessary.

194. Matters to be considered by Minister

- (1) The Minister, in determining an application for registration of a kindergarten is to take into account —
 - (a) the location of the premises to be used by the kindergarten; and
 - (b) the kindergarten's buildings, if any; and
 - (c) the playground equipment and other facilities to be provided; and
 - (d) any other matter prescribed by the regulations.
- (2) The Minister may determine standards in respect of the matters referred to in subsection (1).

195. Grant or refusal of registration

- (1) The Minister is to register the kindergarten as a community kindergarten if the Minister is satisfied that —
 - (a) the governing body of the kindergarten will be incorporated under the *Associations Incorporation Act 2015* before the day from which registration is sought; and
 - (b) the constitution of the governing body of the kindergarten is satisfactory for the purposes of this Act; and
 - (c) the members of the governing body are fit and proper persons to operate a community kindergarten; and
 - (d) the kindergarten will meet any standards determined by the Minister under section 194(2); and
 - (e) the kindergarten will provide satisfactory levels of care for the children concerned; and

- (f) the kindergarten complies, or will be able to comply, with any written laws affecting the operation of the kindergarten.

- (2) If the Minister is not so satisfied, he or she is to —
 - (a) register the kindergarten subject to specified conditions; or
 - (b) refuse to register the kindergarten.

[Section 195 amended by No. 30 of 2015 s. 228(7).]

196. Minister to notify decision within 3 months

The Minister, within 3 months after the application is received, is to notify the applicant in writing of the decision and, if registration is refused, of the reasons for the refusal.

197. Certificate of registration; register of registered kindergartens

- (1) The Minister is to issue a certificate of registration to the governing body of a community kindergarten, specifying the kind or kinds of education, in terms of section 192, for which it is registered under this Part.
- (2) The registration of a community kindergarten has effect indefinitely unless the registration is cancelled under section 200.
- (3) The chief executive officer is to keep a register of community kindergartens that are registered under this Part.

[Section 197 amended by No. 11 of 2012 s. 45.]

198. Amending etc. conditions of registration

- (1) Where under section 195(2)(a) a community kindergarten is registered subject to conditions, the Minister may decide to —
 - (a) impose any new condition; or
 - (b) change or remove an existing condition.
- (2) The Minister is not to make a decision under subsection (1) without first consulting the governing body of the kindergarten.
- (3) The Minister is to give written notice of any decision under subsection (1) to the governing body of the kindergarten and the decision does not take effect until —
 - (a) 14 days after the notice is given; or
 - (b) such later time as is set out in the notice.

199. Who can attend registered kindergarten

- (1) It is a condition of every registration of a community kindergarten that a child is not to attend the community kindergarten in a year unless —
 - (a) the child's pre-compulsory education period falls in that year; or
 - (b) if paragraph (a) does not apply, the child's attendance —
 - (i) is approved by the chief executive officer; or
 - (ii) if the kindergarten is registered to provide the kind of education referred to in section 192(b), is in accordance with the regulations.
- (2) The chief executive officer may —
 - (a) attach any condition to; or
 - (b) revoke,

an approval under subsection (1)(b).

[Section 199 amended by No. 11 of 2012 s. 46; No. 46 of 2012 s. 12.]

200. Cancelling registration, Ministers' functions as to

- (1) The Minister may cancel the registration of a community kindergarten at any time if the Minister is satisfied —
 - (a) that the buildings or facilities of the kindergarten present a risk to the safety or health of the children or staff at the kindergarten; or
 - (b) that there has been mismanagement by the governing body or its management committee; or
 - (c) that the kindergarten or its governing body is not complying with —
 - (i) this Act; or
 - (ii) any relevant requirement of the *School Curriculum and Standards Authority Act 1997*; or
 - (iii) any condition of the kindergarten's registration; or
 - (iv) a direction given under section 202;
 - (d) that it is in the best interests of the children at the kindergarten to do so.

- (2) The Minister is not to cancel the registration of a community kindergarten without first —
 - (a) notifying the governing body of the proposed cancellation and of the reasons for it; and
 - (b) giving the governing body a reasonable opportunity to show why the registration should not be cancelled.
- (3) Subsection (2) does not apply if in the opinion of the Minister the health or welfare of persons may be at risk if the registration is not cancelled immediately.
- (4) The Minister is to give written notice of the cancellation to the governing body.
- (5) The cancellation takes effect at such time as is specified in the notice given under subsection (4).

[Section 200 amended by No. 37 of 2011 s. 58(3).]

201. Decision as to registration, review of

- (1) The governing body of a kindergarten may apply in writing to the Minister for a review of a decision of the Minister —
 - (a) to refuse to register the kindergarten as a community kindergarten; or
 - (b) concerning a condition to which the kindergarten's registration is subject; or
 - (c) to cancel the kindergarten's registration.
- (2) The application is to be made within 28 days after the applicant received written notice of the decision.
- (3) Where an application is made under subsection (1), the Minister is to refer the matter to a Community Kindergarten Registration Advisory Panel which is to examine the matter and report to the Minister with its recommendation.
- (4) A Community Kindergarten Registration Advisory Panel is to give the applicant the opportunity to be heard.
- (5) The Minister is to give a copy of the report of the Community Kindergarten Registration Advisory Panel to the applicant.
- (6) The Minister after considering the report may confirm, vary or reverse the decision and is to give written notice to the applicant of the subsequent decision and written reasons for that decision.

- (7) In this section —

Community Kindergarten Registration Advisory Panel means an advisory panel under section 241 established for the purposes of subsection (3) of this section.

**Division 3 — Operation and management of
community kindergartens**

202. Minister may direct registered kindergarten as to standards

- (1) The Minister may give directions in writing to the governing body of a community kindergarten requiring the governing body to observe any standard for the time being determined under section 194(2).
- (2) A governing body is to comply with a direction so given.

203. Governing body of kindergarten, role of

- (1) With the approval of the Minister and subject to the regulations, a governing body for a community kindergarten or its management committee may take part in the selection of teaching staff for the kindergarten.
- (2) The governing body of a community kindergarten cannot —
 - (a) intervene in the educational instruction of children; or
 - (b) exercise authority over teaching staff or other persons appointed under section 236(2) who are employed at the kindergarten.
- (3) The number of children that may attend a community kindergarten is to be determined by the chief executive officer.

204. Teaching staff etc., appointment of

The chief executive officer is to appoint such number of teaching staff and other persons under section 236(2) as the chief executive officer considers appropriate for the provision of an educational programme at a community kindergarten.

205. Teaching staff, functions of

- (1) The functions of teaching staff in a community kindergarten are —
 - (a) to foster and facilitate learning in children; and

- (b) to give competent instruction to children in accordance with —
 - (i) the curriculum; and
 - (ii) standards determined by the chief executive officer,and to undertake the preparation necessary to do so; and
 - (c) to undertake regular evaluation and reporting of the progress of children; and
 - (d) to be answerable for the educational achievement of children under his or her instruction to a principal nominated, or an officer designated by, the chief executive officer; and
 - (e) to supervise children and to maintain proper order and discipline on their part; and
 - (f) to carry out administrative duties to meet organizational requirements relevant to the teacher's functions; and
 - (g) to perform any other prescribed function assigned by the chief executive officer.
- (2) The functions set out in subsection (1) have effect subject to —
- (a) this Act; and
 - (b) the instructions of the chief executive officer.

206. Curriculum and enrolment

- (1) Sections 67 and 68 have effect as if the references in those sections to government schools included community kindergartens.
- (2) The enrolment of a child at a community kindergarten is to be in accordance with the regulations.

207. Fee for instruction and charges

- (1) Except as provided by this section, no fee or charge may be imposed or collected for the cost of providing an educational programme of a community kindergarten.
- (2) Regulations may be made providing for charges that may be made for —
 - (a) materials provided in an educational programme of a community kindergarten; and

School Education Act 1999

Part 5 Community kindergartens

Division 3 Operation and management of community kindergartens

s. 209

- (b) services or facilities for use in, or associated with the provision of, an educational programme of a community kindergarten.
- (3) Regulations may provide for the manner of determining a charge, the kind of charge that is able to be charged for the purposes of this section, the limits of such charges and any other matter relevant to such charges and their recovery.

[208. Has not come into operation ⁴.]

209. Person disrupting kindergarten etc.; disseminating information on kindergarten premises

Sections 120 and 121 have effect as if the references in those sections —

- (a) to a government school included a community kindergarten; and
- (b) to a principal included a principal or an officer referred to in section 205(1)(d).

210. Moneys appropriated for kindergartens, allocation of

- (1) The chief executive officer may, in accordance with the regulations, allocate moneys that have been appropriated by Parliament for the purpose of assisting community kindergartens.
- (2) Moneys may only be allocated under this section in respect of children who are —
 - (a) entitled to reside permanently in Australia; or
 - (b) members of a class of children prescribed by the regulations.
- (3) Regulations may be made providing for the allocation of moneys referred to in subsection (1).

211. Minister may require kindergarten to account for allocated moneys

- (1) The chief executive officer may require a governing body to furnish to the chief executive officer a report as to the application of moneys provided under this Part.
- (2) If —
 - (a) the governing body fails to furnish any report required by the chief executive officer; or

(b) any condition, limitation or restriction on the use of moneys is not complied with,

the chief executive officer may recover the moneys as a debt in a court of competent jurisdiction.

212. Regulations about kindergartens

Regulations may be made for the regulation and control of community kindergartens.

Part 6A — Student residential colleges

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

What this Part is about

This Part provides for student residential colleges.

In particular it deals with —

- the establishment of student residential colleges (Division 2);
- the administration of student residential colleges (Division 3);
- local input networking and communications committees (LINC committees) for student residential colleges (Division 4);
- provisions for the management of college funds and funds appropriated by Parliament for student residential colleges (Division 5).

