

School Education Amendment Act 2014

(No. 28 of 2014)

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Western Australia

School Education Amendment Act 2014

No. 28 of 2014

An Act —

- to amend the *School Education Act 1999*; and
 - to make consequential amendments to the *School Curriculum and Standards Authority Act 1997*,
- and for related purposes.**

[Assented to 27 November 2014]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *School Education Amendment Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 comes into operation on the day on which this Act receives the Royal Assent (*assent day*);
- (b) section 29 —
 - (i) comes into operation on assent day if assent day is on or before 1 January 2015; or
 - (ii) is deemed to have come into operation on 1 January 2015 if assent day is later than that day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *School Education Act 1999* amended

Division 1 — Preliminary

3. Act amended

This Part amends the *School Education Act 1999*.

Division 2 — Amendments about the registration of non-government schools

4. Section 150 amended

- (1) In section 150 insert in alphabetical order:

advance determination means an advance determination made under section 157B(1);

certificate of registration, in relation to a school, means a certificate of registration issued to the governing body of the school under section 162(1) or (2);

condition means a condition imposed on the registration of a school under section 165(1);

direction means a direction given to the governing body of a registered school under section 166(1);

quality improvement notice means a notice given under section 165A(1);

register means the register of non-government schools kept under section 161;

registration change, in relation to a registered school, means a change to, or in relation to, any of the things listed in section 161(1);

school planning proposal has the meaning given in section 156;

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significant registration change has the meaning given in section 156(b);

student record, in relation to a student, means all of the following —

- (a) any information in respect of the student that is shown on the register referred to in section 19;
- (b) any record in respect of the student that is kept under section 28;
- (c) any student record, as defined in the *School Curriculum and Standards Authority Act 1997* section 19A(1), in respect of the student;

(2) In section 150 in the definition of **governing body**:

- (a) in paragraph (a) delete “school or” (each occurrence);
- (b) after paragraph (a) insert:

(ba) in relation to a registered school, the person or body of persons that is recorded in the register as the governing body of the school; and

- (c) in paragraph (b) delete “that exercises a supervisory role over the schools in the system;” and insert:

that is specified as the governing body of the system in an order made under section 169;

(3) In section 150 in the definitions of **non-system school** and **system school** before “school that” insert:

registered

5. Section 153 amended

- (1) In section 153:
- (a) delete “The” and insert:

(1) The
 - (b) delete “but the Minister cannot give a direction in relation to a particular person.” and insert:

and the chief executive officer is to give effect to any such direction.
- (2) At the end of section 153 insert:
- (2) The Minister must not under subsection (1) give a direction with respect to the performance of the chief executive officer’s functions —
 - (a) under Division 3B; or
 - (b) in respect of a particular person, governing body or school.
 - (3) A copy of a direction given under subsection (1) must —
 - (a) within 14 days after the direction is given, be laid before each House of Parliament or dealt with under subsection (4); and
 - (b) be included in the annual report of the department submitted under the *Financial Management Act 2006* Part 5.

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- (4) The Minister must transmit a copy of the direction to the Clerk of a House of Parliament if —
 - (a) at the commencement of the period referred to in subsection (3)(a) the House is not sitting; and
 - (b) the Minister is of the opinion that the House will not sit during that period.
- (5) A copy of a direction transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (6) The laying of a copy of a direction that is regarded as having occurred under subsection (5) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

6. Part 4 Division 2 heading replaced

Delete the heading to Part 4 Division 2 and insert:

Division 2 — Offences

7. Section 154 amended

(1) Delete section 154(1) and insert:

- (1) A person must not establish or conduct a school for the education of children unless the school is registered under section 160.

Penalty: a fine of \$10 000 and a daily penalty of \$200.

- (2) In section 154(2):
- (a) delete “Subsection (1) does not apply to —” and insert:

In subsection (1) —
school does not include —
 - (b) after paragraph (b) insert:
 - (ca) a child care service as defined in the *Child Care Services Act 2007* section 4; or
 - (cb) an education and care service as defined in the *Education and Care Services National Law (Western Australia)* section 5(1); or
 - (c) in paragraph (c) delete “that provides an educational programme”.
- (3) Delete section 154(3).

