

Education (Amendment) Bill

No.

TABLE OF PROVISIONS

Clause

1. Purpose
2. Commencement
3. Principal Act
4. Definitions
5. New section 8 inserted
 8. Delegation by Minister
6. Immunity of Crown etc.
7. New sections 14A to 14C inserted
 - 14A. Ministerial directions and guidelines
 - 14B. Limitation on commencement of legal proceedings
 - 14C. Indemnity for council members
8. Audit
9. New section 15FA inserted
 - 15FA. Effectiveness and efficiency review
10. New Division 3A inserted in Part I

Division 3A—Designated Schools

- 15i. Designated schools
- 15j. Application
- 15k. School charter
- 15l. Status of school charter
- 15m. Termination of school charter
- 15n. Contracts for provision of services
- 15o. Accountability
- 15p. Annual report
- 15q. Ministerial orders
11. New sections 21A and 21B inserted
 - 21A. Closing of State schools—limitation of judicial review
 - 21B. Limitation on occupier's liability for discontinued State schools
12. Instruction in State schools
13. New sections 25, 25A and 25B inserted
 25. Discipline of pupils
 - 25A. Overseas students to be required to pay fees
 - 25B. Funding
14. New section 26A inserted
 - 26A. Supply of services
15. New section 81A inserted
 - 81A. Supreme Court—limitation of jurisdiction

16. New section 84 inserted
 84. Ministerial orders—general provisions
17. New Second Schedule substituted
18. Consequential amendments

LEGISLATIVE ASSEMBLY

Read 1° 20 October 1993

(Brought in by Mr Hayward and Mr Gude)

A BILL

to amend the **Education Act 1958** and for other purposes.

Education (Amendment) Act 1993

The Parliament of Victoria enacts as follows:

1. *Purpose*

The purpose of this Act is to make miscellaneous amendments to the **Education Act 1958**.

5 **2. *Commencement***

(1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.

(2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

10

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

5

N . 6240.
Reprinted to
N . 45/1990.
Subsequently
amend d by
Nos 16/1992,
47/1992,
83/1992,
18/1993 and
44/1993.

3. *Principal Act*

In this Act, the **Education Act 1958** is called the Principal Act.

4. *Definitions*

In section 3 (1) of the Principal Act—

10

- (a) before the definition of “Chief Executive”
insert—

“**approved auditor**” means—

- (a) a person registered as an auditor or taken to be registered as an auditor under Part 9.2 of the Corporations Law; or

15

- (b) a member of the Institute of Chartered Accountants or the Australian Society of Certified Practising Accountants; or

20

- (c) a person approved by the Minister for the purposes of this paragraph;’;

- (b) after the definition of “Chief General Manager”
insert—

“**designated school**” means a State school declared to be a designated school under section 151 (1);

25

“**Director**” means Director of School Education;’;

(c) for the definition of “head teacher” **substitute—**

“**head teacher**” means a person appointed to a designated position as head teacher of a State school;’;

(d) after the definition of “Minister” **insert—**

“**overseas student**” has the same meaning as in the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 of the Commonwealth;’;

(e) after the definition of “prescribed” **insert—**

“**principal**” means a person appointed to a designated position as principal of a State school;’.

5. New section 8 inserted

In Division 1 of Part I of the Principal Act, after section 7 **insert—**

“8. Delegation by Minister

The Minister may, by instrument, delegate to any person or class of persons employed in the administration of this Act any responsibility, power, authority, duty or function of the Minister under this Act or the regulations, other than this power of delegation.”.

6. Immunity of Crown etc.

For section 13 (10) of the Principal Act **substitute—**

“(10) Except as otherwise agreed in writing expressly with reference to this sub-section between the council and the Crown, the State, the Minister or the Director (as the case requires) and whether before or after the thing is done or omitted to be done but subject to section 14c, nothing done or omitted to be done by a council constituted under this section subjects the

Education (Amendment)

Crown, the State, a Minister or the Director to any liability in respect of it.”.

