



New South Wales

Education Amendment (School Safety) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Education Act 1990* as follows:

- (a) to enable the Minister for Education (the **Minister**) to direct a student not to attend school for a specified period if the Minister believes on reasonable grounds that:
 - (i) there is a significant risk that the student will engage in serious violent conduct or the student supports terrorism or violent extremism, and
 - (ii) issuing the direction is necessary to protect the health or safety of school students and staff,
- (b) to require the Minister to assess whether the attendance of the student at school constitutes a health or safety risk and, if appropriate, develop risk management strategies to enable the student to attend school,
- (c) to extend school disciplinary powers to student conduct that significantly affects, or is likely to significantly affect, the health or safety of students or staff, regardless of whether that conduct occurs on or outside school premises or within or outside school hours.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Schedule 1 Amendment of Education Act 1990 No 8

Non-attendance directions

Schedule 1 [13] enables the Minister to direct a student not to attend a particular school (or any school) during a specified period (a *non-attendance direction*) if:

- (a) the Minister believes on reasonable grounds that:
 - (i) there is a significant risk that the student will engage in serious violent conduct, or
 - (ii) the student supports terrorism or violent extremism, and
- (b) the Minister believes on reasonable grounds that issuing the direction is necessary to protect the health or safety of the students or staff of any school.

The Minister is then required to assess whether the attendance of the student at school constitutes a health or safety risk and, if appropriate, develop risk management strategies to enable the student to attend school.

Serious violent conduct means conduct constituting any of the following offences (regardless of whether the student cannot, or might not, be held to be criminally responsible for the conduct):

- (a) an offence involving loss of life, serious physical or psychological injury or serious damage to property,
- (b) a serious offence of a sexual nature,
- (c) an offence involving serious animal cruelty.

Schedule 1 [16] provides that the Minister is not required to consult with a student, or a parent of the student, before giving the student a non-attendance direction for the first time. **Schedule 1 [14] and [15]** are consequential amendments, which require consultation for subsequent non-attendance directions.

Schedule 1 [18] requires the Minister to give a student, and the parents of the student, written notice of a non-attendance direction and the grounds for the direction and enables the Minister to vary or revoke a non-attendance direction. **Schedule 1 [17] and [19]** are consequential amendments.

Schedule 1 [2] inserts relevant definitions. **Schedule 1 [7]–[10] and [12]** are consequential amendments to existing provisions about enrolment directions. An enrolment direction is issued by the Secretary of the Department of Education (the *Secretary*) and requires a student to attend a specified school because of the student's behaviour. Existing provisions relating to enrolment directions, including in relation to information gathering and guidelines, are being extended to non-attendance directions (see below).

Obtaining information about students

Schedule 1 [4] facilitates the gathering of information about students by the Minister in relation to non-attendance directions by extending existing provisions that relate to enrolment directions. Under the provisions, information about a student may be obtained from various bodies, such as schools, public health organisations, the Department of Family and Community Services and the NSW Police Force. **Schedule 1 [5] and [6]** are consequential amendments.

Schedule 1 [3] provides that the Minister, the Secretary and schools are not required to disclose any information obtained in connection with non-attendance directions to a student, parent or any other person in certain circumstances.

Guidelines

Currently, the Minister may issue guidelines in relation to information gathering and enrolment directions, and compliance with the guidelines is compulsory. Under the amendments in **Schedule 1 [22]–[24] and [26]**, the guidelines will also apply to non-attendance directions. **Schedule 1 [27]** enables guidelines to be issued in relation to applications for internal review of certain non-attendance directions, the provision of education and support to students who are

given a non-attendance direction and the requirements to notify certain agencies when a non-attendance direction is given to a student. **Schedule 1 [25]** is a consequential amendment.