Note: The heading to amended section 154 is to read:

Establishing or conducting an unregistered school

8. Sections 155 to 162 replaced

Delete sections 155 to 162 and insert:

155. Making false representations

A person must not falsely represent that —

- (a) an establishment is registered under section 160; or
- (b) enrolment in an establishment satisfies the requirements of section 9(1); or

- (c) an advance determination is in force in relation to an establishment.

Penalty: a fine of \$10 000.

156A. Schools to be conducted in accordance with registered information

The governing body of a registered school must ensure that the school —

- (a) is not conducted under a name other than the name recorded in the register in respect of the school; and
- (b) is not conducted from any place other than the school premises recorded in the register in respect of the school; and
- (c) does not provide a year level of education other than a year level of education recorded in the register in respect of the school; and
- (d) does not provide a curriculum other than a curriculum recorded in the register in respect of the school.

Penalty: a fine of \$10 000 and a daily penalty of \$100.

156B. Notice to be given to CEO about changes to governing bodies of schools

- (1) The governing body of a registered school must give written notice, in accordance with subsection (2), to the chief executive officer if —
 - (a) there is a change to the constitution of the governing body, whether by the amendment or substitution of the constitution; or
 - (b) there is a change to the membership of the governing body.

Penalty: a fine of \$5 000.

-
- (2) Notice is to be given no later than 30 days after the change is made and is to be accompanied by —
- (a) if subsection (1)(a) applies — a copy of the amendment to the constitution or the substituted constitution; and
 - (b) if subsection (1)(b) applies — a list of the names of any new members and of any persons who are no longer members.

156C. Minister or CEO may require information about registered schools

- (1) The Minister or the chief executive officer may, by notice in writing, require the governing body of a registered school to provide, within the period specified in the notice —
- (a) statistical, educational and financial information about the school; and
 - (b) any other information about the school relating to any matter referred to in section 159 or 160.
- (2) The period specified in the notice must not be less than 14 days from receipt of the notice.
- (3) A governing body must comply with a notice given to it under this section.

Penalty: a fine of \$5 000.

Division 3A — School planning proposals require an advance determination

156. What is a school planning proposal

A *school planning proposal* is a proposal —

- (a) to establish a non-government school; or

- (b) to make a registration change to a registered school that is of a kind prescribed by the regulations (a *significant registration change*).

157A. Application for advance determination

- (1) An application may be made to the Minister for an advance determination about a school planning proposal.
- (2) An application is to —
 - (a) be made in writing at least 18 months, or such shorter period as may be approved by the Minister, before it is intended to implement the school planning proposal; and
 - (b) be made in a form approved by the Minister; and
 - (c) be accompanied by the prescribed fee, if any.
- (3) An application is to be made by the governing body of the school or proposed school.
- (4) The Minister may, in writing, request the governing body to provide the Minister with such further information relevant to the application as the Minister requires.
- (5) The Minister may refuse to consider an application if the governing body does not comply with a request made under subsection (4).

157B. Minister may make advance determination

- (1) The Minister is to make an advance determination, on an application under section 157A, if the Minister is satisfied that the school planning proposal is satisfactory taking into account the policy direction issued under section 157C.

- (2) The Minister is to specify in an advance determination the day on which the determination will expire.
- (3) An advance determination is in force until the expiry day specified in the determination.
- (4) If the Minister is not satisfied as described in subsection (1), the Minister is to refuse to make an advance determination.

157C. Policy direction for advance determinations

- (1) The Minister is to issue a policy direction in respect of the making of advance determinations.
- (2) In preparing a policy direction the Minister is to —
 - (a) have regard to the need for diversity of schools and educational choices; and
 - (b) address the potential for adverse effects on existing schools; and
 - (c) address how previously made advance determinations that are in force in respect of schools, and proposed schools, are to be taken into account; and
 - (d) address the need for consultation, in accordance with procedures prescribed by the regulations, about school planning proposals; and
 - (e) take into account such other matters as the Minister thinks fit.
- (3) A policy direction —
 - (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

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- (b) takes effect —
 - (i) on the day it is published in the *Gazette*;
or
 - (ii) if a later day is stated in the direction,
on that day.
- (4) A policy direction may be amended or repealed by a subsequent policy direction issued by the Minister.
- (5) Subsection (2) applies to and in relation to the amendment of a policy direction.
- (6) Subsection (3) applies to and in relation to the amendment or repeal of a policy direction.