7. New sections 14A to 14C inserted

After section 14 of the Principal Act insert—

“14A. Ministerial directions and guidelines 5

(1) The Minister may give directions or issue guidelines to a council constituted under section 13 on the performance, discharge or exercise by it of its functions, duties or powers. 10

(2) The council must comply with a direction or guideline under sub-section (1).

(3) The Minister is not required to notify a council of, or consult with a council about, a proposed direction or guideline under sub-section (1). 15

14B. Limitation on commencement of legal proceedings

A council constituted under section 13 must not, without the written consent of the Minister, commence in any court or tribunal or before any person acting judicially (within the meaning of the **Evidence Act 1958**) a legal proceeding (including a proceeding for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief) against any person (including the Crown, the State, the Minister, the Director and any servant or agent of the Crown or independent contractor employed by the Crown). 20
25
30

14C. Indemnity for council members

5 The Crown must indemnify a person who is or has been a member of a council constituted under section 13 against any liability in respect of any loss or damage suffered by the council or any other person in respect of anything necessarily or reasonably done or omitted to be done by him or her in good faith—

- 10 (a) in the exercise of a power or the performance of a function of a member; or
- 15 (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function of a member.”.

8. Audit

In section 15F (2) of the Principal Act—

- 20 (a) in paragraph (a) for “a person with appropriate accounting qualifications or (if no such person is available) by a person approved by the Auditor-General” **substitute** “an approved auditor”;
- 25 (b) in paragraph (b) for “person to be sent to the Director-General” **substitute** “auditor to be sent to the Director if requested by the Director to do so”.

9. New section 15FA inserted

After section 15F of the Principal Act **insert**—

30 “**15FA. Effectiveness and efficiency review**

- (1) The Director may appoint a person to carry out, in accordance with any Order made by the Minister under sub-section (3), an effectiveness and efficiency review of the

Education (Amendment)

operations, or specified operations, of a council constituted under section 13 and to report the results of the review to the Director.

- (2) In sub-section (1) a reference to an effectiveness and efficiency review of operations of a council is a reference to— 5
- (a) an examination of the functions performed by, and the operations carried on by, the council for the purpose of forming an opinion concerning the extent to which those operations are being carried on in an effective and efficient manner; and 10
- (b) an examination of the procedures that are followed by the council for reviewing operations carried on by it and an evaluation of the adequacy of those procedures to enable the council to assess the extent to which those operations are being carried on in an effective and efficient manner. 15 20
- (3) The Minister may make an Order for or with respect to any matter that relates to effectiveness and efficiency reviews including but not limited to— 25
- (a) the nature of the reviews;
- (b) the manner in which the reviews are to be carried out;
- (c) the frequency and timing of reviews. 30
- (4) The Director must ensure that written notice of the carrying out of an effectiveness and efficiency review is given before the commencement of the carrying out of that review to both the president of the school council and the principal or head teacher.” 35

10. New Division 3A inserted in Part I

In Part I of the Principal Act, after Division 3 **insert**—

“Division 3A—Designated Schools

15I. Designated schools .

- 5
- (1) The Minister may by Order declare any State school to be a designated school for the purposes of this Act.
 - (2) The Minister must ensure that an Order made under sub-section (1) is published.

10 **15J. Application**

- (1) Nothing in this Division applies to a State school that is not a designated school.
- 15 (2) Subject to sub-section (3), the provisions of this Act (other than this Division) and of any other Act continue to apply to a State school that is a designated school in the same manner and to the same extent as they would have applied had that school not been declared to be a designated school.
- 20 (3) If a provision of this Division is inconsistent with a provision referred to in sub-section (2) that continues to apply to a designated school, the provision of this Division prevails to the extent of the
- 25 inconsistency.

15K. School charter

- 30 (1) The council constituted in relation to a designated school must, in accordance with any Order made by the Minister under section 15Q (1), prepare a written charter for the school.