Division 1 — Preliminary

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213A. Terms used

In this Part —

code of conduct means the code of conduct issued under section 213J;

college fund means the General Purposes Fund and a fund referred to in section 213R;

General Purposes Fund, in relation to a student residential college, means the fund referred to in section 213Q;

joint arrangement means an arrangement entered into by the Minister for purposes that are complementary and beneficial to the functions conferred on the Minister under this Part in relation to student residential colleges and which involves any or all of the following —

- enabling any property vested in the Minister to be used for the purposes of the arrangement (**joint use property**);
- controlling and managing the use of joint use property for the purposes of the arrangement;
- sharing the use of joint use property for the purposes of the arrangement and for the purposes of performing any of the functions conferred on the Minister under this Part in relation to student residential colleges;

LINC committee, in relation to a student residential college, means the committee constituted for that college under section 213M;

property has the meaning given in section 213;

student residential college means a student residential college established under section 213B;

Student Residential Colleges Fund means the account established under section 213Y.

[Section 213A inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

Division 2 — Establishment of student residential colleges

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213B. Establishing student residential colleges

- (1) The Minister may establish such student residential colleges as the Minister considers necessary to provide residential accommodation and related services for students while they attend, and participate in an educational programme of, a school.
- (2) The Minister, in considering if it is necessary to establish a student residential college, is to take into account the following —
 - (a) the social, cultural, lingual, economic or geographic factors that might affect access to school education for particular students;
 - (b) any other matter prescribed by the regulations.
- (3) The Minister may assign a name to, or change the name of, a student residential college.

[Section 213B inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213C. Closing or amalgamating student residential colleges

- (1) The Minister may on such terms and conditions as the Minister thinks fit —
 - (a) amalgamate 2 or more student residential colleges; and
 - (b) close any student residential college either temporarily or permanently.

School Education Act 1999

Part 6A Student residential colleges

Division 3 Administration of student residential colleges

s. 213D

- (2) Before making a decision under subsection (1), the Minister is to take into account the matters described in section 213B(2).

[Section 213C inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

Division 3 — Administration of student residential colleges

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

Subdivision 1 — Operation and management

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213D. Operation and management of student residential colleges

- (1) The Minister is responsible for the operation and management of student residential colleges.
- (2) The responsibility of the Minister under subsection (1) includes determining, implementing and monitoring the standard of care provided to students at student residential colleges.

[Section 213D inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213E. Powers of Minister relating to student residential colleges

- (1) The Minister may do all things necessary or convenient to be done for the purposes of —
- (a) performing the functions conferred on the Minister under this Part in relation to student residential colleges;
or
- (b) carrying out joint arrangements.
- (2) Without limiting subsection (1), the Minister may for any of the purposes mentioned —
- (a) acquire, hold, manage, improve, develop and dispose of property or an interest in property; and
- (b) accept any gift, grant, devise or bequest if it is absolute or subject to conditions to which the Minister agrees; and
- (c) subject to section 213F, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and

(d) allow persons to undertake advertising or sponsorship, of the kind and to the extent that is authorised by regulations, in connection with student residential colleges; and

(e) enter into any contract or arrangement; and

(f) use the expertise and resources of the department to provide consultancy, advisory or other services for profit.

(3) In exercising any power under this section the Minister may act in conjunction with —

(a) any person or firm, or a public authority; or

(b) any department of the Public Service or any agency of the State or the Commonwealth.

(4) An agreement or arrangement for advertising or sponsorship in relation to a student residential college is not to be entered into by a person acting —

(a) in exercise of the power conferred by subsection (2)(d); and

(b) as a subdelegate of the Minister under section 225,

unless the LINC committee for that college has approved the agreement or arrangement.

(5) If a term is given a meaning in section 216(6), it has the same meaning in subsection (2).

[Section 213E inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213F. Treasurer to consider proposals under s. 213E(2)(c)

(1) Before the Minister exercises any power conferred by section 213E(2)(c) he or she is to —

(a) notify the Treasurer of the proposal; and

(b) seek the Treasurer's approval to it,

unless it is of a kind that the Treasurer has determined in writing need not be so notified.

(2) If the Treasurer approves the proposal, he or she may impose requirements to be complied with by the Minister in connection with it.

School Education Act 1999

Part 6A Student residential colleges

Division 3 Administration of student residential colleges

s. 213G

- (3) The Treasurer may also give directions to be complied with generally by the Minister in the exercise of the powers referred to in subsection (1).

[Section 213F inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213G. When money paid for advertising or sponsorship to be paid to student residential college's General Purposes Fund

- (1) Where —

- (a) an agreement or arrangement for advertising or sponsorship in relation to a student residential college is entered into —

- (i) in exercise of the power conferred by section 213E(2)(d); and

- (ii) as the subdelegate of the Minister under section 225;

and

- (b) the subdelegation expressly states that this section is to apply,

any money payable for the advertising or sponsorship is to be credited to the General Purposes Fund of the college in accordance with section 213T(1)(d).

- (2) The Minister is to ensure that a subdelegation does not state that this section is to apply unless the application of the section in the particular case is in accordance with the fair distribution across student residential colleges of the benefits of advertising and sponsorship.

[Section 213G inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213H. Sections 120 and 121 have effect in respect of student residential colleges

Sections 120 and 121 have effect in respect of a student residential college as if references in those sections —

- (a) to a government school were to a student residential college; and
- (b) to a teacher included a person employed at a student residential college; and

(c) to an authorised person, in relation to a government school, were to —

(i) a person authorised by the chief executive officer to exercise the powers conferred by this section in respect of a student residential college; and

(ii) a person who belongs to a class of persons so authorised.

[Section 213H inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

Subdivision 2 — Regulations and code of conduct

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213I. Regulations about student residential colleges

(1) Regulations may be made in respect of student residential colleges.

(2) Without limiting subsection (1), regulations may make provision for, and in relation to, any or all of the following —

(a) agreements under which accommodation and related services are provided at student residential colleges (an **agreement**), including any requirements as to any, or all, of the contents of an agreement (including any specific terms and conditions);

(b) kinds of, and limits to, the costs and charges payable for accommodation and related services provided under an agreement and any other matter relevant to such costs and charges and their recovery;

(c) requirements as to the health and safety of students boarding at student residential colleges;

(d) the operation and management of student residential colleges including —

(i) the making of applications for places at colleges and the offering of those places based on the availability of suitable accommodation and conformity with any other criteria prescribed;

(ii) access to, and the use of, the facilities and services of colleges;

(iii) the means by which disputes or complaints about the operation or management of a college, or the

School Education Act 1999

Part 6A Student residential colleges

Division 3 Administration of student residential colleges

s. 213J

conduct of any student, or person employed at a college, may be dealt with.

(3) Regulations of the kind mentioned in subsection (2)(d)(iii) may —

(a) confer authority on the Minister to make provision, by instrument published in the *Gazette*, for a scheme for dealing with disputes and complaints; and

(b) confer protection on persons in respect of statements made or information given; and

(c) provide for the powers that may be exercised in connection with the investigation and resolution of disputes and complaints.

(4) Regulations for the purposes of section 213E(2)(d) may provide for —

(a) the duration of an agreement or arrangement for advertising or sponsorship in relation to a student residential college; and

(b) naming rights in relation to advertising or sponsorship in relation to a student residential college; and

(c) the means of ensuring that advertising or sponsorship in relation to a student residential college does not interfere with the normal operations of the college.

[Section 213I inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213J. Code of conduct for students

(1) The Minister is to prepare and issue a code of conduct for students at student residential colleges.

(2) A code of conduct is to set out minimum standards of conduct to be observed by students at student residential colleges.

(3) A code of conduct may —

(a) be about any aspect of the conduct of students at student residential colleges; and

(b) set general principles to guide the behaviour of students at student residential colleges; and

(c) make specific provision in respect of a particular student residential college.

(4) The Minister may consult with any, or all, of the LINC committees before issuing a code of conduct if the Minister considers it necessary or desirable to do so.

(5) A code of conduct —

(a) is to be published —

(i) in the *Gazette*; and

(ii) by any other means (including on the Internet) that the Minister thinks fit;

and

(b) takes effect —

(i) on the day it is published in the *Gazette*; or

(ii) if a later day is stated in the code, on that day.

(6) The Minister may amend a code of conduct in force under subsection (1) or repeal it and substitute a new code of conduct.

(7) Subsections (4) and (5) apply to and in relation to the amendment or repeal of a code of conduct.

[Section 213J inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

Subdivision 3 — Power of Minister to grant licences

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213K. Licences by Minister for use of tangible property relating to student residential colleges

(1) This section applies to a licence granted by the Minister to a person for the use of tangible property vested in the Minister that relates to a student residential college.

(2) A licence is not to be granted if the use of the property would adversely affect the safety or welfare of students or other persons residing or employed at the student residential college to which the property relates.

(3) A licence —

(a) must be in writing; and

(b) may provide for a payment to be made by the licensee in connection with the use of the property; and

School Education Act 1999

Part 6A Student residential colleges

Division 3 Administration of student residential colleges

s. 213K

- (c) may provide for an amount of money to be paid by the licensee as security for the performance of the licensee's obligations under the licence; and
 - (d) is otherwise to be on such terms and subject to such conditions as the Minister thinks fit.
- (4) A licence granted for the use of property that is not in use by the college to which the property relates —
 - (a) is not to be granted for a period of more than—
 - (i) in the case of a licence granted by a subdelegate acting under section 225 — 2 years; or
 - (ii) otherwise — 5 years;
 - and
 - (b) may be renewed once or more than once for a period or successive periods, each not exceeding the period allowed under paragraph (a)(i) or (ii).
- (5) The use of property in respect of which a licence referred to in subsection (4) applies must not interfere with the normal operations of the student residential college to which the property relates.
- (6) A licence granted for the purposes of a joint arrangement may provide for all things necessary or convenient to be done for the purpose of furthering the joint arrangement, including —
 - (a) the establishment, composition, powers and duties of a management committee to manage and control the use of the property in accordance with the licence and the joint arrangement; and
 - (b) setting out how the property is to be shared and how disputes as to the use of the property are to be resolved; and
 - (c) the provision of facilities relating to the property; and
 - (d) payment to be made to the Minister by the licensee by way of contribution towards the costs incurred in the provision of any facilities; and
 - (e) the appointment and remuneration of staff with respect to the use of the property and any facilities.