157. Notice to be given about decisions on advance determinations

- (1) The Minister is to notify an applicant in writing —
 - (a) of a decision to make, or refuse to make, an advance determination; and
 - (b) if the decision is to refuse to make an advance determination, of the reasons for the decision.
- (2) Notification is to be given as soon as is practicable after the decision is made, but in any event not later than 6 months after the application is made.

Division 3B — Registration of non-government schools

Subdivision 1 — Applications and requirements

158A. When advance determination required before making application under this Division

- (1) An advance determination must be in force in respect of a proposal to establish a non-government school when an application is made under section 158 for the

registration of an establishment as a non-government school.

- (2) An advance determination must be in force in respect of a proposal to make a significant registration change to a registered school when an application is made under section 159B for that change to be made to, or in relation to, the school.

158. Application for registration

- (1) An application may be made to the chief executive officer for the registration of an establishment as a non-government school.
- (2) An application is to —
- (a) be made in writing at least 6 months before the day from which registration is sought; and
 - (b) be made in a form approved by the chief executive officer; and
 - (c) be accompanied by —
 - (i) a copy of the advance determination referred to in section 158A(1); and
 - (ii) a statement to the effect that there has been no material change to the information provided under section 157A in relation to the advance determination;
- and
- (d) be accompanied by the prescribed fee, if any.
- (3) An application is to be made by the governing body of the proposed school.
- (4) The chief executive officer may, in writing, request the governing body to provide the chief executive officer

with such further information relevant to the application as the chief executive officer requires.

- (5) The chief executive officer may refuse to consider an application if the governing body does not comply with a request made under subsection (4).

159A. Application for renewal of registration

- (1) An application may be made to the chief executive officer for the renewal of the registration of a non-government school.
- (2) A registration change cannot be made on an application under this section, unless it is an application referred to in section 172(2).
- (3) An application is to —
- (a) be made in writing at least 6 months but not more than 12 months before the current period of registration will end; and
 - (b) be made in a form approved by the chief executive officer; and
 - (c) be accompanied by the prescribed fee, if any.
- (4) An application is to be made by the governing body of the school.
- (5) The chief executive officer may, in writing, request the governing body to provide the chief executive officer with such further information relevant to the application as the chief executive officer requires.
- (6) The chief executive officer may refuse to consider an application if the governing body does not comply with a request made under subsection (5).

159B. Application for registration change

- (1) An application may be made to the chief executive officer for a registration change in respect of a registered school.
- (2) An application is to —
 - (a) be made in writing at least 6 months, or such shorter period as may be approved by the chief executive officer, before it is intended to implement the change; and
 - (b) be made in a form approved by the chief executive officer; and
 - (c) be accompanied by the prescribed fee, if any.
- (3) If the application is in respect of a significant registration change, it is to be accompanied by —
 - (a) a copy of the advance determination referred to in section 158A(2); and
 - (b) a statement to the effect that there has been no material change to the information provided under section 157A in relation to the advance determination.
- (4) An application is to be made by the governing body of the school.
- (5) The chief executive officer may, in writing, request the governing body to provide the chief executive officer with such further information relevant to the application as the chief executive officer requires.
- (6) The chief executive officer may refuse to consider an application if the governing body does not comply with a request made under subsection (5).

159. Standards for non-government schools

- (1) The Minister may determine standards for non-government schools about any of the following matters —
 - (a) the curriculum or curriculums of schools;
 - (b) staff to student ratios at schools;
 - (c) the days, and hours per day, of instruction provided by schools;
 - (d) the staff of schools;
 - (e) the premises that may be used for, or in connection with, schools;
 - (f) the facilities of schools;
 - (g) the number of children in each year level at schools;
 - (h) the enrolment and attendance procedures at schools;
 - (i) the management, recording and reporting of critical and emergency incidents at schools;
 - (j) the arrangements (if any) for board and lodging for students on school premises or premises associated with schools;
 - (k) the response to, and recording of, complaints and disputes at schools;
 - (l) the arrangements for preventing child abuse at schools and for responding to any such abuse which may occur;
 - (m) the sufficiency of schools' financial resources for providing education of the kind for which registration is sought;
 - (n) any other matter prescribed by the regulations.
- (2) A standard is to be determined in accordance with consultation procedures prescribed by the regulations.