Education (Amendment)

- (2) A school charter must—
 - (a) be in the form required by an Order made under section 15Q (1);
 - (b) contain any matters that it is required to contain by an Order made under section 15Q (1). 5
- (3) A school charter prepared under sub-section (1) must be signed by both the president of the school council and the principal or head teacher and must be submitted to the Director for approval within the period specified in an Order made under section 15Q (1). 10
- (4) The Director may direct the school council to make specified variations to a charter and resubmit it to him or her for approval. 15
- (5) The Director or his or her nominee must sign any school charter approved by the Director.
- (6) A school charter comes into force immediately on being signed by the Director or his or her nominee and remains in force for a period of 3 years after that date or any other period that is specified in an Order made under section 15Q (1). 20

15L. *Status of school charter*

- (1) A school charter is a record of understanding between the school and the Director on the role and operation of the school. 30
- (2) A school charter—
 - (a) does not create any contractual relationship between any persons;
 - (b) does not give rise to any rights or entitlements, or impose any duties, 35

that are capable of being enforced in a legal proceeding.

15M. *Termination of school charter*

5 The Director may, by notice served on the school council, terminate the operation of the whole or a specified part of a school charter with effect from a date specified in the notice that is not less than 14 days after the date of service of the notice on the council.

15N. *Contracts for provision of services*

15 Subject to and in accordance with any Order made by the Minister under section 15Q (2), a council constituted in relation to a designated school may enter into a contract with any person or body for or in relation to the provision of services of any kind to the school.

15O. *Accountability*

20 A council constituted in relation to a designated school is, in accordance with any Order made by the Minister under section 15Q (3), accountable to the Minister in respect of the operation of the school and the performance by the council of its functions.

15P. *Annual report*

30 The annual report published under section 14 (2) of a council constituted in relation to a designated school must be prepared in the form, and contain the further information, that is required by an Order made by the Minister under section 15Q (4).

15Q. Ministerial orders

- (1) The Minister may make an Order for or with respect to any matter that relates to school charters including but not limited to— 5
- (a) the period within which a school charter must be submitted to the Director for approval;
 - (b) the matters with which a school charter must deal which may include a requirement that the charter— 10
 - (i) give a profile of the school;
 - (ii) state the goals of the school;
 - (iii) state the priorities of the school during the period that the charter will be in force; 15
 - (iv) give a profile of the curriculum of the school;
 - (v) contain codes of practice on the roles and responsibilities of the council, the principal, the staff and the students; 20
 - (vi) contain a student code of conduct;
 - (vii) contain a statement on the financial position of the school and on its likely income and expenditure during the period that the charter will be in force; 25
 - (c) the role of the Director in assisting with the preparation and implementation of a school charter; 30
 - (d) the period for which a school charter is to remain in force;
 - (e) the manner in which a school charter may be amended or terminated; 35
 - (f) the procedure for reviewing a school charter;

(g) the consequences of non-compliance with a school charter.

5 (2) The Minister may make an Order for or with respect to any matter that relates to the power of a council constituted in relation to a designated school to enter into a contract for or in relation to the provision of services of any kind to the school.

10 (3) The Minister may make an Order for or with respect to any matter that relates to the accountability under section 15O of a council constituted in relation to a designated school including but not limited to the means by which accountability is to be achieved or enforced generally or in relation to specified matters.

15 (4) The Minister may make an Order for or with respect to any matter that relates to the annual report of a council constituted in relation to a designated school including but not limited to requiring the inclusion in the annual report of a report on—

20 (a) the implementation of, and extent of compliance with, the school charter;

25 (b) contracts entered into under section 15N;

(c) programmes offered for overseas students at the school.”.

11. *New sections 21A and 21B inserted*

30 After section 21 of the Principal Act insert—

‘21A. *Closing of State schools—limitation of judicial review*

35 (1) A decision or purported decision of the Minister to discontinue or continue any State school is not liable to be challenged,

- appealed against, reviewed, quashed or called in question on any account in any court or tribunal or before any person acting judicially (within the meaning of the **Evidence Act 1958**) or before the Ombudsman. 5
- (2) Without limiting sub-section (1), proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief do not lie in respect of a decision or purported decision of the Minister to discontinue or continue any State school. 10
- 21B. *Limitation on occupier's liability for discontinued State schools*** 15
- (1) In this section “**relevant person**”, in relation to a State school discontinued by the Minister under section 21, is a person who—
- (a) without the consent of the Minister operates, or assists in operating, education programmes on the premises on which the discontinued school operated; or 20
- (b) is on those premises to protest against, or in support of persons protesting against, the decision of the Minister to discontinue the school; or 25
- (c) is on those premises as a student of education programmes that are being operated on those premises without the consent of the Minister. 30
- (2) The Crown or its servants or agents, the State, the Minister or a council constituted under section 13 do not owe a duty of care to any relevant person on the premises of a State school that has been discontinued by the Minister under section 21 and to which 35

the provisions of this section are expressly applied by the Minister by a notice published in the Government Gazette.