[Section 213K inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213L. When money paid under licence to be paid to a General Purposes Fund

Where a licence under section 213K for the use of tangible property vested in the Minister that relates to a student residential college —

- (a) requires an amount of money to be paid in accordance with section 213K(3)(b) or (c); and
- (b) is granted by a subdelegate of the Minister acting under section 225 and the subdelegation expressly states that this section is to apply.

subject to section 213S(4), the money is to be credited to the General Purposes Fund of the college in accordance with section 213T(1)(d).

[Section 213L inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

Division 4 — LINC committees

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213M. LINC committees

- (1) Each student residential college is to have a local input networking and communications committee (*LINC committee*).
- (2) It is sufficient compliance with subsection (1) for 2 or more colleges, with the approval of the Minister, to have one LINC committee that operates for those colleges jointly.
- (3) Subject to this Division, a LINC committee may determine its own procedure.
- (4) The Minister is to ensure that each LINC committee is provided with such support services as it may reasonably require.

[Section 213M inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213N. Membership of LINC committees

- (1) A LINC committee is to be constituted by not less than 4 or more than 10 members appointed by the chief executive officer.
- (2) The membership of a LINC committee is to be drawn from persons who have such experience, skills, attributes or qualifications as the chief executive officer considers

School Education Act 1999

Part 6A Student residential colleges

Division 4 LINC committees

s. 213O

appropriate to enable them to effectively perform the functions set out in section 213O, and may include —

- (a) parents of students at the college; and
- (b) other members of the general community; and
- (c) any person employed at the college.

(3) Persons referred to in subsections (2)(a) and (b) must form the majority of members of a LINC committee.

(4) Unless otherwise provided by the regulations, a member is to hold office for a term of not more than 3 years as is specified in the instrument of his or her appointment, and is eligible for reappointment.

[Section 213N inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213O. Functions of LINC committees

(1) A LINC committee for a student residential college has the following functions —

- (a) to provide advice regarding the operation and management of the college;
- (b) to promote the interests of the college and to foster community interest in the college;
- (c) to carry out the functions given by sections 213E(4) and 213J(4);
- (d) to undertake such other functions prescribed by the regulations for the purposes of this section.

(2) A LINC committee for a student residential college may do any or all of the following —

- (a) take part in and provide advice on the selection, but not the appointment, of any person employed at the college, if the person comes within a class of employees referred to in section 235(1);
- (b) provide advice as to the means by which disputes or complaints about the conduct of students at the college may be dealt with;
- (c) take part in the planning of, and provide advice on, the financial arrangements and priorities for the college.

(3) A LINC committee cannot —

- (a) intervene in the operation or management of a student residential college; or

(b) exercise authority over any person employed at a student residential college.

(4) A LINC committee may do all things necessary or convenient to be done for or in connection with the carrying out of its functions.

[Section 213O inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213P. Regulations about LINC committees

(1) Regulations may be made in respect of LINC committees.

(2) Without limiting subsection (1), regulations may be made about any or all of the following —

(a) the proceedings of LINC committees;

(b) matters relating to ineligibility for, and cessation or termination of, membership of LINC committees;

(c) enabling LINC committees to allow students, principals and other staff of a school and members of the local community to attend meetings and take part in discussion but without having a right to vote or being counted in determining a quorum.

[Section 213P inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

Division 5 — Financial provisions

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

Subdivision 1 — Fund for each student residential college

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213Q. General Purposes Fund for each student residential college

Each student residential college is to have a fund to be called the “(name of student residential college) General Purposes Fund”.

[Section 213Q inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213R. Funds for other moneys received for a student residential college

The chief executive officer may authorise an officer designated under section 213S(1) to establish funds for the receipt of donations and bequests for or towards —

- (a) the addition of new capital works to the student residential college premises; or
- (b) the benefit of the college generally.

[Section 213R inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213S. Management of college funds

(1) The management of a college fund is to be vested in an officer designated by the chief executive officer to perform that function for the college.

(2) The chief executive officer may amend, revoke or replace a designation under subsection (1).

(3) Moneys forming part of a college fund may only be expended by or with the authority of the person designated under subsection (1) and in accordance with —

- (a) the regulations; and
- (b) any directions (not being inconsistent with the regulations) issued by the chief executive officer either generally or in any particular case.

(4) However —

- (a) money paid under a licence to which section 213K applies as a security for the performance of an obligation may only be applied in accordance with the licence; and
- (b) subsection (3) only applies to that money if the money has been forfeited under, and in accordance with, the licence.

[Section 213S inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213T. Money to be credited to college funds

(1) The following are to be credited to the General Purposes Fund of a student residential college —

- (a) moneys from time to time allocated to the college from funds appropriated by Parliament;

(b) grants and advances to the college from government and private sources;

(c) charges and other moneys received or recovered under agreements under which accommodation and related services are provided at the colleges;

(d) moneys payable to the college under section 213G or 213L;

(e) the proceeds of any investment of the General Purposes Fund under section 213W;

(f) subject to subsection (2), other moneys properly receivable for the purposes of the college.

(2) There are to be credited to a fund established for a student residential college under section 213R —

(a) donations and bequests to the school for the purpose for which the fund was established; and

(b) the proceeds of any investment of the fund under section 213W.

[Section 213T inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213U. Bank account for college funds

(1) Moneys forming part of a college fund are to be paid into an account at a bank approved by the chief executive officer.

(2) A student residential college is to have only one such bank account for each college fund except to the extent that the chief executive officer approves otherwise.

(3) The bank account or accounts may only be operated jointly by 2 or more office-holders, or persons belonging to a class, designated under subsection (4).

(4) The chief executive officer is to designate for each student residential college the office-holders or class of persons who may act under subsection (3).

(5) In this section —

bank means —

(a) an ADI (authorised deposit-taking institution) as defined in the *Banking Act 1959* (Commonwealth) section 5; or

School Education Act 1999

Part 6A Student residential colleges

Division 5 Financial provisions

s. 213V

(b) a bank constituted by a law of a State, a Territory or the Commonwealth.

[Section 213U inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213V. Financial Management Act 2006 s. 8 and 34, application of to s. 213Q to 213U

Sections 213Q to 213U have effect despite the *Financial Management Act 2006* sections 8 and 34, but nothing in sections 213Q to 213U is to be read as affecting the responsibilities of the chief executive officer as accountable authority under that Act in respect of moneys referred to in section 213T.

[Section 213V inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213W. Investment of college funds

Moneys forming part of a college fund may, until required to be paid out under section 213S, be invested in the name of the college by the officer designated under section 213S(1) in the manner in which money standing to the credit of the Public Bank Account may be invested under the *Financial Management Act 2006* section 37.

[Section 213W inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213X. Dealing with college funds on closure or amalgamation of a college

(1) If a student residential college is closed or amalgamated with another college —

(a) subject to subsection (2), moneys in a college fund are to be dealt with as the chief executive officer may direct; and

(b) the bank account for the fund may be operated by the chief executive officer for the purpose of giving effect to such a direction.

(2) However —

(a) money paid under a licence to which section 213K applies as a security for the performance of an obligation may only be applied in accordance with the licence; and

- (b) subsection (1)(a) only applies to that money if the money has been forfeited under, and in accordance with, the licence.

[Section 213X inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

Subdivision 2 — Student Residential Colleges Fund

[Heading inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213Y. Student Residential Colleges Fund

- (1) An account called the Student Residential Colleges Fund is established for the department.
- (2) The Student Residential Colleges Fund is an agency special purpose account under the *Financial Management Act 2006* section 16.
- (3) The following are to be credited to the Student Residential Colleges Fund —
- (a) moneys appropriated by Parliament for the purposes of student residential colleges;
- (b) moneys borrowed under section 213ZA;
- (c) any other moneys received by, made available to or payable to the Minister in the performance of functions under this Act that relate to student residential colleges.
- (4) Moneys standing to the credit of the Student Residential Colleges Fund are to be applied in the payment of —
- (a) expenditure incurred in the performance of the functions of the Minister under this Part;
- (b) the costs of the administration and enforcement of this Act in relation to student residential colleges.
- (5) For the purposes of the *Financial Management Act 2006* section 52, the administration of the Student Residential Colleges Fund is to be regarded as a service of the department.

[Section 213Y inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.]

213ZA. Minister's power to borrow money

- (1) The Minister may, if the Treasurer approves, borrow sums of money from the Western Australian Treasury Corporation

School Education Act 1999

Part 6A Student residential colleges

Division 5 Financial provisions

s. 213ZA

established under the *Western Australian Treasury Corporation Act 1986* for the purposes of this Part.

(2) All sums borrowed under subsection (1) are to be credited to the Student Residential Colleges Fund.

[Section 213ZA inserted by the *School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 11.*]

Part 6 — Administration

What this Part is about

This Part deals with —

- the functions and powers of the Minister including the power of delegation (Division 1);
- a department of the public service, and its chief executive officer, to assist the Minister in the administration of the Act, other than Part 4 (which is about non-government schools) (Division 2);
- the appointment, management and discipline of teaching staff and non-teaching staff (Division 3);
- the establishment of panels to advise on aspects of the operation of the Act (Division 4).

Division 1 — The Minister

213. Terms used

In this Division —

joint arrangement means an arrangement entered into by the Minister for purposes that are complementary and beneficial to the purposes of school education and which involves any or all of the following —

- (a) enabling any property vested in the Minister to be used for the purposes of the arrangement (**joint use property**);
- (b) controlling and managing the use of joint use property for the purposes of the arrangement;
- (c) sharing the use of joint use property for the purposes of the arrangement and for the purposes of school education;

property means property of every kind, whether real or personal, tangible or intangible, corporeal or incorporeal, and any interest in property.

[Section 213 amended by No. 28 of 2014 s. 30.]

214. “Minister for Education” is body corporate etc.

- (1) For the purposes of this Act the Minister is a body corporate with the name “Minister for Education”.
- (2) The corporate identity of the body corporate referred to in subsection (1) is the same as that continued by section 5 of the

Act repealed by section 246 and the continuation of the corporate identity is not affected by the repeal.