- (3) A standard —
 - (a) takes effect —
 - (i) on the day the standard is determined by the Minister; or
 - (ii) if a later day is stated in the standard, on that day;
 - and
 - (b) is to be published on a website maintained by the chief executive officer.
- (4) A standard may be amended or repealed by a subsequent determination by the Minister.
- (5) Subsection (2) applies to and in relation to the amendment of a standard.
- (6) Subsection (3) applies to and in relation to the amendment or repeal of a standard.

160. Determining applications for registration and renewal of registration

- (1) The chief executive officer, on an application under section 158, is to register an establishment as a non-government school if satisfied that —
 - (a) the governing body of the school is the person or body that has the ownership, management or control of the school; and
 - (b) the constitution of the governing body of the school is satisfactory for the purposes of this Act; and
 - (c) each member of the governing body of the school is a fit and proper person to operate a school having regard to —
 - (i) the prior conduct, whether in Western Australia or elsewhere, of the member,

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or any person who, as described in subsection (5), is related to the member; and

- (ii) any other matter the chief executive officer considers relevant;

and

- (d) the school will observe any standards determined by the Minister under section 159; and
 - (e) the day-to-day management and control of the school by the principal will be separate from the overall governance of the school by its governing body; and
 - (f) the governing body of the school will be accountable for the following —
 - (i) development and implementation of an effective strategic direction for the school;
 - (ii) development and implementation of effective processes to plan for, monitor and achieve improvements in student learning;
 - (iii) effective management of the school's financial resources in accordance, where relevant, with any purposes for which they were provided;
 - (iv) compliance with all written and other laws that apply to and in respect of the school and the operation of the school;
- and
- (g) the school will provide a satisfactory standard of education of the kind for which registration is sought; and

- (h) the school will provide satisfactory levels of care for the children concerned; and
 - (i) there has been no material change to the information provided under section 157A in relation to the advance determination about the proposal to establish the school.
- (2) The chief executive officer, on an application under section 159A, is to renew the registration of a school if satisfied as to the matters referred to in subsection (1).
- (3) Past and current compliance with a matter referred to in subsection (1) may be taken into account, where relevant, for the purposes of being satisfied as to the matter under this Act.
- (4) If the chief executive officer is not satisfied as required under subsection (1) or (2), the chief executive officer is to —
 - (a) register, or renew the registration of, the school, as is relevant and —
 - (i) give a quality improvement notice; or
 - (ii) impose, or change, a condition; or
 - (iii) give a direction;or
 - (b) refuse to register, or renew the registration of, the school, as is relevant.
- (5) For the purposes of subsection (1)(c)(i), a person is related to a member if —
 - (a) one is an employer or employee of the other; or
 - (b) they are partners in a partnership; or
 - (c) one is a body corporate and the other —
 - (i) is a director or a member of the governing body of the body corporate; or

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- (ii) is otherwise involved in the control or management of the body corporate; or
- (iii) has a legal or equitable interest in 5% or more of the share capital of the body corporate;

or

- (d) one is the trustee or beneficiary of a trust of which the other is also a trustee or beneficiary; or
- (e) they are associated or related in a manner prescribed by the regulations; or
- (f) a chain of relationships can be traced between them under one or more of the preceding paragraphs.

161A. Determining applications for registration change

- (1) The chief executive officer is to approve an application under section 159B for a registration change if the chief executive officer is satisfied —
 - (a) as to the matters referred to in section 160(1) that, in the opinion of the chief executive officer, are relevant to the application; and
 - (b) if the application is in respect of a significant registration change, there has been no material change to the information supplied under section 157A in relation to the advance determination about the proposal to make the significant registration change.
- (2) If the chief executive officer is not satisfied as required under subsection (1), the chief executive officer is to —
 - (a) approve the application and —
 - (i) give a quality improvement notice; or

- (ii) impose, or change, a condition; or
 - (iii) give a direction;
 - or
 - (b) refuse to approve the application.
- (3) If the chief executive officer approves the application, the chief executive officer is to amend the information that is recorded in the register in respect of the school in accordance with the approval.