- 5 (3) Sub-section (2) applies despite anything to the contrary in Part IIA of the **Wrongs Act 1958** or in any rule of law with respect to the liability of an occupier to a person entering on the occupier's premises.'.

12. *Instruction in State schools*

10 In section 22 of the Principal Act, for sub-sections (2) and (3) **substitute**—

“(2) Instruction in the learning areas specified in the Second Schedule shall be free for all pupils (other than overseas students) attending a State school.”.

15 13. *New sections 25, 25A and 25B inserted*

For section 25 of the Principal Act **substitute**—

‘25. *Discipline of pupils*

(1) In this section “**exclude**” means suspend or expel.

20 (2) The principal or head teacher of a State school may, in accordance with any Order made by the Minister under sub-section (7), exclude a pupil from that school.

25 (3) A pupil expelled from a State school under sub-section (2) may, in accordance with any Order made by the Minister under sub-section (7), appeal to the Director against his or her expulsion.

30 (4) Subject to any action taken by the Director under sub-section (6), a pupil of school age who has been expelled from a State school must, in accordance with any Order made by the Minister under sub-section (7), be afforded an opportunity of continuing his or

her education while he or she is of school age.

- (5) Despite any provision made by or under any other Act, the Director must cause all documents under his or her control relating to the expulsion of a pupil from a State school to be destroyed within 12 months after the pupil is expelled or ceases to be of school age, whichever is the later. 5
- (6) The Director may, in accordance with any Order made by the Minister under sub-section (7), prohibit a pupil expelled from a State school from attending any other State school. 10
- (7) The Minister may make an Order for or with respect to any matter that relates to the exclusion of pupils from State schools including but not limited to— 15
- (a) the grounds on which a pupil may be excluded; 20
- (b) the procedures to be followed before a pupil may be excluded;
- (c) the period for which a pupil may be suspended;
- (d) the grounds on which a pupil may appeal to the Director against his or her expulsion and the procedures to be followed on such an appeal; 25
- (e) the means by which a pupil expelled from a State school is to be afforded an opportunity of continuing his or her education while of school age; 30
- (f) the circumstances in which the Director may prohibit a pupil expelled from a State school from attending any other State school. 35

25A. Overseas students to be required to pay fees

5 (1) An overseas student enrolled at a State school or his or her parent or guardian must, in accordance with any Order made by the Minister under sub-section (2), pay a fee for the instruction and educational and other related services provided to the student by the school.

10 (2) The Minister may make an Order for or with respect to any matter that relates to the payment of fees by overseas students enrolled at State schools including but not limited to—

15 (a) the amount of the fee payable under sub-section (1);

(b) the period to which the fee relates;

(c) the date on which the fee is payable;

(d) the person to whom the fee is to be paid;

20 (e) the extent to which and manner in which the fee is to be apportioned between the school and the Director.

25 (3) The principal or head teacher of a State school and the council constituted in relation to it must comply with any Order made under sub-section (2) that applies to the school.

30 (4) Subject to sub-section (5), the principal or head teacher of a State school must expel from the school any overseas student in respect of whom any fee required to be paid under this section has not been paid by the due date.

35 (5) The Minister may permit an overseas student who has been or is to be expelled from a State school under sub-section (4) to return to or remain at the school either unconditionally or on conditions agreed to

by the student or his or her parent or guardian relating to the payment of the fee.

25B. Funding

The council constituted in relation to a State school may, subject to and in accordance with any guidelines issued by the Minister, use for any purpose for the school any funding provided to the school that is not provided for a specified purpose only.’

