

TASMANIA

**EDUCATION AND TRAINING (MISCELLANEOUS
AND CONSEQUENTIAL AMENDMENTS) BILL
2008**

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**EDUCATION AND TRAINING (MISCELLANEOUS
AND CONSEQUENTIAL AMENDMENTS) BILL
2008**

*(Brought in by the Minister for Education and Skills, the
Honourable David John Bartlett)*

A BILL FOR

**An Act to amend the *Education Act 1994* and the *TAFE
Tasmania Act 1997***

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Education and
Training (Miscellaneous and Consequential
Amendments) Act 2008*.

2. Commencement

- (1) Except as provided in this section, this Act
commences on the day on which this Act
receives the Royal Assent.

THIS BILL IS COGNATE WITH THE *EDUCATION AND TRAINING (TASMANIAN
ACADEMY) BILL 2008*, THE *EDUCATION AND TRAINING (TASMANIAN POLYTECHNIC)
BILL 2008*, THE *EDUCATION AND TRAINING (TASMANIAN SKILLS INSTITUTE) BILL 2008*,
THE *EDUCATION AND TRAINING (REPEALS AND TRANSITIONAL PROVISIONS) BILL 2008*
AND THE *EDUCATION AND TRAINING (FURTHER CONSEQUENTIAL AMENDMENTS) BILL
2008*

*Education and Training (Miscellaneous and Consequential
Amendments) Act 2008*
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s. 2

Part 1 – Preliminary

(2) Part 2 commences on 1 January 2009.

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Part 2 – Education Act 1994 Amended

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PART 2 – EDUCATION ACT 1994 AMENDED

3. Principal Act

In this Part, the *Education Act 1994** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of “certificate of registration”:

“Academy” means the Tasmanian Academy established under section 5 of the *Education and Training (Tasmanian Academy) Act 2008*;

- (b) by inserting “other” after “or” in the definition of “home education”;
- (c) by inserting the following definition after the definition of “parent”:

“Polytechnic” means the Tasmanian Polytechnic established under section 5 of the *Education and*

*No. 86 of 1994

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*Training (Tasmanian
Polytechnic) Act 2008;*

- (d) by omitting the definition of “school” and substituting the following definition:

“school” means –

- (a) a State school; and
 - (b) a centre, unit or institute of the State, other than the Academy or the Polytechnic, which provides educational instruction at any level up to, and including, the final year of secondary education; and
 - (c) a registered school;
- (e) by omitting the definition of “school-aged child” and substituting the following definition:

“school-aged child” means a person who –

- (a) is required under section 4(1) to be enrolled at a school or provided with home education; or
- (b) would be required under section 4(1) to be enrolled

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Part 2 – Education Act 1994 Amended

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at a school or provided
with home education if
not exempted or excused
under Part 2;

- (f) by inserting “other” after “or” in the
definition of “school student”.

5. Section 4 amended (Enrolment)

Section 4 of the Principal Act is amended by
omitting subsection (1) and substituting the
following subsection:

- (1) Unless exempted or excused under this
Part, a child who is at least 5 years of age
as at 1 January in any year must be
enrolled at a school or be provided with
home education for that year and
subsequent years until the child
completes the school year during which
he or she attains the age of 16 years.

6. Section 5 amended (Exemption from enrolment)

Section 5 of the Principal Act is amended by
omitting subsection (2) and substituting the
following subsection:

- (2) The Secretary, at his or her own initiative
or on application, may grant a child, or a
class of children, an exemption from the
requirement to be enrolled at a school if

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Part 2 – Education Act 1994 Amended

satisfied that it is in the best interests of the child's, or children's, education to be exempted.

7. Section 6 amended (Attendance)

Section 6 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “required;” and substituting “required by the principal;”;
- (b) by omitting from subsection (1)(b) “education.” and substituting “education; or”;
- (c) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (c) attends at the Academy or the Polytechnic each day as required if the child is exempted under section 5 from the requirement to be enrolled at a school subject to a condition that the child attend or be enrolled at either the Academy or the Polytechnic.
- (d) by omitting from subsection (3) “principal” and substituting “principal, the Academy or the Polytechnic”.

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Part 2 – Education Act 1994 Amended

s. 8

8. Section 7 amended (Part-time attendance)

Section 7 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “a school” after “attend”;
- (b) by inserting in subsection (2) “at a school” after “attendance”;
- (c) by inserting in subsection (3)(a) “at a school” after “attendance”.

9. Section 8 amended (Certificate of exemption)

Section 8 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) If the Secretary exempts a class of school-aged children under section 5, the Secretary is to issue a certificate of exemption on the application of a school-aged child of that class or the parent of such a school aged-child.