161B. Notice to be given about decisions under this Subdivision

- (1) The chief executive officer is to notify an applicant in writing —
- (a) of a decision made under this Subdivision; and
 - (b) of the reasons for the decision, if the decision is to —
 - (i) refuse to register, or to renew the registration of, a school; or
 - (ii) refuse to approve an application for a registration change in respect of a school.
- (2) Notification is to be given as soon as is practicable after the decision is made, but, unless the application is for the renewal of registration, in any event not later than 6 months after the application is made.

Subdivision 2 — Register and certificates of registration

161. Register of non-government schools to be kept

- (1) The chief executive officer is to keep an accurate and up-to-date register that records the following information in respect of each registered school —
- (a) the name of the school;

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- (b) the address of the school and the location of all other school premises;
 - (c) the year levels of education that the school may provide;
 - (d) the curriculum or curriculums that the school may provide;
 - (e) the name of the governing body of the school;
 - (f) any other information prescribed by the regulations.
- (2) The following information is also to be recorded in the register in respect of each registered school —
- (a) the date on which the period of registration starts and, unless the school is a member of a school system, the date on which the period of registration ends;
 - (b) any condition of the school's registration;
 - (c) any direction given in relation to the school.
- (3) The register may be kept in any way the chief executive officer thinks appropriate, including by electronic means.

162. Certificate of registration

- (1) The chief executive officer is to issue a certificate of registration to the governing body of a school that is granted registration, or renewal of registration, specifying the information that is recorded in the register in respect of the school.
- (2) The chief executive officer is to issue a new certificate of registration to the governing body of a school if the information recorded in the register in respect of the school is amended.

163A. Surrender of certificate of registration

- (1) The governing body of a school is to surrender to the chief executive officer the certificate of registration of the school within 14 days after the governing body is notified in writing that —
- (a) the registration of the school is cancelled under section 167; or
 - (b) the renewal of the registration of the school is refused under section 160(4)(b); or
 - (c) the certificate is to be surrendered under this section because a certificate is to be issued under section 162(2) as information recorded in the register in respect of the school has been amended.

Penalty: a fine of \$5 000.

- (2) It is a defence to a prosecution for an offence against subsection (1) for the governing body to show that the failure to surrender the certificate is due to its loss or destruction.

9. Section 163 amended

- (1) In section 163(1) delete “7 years.” and insert:
- 5 years.
- (2) After section 163(2) insert:
- (3) Despite subsection (1) and (2), the registration of a school that is the subject of an application under section 159A continues until a decision on the application is made under section 160.

10. Part 4 Division 3B Subdivision 3 heading inserted

After section 163 insert:

**Subdivision 3 — Notices, conditions, directions
and cancellations**

11. Sections 164 to 167 replaced

Delete sections 164 to 167 and insert:

164. Continuing suitability of governing body

- (1) The chief executive officer may assess the suitability of the governing body of a registered school —
 - (a) as soon as is possible after receiving a notice under section 156B; and
 - (b) at any other time the chief executive officer sees fit.
- (2) If, after conducting an assessment, the chief executive officer is not satisfied as to any matter referred to in section 160(1)(a), (b) and (c) the chief executive officer must —
 - (a) give a quality improvement notice; or
 - (b) impose, or change, a condition; or
 - (c) give a direction; or
 - (d) cancel the registration of the school under section 167(1)(c).
- (3) The chief executive officer may, in writing, request the governing body of a registered school to provide the chief executive officer with any relevant information that the chief executive officer requires for the

purposes of conducting an assessment under this section.

165A. Quality improvement notices

- (1) The chief executive officer may give a quality improvement notice to the governing body of a registered school at any time if not satisfied as to any matter referred to in section 160(1).
- (2) A quality improvement notice is to be in writing and is to —
 - (a) identify the matter that the chief executive officer is not satisfied as to; and
 - (b) specify —
 - (i) the remedial action required in respect of the matter; and
 - (ii) if relevant, the period of time within which the action is to be taken.
- (3) If a matter identified under subsection (2)(a) is a failure to observe a standard determined by the Minister under section 159, then the standard is also to be identified in the notice.

