

Education (Out of School Education) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 12 November 1991

(Brought in by the Honourable B. T. Pullen)

A BILL

to amend the **Education Act 1958** to provide for children to be educated out of school and to make various other amendments to that Act and the **Community Services Act 1970**.

Education (Out of School Education) Act 1991

The Parliament of Victoria enacts as follows:

1. *Purpose*

5 The purpose of this Act is to amend the **Education Act 1958** to provide for children to be educated out of school and to make various other amendments to that Act and the **Community Services Act 1970**.

2. *Commencement*

This Act comes into operation on a day or days to be proclaimed.

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

3. Repeal of heading

In Part IV of the Education Act 1958, the heading “Division 1—General” is repealed.

4. Insertion of new Divisions 1 and 1A

For section 53 of the Education Act 1958 substitute— 5

“Division 1—Requirement to attend school

53. Parents must cause a child to attend school

- (1) The parents of a child of school age must cause the child to attend a State school on any school half-day, unless the child is not required to attend a State school under section 53A. 10

Penalty: First offence: 1 penalty unit.

Second or subsequent offence in respect of that child or any other child of the parents: 2 penalty units. 15

- (2) Attendance at school on any school day for 2 hours before noon or for 2 hours after noon is attendance on a school half-day.

53A. When is a child not required to attend school?

- (1) A child is not required to attend a State school if— 20

- (a) the child is attending a school registered under Part III in respect of which a certificate has been issued under section 54; or 25

- (b) a certificate under section 53F has been issued in respect of the child; or

- (c) the child has been prevented from attending school by sickness, reasonable fear of infection, temporary or permanent infirmity or any unavoidable cause; or 30

5 (d) the child is being educated by
correspondence tuition and the Minister
is of the opinion that there is no State
school within a reasonable distance of the
child's place of residence; or

(e) the child is exempted from school
attendance by a general or particular order
of the Minister.

10 (2) For the purposes of this section a child is being
educated by correspondence tuition if—

(a) the child is enrolled in and is receiving
tuition by correspondence from a
correspondence school of the Department
of School Education; or

15 (b) the child is receiving efficient and regular
tuition by correspondence in a manner
approved by the Minister.

53B. *Child's absence—parent to inform school of reason*

20 (1) If a child has not attended school, the child's
parent must inform the child's teacher of the
reason why the child has not attended school,
when the teacher asks the parent for the reason.

25 (2) The parent must give the teacher the information
asked for within 5 days of being asked for it and
may give the information through an authorised
agent.

(3) The teacher must retain the information in a
form in which it will be available for inspection
by an officer authorised by the Minister.

30 **53C. *Proof relating to a child not attending school***

A certificate purporting to be under the hand of
the head teacher of a State school or of a school
registered under Part III stating that a child is or
is not attending the school or giving particulars
of the child's attendance at the school is
evidence, and, in the absence of evidence to the

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contrary, is proof of the facts and matters contained in it.

53D. Proceedings about not attending school

- (1) In any proceedings about a child not attending a school— 5
 - (a) the defendant has the burden of proving that the child is not required to attend the school under section 53A; and
 - (b) a statement on oath by a witness of his or her belief as to the age or parentage of the child is evidence, and, in the absence of evidence to the contrary, as proof of that child’s age or parentage; and 10
 - (c) a certificate purporting to be under the hand of the head teacher of the State school nearest to the residence of the child stating his or her belief as to the age or parentage of the child is evidence, and, in the absence of evidence to the contrary, is proof of that child’s age or parentage; and 15 20
 - (d) a certificate purporting to be under the hand of the head teacher of the State school nearest the residence of the child stating the number of school half-days on which that school was open during a particular period and the number of school half-days on which that child attended that school— 25
 - (i) is evidence, and, in the absence of evidence to the contrary, is proof of the facts stated in it; and 30
 - (ii) if it appears from the certificate that the child did not attend that school on school half-days on which it was open, the certificate is evidence, and, in the absence of evidence to the contrary, is proof that the child did 35

not attend any State school on those half-days;

5 (e) if a statement under paragraph (b) or certificate under paragraph (c) or (d) refers to a child of the same or similar name, that is evidence, and, in the absence of evidence to the contrary, is proof that it refers to the child in respect of whom the proceedings are being taken.

10 (2) In any proceedings about a child not attending a school—

(a) the court may, with the consent of the parent be held within closed doors; or

15 (b) the court may be held at any State school; or

(c) in either event, the court may hear and determine the matter without requiring the presence at the court or the school of the parents or the child in respect of whom the proceedings is taken.