- (3) The Minister —
- (a) has perpetual succession; and
 - (b) is to have a common seal; and
 - (c) may sue and be sued in the Minister's corporate name.

215. Property vested in Minister

Property acquired or held for the purposes of this Act is vested in the Minister.

216. Powers of Minister

- (1) The Minister may do all things necessary or convenient to be done for the purposes of —
- (a) school education; or
 - (b) furthering the best interests of students and educational programmes in government schools; or
 - (c) carrying out joint arrangements.
- (2) Without limiting subsection (1) the Minister may for any of the purposes mentioned —
- (a) acquire, hold, manage, improve, develop and dispose of property or an interest in property; and
 - (b) accept any gift, [grant](#), devise or bequest if it is absolute or subject to conditions to which the Minister agrees; and
 - (c) subject to section 217, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and
 - (d) allow persons to undertake advertising or sponsorship, of the kind and to the extent that is authorised by regulations, in connection with educational activities in government schools; and
 - (e) enter into any contract or arrangement; and
 - (f) turn to account any resource or intellectual property that is vested in the Minister; and
 - (g) apply for, hold, exploit and dispose of any patent, patent rights, design rights, copyright, trademark or similar rights; and

- (h) use the expertise and resources of the department to provide consultancy, advisory or other services for profit.
- (3) The Minister may for the purpose of furthering education whether in the government or non-government schools —
 - (a) act as trustee of any trust for educational purposes; or
 - (b) grant allowances, awards and scholarships.
- (4) In exercising any power under this section the Minister may act in conjunction with —
 - (a) any person or firm, or a public authority; or
 - (b) any department of the Public Service or any agency of the State or the Commonwealth.
- (5) An agreement or arrangement for advertising or sponsorship in relation to a government school is not to be entered into by the principal of the school acting —
 - (a) in exercise of the power conferred by subsection (2)(d); and
 - (b) as the subdelegate of the Minister under section 225,unless the Council for that school has approved the agreement or arrangement.
- (6) In subsection (2) —
 - acquire** includes taking on lease or licence or in any other manner in which an interest in property may be acquired;
 - business arrangement** means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;
 - dispose of** includes dispose of by way of lease;
 - participate** includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement.

[Section 216 amended by No. 28 of 2014 s. 31; [School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 12.](#)]

217. Treasurer to consider proposals under s. 216(2)(c)

- (1) Before the Minister exercises any power conferred by section 216(2)(c) he or she is to —
 - (a) notify the Treasurer of the proposal; and

(b) seek the Treasurer's approval to it,

unless it is of a kind that the Treasurer has determined in writing need not be so notified.

- (2) If the Treasurer approves the proposal, he or she may impose requirements to be complied with by the Minister in connection with it.
- (3) The Treasurer may also give directions to be complied with generally by the Minister in the exercise of the powers referred to in subsection (1).

218. Licences by Minister for use of tangible property, other than property relating to student residential colleges~~Licences by Minister for use of tangible property~~

- (1) This section applies to a licence granted by the Minister to a person for the use of tangible property that is vested in the Minister, other than property that relates to a student residential college.~~Minister.~~
- (2) A licence is not to be granted if the use of the property would adversely affect the safety or welfare of students, teaching staff or other persons employed at any school to which the property relates.
- (3) A licence —
- (a) must be in writing; and
 - (b) may provide for a payment to be made by the licensee in connection with the use of the property; and
 - (c) may provide for an amount of money to be paid by the licensee as security for the performance of the licensee's obligations under the licence; and
 - (d) is otherwise to be on such terms and subject to such conditions as the Minister thinks fit.
- (4) A licence granted for the use of property that is not in use by the school to which the property relates —
- (a) is not to be granted for a period of more than —
 - (i) in the case of a licence granted by a subdelegate acting under section 225 — 2 years; or
 - (ii) otherwise — 5 years;
 - and

- (b) may be renewed once or more than once for a period or successive periods, each not exceeding the period allowed under paragraph (a)(i) or (ii).
- (5) The use of property in respect of which a licence referred to in subsection (4) applies must not interfere with the normal operations of the school to which the property relates.
- (6) A licence granted for the purposes of a joint arrangement may provide for all things necessary or convenient to be done for the purpose of furthering the joint arrangement, including —
 - (a) the establishment, composition, powers and duties of a management committee to manage and control the use of the property in accordance with the licence and the joint arrangement; and
 - (b) setting out how the property is to be shared and how disputes as to the use of the property are to be resolved; and
 - (c) the provision of facilities relating to the property; and
 - (d) payment to be made to the Minister by the licensee by way of contribution towards the costs incurred in the provision of any facilities; and
 - (e) the appointment and remuneration of staff with respect to the use of the property and any facilities.

[Section 218 inserted by No. 28 of 2014 s. 32; [amended by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 13.](#)]

[219. Deleted by No. 28 of 2014 s. 32.]

220. When money paid under licence to be paid to school's General Purposes Fund

Where —

- (a) a licence referred to in section 218(4) —
 - (i) relates to property in respect of a particular school; and
 - (ii) requires an amount of money to be paid in accordance with section 218(3)(b) or (c);
- and

- (b) the licence is granted by a subdelegate of the Minister acting under section 225 and the subdelegation expressly states that this section is to apply,

subject to section 111(4), the money is to be credited to the General Purposes Fund of the school in accordance with section 112(1)(d).

[Section 220 amended by No. 28 of 2014 s. 33.]

221. When money paid for advertising or sponsorship to be paid to school's General Purposes Fund

- (1) Where —
 - (a) an agreement or arrangement for advertising or sponsorship in relation to a government school is entered into by the principal of the school acting —
 - (i) in exercise of the power conferred by section 216(2)(d); and
 - (ii) as the subdelegate of the Minister under section 225; and
 - (b) the subdelegation expressly states that this section is to apply,

any money payable for the advertising or sponsorship is to be credited to the General Purposes Fund of the school in accordance with section 112(1)(d).

- (2) The Minister is to ensure that a subdelegation does not state that this section is to apply unless the application of the section in the particular case is in accordance with the fair distribution across government schools of the benefits of advertising and sponsorship.

222. Exempting school from Act, Minister's powers as to

- (1) The Minister may, by order published in the *Government Gazette* —
 - (a) exempt a school or class of schools —
 - (i) from the provisions of this Act that are specified in the order; and
 - (ii) for a period not exceeding 3 years as specified in the order;
 - and
 - (b) amend or repeal an order made under paragraph (a); and

- (c) renew an order made under paragraph (a) for a one year period only by making the order to renew at least 6 months before the original order expires.
- (2) An exemption given for the purposes of this section is of no effect at any time when a condition imposed in relation to the exemption is being contravened.
- (3) Section 42 of the *Interpretation Act 1984* applies to an order, the amendment or repeal of an order or the renewal of an order under subsection (1) as if the order were regulations within the meaning of that Act, except that the reference in section 42(1) of that Act to 6 sitting days is, for the purposes of its application to the order, to be construed as a reference to 9 sitting days.
- (4) The Minister is to ensure that the reasons in support of an order, the amendment or repeal of an order or the renewal of an order under subsection (1) are laid before each House of Parliament in accordance with section 42 of the *Interpretation Act 1984* as it applies under subsection (3) of this section.

223. Decision as to individual student, review of by Minister

- (1) A person who is aggrieved by a decision —
 - (a) made by any person performing a function for the purposes of school education; and
 - (b) concerning an individual student,may, in addition to any other right under this Act to have the decision reviewed, request the Minister to review the procedure by which the decision was made.
- (2) The Minister may, but is not obliged to, conduct a review under this section.
- (3) If, on a review under this section, the Minister is of the opinion that —
 - (a) the decision was made without compliance with the applicable procedure; or
 - (b) the procedure by which the decision was made was unfair, defective or inadequate; or
 - (c) the information available to the person who made the decision was inadequate,

the Minister may recommend that the person who made the decision review the procedure or reconsider the decision and may recommend the procedure or information that the Minister thinks is appropriate for that review or reconsideration.

- (4) The regulations may regulate the practice and procedure of reviews under this section.
- (5) Nothing in this section affects the jurisdiction that the Parliamentary Commissioner for Administrative Investigations has under the *Parliamentary Commissioner Act 1971*.

224. Delegation by Minister

- (1) The Minister may, by instrument, delegate to the chief executive officer the performance of any of the Minister's functions except those under section 54, 168, 201, 222 or 223.
- (2) Subsection (1) has effect subject to sections 11(6) and 21(2).
- (3) A delegation may be general or as otherwise provided by the instrument of delegation.
- (4) Where the chief executive officer performs a function of the Minister he or she is to be taken to do so in accordance with the terms of a delegation under this section, unless the contrary is shown.
- (5) Performance of a function by the chief executive officer under this section is to be treated as performance by the Minister.

225. Subdelegation by CEO, Minister may permit

- (1) The Minister may, in an instrument by which a function is delegated to the chief executive officer under section 224, authorise the chief executive officer to subdelegate that function to —
 - (a) a specified officer; or
 - (b) the holder or holders for the time being of a specified office or class of office.
- (2) Apart from subsection (1), a delegation under section 224 does not include the power to subdelegate.
- (3) Section 59 of the *Interpretation Act 1984* applies to a subdelegation under this section in the same way as it applies to a delegation.
- (4) In this section —
officer means a person who comes within a class referred to in section 235(1), and *office* has a corresponding meaning.

226. Documents presumed duly executed

When a document is produced bearing a seal purporting to be the common seal of the Minister, it is to be presumed until the contrary is shown that the seal is the seal of the Minister and has been duly affixed.

227. Application of Financial Management Act 2006~~Financial Management Act 2006, application of to acts etc. under this Division~~

Any acts or things done by the Minister under [Part 6A](#) or this Division are to be regarded —

- (a) as services under the control of the department for the purposes of section 52 of the *Financial Management Act 2006*; and
- (b) as operations of the department for the purposes of Part 5 of that Act.