165. Conditions of registration

- (1) The chief executive officer may impose a condition on the registration of a school, or change an existing condition, at any time if —
 - (a) not satisfied as to any matter referred to in section 160(1); or
 - (b) not satisfied that a quality improvement notice given to the governing body of the school has been complied with.

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- (2) A condition is to be in writing and is to —
 - (a) identify —
 - (i) the matter that the chief executive officer is not satisfied as to; or
 - (ii) the quality improvement notice that the chief executive officer is not satisfied has been complied with;
 - and
 - (b) specify —
 - (i) any remedial action required in respect of the matter or quality improvement notice; and
 - (ii) if relevant, the period of time within which the action is to be taken.
- (3) If a matter identified under subsection (2)(a)(i) is a failure to observe a standard determined by the Minister under section 159, then the standard is also to be identified in the condition.
- (4) The governing body of a registered school must ensure that a condition imposed on the registration of the school is complied with.
- (5) The chief executive officer may remove a condition if satisfied that the condition has been complied with or is no longer required.

166. Directions to comply

- (1) The chief executive officer may give a written direction to the governing body of a registered school at any time if —
 - (a) not satisfied as to any matter referred to in section 160(1); or

- (b) not satisfied that any condition of the school's registration is being complied with.
- (2) A direction is to be in writing and is to —
 - (a) identify —
 - (i) the matter that the chief executive officer is not satisfied as to; or
 - (ii) the condition that the chief executive officer is not satisfied is being complied with;
 - and
 - (b) specify —
 - (i) any remedial action required in respect of the matter or condition; and
 - (ii) if relevant, the period of time within which the action is to be taken.
- (3) If a matter identified under subsection (2)(a)(i) is a failure to observe a standard determined by the Minister under section 159, then the standard is also to be identified in the direction.
- (4) The governing body of a registered school must ensure that a direction given in relation to the school is complied with.
- (5) The chief executive officer may withdraw a direction if satisfied that the direction has been complied with or is no longer required.

167A. No new enrolments while a direction is outstanding

A governing body of a registered school that has been given a direction is to ensure that no children are accepted for enrolment at the school until the direction is withdrawn under section 166(5).

Penalty: a fine of \$10 000.

167. Cancelling registration

- (1) The chief executive officer may cancel the registration of a registered school at any time if —
 - (a) satisfied that the school or its governing body is not complying with —
 - (i) this Act; or
 - (ii) a condition; or
 - (iii) a direction;or
 - (b) satisfied that it is in the best interests of the children at the school to do so; or
 - (c) not satisfied as to any matter referred to in section 160(1).
- (2) The chief executive officer is to cancel the registration of a school at the written request of the governing body of the school.
- (3) A request by a governing body to cancel the registration of a school is to be accompanied by a copy of the student record for each student currently enrolled at the school.
- (4) The chief executive officer is not to cancel the registration of a school under subsection (1) 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.
- (5) Subsection (4) does not apply if, in the opinion of the chief executive officer, the health or welfare of any person may be at risk if the registration is not cancelled immediately.

- (6) On cancelling the registration of a school, the chief executive officer is to give to the governing body of the school written notice stating —
- (a) that the registration of the school is cancelled and giving the reasons for the cancellation; and
 - (b) the time when the cancellation takes effect.
- (7) The cancellation takes effect at such time as is specified in the notice given under subsection (6).
- (8) The chief executive officer may, by notice in writing, require the governing body of a registered school to provide to the chief executive officer, as soon as is possible after receiving the notice, a copy of the student record for each student currently enrolled at the school if —
- (a) the school has requested that its registration be cancelled; or
 - (b) the chief executive officer has made a decision to cancel the registration of the school.
- (9) A governing body must comply with a notice given to it under subsection (8).
- Penalty: a fine of \$10 000.

12. Part 4 Division 3C heading inserted

Before section 168 insert:

**Division 3C — Review of decisions under
Divisions 3A and 3B**

13. Section 168 amended

Delete section 168(1) and (2) and insert:

- (1) The governing body of a school, or proposed school, may apply in writing to the Minister for a review of any of the following —
 - (a) a decision under section 157B(4) to refuse to make an advance determination;
 - (b) a decision under section 160(4)(b) to refuse to register, or renew the registration of, the school;
 - (c) a decision under section 161A(2)(b) to refuse to approve an application for a registration change;
 - (d) a decision to impose, or change, a condition to which the school's registration is subject;
 - (e) a decision to give a direction in relation to the school;
 - (f) a decision under section 167(1) to cancel the registration of the school.
- (2) The application is to —
 - (a) be made in writing within 20 days after the applicant receives written notice of the decision; and
 - (b) if reasons are given for the decision, address the reasons for the decision; and
 - (c) be made in a form approved by the Minister; and
 - (d) be accompanied by the prescribed fee, if any.