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53E. *Summoning officers*

(1) The Minister may appoint summoning officers by order published in the Government Gazette.

(2) A summoning officer may—

25 (a) take any necessary proceedings to enforce the attendance of children at schools; and

(b) obtain the name and address of any child who is apparently not attending school during school hours, and may accost and detain that child during those hours for that purpose.

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(3) The production of a copy of the Government Gazette purporting to contain the order of appointment is evidence and, in the absence of evidence to the contrary, is proof that the person to whom the order relates is so appointed.

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- (4) A person must not obstruct hinder or interfere with any summoning officer while he or she is carrying out his or her duties.

Penalty: 5 penalty units.

Division 1A—Out of School Education Certificate 5

53F. *Out of School Education Certificate*

- (1) The Chief General Manager may issue a certificate in respect of a child permitting that child to be educated out of school and exempting that child from the requirement to attend a school under section 53 (1). 10
- (2) In issuing a certificate the Chief General Manager must have regard to—
 - (a) whether or not he or she is satisfied that—
 - (i) the instruction the child will receive is comprehensive and balanced and is in the subjects which children of comparable age, ability and maturity would ordinarily undertake in a State school; and 15 20
 - (ii) that the lighting, ventilation, furnishings and space of the place in which the instruction is to be given are adequate; and
 - (b) the number of other children with whom the child is to be educated, which must not be more than 4 unless there are special circumstances; and 25
 - (c) any other matter which is, in the opinion of the Chief General Manager, relevant. 30

53G. *Application*

- (1) A certificate may only be issued if the parents of the child have applied in writing for it.

- (2) An application must be in the form determined by the Chief General Manager and accompanied by the information required by the Chief General Manager.

5 **53H. Certificate**

A certificate—

- 10 (a) operates for the period stated in the certificate which in any case should not be more than 2 years from the date on which it is issued; and
- (b) is subject to any terms and conditions that the Chief General Manger determines and specifies in it.

15 **53I. Chief General Manager's representative**

The Chief General Manager may by instrument appoint representatives who may—

- 20 (a) at any reasonable time visit and examine the place at which the child is to be educated; and
- (b) require information and documentation about the child's education to be given to them; and
- 25 (c) take any other action determined by the Chief General Manager for the purpose of assessing or monitoring the child's education.
- (2) The powers of the Chief General Manager's representative may be exercised—
- 30 (a) for the purpose of determining whether a certificate should be issued; and
- (b) at any time during the operation of a certificate.

35 **53J. Parent's duties**

If an application for a certificate has been made or a certificate is in operation, the parents must—

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- (a) at any reasonable time permit the Chief General Manager's representative to visit and examine the place at which the child is to be educated; and
- (b) provide that information and documentation about the child's education which the representative has asked for; and 5
- (c) comply with any other reasonable request of the representative which is made for the purpose of monitoring the child's education. 10

53k. *Cancellation of certificate*

The Chief General Manager may cancel the certificate by written notice if— 15

- (a) the terms and conditions of the certificate have not been complied with; or
- (b) the provisions of this Part or any lawful direction of his or her representative have not been complied with; or 20
- (c) there has been a significant change in the circumstances under which the certificate was issued.

53L. *Review of decision by the Minister*

- (1) A person may apply to the Minister for a review of a decision made by the Chief General Manager— 25
 - (a) not to issue a certificate under section 53F; or
 - (b) to cancel a certificate under section 53k. 30
- (2) An application must be made within 30 days of the person being notified of the decision.
- (3) Upon reviewing a decision of the Chief General Manager the Minister may decide to—
 - (a) uphold the decision; or 35

- (b) alter the decision; or
- (c) replace the decision.

(4) In making his or her decision, the Minister may inform himself or herself in any manner he or she sees fit.

53M. Review of Minister's decision

(1) A person may apply to the Administrative Appeals Tribunal for a review of a decision by the Minister under section 53L.

(2) An application must be made within 30 days of the person being notified of the decision.”.

5. Insertion of heading

Before section 54 of the Education Act, insert—

“Division 1B—Miscellaneous Provisions”

6. Amendments to the Community Services Act 1970

In Part III of the Community Services Act 1970—

(a) in Division 8A, sections 74B to 74F are **repealed**; and

(b) in section 74G, for sub-section (1) **substitute—**

“(1) A person must not employ a child or permit a child to be employed within school hours on a school day in any trade, business, work or occupation carried on for the purposes of gain.

(1A) The Minister may exempt a child from the operation of sub-section (1) if the Minister is of the opinion that there are special circumstances which justify that exemption.”.