5

10

14. New section 26A inserted

In Division 1 of Part II of the Principal Act, after section 26 insert—

“26A. Supply of services

The Minister may enter into a contract or arrangement for educational or other related services of a State school to be provided (whether within or outside the State) to persons not attending a State school.”

15

15. New section 81A inserted

20

After section 81 of the Principal Act insert—

“81A. Supreme Court—limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from—

25

- (a) entertaining any action in which the Crown, the State, the Minister or the Director is sought to be made liable for an act or omission of a council constituted under section 13 otherwise than pursuant to a written

30

agreement with the council in accordance with section 13 (10);

5 (b) entertaining any action commenced, without the written consent of the Minister, by a council constituted under section 13;

10 (c) entertaining any action in which a decision or purported decision of the Minister to discontinue or continue any State school is sought to be challenged, appealed against, reviewed, quashed or called in question on any account;

15 (d) entertaining any application for an order in the nature of prohibition, certiorari, or mandamus or for a declaration or injunction or for any other relief in respect of a decision or purported decision of the Minister to discontinue or continue any State school;

20 (e) entertaining any action with respect to the liability of the Crown or its servants or agents, the State, the Minister or a council constituted under section 13 to a relevant person within the meaning of section 21B on the premises of a State school in circumstances in which no duty of care is owed to that person under section 21B.”.

25 **16. *New section 84 inserted***

After section 83 of the Principal Act **insert—**

“84. *Ministerial orders—general provisions*

35 (1) This section applies to an Order made by the Minister under section 15FA (3), 15Q, 25 (7) or 25A (2).

Education (Amendment)

- (2) An Order or a provision of an Order comes into operation at the beginning of the day on which the Order is made or at the beginning of such later day as is expressed in the Order as the day on which the Order or provision (as the case requires) shall come into operation. 5
- (3) The Minister must ensure that an Order is published as soon as practicable after it is made. 10
- (4) A power conferred by this Act to make an Order may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; 15
 - (b) so as to make, as respects the cases in relation to which the power is exercised— 20
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or 25
 - (ii) any such provision either unconditionally or subject to any specified condition. 30
- (5) An Order may be made—
 - (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) to all schools or to a specified school or a specified class of school; or 35

(iii) as specified in both sub-paragraphs (i) and (ii);

(b) so as to require a matter affected by the Order to be—

(i) in accordance with a specified standard or specified requirement; or

(ii) approved by or to the satisfaction of a specified person or a specified class of persons; or

(iii) as specified in both sub-paragraphs (i) and (ii);

(c) so as to apply, adopt or incorporate any matter contained in any document issued or published by any person or body whether—

(i) wholly or partially or as amended by the Order; or

(ii) as issued or published at the time the Order is made or at any time before then;

(d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons;

(e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the Order, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.”.

17. *New Second Schedule substituted*

For the Second Schedule to the Principal Act
substitute—

“SECOND SCHEDULE

- The Arts
- English
- Health and Physical Education (including Sport)
- Languages other than English
- Mathematics
- Science
- Studies of Society and Environment
- Technology”.

18. Consequential amendments

In the Principal Act—

- (a) in section 15B (1) (b) after “principal” **insert** “or head teacher”;
- (b) in section 15B (1) (c) after “principal” **insert** “or head teacher”;
- (c) in section 62 (1) before “head teacher” (where twice occurring) **insert** “principal or”;
- (d) in section 64E (2) after “Principal” (where twice occurring) **insert** “or head teacher”;
- (e) in section 64L in the definition of “arrangement” after “principal” **insert** “or head teacher”;
- (f) in section 64MA (1) after “Principal” **insert** “or head teacher”;
- (g) in section 64MA (2) (b) after “principal” (wherever occurring) **insert** “or head teacher”;
- (h) in section 64MA (4) (c) after “principal” (where twice occurring) **insert** “or head teacher”;
- (i) in section 64MA (4) (e) after “principal” **insert** “or head teacher”;
- (j) in section 64N (2) (b) after “principal” (where twice occurring) **insert** “or head teacher”;
- (k) in section 64O after “principal” **insert** “or head teacher”.