Note: The heading to amended section 168 is to read:

Review of certain decisions

14. Section 169 amended

In section 169(2) delete “schools.” and insert:

schools (the *governing body of the system*).

15. Section 172 amended

- (1) In section 172(1) delete “wishes to withdraw from the system and apply for registration as a non-system school.” and insert:

intends to withdraw from the system.

- (2) Delete section 172(2) and (3) and insert:

(2) Despite section 159A(3)(a), an application under section 159A for the renewal of the registration of a school that withdraws from a school system can be made within one month after the withdrawal of the school from the system.

(3) The Minister is to inform the governing body of the relevant school system of the notice given under subsection (1).

16. Section 174 amended

- (1) In section 174(1):

- (a) in paragraph (a) delete “responsibility of the governing body for the supervision” and insert:

accountability of the governing body for the proper oversight and management

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(b) in paragraph (b) delete “schools of” and insert:

schools in

(c) delete paragraph (c) and insert:

(c) the provision of the information referred to in section 156C by the governing body of the system on behalf of the schools in the system; and

(da) the methods by which the governing body will ensure that satisfactory levels of care are maintained for the children in the schools in the system; and

(d) in paragraph (d) delete “schools within” and insert:

schools in

(2) Delete section 174(2) and insert:

(2) A system agreement may also include provisions as to any of the following —

(a) the delegation of responsibility for registration and performance review of the schools in the system to the governing body of the system;

(b) the provision of information about the system including —

(i) statistical, educational and financial information; and

(ii) information about policies, procedures and practices;

- (c) the manner in which compliance by the governing body with the system agreement is to be audited and reported to the Minister;
- (d) any other matter prescribed by the regulations.

17. Part 4 Division 4 heading replaced

Delete the heading to Part 4 Division 4 and insert:

Division 4 — Inspection of registered schools

18. Section 176 amended

(1) Delete section 176(1) and insert:

- (1) The chief executive officer may authorise a person to inspect registered schools for all or any of the following purposes —
 - (a) to ensure that the following are being complied with —
 - (i) this Act;
 - (ii) a quality improvement notice;
 - (iii) a condition;
 - (iv) a direction;
 - (b) to inquire into the following —
 - (i) any matter referred to in section 160(1);
 - (ii) where any matter referred to in section 160(1) has not been complied with, the causes of the failure to comply.

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- (2) In section 176(2):
 - (a) delete “Minister” and insert:

chief executive officer
 - (b) delete paragraph (a) and insert:
 - (a) the full name of the person so authorised; and
- (3) In section 176(3)(b) after “records” insert:

(including student records)
- (4) Delete section 176(4).

19. Section 177 amended

- (1) Delete section 177(1) and insert:
 - (1) The chief executive officer may authorise a person to inspect a registered school without notice for any of the purposes referred to in section 176(1) if the chief executive officer is of the opinion that it is necessary to do so because the health or welfare of a person may be at risk.
- (2) In section 177(2):
 - (a) delete “Minister” and insert:

chief executive officer

(b) delete paragraph (a) and insert:

(a) the full name of the person so authorised; and

(3) In section 177(3):

(a) in paragraph (b) after “records” insert:

(including student records)

(b) in paragraph (c) delete “Minister to do so, take possession of any records” and insert:

chief executive officer to do so, take possession of any records (including student records)

20. Sections 180 and 181 deleted

Delete sections 180 and 181.

Note: The note under the heading to amended Part 4 is to read:

What this Part is about

This Part requires non-government schools to be registered and makes various provisions about their operation and funding.