*[Section 227 amended by No. 77 of 2006 Sch. 1 cl. 154(4);
[School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 14.\]](#)*

Division 2 — The department

228. Department to assist in administration of Act, other than in relation to non government schools and students attending non government schools~~Department of Public Service for government schools~~

There is to be a department of the Public Service with a function of principally assisting the Minister in the administration of this Act, other than in relation to —

- (a) Part 4; and
- (b) the application of any other provision of this Act ([except Part 6A](#)) to students enrolled at non-government schools.

[Section 228 amended by the [School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 15.\]](#)

229. Term used: chief executive officer

References in this Act, other than Part 4, to the chief executive officer are, unless a contrary intention appears, references to the chief executive officer appointed for the department under section 45 of the *Public Sector Management Act 1994*.

230. Delegation by chief executive officer

- (1) The chief executive officer may, by instrument, delegate to an officer the performance of any of the functions conferred on the chief executive officer by this Act except this power of delegation.
- (2) A delegation may be general or as otherwise provided by the instrument of delegation.
- (3) Where an officer performs a function of the chief executive officer he or she is to be taken to do so in accordance with the terms of a delegation under this section, unless the contrary is shown.
- (4) Performance of a function by an officer under this section is to be treated as performance by the chief executive officer.
- (5) In this section —
officer means a person who comes within a class referred to in section 235(1).

231. Minister may direct chief executive officer

The Minister may give directions in writing of a general nature to the chief executive officer with respect to the performance of the chief executive officer's functions under this Act but the Minister cannot give a direction in relation to a particular person.

232. Chief executive officer may direct principal

The chief executive officer may give directions in writing to the principal of a government school with respect to the performance of the principal's functions under this Act, either generally or in relation to a particular matter, and the principal is to give effect to any such direction.

233. CEO's Instructions, issue of etc.

- (1) The chief executive officer may prepare and issue instructions (*CEO's Instructions*) to be observed by persons performing functions in the department.
- (2) The CEO's Instructions must not be inconsistent with this Act.
- (3) Sections 9, 10, 15, 43(4) and 43(7) to (9) of the *Interpretation Act 1984* apply to the CEO's Instructions as if they were regulations.

- (4) A breach of the CEO's Instructions committed by a person is not to be an offence but is to be treated for the purposes of paragraph (a) of section 80 of the *Public Sector Management Act 1994* (including that paragraph as applied by section 239) as the disobedience by that person of a lawful order.

Division 3 — Staff employed in the department

234. Terms used

In this Division —

other officers means officers referred to in section 235(1)(c);

PSMA means the *Public Sector Management Act 1994*;

teaching staff means teaching staff referred to in section 235(1)(b).

235. Categories of staff to be employed

- (1) To enable the functions of the department to be performed persons are to be employed in the department —
- (a) as public service officers appointed or made available under Part 3 of the PSMA; or
 - (b) as members of the teaching staff; or
 - (c) as other officers; or
 - (d) as wages staff.
- (2) A person is not to be employed as a member of the teaching staff unless the person holds a qualification recognized by the chief executive officer as being an appropriate qualification.
- (3) Subsection (1) does not affect the power of the chief executive officer to engage a person under a contract for services under section 100 of the PSMA.

236. Engaging etc. teaching staff, other officers and wages staff

- (1) Part 3 of the PSMA does not apply to the teaching staff, other officers and wages staff.
- (2) The powers to engage, transfer, promote and otherwise manage the members of the teaching staff, other officers and wages staff are vested in the chief executive officer.
- (3) The terms and conditions of service of members of the teaching staff, other officers and wages staff are to be —
- (a) in accordance with any relevant industrial award, order or agreement; and

School Education Act 1999

Part 6 Administration

Division 3 Staff employed in the department

s. 237

- (b) not less than those provided for by the *Minimum Conditions of Employment Act 1993*.
- (4) Members of the teaching staff and other officers may be engaged —
 - (a) on a full-time or part-time basis; and
 - (b) for an indefinite period as permanent officers, or for a period not exceeding 5 years.
- (5) Nothing in this section affects the operation of Part VID of the *Industrial Relations Act 1979*.
- (6) For the avoidance of doubt it is declared that members of the teaching staff, other officers and wages staff are employed for and on behalf of the Crown.

[Section 236 amended by No. 20 of 2002 s. 27; amended in Gazette 15 Aug 2003 p. 3692.]

237. Teaching staff, classes of

Without limiting section 29(1)(h) of the PSMA the teaching staff is to consist of the following classes —

- (a) school administrators, that is —
 - (i) principals; and
 - (ii) any other office or position, or class of office or position, prescribed by the regulations;
- and
- (b) teachers other than school administrators; and
- (c) any other class prescribed by the regulations.

238. Transfer etc. of teacher to another category of employee

- (1) The chief executive officer may, if he or she considers that it is in the interests of the department to do so, determine that —
 - (a) a person who is a member of the teaching staff is to become an officer of the class mentioned in section 235(1)(a) or (c); or
 - (b) a person who has been the subject of a determination under paragraph (a) of this subsection is to again become a member of the teaching staff.
- (2) Except where section 239(2) applies, a determination under subsection (1) of this section is only to be made with the consent of the person concerned.

- (3) Regulations may be made in respect of the entitlement of persons who are the subject of a determination under subsection (1) to rights and benefits that had accrued or were accruing at the time when the determination took effect.

239. Teaching staff and other officers, substandard performance by and discipline of

- (1) Part 5 of the PSMA has effect as if in that Part references to —
- (a) an employee included —
 - (i) a member of the teaching staff; and
 - (ii) an officer who comes within section 235(1)(c);
 - and
 - (b) an employing authority included references to the chief executive officer.
- (2) In addition to —
- (a) the actions that may be taken under section 79(3) of the PSMA; and
 - (b) any disciplinary action or improvement action that may be taken under section 82A(3)(b) or 88(b) of the PSMA,
- the chief executive officer may under those provisions make a determination under section 238(1)(a) in respect of a member of the teaching staff.
- (3) Without limiting section 80 of the PSMA, a contravention of this Act is to be taken to be a breach of discipline for the purposes of that section.

[Section 239 amended by No. 39 of 2010 s. 110(2) and (3).]

240. Employee may be ordered to leave school premises

- (1) If the chief executive officer suspects —
- (a) that a person employed at the premises of a government school [or a student residential college](#) may have committed a breach of discipline as referred to in section 80 of the PSMA (whether or not that section applies to the person); and
 - (b) that the presence of the person —
 - (i) on the premises of that school [or college](#) constitutes a risk to the safety or welfare of students at the premises; or

- (ii) on the premises of any government school or any student residential college constitutes a risk to the safety or welfare of students generally,

the chief executive officer may, by order in writing given to the person, require the person to leave the premises of the school or college specified in the order and remain away from those premises, or from the premises of all government schools or all student residential colleges, or both, specified in the order and remain away from those premises, or from the premises of all government schools, as the case requires —

- (c) until —

- (i) in the case of a member of the wages staff, any relevant procedures have been followed; or
- (ii) in the case of a suspected breach of discipline dealt with under Part 5 of the PSMA — a decision is made under section 81(1)(b), 82A(2) or (3) or 88 of the PSMA;

or

- (d) until the order is sooner revoked.

- (2) The chief executive officer is to ensure that written reasons for issuing an order under subsection (1) are provided with the order.
- (3) A person must comply with an order given to him or her under subsection (1).
Penalty: a fine of \$5 000.
- (4) The power conferred by this section is in addition to the powers in Part 5 of the PSMA.

[Section 240 amended by No. 50 of 2003 s. 94(2); No. 39 of 2010 s. 110(4); No. 28 of 2014 s. 34 and 35; School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 16.]

Division 4 — Advisory panels

241. Advisory panels, establishing etc.

- (1) Without limiting section 39, 87 or 93 the Minister may establish advisory panels for the purposes of this Act.
- (2) The Minister is to determine —
- (a) provisions for the membership, constitution, procedures and discharge of an advisory panel; and

- (b) in what circumstances and on what matters the panel is to advise.
- (3) The members of an advisory panel are to be persons who have such experience, skills, attributes or qualifications as the Minister considers appropriate to enable them to effectively perform their advisory function.
- (4) Subject to this section, an advisory panel may determine its own procedure.
- (5) In performing its functions in relation to a particular child or student, or class of children or students, an advisory panel may have regard to the social, cultural, lingual, economic or geographic factors, or learning difficulties, that might be relevant to the matter before the panel.
- (6) The Minister is to ensure that each advisory panel is provided with such support services as it may reasonably require.
- (7) The Minister may —
 - (a) direct that some or all of the members of an advisory panel are to be paid remuneration or allowances or both; and
 - (b) determine the amount of any such payments on the recommendation of the Public Sector Commissioner.

[Section 241 amended by No. 39 of 2010 s. 89.]

Part 7 — Miscellaneous

What this Part is about

This Part deals with —

- the requirement of confidentiality (section 242);
- who can take legal proceedings (section 243);
- the regulations required for carrying out the Act (section 244);
- a review of the Act after 5 years (section 245);
- the repeal of the *Education Act 1928* and the transition from that Act to the new Act (section 246 and Schedule 1).

242. Disclosure of official information restricted

- (1) A person must not disclose or make use of information to which this section applies except —
- (a) in the course of duty; or
 - (b) for the purpose of proceedings for an offence against this Act; or
 - (c) under and in accordance with this Act or any other law; or
 - (d) with the authority of the Minister or all persons to whom the information relates; or
 - (e) in other prescribed circumstances.

Penalty: a fine of \$5 000.

- (2) This section applies to information contained in any register or document of or in the possession or under the control of —
- (a) the Minister; or
 - (b) the chief executive officer or the chief executive officer referred to in section 151, as is relevant to the case; or
 - (c) the department or the department referred to in section 228, as is relevant to the case; or
 - (d) the principal of a government school; or
 - (e) a panel appointed for the purposes of this Act.

[Section 242 amended by No. 50 of 2003 s. 94(2); No. 28 of 2014 s. 35.]