10. Section 10 amended (Excused from daily attendance)

Section 10 of the Principal Act is amended as follows:

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Part 2 – Education Act 1994 Amended

- (a) by omitting from subsection (1) “school” and substituting “school, the Academy or the Polytechnic”;
- (b) by omitting from subsection (1)(a)(iii) “cause;” and substituting “cause approved by the principal, the Academy or the Polytechnic, as the case may require;”;
- (c) by omitting from subsection (1)(b) “principal” and substituting “principal, the Academy or the Polytechnic”;
- (d) by omitting from subsection (1)(b) “Secretary.” and substituting “Secretary, the Academy or the Polytechnic.”;
- (e) by omitting from subsection (2) “child’s non-attendance at a school” and substituting “school-aged child’s non-attendance at a school, the Academy or the Polytechnic”;
- (f) by inserting in subsection (2) “the Academy or the Polytechnic,” after “Secretary,”;
- (g) by inserting in subsection (2) “the Academy or the Polytechnic” after “principal,”;
- (h) by omitting from subsection (3) “principal” and substituting “principal, the Academy or the Polytechnic”;

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- (i) by omitting from subsection (3) “school” first occurring and substituting “school, the Academy or the Polytechnic”;
- (j) by omitting from subsection (3) “Secretary” and substituting “Secretary, Academy or Polytechnic”;
- (k) by omitting from subsection (3) “school.” and substituting “school, Academy or Polytechnic.”.

11. Section 14 amended (Authorized persons)

Section 14 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “school.” and substituting “a school, the Academy or the Polytechnic.”;
- (b) by omitting from subsection (3)(a) “school;” and substituting “school, the Academy or the Polytechnic;”;
- (c) by inserting in subsection (3)(b)(ii) “or the campus of the Academy or the Polytechnic” after “school”;
- (d) by omitting from subsection (3)(b)(iii) “school;” and substituting “school, the Academy or the Polytechnic;”;

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- (e) by omitting from subsection (3)(c) “school” and substituting “school, the Academy or the Polytechnic”.

12. Section 16 amended (Evidence and presumption)

Section 16 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) In any proceedings for an offence against this Part, a certificate –
 - (a) by the principal of a school certifying that on a specified day a particular child was enrolled at, but did not attend, the school for the period or periods specified in the certificate; or
 - (b) by the Academy or the chief executive officer of the Academy certifying that on a specified day a particular child was enrolled at, but did not attend, the Academy for the period or periods specified in the certificate; or
 - (c) by the Polytechnic or the chief executive officer of the Polytechnic certifying that on a specified day a particular child was enrolled at, but did not attend, the Polytechnic for the

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Part 2 – Education Act 1994 Amended

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period or periods specified in the
certificate –

is evidence of those facts.

**13. Section 17 amended (Registration of home
educators)**

Section 17 of the Principal Act is amended as
follows:

- (a) by omitting from subsection (4) “attains
the age of 16 years,” and substituting
“ceases to be a school-aged child,”;
- (b) by omitting from subsection (4A) “has
attained the age of 16 years in order to
complete the final year of secondary
education.” and substituting “is no longer
a school-aged child.”.

14. Section 20 amended (Enrolment in certain cases)

Section 20 of the Principal Act is amended as
follows:

- (a) by omitting from subsection (1) “school
or a registered school.” and substituting
“school, a registered school, the
Academy or the Polytechnic.”;

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Part 2 – Education Act 1994 Amended

- (b) by omitting from subsection (3) “school.” and substituting “school, the Academy or the Polytechnic.”.

15. Section 24 amended (Distance education)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “education.” and substituting “education, being education up to and including the last year of secondary education provided by a State school.”;
- (b) by omitting from subsection (4)(e) “basis.” and substituting “basis;”;
- (c) by inserting the following paragraph after paragraph (e) in subsection (4):
 - (f) any other matter the Secretary considers relevant.

16. Section 38 amended (Exclusion and expulsion)

Section 38 of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (6) In this section –

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Part 2 – Education Act 1994 Amended

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“student” includes a student who has
been suspended or expelled from
a school under this section.

17. Sections 47 and 47A substituted

Sections 47 and 47A of the Principal Act are
repealed and the following sections are
substituted:

**47. Entitlement to complete secondary education
provided by State school**

- (1) If a person is not a school-aged child and
has not completed secondary education at
the level provided by State schools, that
person is entitled, subject to section 47D,
to attend a State school –
 - (a) until the person completes the
final year of secondary education
provided by State schools; or
 - (b) for a period not exceeding the
equivalent of 2 years of full-time
study –

whichever occurs first.

- (2) If a person is entitled to attend a State
school under subsection (1), the
Secretary may determine which schools,
or which class of schools, the person may
attend.

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Part 2 – Education Act 1994 Amended

47A. Attending State school after compulsory education

(1) If a person is not a school-aged child and –

(a) he or she is not entitled to attend a State school under section 47; or

(b) his or her entitlement under section 47 to attend a State school has come to an end –

the person may apply to the principal of a State school to attend or continue attending that school.

(2) An application is to be in a form approved by the Secretary.

(3) Subject to section 47D, the principal may –

(a) grant the application with or without conditions; or

(b) refuse to grant the application.

47B. Entitlement to attend Academy or Polytechnic

(1) In this section –

“post-Year 10 secondary education and training” means secondary education and training that is

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usually undertaken by persons following the completion of the fourth year of secondary education, being the year commonly known as Year 10.