In particular it deals with —

- advance determinations about proposals to establish, or make certain changes to, non-government schools (*school planning proposals*) (Division 3A);
- registration of non-government schools (Division 3B);
- review of decisions about advance determinations or registration (Division 3C);
- recognition of groups of registered schools (*school systems*) and agreements between the Minister and the governing body of a school system about the operation of schools in the group (Division 3);
- inspection of registered schools (Division 4);

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- the allocation of funds appropriated by Parliament for registered schools (Division 5);
- loans to registered schools or school systems for capital works (Division 6).

21. Schedule 1 Division 3 inserted

At the end of Schedule 1 insert:

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

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.

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*.

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.

(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.

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.

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.

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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.

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*.

Division 3 — Other amendments

22. Long title amended

In the long title:

- (a) in the last bullet point delete “**education;**” and insert:

education; and

- (b) after the last bullet point insert:

- **for the use of property that is vested in the Minister;
and**

23. Section 9 amended

In section 9(3) delete “all”.

24. Section 11AA inserted

After section 10 insert:

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

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- (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.

25. Section 11M amended

Delete section 11M(3)(a) and insert:

- (a) the Executive Director Catholic Education in Western Australia; and

26. Section 26 amended

After section 26(2) insert:

- (3) Under subsection (2)(b)(ii), a Panel may advise that a responsible parenting agreement under the *Parental Support and Responsibility Act 2008* be entered into, and complied with, in respect of the child.

27. Section 40 amended

After section 40(2) insert:

- (3A) Under subsection (2)(b), a Panel may advise that a responsible parenting agreement under the *Parental*

Support and Responsibility Act 2008 be entered into,
and complied with, in respect of the child.

28. Section 42 amended

- (1) In section 42(1)(a) and (1a)(a) delete “all”.
- (2) Delete section 42(4).
- (3) In section 42(5) delete “and, if a report is required under subsection (4), a copy of the report are” and insert:

is

- (4) Delete section 42(6) and insert:
 - (6) Where in any proceedings a document is produced purporting to be a certificate given under subsection (1) or (1a), the court is to presume, unless the contrary is shown, that the document is such a certificate.

29. Section 97 amended

In section 97 in the definition of *first charges payment year*:

- (a) in paragraph (b):
 - (i) delete “January 2011,” and insert:

1 January 2011 until 31 December 2014,

- (ii) delete “year” and insert:

year; and

- (b) after paragraph (b) insert:
 - (c) on and from 1 January 2015, means the first calendar year in which the student has reached 11 years and 6 months by the beginning of the year;

30. Section 213 amended

In section 213 insert in alphabetical order:

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;

Note: The heading to amended section 213 is to read:

Terms used

31. Section 216 amended

- (1) Delete section 216(1) and insert:
 - (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) In section 216(2) delete “the purpose” and insert:

any of the purposes

32. Sections 218 and 219 replaced

Delete sections 218 and 219 and insert:

218. 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.
- (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.

33. Section 220 amended

In section 220(a):

- (a) delete “to which section 218 applies —” and insert:

referred to in section 218(4) —

- (b) in subparagraph (ii) delete “218(2)(c) or (d);” and insert:

218(3)(b) or (c);

34. Section 240 amended

In section 240(1):

- (a) delete paragraph (b) and insert:

(b) that the presence of the person —

- (i) on the premises of that school constitutes a risk to the safety or welfare of students at the premises; or
- (ii) on the premises of any government school constitutes a risk to the safety or welfare of students generally,

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- (b) delete “him or her to leave the school premises and remain away —” and insert:

the person to leave the premises of the school specified in the order and remain away from those premises, or from the premises of all government schools, as the case requires —

35. Various penalties amended

In the provisions listed in the Table after “Penalty:” insert:

a fine of

Table

s. 9(2)	s. 13(3)
s. 15	s. 27(4)
s. 29(1)	s. 35
s. 36(3)	s. 37
s. 38(1) and (2)	s. 43(2)
s. 120(2)	s. 121(1)
s. 149(4)	s. 179
s. 240(3)	s. 242(1)

Part 3 — *School Curriculum and Standards Authority Act 1997* amended

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

This Part amends the *School Curriculum and Standards Authority Act 1997*.

37. Section 3 amended

In section 3 in the definition of ***governing body*** delete paragraphs (b) and (c) and insert:

- (b) in relation to a non-government school as defined in the School Education Act, means the governing body of that school under that Act;

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