243. Prosecutions and s. 109 recovery action, who may commence; evidentiary matters

- (1) Any proceedings for an offence under this Act, other than for an offence under section 45, and any proceedings under section 106 may be taken in the name of the chief executive officer or a person authorised in that behalf by the chief executive officer.
- (2) In any proceedings no proof is required of —
 - (a) the appointment of the chief executive officer; or
 - (b) the authorisation of a person under subsection (1),but an averment in a prosecution notice that the person is so appointed or authorised is to be taken to be proved in the absence of evidence to the contrary.
- (3) Subsection (1) does not limit the ability of a person to commence or conduct the prosecution of an offence if the person has authority at law to do so.

[Section 243 amended by No. 84 of 2004 s. 80.]

244. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out, or giving effect to the purposes of, this Act.
- (2) Without limiting subsection (1) the regulations may —
 - (a) create offences punishable by a fine not exceeding \$2 000; and
 - (ba) make provision for requirements as to the health and safety of children enrolled at a school or a community kindergarten registered under Part 5; and
 - (b) confer power on the Minister to grant exemptions from provisions of the regulations, and to impose conditions subject to which an exemption applies; and
 - (c) regulate the practice and procedure of advisory panels established by or under this Act.
- (3) Regulations for the purposes of section 216(2)(d) may provide for —
 - (a) the duration of an agreement or arrangement for advertising or sponsorship in relation to a government school; and

s. 245

- (b) naming rights in relation to advertising or sponsorship in relation to a government school; and
- (c) the means of ensuring that advertising or sponsorship in relation to a government school does not interfere with the normal operations of the school; and
- (d) the extent to which teaching materials may be involved in advertising or sponsorship in relation to a government school.

[Section 244 amended by No. 1 of 2011 s. 9.]

245. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act not later than 5 years after its commencement.
- (2) The Minister is to prepare a report based on the review carried out under subsection (1) and, as soon as practicable after that preparation, is to cause that report to be laid before each House of Parliament.

246. Repeal, savings and transitional

- (1) The *Education Act 1928* is repealed.
- (2) The *Education Regulations 1960* are repealed.
- (3) The *School Premises Regulations 1981* are repealed.
- (4) Schedule 1 has effect to make transitional provisions.

[247. Omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 1 — Transitional provisions

[Section 246(4)]

Division 1 — Transitional provisions for the commencement of this Act

[Heading inserted by No. 11 of 2012 s. 47.]

1. Terms used

In this [Division](#) — ~~Schedule~~ —
commencement means the commencement of this Act;
repealed Act means the *Education Act 1928*.

*[Clause 1 amended by the School Boarding Facilities Legislation
Amendment and Repeal Bill 2016 cl. 17.]*

2. Interpretation Act 1984 not affected

The provisions of this [Division](#) ~~Schedule~~ do not affect the application
of the *Interpretation Act 1984* to and in relation to the —

- (a) repeal effected by section 246; or
- (b) any other aspect of the operation of this Act.

*[Clause 2 amended by the School Boarding Facilities Legislation
Amendment and Repeal Bill 2016 cl. 18.]*

3. Property vested in Minister at 1 Jan 2001

All property that immediately before the commencement is vested in
the Minister under section 6 of the repealed Act is, on the
commencement, vested in the Minister for the purposes of
section 215.

4. Delegation in force at 1 Jan 2001 under repealed Act s. 6AA

A delegation under section 6AA of the repealed Act that is in force
immediately before the commencement is to be taken on the
commencement to be a delegation under section 224.

**5. Agreement or licence in force at 1 Jan 2001 under repealed
Act s. 6A**

An arrangement entered into, and a licence granted, under section 6A
of the repealed Act that are in force immediately before the
commencement are to be taken on the commencement to be
respectively —

- (a) an arrangement entered into under section 219; and
- (b) a licence to give effect to that arrangement granted in terms of
subsection (2) of that section.

School Education Act 1999

Schedule 1 Transitional provisions

Division 1 Transitional provisions for the commencement of this Act

cl. 6

6. Licence in force at 1 Jan 2001 under repealed Act s. 6B

- (1) Section 218(3) applies to a licence under section 6B of the repealed Act for the use of tangible property vested in the Minister that is in force immediately before the commencement.
- (2) Section 220 applies to a licence referred to in subclause (1) if immediately before the commencement it came within section 6C of the repealed Act.

7. Staff appointed etc. as at 1 Jan 2001 under repealed Act s. 7(2)

- (1) A person —
 - (a) appointed by the Minister as a teacher in the Education Department under section 7(2) of the repealed Act; and
 - (b) holding office as such immediately before the commencement,

is to be taken on the commencement to have been engaged as a member of the teaching staff under section 236(2).

- (2) A person —
 - (a) appointed by the Minister as an employee (other than as a teacher) in the Education Department under section 7(2) of the repealed Act; and
 - (b) employed under that section immediately before the commencement,

is to be taken on the commencement to have been engaged as an officer (not being a member of the teaching staff) referred to in section 236(2).

- (3) The operation of this clause in relation to a person's employment does not —
 - (a) affect the person's remuneration or terms and conditions of employment; or
 - (b) prejudice the person's existing or accruing rights; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt continuity of service.

8. Inquiry incomplete at 1 Jan 2001 under repealed Act s. 7C

- (1) If before the commencement an inquiry under section 7C(3) of the repealed Act has begun in relation to a teacher, the inquiry may continue and be completed and —
 - (a) the chief executive officer may exercise powers under the section; and
 - (b) the section otherwise applies,

in relation to the teacher as if the section had not been repealed.

- (2) For the purposes of subsection (1) an inquiry has begun under section 7C(3) if the chief executive officer has in writing requested a person to hold the inquiry.

9. Enrolment in effect at 1 Jan 2001

- (1) The enrolment of a student at a government school that has effect immediately before the commencement is to be taken as an enrolment under this Act.
- (2) Subclause (1) applies whether or not the enrolment is in accordance with Division 4 of Part 3, but does not limit the exercise of the powers in section 20, 83 or 92(6).

10. Government school in existence at 1 Jan 2001 under repealed Act s. 9

- (1) A government school that immediately before the commencement is in existence as a primary school or a secondary school under section 9 of the repealed Act is to be taken on the commencement to have been established under section 55 with the same classification.
- (2) If, within 6 months of the commencement, the chief executive officer declares a government school to be a local-intake school the area for the purposes of section 60(1)(b) in relation to the school is to be taken to be the area described in relation to the school in a notice under section 21(2) of the repealed Act, unless the chief executive officer otherwise defines the area.

11. Efficient school registered at 1 Jan 2001 under repealed Act s. 32B

- (1) A school that immediately before the commencement is registered in the register of efficient schools under section 32B of the repealed Act is to be taken on the commencement to be registered under section 160.
- (2) If a school referred to in subclause (1) is included in an order under section 169 it is to be taken to be registered as a system school for the purposes of section 156(2).
- (3) Subject to Part 4, the registration provided for by subclause (1) continues in force for 3 years from the commencement.

12. Certain pre-school centres at 1 Jan 2001 continued as registered schools

- (1) A pre-school centre —
 - (a) for which a permit was in force under Part VIA of the repealed Act immediately before the commencement; and

School Education Act 1999

Schedule 1 Transitional provisions

Division 1 Transitional provisions for the commencement of this Act

cl. 13

- (b) which does not have on its staff any employee who comes within a class referred to in section 235(1),

is to be taken after the commencement to be registered under section 160 as a non-system school as if the permit were a certificate of registration under section 162.

- (2) Subject to Part 4, the registration provided for by subclause (1) continues in force for 3 years from the commencement.

13. Certain care-centres and pre-school centres as at 1 Jan 2001 continued

- (1) A care-centre or a pre-school centre —
 - (a) for which a permit was in force under Part VIA of the repealed Act immediately before the repeal; and
 - (b) which has on its staff any employee who comes within a class referred to in section 235(1),

may continue in operation, but is to be known as a community kindergarten.

- (2) A permit referred to in subclause (1) continues in force as a registration under Part 5.
- (3) Despite sections 192 and 199(1)(a), a child may attend a community kindergarten continued by this clause in a year other than the first year of the child's pre-compulsory education period until 1 January 2001.

[14. Deleted by No. 43 of 2000 s. 62.]

15. Notices etc. in force at 1 Jan 2001 under repealed Act s. 9A

- (1) A notice under section 9A(2) of the repealed Act that is in force immediately before the commencement is to be taken on the commencement to be an order under section 183.
- (2) Guidelines referred to in section 9A(5)(b) of the repealed Act that are in operation immediately before the commencement continue in operation after the commencement for the purposes of section 184(b).

16. Approved account as at 1 Jan 2001 under repealed Act s. 9B

A bank account that immediately before the commencement is an approved account for the purposes of section 9B(5)(b) of the repealed Act is to be taken on the commencement to have been approved for the purposes of section 113(1).

17. Decision as to home education in force at 1 Jan 2001 under repealed Act s. 14(a)

A decision under section 14(a) of the repealed Act (that the instruction of a child at home is efficient) that is in force immediately before the

commencement is to be taken on the commencement to be a registration under section 48.

18. Direction in force at 1 Jan 2001 under repealed Act s. 20A

A direction under section 20A of the repealed Act that is in force immediately before the commencement continues in force despite the repeal but may at any time be revoked by the chief executive officer.

19. Student suspended or excluded as at 1 Jan 2001

- (1) A suspension under section 20G(1) of the repealed Act that is in force immediately before the commencement is to be taken on the commencement to be a suspension under section 90.
- (2) If before the commencement a recommendation has been made under section 20G(2) of the repealed Act but no determination has been made by the Minister, the recommendation is to be treated after the commencement as if it had been made to the chief executive officer under section 92(1).
- (3) An order under section 20G(4) of the repealed Act that is in force immediately before the commencement —
 - (a) is to be taken on the commencement to be an order made by the chief executive officer under section 92(6); and
 - (b) may be revoked or amended under section 94(3).

20. School decision-making group in being at 1 Jan 2001 under repealed Act Part VA

- (1) A school decision-making group for a government school that immediately before the commencement is in existence under Part VA of the repealed Act is to be taken on the commencement to be the Council established for the school under section 125.
- (2) Regulations may be made under section 244 providing for —
 - (a) the way in which matters relating to Councils referred to in subclause (1) are to be changed so that they conform to the requirements of Subdivision 1 of Division 8 of Part 3; and
 - (b) the time by which those changes are to be made.