- (2) If a person is not a school-aged child and has not completed the equivalent of 2 years of full-time study of post-Year 10 secondary education and training, that person is entitled, subject to section 47D, to attend the Academy or the Polytechnic for a period not exceeding the equivalent of 2 years of full-time study.
- (3) If –
 - (a) a person is entitled to attend the Academy or the Polytechnic under subsection (2); and
 - (b) there is a dispute as to which the person may attend, the Academy and the Polytechnic, jointly, may determine the matter.

47C. Attending Academy or Polytechnic after entitlement ends

- (1) If a person is not a school-aged child and –
 - (a) he or she is not entitled to attend the Academy or the Polytechnic under section 47B; or

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Part 2 – Education Act 1994 Amended

- (b) his or her entitlement under section 47B to attend the Academy or the Polytechnic has come to an end –

the person may apply to the Academy or the Polytechnic to attend or continue attending the Academy or the Polytechnic.

- (2) An application is to be in a form approved by the Academy or the Polytechnic.
- (3) Subject to section 47D, the Academy or the Polytechnic may –
 - (a) grant the application with or without conditions; or
 - (b) refuse to grant the application.

47D. Requirement that person be of good character

- (1) If –
 - (a) a person is entitled to attend a State school, the Academy or the Polytechnic under section 47 or 47B; or
 - (b) an application is made for the applicant to attend or continue attending a State school, the

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Academy or the Polytechnic
under section 47A or 47C –

the Secretary, Academy or Polytechnic
may require to be satisfied that the
applicant is of good character before the
application may be granted.

- (2) In order to be satisfied as to the good character of the applicant, the Secretary, Academy or Polytechnic may require the Commissioner of Police to provide a report in respect of any convictions or proceedings taken against the applicant.
- (3) Sections 22(1), 31(1), 45(1) and 108 of the *Youth Justice Act 1997* do not apply to the identification, in a report provided under subsection (2), of an applicant who is a youth as defined in that Act in respect of any action or proceedings referred to in those sections.

47E. Determining what is equivalent of 2 years of full-time study

If there is a dispute as to whether a
person has completed, or what
constitutes, the equivalent of 2 years of
full-time study for the purposes of
section 47 or 47B –

- (a) the dispute is to be determined by the Minister; and

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Part 2 – Education Act 1994 Amended

- (b) the Minister's determination is final.

18. Section 81 amended (Financial assistance)

Section 81 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) A school-aged child, the parent of a school-aged child or a person who is entitled to attend the Academy or the Polytechnic under section 47B during a year may apply to the Secretary for financial assistance in respect of –

- (a) any levy made under section 33(1)(b) of the *Education and Training (Tasmanian Academy) Act 2008* or section 33(1)(b) of the *Education and Training (Tasmanian Polytechnic) Act 2008* and imposed in relation to his or her attendance at the Academy or the Polytechnic during that year; or

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- (b) any essential materials the school-aged child or person requires to continue his or her education and training at the Academy or the Polytechnic during that year; or
 - (c) any accommodation costs incurred by the school-aged child or person living away from home to continue education and training at the Academy or the Polytechnic during that year.
- (b) by omitting from subsection (2) “subsection (1)” and substituting “subsection (1) or (1A)”;
- (c) by omitting paragraphs (a) and (b) from subsection (2) and substituting the following paragraphs:
 - (a) the income of the applicant or, in an appropriate case, the parent of the applicant is less than an amount the Secretary may determine; or
 - (b) the applicant or, in an appropriate case, the parent of the applicant is of a class of persons determined

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Part 2 – Education Act 1994 Amended

by the Secretary to be entitled to assistance; or

- (c) in respect of accommodation costs, the normal residence of the student, school-aged child or person attending the Academy or the Polytechnic is at least 40 kilometres from the nearest appropriate school or appropriate campus of the Academy or the Polytechnic.
- (d) by omitting from subsection (4) “student or a parent of a student may” and substituting “person who may apply for financial assistance under subsection (1) or (1A) also may”;
- (e) by inserting in subsection (5)(a) “or, in an appropriate case, the applicant’s parents” after “applicant”;
- (f) by omitting from subsection (5)(b) “student” and substituting “student, school-aged child or person attending the Academy or the Polytechnic”.

19. Section 82 amended (Employment of children)

Section 82 of the Principal Act is amended by omitting “school” and substituting “school, the Academy or the Polytechnic”.

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Part 3 – TAFE Tasmania Act 1997 Amended

s. 20

PART 3 – TAFE TASMANIA ACT 1997 AMENDED

20. Principal Act

In this Part, the *TAFE Tasmania Act 1997** is referred to as the Principal Act.

21. Section 36 amended (Employees)

Section 36 of the Principal Act is amended by inserting after subsection (6) the following subsection:

- (6A) A person appointed as a sessional employee pursuant to subsection (6) is taken, for all purposes, to be an employee within the meaning of the *State Service Act 2000*.

*No. 50 of 1997