Internal review and administrative review of non-attendance directions

Schedule 1 [21] enables a student, or a parent of the student, who is given a non-attendance direction for a period of more than 5 days, to apply for an internal review of the decision to give the direction. The review must be conducted by a person who is employed in the Department of Education who was not substantially involved in making the decision to give the student the direction. **Schedule 1 [20]** makes it clear that there is no right to apply for a variation or revocation of a non-attendance direction that is for 5 days or less.

Schedule 1 [30] provides that a student, or a parent of the student, who is given a non-attendance direction that results in the student being directed not to attend school for more than 20 school days in a year, may apply to the New South Wales Civil and Administrative Tribunal (*NCAT*) for administrative review of the decision to give the student the non-attendance direction. **Schedule 1 [31]** provides that *NCAT* may confirm the decision or recommend to the Minister that the direction be varied or revoked. **Schedule 1 [32]** provides that the Minister is not required under the *Administrative Decisions Review Act 1997*, or any other Act or law, to give reasons for a decision to give a non-attendance direction to a student in certain circumstances. **Schedule 1 [29]** is a consequential amendment.

School discipline

Schedule 1 [28] extends the Minister's powers in relation to school discipline to include student conduct that significantly affects, or is likely to significantly affect, the health or safety of school students and staff, regardless of whether that conduct occurs on or outside school premises or within or outside school hours.

Other minor amendments

Schedule 1 [11] makes it clear that the existing power of the Secretary to direct that a student must attend a specified school extends to any education facility approved by the Minister, whether it is conducted by the State or not.

Schedule 1 [1] provides that a compulsory schooling order (made by the Children's Court on the application of the Secretary) does not have effect to the extent that it is inconsistent with a non-attendance direction.



New South Wales

Education Amendment (School Safety) Bill 2017

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New South Wales

Education Amendment (School Safety) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Education Act 1990* to make further provision in relation to the health and safety of school students and staff; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Education Amendment (School Safety) Act 2017*.

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2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

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Schedule 1	Amendment of Education Act 1990 No 8	1
[1] Section 22D Compulsory schooling orders		2
Omit “under section 26H” from section 22D (13) (a).		3
Insert instead “or the Minister under Division 3 of Part 5A”.		4
[2] Section 26A Definitions		5
Insert in alphabetical order:		6
<i>direction</i> means an enrolment direction or a non-attendance direction.		7
<i>enrolment direction</i> means a direction given by the Secretary under section 26H.		8
<i>non-attendance direction</i> means a direction given by the Minister under section 26HA.		10
<i>relevant decision-maker</i> means:		12
(a) in relation to an enrolment direction—the Secretary, or		13
(b) in relation to a non-attendance direction—the Minister.		14
[3] Section 26AA		15
Insert after section 26A:		16
26AA Restriction on disclosing certain information		17
Despite this or any other Act or law, the Minister, the Secretary or a school is not required to disclose information obtained under or in connection with this Part to any student, parent or other person if there are reasonable grounds to believe that to do so would:		18
(a) endanger a person’s life or physical safety, or		22
(b) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or		23
(c) prejudice the investigation of a contravention (or possible contravention) of a law in any particular case, or		24
(d) not be in the public interest.		25
[4] Section 26B Purpose of obtaining information about students		29
Omit section 26B (1). Insert instead:		30
(1) Information may be obtained under this Division solely for the following purposes:		31
(a) assisting the Minister, the Secretary or schools:		32
(i) to assess whether the enrolment or attendance of a particular student at a school is likely to constitute a risk (because of the behaviour of the student) to the health or safety of any person (including the student), and		33
(ii) to develop and maintain strategies to eliminate or minimise any such risk,		34
(b) assisting the Minister to exercise functions under section 26HA relating to non-attendance directions.		35
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[5] Section 26D Obtaining information about particular students	1
Omit “such information about a particular student as would assist in making an assessment, or developing or maintaining strategies, of the kind referred to in section 26B” from section 26D (1).	2 3 4
Insert instead “information about a particular student for the purposes referred to in section 26B (1)”.	5 6
[6] Section 26E Consultation during assessment of risk and development of strategies	7
Insert “the Minister,” after “section 26B,”.	8
[7] Part 5A, Division 3, heading	9
Omit “at government schools”. Insert instead “and attendance”.	10
[8] Section 26H Enrolment directions	11
Insert “(an <i>enrolment direction</i>)” after “direction” in section 26H (1).	12
[9] Section 26H (2)	13
Omit “A direction under this section”. Insert instead “An enrolment direction”.	14
[10] Section 26H (3)	15
Omit “a direction in force under this section”. Insert instead “an enrolment direction”.	16
[11] Section 26H (4)	17
Insert “, or otherwise approved by the Minister,” after “State”.	18
[12] Section 26H (4)	19
Omit “a direction under this section”. Insert instead “an enrolment direction”.	20
[13] Section 26HA	21
Insert after section 26H:	22
26HA Non-attendance directions	23
(1) The Minister may, by notice in writing, direct a student not to attend school during a specified period (a <i>non-attendance direction</i>). A non-attendance direction may specify a particular school or schools or any school.	24 25 26
(2) The Minister may give a non-attendance direction to a student only if:	27
(a) the Minister believes on reasonable grounds that:	28
(i) there is a significant risk that the student will engage in serious violent conduct, or	29 30
(ii) the student supports terrorism or violent extremism, and	31
(b) the Minister believes on reasonable grounds that issuing the non-attendance direction is necessary to protect the health or safety of the students or staff of any school.	32 33 34
(3) While a non-attendance direction in relation to a student is in force, the Minister:	35
(a) must assess whether the attendance of the student at school constitutes a risk to the health or safety of any person (including the student), and	36 37 38
(b) must, if appropriate, develop strategies to eliminate or minimise that risk and to enable the student to attend school, and	39 40