21. Parents and Citizens' Association in being at 1 Jan 2001 under repealed Act Part VI

A Parents and Citizens' Association for a government school or group of schools that immediately before the commencement is in existence under Part VI of the repealed Act is to be taken on the commencement to be the Parents and Citizens' Association formed for the school or group of schools under section 142.

School Education Act 1999

Schedule 1 Transitional provisions

Division 2 Transitional provisions for the Education and Care Services
National Law (WA) Act 2012

cl. 22

22. Repeal of *Industrial Relations Act 1979* s. 23B, transitional

An appeal in respect of any matter referred to in section 23B(1)(a), (b) or (c) of the *Industrial Relations Act 1979* arising before the commencement of this Act may be —

- (a) determined; or
- (b) heard and determined; or
- (c) instituted, heard and determined,

as the case requires, under the *Industrial Relations Act 1979* as if section 23B of that Act had not been repealed by this Act.

23. Transitional regulations

- (1) If there is no sufficient provision in this ~~Division~~^{Schedule} for dealing with a matter that needs to be dealt with for the purpose of the transition from the repealed Act to this Act, regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (2) Regulations under subclause (1) may provide that specific provisions of this Act or of subsidiary legislation made under this Act —
 - (a) do not apply; or
 - (b) apply with or without specified modifications,to or in relation to any matter or thing.
- (3) Regulations under subclause (1) may have effect before the day on which they are published in the *Government Gazette*.
- (4) To the extent that a regulation under subclause (1) has effect before the day of its publication in the *Government Gazette*, it does not —
 - (a) affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of its publication; or
 - (b) impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of its publication.

[Clause 23 amended by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 19.]

Division 2 — Transitional provisions for the *Education and Care Services National Law (WA) Act 2012*

[Heading inserted by No. 11 of 2012 s. 48.]

24. Term used: commencement

In this Division —

commencement means the commencement of the *Education and Care Services National Law (WA) Act 2012* section 48.

[Clause 24 inserted by No. 11 of 2012 s. 48.]

25. Registration extended for a period of time

- (1) If, immediately before commencement, a non-government school was providing a kind of education referred to in section 156(3)(c), then after commencement, the registration of the school under section 160 is to be taken to extend to the provision of that kind of education.
- (2) Subject to Part 4, the registration provided for by subclause (1) continues in force for 3 years from the commencement.

[Clause 25 inserted by No. 11 of 2012 s. 48.]

Division 3 — Transitional provisions for the *School Education Amendment Act 2014*

[Heading inserted by No. 28 of 2014 s. 21.]

26. Terms used

In this Division —

commencement means the commencement of the *School Education Amendment Act 2014* Part 2 Division 2;

former provisions means this Act as in force immediately before commencement.

[Clause 26 inserted by No. 28 of 2014 s. 21.]

27. Interpretation Act 1984 not affected

Except to the extent this Division or regulations made under clause 32 expressly provide otherwise, the *Interpretation Act 1984* Part V applies in relation to the amendments effected by the *School Education Amendment Act 2014*.

[Clause 27 inserted by No. 28 of 2014 s. 21.]

28. Pending applications and reviews of certain decisions

- (1) In this clause —

pending application means an application under section 157 or 158 made, but not determined, before commencement.

School Education Act 1999

Schedule 1 Transitional provisions

Division 3 Transitional provisions for the School Education Amendment Act 2014

cl. 29

- (2) The former provisions continue to apply in relation to the determination of a pending application.
- (3) The former provisions continue to apply in relation to an application for, and the determination of, a review under section 168 of —
 - (a) a decision made under this Act before commencement; or
 - (b) a decision made on a pending application to refuse to register a school.

[Clause 28 inserted by No. 28 of 2014 s. 21.]

29. Application for imminent renewal of registration

- (1) In this clause —

application for imminent renewal of registration means an application under Part 4 for the renewal of registration of a school —

 - (a) made, but not determined, before commencement; or
 - (b) made after commencement where the current period of registration ends within 12 months after commencement.
- (2) The former provisions continue to apply in relation to the determination of an application for the imminent renewal of registration.

[Clause 29 inserted by No. 28 of 2014 s. 21.]

30. Advance determinations under former provisions continue

- (1) In this clause —

advance determination under the former provisions means an advance determination —

 - (a) that is in force under section 157 of the former provisions immediately before commencement; or
 - (b) made by the Minister under section 157 of the former provisions on a pending application under clause 28.
- (2) On and after commencement, an advance determination under the former provisions is to be taken to be an advance determination made under section 157B and for that purpose a reference in this Act to information provided under section 157A is to be taken to be a reference to information provided under section 157 of the former provisions.

[Clause 30 inserted by No. 28 of 2014 s. 21.]

31. Directions in force before commencement

Section 167A does not apply in relation to a direction given under section 166 that is in force immediately before commencement.

[Clause 31 inserted by No. 28 of 2014 s. 21.]

32. Transitional regulations

- (1) If there is no sufficient provision in this Division for dealing with a transitional matter, the Governor may make regulations prescribing all matters that are required or necessary or convenient to be prescribed in relation to that matter.
- (2) In subsection (1) —
transitional matter means a matter that needs to be dealt with for the transition required because of the enactment of the *School Education Amendment Act 2014*.
- (3) Regulations made under subsection (1) may provide that specific provisions of any written law —
 - (a) do not apply in relation to any matter; or
 - (b) apply with specific modifications in relation to any matter.
- (4) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement, the regulations have effect according to their terms.
- (5) In subsection (4) —
specified means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the regulations were published in the *Gazette*; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in relation to anything done or omitted to be done before the regulations were published in the *Gazette*.

[Clause 32 inserted by No. 28 of 2014 s. 21.]

**Division 4 — Transitional provisions for the School Boarding
Facilities Legislation Amendment and Repeal Act 2016**

*[Heading inserted by the School Boarding Facilities Legislation
Amendment and Repeal Bill 2016 cl. 20.]*

33. Terms used

In this Division, unless the contrary intention appears —

1960 Act means the Country High School Hostels Authority Act 1960;

School Education Act 1999

Schedule 1 Transitional provisions

Division 4 Transitional provisions for the School Boarding Facilities
Legislation Amendment and Repeal Act 2016

cl. 34

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description, and includes money and securities, choses in action and documents;

commencement day means the day on which the *School Boarding Facilities Legislation Amendment and Repeal Act 2016* section 20 comes into operation;

former Authority means the Country High School Hostels Authority —

(a) established under the 1960 Act section 4; and

(b) as in existence immediately before commencement day;

hostel has the meaning given in the 1960 Act section 3;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

right means any right, power, privilege or immunity whether actual, contingent or prospective.

[Clause 33 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

34. Hostels

On commencement day, each hostel ceases to be a hostel and becomes, by force of this clause, a student residential college taken to have been established under section 213B.

[Clause 34 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

35. Hostel land

(1) In this clause —

hostel land means land the care, control and management of which was, immediately before commencement day, placed with the Authority in accordance with the 1960 Act section 11.

(2) On commencement day, hostel land ceases to be under the care, control and management of the former Authority and is placed under the care, control and management of the Minister by force of this clause.

[Clause 35 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

36. Former Authority abolished

On commencement day, the former Authority is abolished and its members go out of office.

[Clause 36 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

37. Staff members of former Authority

(1) In this clause —

staff member of the former Authority means a person who, immediately before commencement day, was an officer or servant of the former Authority appointed under the 1960 Act section 10.

(2) At commencement day each staff member of the former Authority becomes a person employed in the department within the class of employees referred to in section 235(1)(c) or (d), as is relevant in accordance with any relevant industrial award or agreement applying to the staff member immediately before commencement day.

(3) Except as otherwise agreed by a person mentioned in subclause (2) the operation of this clause does not —

(a) affect the person's remuneration; or

(b) affect the person's existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or

(c) affect any rights under a superannuation scheme; or

(d) interrupt the continuity of the person's service.

(4) For the purposes of subclause (3)(d), the staff member's service with the former Authority is to be taken to have been with the department.

[Clause 37 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

38. Transfer of assets, liabilities, proceedings, remedies and immunities

(1) On commencement day—

(a) the assets and rights of the former Authority immediately before that day vest in or become, by force of this clause, the property of the Minister; and

(b) the liabilities of the former Authority immediately before that day become, by force of this clause, the liabilities of the Minister.

(2) From commencement day, any proceedings or remedy that, immediately before that day, might have been brought or continued by

School Education Act 1999

Schedule 1 Transitional provisions

Division 4 Transitional provisions for the School Boarding Facilities
Legislation Amendment and Repeal Act 2016

cl. 39

or available against or to the former Authority may be brought or continued by, and are or is available against or to, the Minister.

(3) As soon as is practicable after commencement day, all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of the former Authority are to be delivered to the Minister.

(4) As soon as is possible after commencement day, any account maintained by the former Authority must be closed by the Minister and the moneys in the account credited to the Student Residential Colleges Fund.

[Clause 38 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

39. Completion of things commenced

Anything commenced to be done by the former Authority before commencement day may be continued by the Minister so far as the doing of that thing is within the functions of the Minister.

[Clause 39 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

40. Continuing effect of things done

(1) In this clause —

relevant act means an act, matter or thing done or omitted to be done before commencement day by, to or in respect of the former Authority.

(2) To the extent that a relevant act has force or significance on or after commencement day it is to be taken, from that day, to have been done or omitted by, to or in respect of the Minister so far as the act, matter or thing is relevant to the functions of Minister.

(3) This clause does not affect the operation of any other provision of this Schedule.

[Clause 40 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

41. Exemption from State tax

(1) In this clause —

State tax includes —

(a) duty under the *Duties Act 2008*; and

(b) any other tax, duty, fee, levy or charge under a law of the State.

(2) State tax is not payable in relation to —

(a) anything that occurs by operation of this Division; or

(b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to give effect to this Division, or for a purpose connected with or arising out of giving effect to this Division.