(c)	may, in accordance with the guidelines, develop and implement a plan to support the student while the student is not attending school under the direction.	1 2 3
	Note. Information about students may be obtained under Division 2 for the purposes of assisting the Minister in exercising functions under this section.	4 5
(4)	In subsection (2) (a) (i), <i>serious violent conduct</i> means conduct constituting any of the following offences (regardless of whether the student cannot, or might not, be held to be criminally responsible for the conduct):	6 7 8
(a)	an offence involving:	9
(i)	loss of a person's life or serious risk of loss of a person's life, or	10
(ii)	serious physical or psychological injury to a person or serious risk of such injury to a person, or	11 12
(iii)	serious damage to property in circumstances endangering the safety of any person,	13 14
(b)	a serious offence of a sexual nature,	15
(c)	an offence involving serious animal cruelty.	16
[14]	Section 26I Representations by student, parents and others	17
	Omit "a direction is given under this Division" from section 26I (1).	18
	Insert instead "an enrolment direction or a non-attendance direction is given".	19
[15]	Section 26I (1)	20
	Omit "Secretary" wherever occurring. Insert instead "relevant decision-maker".	21
[16]	Section 26I (4)	22
	Insert after section 26I (3):	23
(4)	Without limiting the operation of subsection (2), the Minister is not required to comply with subsection (1) before giving a non-attendance direction to a student for the first time.	24 25 26
[17]	Sections 26J and 26K	27
	Omit "under this Division" wherever occurring.	28
[18]	Sections 26J and 26K	29
	Omit "Secretary" wherever occurring. Insert instead "relevant decision-maker".	30
[19]	Section 26K Variation and revocation of direction	31
	Omit "Secretary's" from section 26K (c). Insert instead "relevant decision-maker's".	32
[20]	Section 26K (2)	33
	Insert at the end of section 26K:	34
(2)	This section does not entitle a student, or a parent of the student, to make an application to vary or revoke a non-attendance direction given to the student for a period of 5 days or less.	35 36 37