(3) The Minister may certify in writing that —

(a) a specified thing occurred by operation of this Division; or

(b) a specified thing was done under this Division, or to give effect to this Division, or for a purpose connected with or arising out of giving effect to this Division.

(4) For all purposes and in all proceedings, a certificate under subclause (3) is sufficient evidence of the matters it certifies, except so far as the contrary is shown.

[Clause 41 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

42. Agreements, instruments and documents

(1) In this clause —

subsisting, in relation to an agreement, instrument or document, means subsisting immediately before commencement day.

(2) A subsisting agreement, instrument or document that contains a reference to the former Authority has effect from that day as if that reference were amended to be a reference to the Minister.

(3) Subclause (2) does not apply to an agreement or instrument to which the former Authority was a party.

(4) A subsisting agreement or instrument to which the former Authority was a party has effect from commencement day as if —

(a) the Minister were substituted for the former Authority as a party to the agreement or instrument; and

(b) a reference to the former Authority in the agreement or instrument were amended to be a reference to the Minister.

(5) Subclause (2) or (4)(b) does not apply to a reference if —

(a) regulations made under clause 45 provide otherwise; or

(b) that application would be inappropriate in the context in which the reference occurs.

[Clause 42 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

School Education Act 1999

Schedule 1 Transitional provisions

Division 4 Transitional provisions for the School Boarding Facilities
Legislation Amendment and Repeal Act 2016

cl. 43

43. Registration of documents

(1) In this clause —

relevant officials means —

(a) the Registrar of Titles under the *Transfer of Land Act 1893*;
or

(b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; or

(c) the Minister administering the *Land Administration Act 1997*;
or

(d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property.

(2) The relevant officials are to take notice of the provisions of this Division and are to record and register in the appropriate manner the documents necessary to show the effect of this Division.

[Clause 43 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

44. Saving

(1) The operation of any provision of this Division is not to be regarded —

(a) as a breach of contract or confidence or otherwise as a civil wrong; or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or

(c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or

(d) as causing any contract or instrument to be void or otherwise unenforceable; or

(e) as releasing or allowing the release of any surety.

(2) This Division is additional to any relevant provisions of the *Interpretation Act 1984*.

[Clause 44 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

45. Transitional regulations

(1) In this clause —

specified means specified or described in the regulations;

transitional matter —

(a) means a matter or issue of a transitional nature that arises as a result of the transition from the 1960 Act to this Act; and

(b) includes a saving or application matter.

(2) If there is no sufficient provision in this Division for dealing with a transitional matter, regulations under this Act may be made prescribing all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(3) Regulations made under subclause (2) may provide that specified provisions of any written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specified modifications to or in relation to any matter.

(4) If regulations made under subclause (2) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement day, the regulations have effect according to their terms.

(5) If regulations made under subclause (2) contain a provision referred to in subclause (4), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the regulations were published in the *Gazette*; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the regulations were published in the *Gazette*.

(6) Regulations made under subclause (2) in relation to a matter referred to in subclause (3) must be made within such period as is reasonable and practically necessary to deal with a transitional matter.

[Clause 45 inserted by the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 cl. 20.]

Notes:

1. The note at the beginning of Part 6 is to be altered in the 3rd bullet point by deleting “non-teaching” and inserting:

other

School Education Act 1999

Schedule 1 Transitional provisions

Division 4 Transitional provisions for the School Boarding Facilities
Legislation Amendment and Repeal Act 2016

cl. 45

2. The note at the beginning of Part 7 is to be altered by deleting the 5th bullet point and inserting :

- the repeal of the *Education Act 1928* (section 246);
- the transition from that Act to this Act, and various other subsequent statutory transitions (Schedule 1).

[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

- ¹ This is a compilation of the *School Education Act 1999* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>School Education Act 1999</i>	36 of 1999	2 Nov 1999	s. 1 and 2: 2 Nov 1999; Act other than s. 1, 2, 182(3) and 208: 1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 62	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(2) and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>Labour Relations Reform Act 2002</i> s. 27	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2 and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 94	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 21 published in <i>Gazette</i> 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 107	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Reprint 1: The School Education Act 1999 as at 3 Sep 2004 (includes amendments listed above)			
<i>Children and Community Services Act 2004</i> Sch. 2 cl. 24	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Acts Amendment (Higher School Leaving Age and Related Provisions) Act 2005</i> Pt. 2 ^{5,6}	22 of 2005	18 Nov 2005	Pt. 2 Div. 1 and 2: 18 Nov 2005 (see s. 2(1)); Pt. 2 Div. 4: 1 Jan 2006 (see s. 2(3)); Pt. 2 Div. 3: 1 Jan 2008 (see s. 2(2))
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1), 6 and Sch. 1 cl. 154 ⁷	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 2: The School Education Act 1999 as at 16 Mar 2007 (includes amendments listed above except those in the <i>Acts Amendment (Higher School Leaving Age and Related Provisions) Act 2005</i> Pt. 2 Div. 3)			

School Education Act 1999

Short title	Number and year	Assent	Commencement
<i>Training Legislation Amendment and Repeal Act 2008</i> s. 61	44 of 2008	10 Dec 2008	10 Jun 2009 (see s. 2(2))
<i>Public Sector Reform Act 2010</i> s. 89 and 110	39 of 2010	1 Oct 2010	s. 89: 1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563); s. 110: 28 Mar 2011 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Health, Safety and Civil Liability (Children in Schools and Child Care Services) Act 2011</i> Pt. 3	1 of 2011	1 Mar 2011	1 Jan 2013 (see s. 2(b) and <i>Gazette</i> 14 Dec 2012 p. 6195)
<i>Curriculum Council Amendment Act 2011</i> Pt. 3 Div. 4	37 of 2011	13 Sep 2011	1 Mar 2012 (see s. 2(b) and <i>Gazette</i> 28 Feb 2012 p. 841)
<i>Education and Care Services National Law (WA) Act 2012</i> Pt. 4 Div. 7	11 of 2012	20 Jun 2012	1 Aug 2012 (see s. 2(c) and <i>Gazette</i> 25 Jul 2012 p. 3411)
<i>School Education Amendment Act 2012</i> Pt. 2	46 of 2012	29 Nov 2012	s. 3 and 5: 29 Nov 2012 (see s. 2(a)); Pt. 2 other than s. 3 and 5: 1 Jan 2013 (see s. 2(b))
Reprint 3: The School Education Act 1999 as at 15 Mar 2013 (includes amendments listed above)			
<i>School Education Amendment Act 2014</i> Pt. 2 (s. 3-35)	28 of 2014	27 Nov 2014	s. 29: 27 Nov 2014 (see s. 2(b)(i)); Pt. 2 Div. 1 and 3 (other than s. 29): 17 Dec 2014 (see s. 2(c) and <i>Gazette</i> 16 Dec 2014 p. 4759); Pt. 2 Div. 2: 2 Feb 2015 (see s. 2(c) and <i>Gazette</i> 16 Jan 2015 p. 311)
<i>Children and Community Services Legislation Amendment and Repeal Act 2015</i> Pt. 2 Div. 3 Subdiv. 2	23 of 2015	17 Sep 2015	1 Jan 2016 (see s. 2(b) and <i>Gazette</i> 15 Dec 2015 p. 5027)
<i>Associations Incorporation Act 2015</i> s. 228	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291-2)
Reprint 4: The School Education Act 1999 as at 19 Feb 2016 (includes amendments listed above except the <i>Associations Incorporation Act 2015</i>)			
School Boarding Facilities Legislation Amendment and Repeal Bill 2016 Pt. 3	Current Bill No. 221-1		

- ^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>School Education Act 1999</i> s. 182(3) and 208 ⁴	36 of 1999	2 Nov 1999	To be proclaimed (see s. 2)
<i>Public Health (Consequential Provisions) Act 2016</i> Pt. 3 Div. 25 ⁸	19 of 2016	25 Jul 2016	To be proclaimed (see s. 2(1)(c))

- ² The provisions in this Act amending the other Acts have been omitted under the *Reprints Act 1984* s. 7(4)(e).
- ³ Repealed by the *Children and Community Services Act 2004*.
- ⁴ On the date as at which this compilation was prepared, the *School Education Act 1999* s. 182(3) and 208 had not come into operation. They read as follows:

182. Minister may allocate moneys

- (3) In the case of moneys appropriated for distribution according to the number of students at a school, account may only be taken of students who are in their pre-compulsory, compulsory or post-compulsory education periods and are —
- (a) entitled to reside permanently in Australia; or
 - (b) members of a class of students prescribed by the regulations.

208. Management and control of community kindergarten premises

Regulations made under section 119(2)(a), (b), (f), (g), (h), (i) and (j) have effect as if the references in those paragraphs —

- (a) to school premises included community kindergarten premises; and
- (b) to school officials included teaching staff and other persons appointed under section 236(2) who are employed at a community kindergarten.

- ⁵ The *Acts Amendment (Higher School Leaving Age and Related Provisions) Act 2005* s. 4(2) reads as follows:

- (2) When the meaning of “compulsory education period” changes by operation of section 6(b) of the *School Education Act 1999* (inserted by subsection (1)), the change extends to the compulsory education period for a child which, but for the change, would have ended on 31 December 2005.

-
- ⁶ The *Acts Amendment (Higher School Leaving Age and Related Provisions) Act 2005* s. 21 is a transitional provision of no further effect.
- ⁷ The *Financial Legislation Amendment and Repeal Act 2006* (now known as the *Financial Management (Transitional Provisions) Act 2006*) Sch. 2 deals with certain transitional issues some of which may be relevant for this Act.
- ⁸ On the date as at which this compilation was prepared, the *Public Health (Consequential Provisions) Act 2016* Pt. 3 Div. 25 had not come into operation. It reads as follows:

Part 3 — Amendments to other Acts and repeals

Division 25 — *School Education Act 1999* amended

187. Act amended

This Division amends the *School Education Act 1999*.

188. Section 27 amended

- (1) In section 27(2) delete “Executive Director of Public Health” and insert:

Chief Health Officer

- (2) After section 27(2) insert:

- (3A) In subsection (2) —

Chief Health Officer has the meaning given in the *Public Health Act 2016* section 4(1).