[21] Section 26KA	1
Insert after section 26K:	2
26KA Internal review of certain non-attendance directions	3
(1) If the Minister, or a person acting under a delegation from the Minister, gives a non-attendance direction to a student for a period of more than 5 days, the student, or a parent of the student, may apply for an internal review of the decision to give the direction.	4 5 6 7
(2) An application for internal review is to be made in accordance with any requirements specified in the guidelines.	8 9
(3) An application for internal review does not operate to stay the decision to which the application relates, unless the Minister otherwise directs.	10 11
(4) The review must be conducted by a person (other than the person who made the decision) who is directed to do so by the Minister (the <i>reviewer</i>). The reviewer must be a person employed in the Department who was not substantially involved in making the decision to which the application relates.	12 13 14 15
(5) The reviewer must consider any relevant material submitted by the student or parent.	16 17
(6) The reviewer may, on determining an application for internal review, confirm the decision to which the application relates or recommend to the Minister that the non-attendance direction be varied or revoked.	18 19 20
(7) This section does not entitle a student, or a parent of the student, to make an application for internal review under this section if the person is entitled to make an application to the Tribunal under section 107 (1) (i) for an administrative review of a decision to give the student a non-attendance direction.	21 22 23 24 25
[22] Section 26L Issue of guidelines	26
Omit “for the purposes of section 26B,” from section 26L (2) (b).	27
[23] Section 26L (2) (c)	28
Omit “assessments of the kind referred to in section 26B”.	29
Insert instead “health and safety risk assessments”.	30
[24] Section 26L (2) (k) and (l)	31
Omit “Secretary” wherever occurring. Insert instead “relevant decision-maker”.	32
[25] Section 26L (2) (m)	33
Omit “such a direction”. Insert instead “an enrolment direction”.	34
[26] Section 26L (2) (n) and (o)	35
Omit “such a direction” wherever occurring. Insert instead “a direction”.	36
[27] Section 26L (2) (p)–(r)	37
Insert after section 26L (2) (o):	38
(p) applications for internal review under section 26KA of a decision to give a non-attendance direction,	39 40
(q) the provision of education and support (such as programs and services) to a student in relation to whom a non-attendance direction is in force,	41 42

	(f) the requirements (if any) to notify relevant agencies when a non-attendance direction is given to a student.	1 2
[28]	Section 35 Discipline in government schools	3
	Insert after section 35 (1):	4
	(1A) Subsection (1) extends to the conduct of a student that significantly affects, or is likely to significantly affect, the health or safety of students or staff of any school, regardless of whether that conduct occurs on or outside school premises or within or outside school hours.	5 6 7 8
[29]	Section 107 Applications for administrative reviews of certain decisions	9
	Omit “Division 3 of Part 5A” from section 107 (1) (e1). Insert instead “section 26H”.	10
[30]	Section 107 (1) (i)	11
	Insert after section 107 (1) (h):	12
	(i) a non-attendance direction given by the Minister under section 26HA that results in the student being directed not to attend school for more than a total of 20 school days in a 12 month-period.	13 14 15
[31]	Section 108 Determination of application by Tribunal	16
	Insert after section 108 (1) (a1):	17
	(a2) in the case of an application for the administrative review of a non-attendance direction given by the Minister under section 26HA—recommend to the Minister that the direction be varied or revoked, or	18 19 20
[32]	Section 108 (4)	21
	Insert after section 108 (3) (after the note):	22
	(4) The Minister is not required under the <i>Administrative Decisions Review Act 1997</i> , or any other Act or law, to give reasons for a decision to give a non-attendance direction to a student under section 26HA if the Minister reasonably believes that to do so would:	23 24 25 26
	(a) endanger a person’s life or physical safety, or	27
	(b) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or	28 29 30
	(c) prejudice the investigation of a contravention (or possible contravention) of a law in any particular case, or	31 32
	(d) not be in the public interest.	33