

EDUCATION ORDINANCE 1957-1959.*

517

Amended 42/60 ✓
66/65.
57/73

An Ordinance relating to Education.

1 This Ordinance may be cited as the *Education Ordinance 1957-1959*.*

Short title.
 Short title amended:
 No. 17, 1959,
 s. 4.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.†

Commencement.

3.—(1.) The *Education Ordinance 1917*, the *Education Ordinance 1929* and the *Education Ordinance 1931* are repealed.

Repeal and saving.

(2.) Notwithstanding the repeal effected by the last preceding sub-section—

(a) all regulations made under the Ordinances repealed by this Ordinance and in force immediately before the commencement of this Ordinance continue in force after the commencement of this Ordinance but may be amended or repealed by regulations made under this Ordinance; and

(b) all appointments and determinations made, and approvals, directions and notifications given under the Ordinances repealed by this Ordinance and in force or subsisting immediately before the commencement of this Ordinance shall be deemed to have been made or given, as the case may be, under this Ordinance.

The *Education Ordinance 1957-1959* comprises the *Education Ordinance 1957* as amended. Particulars of the Principal Ordinance and of the amending Ordinance are set out in the following table:—

Ordinance.	Number and Year.	Date of Assent by Administrator.	Date of Commencement.
<i>Education Ordinance 1957</i> ...	No. 43, 1957	26th December, 1957	17th September, 1958
<i>Administrator's Council Ordinance 1959</i>	No. 22, 1959	7th July, 1959 ..	28th April, 1960

† The date fixed was 17th September, 1958—see table above.

Definitions.

4. In this Ordinance, unless the contrary intention appears—

“attend”, in relation to the attendance of a child at a school, means be present at the school at the time the attendance roll-book containing the child’s name is marked and remain present at the school until the close of the session during which the attendance roll-book is marked;

“court” means a court of summary jurisdiction constituted by a Stipendiary Magistrate or by a Special Magistrate and not less than two Justices of the Peace;

“institution” means an institution, in the Northern Territory or a State, for the education of blind, deaf, mute or mentally defective children;

“parent”, in relation to a child, includes a person who has the actual custody of the child and a person with whom the child resides;

“primary school” includes a primary public school and any other public school at which the course of instruction includes the course of instruction for the time being at primary public schools but does not include a school where the teachers are not appointed and controlled by the Education Department of the State of South Australia;

“private school” means a school which—

(a) is not a public school; and

(b) is found to be efficient under the provisions of the Act;

“progress certificate” means a certificate qualifying a child for admission to a school the course of instruction at which is of a higher standard than that of a primary school;

“public school” means any school established in the Northern Territory under the authority of the Act;

“school leaving age” means the age of fourteen years;

“the Act” means the Education Acts 1875 to 1905 of the State of South Australia in their application to the Northern Territory;

“transport route” in relation to a school, means a route normally followed by—

(a) a public omnibus for which there is a stopping place at or near the school; or

(b) a vehicle provided by the Administrator for the purpose of conveying children to or near to the school.

5.—(1.) Subject to sub-section (7.) of this section, a parent of a child who is not under six but is under seven years of age shall, if there is a primary school or a transport route to a primary school within a distance of one mile from the child's residence, enrol the child—

Enrolment of children.

- (a) at a primary school; or
- (b) at a private school.

(2.) Subject to sub-section (7.) of this section, a parent of a child who is not under seven but is under nine years of age shall, if there is a primary school or a transport route to a primary school within a distance of two miles from the child's residence, enrol the child—

- (a) at a primary school; or
- (b) at a private school.

(3.) Subject to sub-sections (4.) and (7.) of this section, a parent of a child who is not under nine years of age but is under the school leaving age shall, if there is a primary school or a transport route to a primary school within a distance of three miles from the child's residence, enrol the child—

- (a) at a primary school;
- (b) at a private school;
- (c) if the child has obtained the progress certificate, at a high school;
- (d) at a public school at which the course of instruction is of a higher standard than the course of instruction at primary schools;
- (e) if the child—
 - (i) is not under thirteen years of age; or
 - (ii) has obtained the progress certificate, at a technical school; or
- (f) at such other school as the Administrator in writing approves as a school at which the child may be enrolled.

(4.) Notwithstanding the last preceding sub-section but subject to sub-section (7.) of this section, a parent of a child who is not under thirteen years of age but is under the school leaving age shall—

- (a) if the child has not obtained the progress certificate and there is a technical school or a transport route to a technical school within three miles of the child's residence, enrol the child at a technical school, if the Administrator, by notice in writing to the parent, requires the child to be so enrolled; or

(b) if the child has obtained the progress certificate and there is a high school, a technical school, any other public school at which the course of instruction is of a higher standard than the course of instruction at primary schools or a transport route to one of those schools within three miles of the child's residence, enrol the child—

- (i) at a high school;
- (ii) at a technical school;
- (iii) at any other public school at which the course of instruction is of a higher standard than the course of instruction at primary schools;
- (iv) at a private school, the course of instruction at which includes instruction of a higher standard than the course of instruction at primary schools; or
- (v) at such other school as the Administrator in writing approves as a school at which the child may be enrolled.

(5.) A child shall be deemed to be enrolled at a school when his parent has supplied the head teacher of the school with the name, age and place of residence of the child.

(6.) When a child is or is deemed to be enrolled at a school he shall continue to be or be deemed to be enrolled at that school until—

(a) he is or is deemed to be enrolled at some other school in accordance with the provisions of this section; or

(b) where the child has attained the school leaving age—

(i) in the case where his parent gives notice in writing to the head teacher of that school that the child has left school or will be leaving school not later than the end of the current school term—the end of the school term during which the notice is so given; or

(ii) in any other case—the end of the first school term during which the child does not attend any session of the school,

whichever first occurs.

(7.) This section does not apply in respect of any child—

- (a) receiving efficient instruction, having regard to the age and capability of the child, at home or elsewhere; or
- (b) in respect of whom section twelve of this Ordinance applies.

(8.) For the purposes of the last preceding sub-section, whether instruction received by a child is efficient or not shall be a matter for the decision of the Administrator, who may, if he deems it necessary, obtain a report on the instruction by an inspector authorized by him in writing to do so; and the Administrator's decision on the matter shall be conclusive.

(9.) For the purposes of this section—

- (a) the distance of a child's residence from a school shall be deemed to be the length of the shortest distance along a road or other available route or both between the residence and the school; and
- (b) the distance of a child's residence from a transport route shall be deemed to be the length of the shortest distance along a road or other available route or both between the residence and a point on the transport route.

(10.) If a child in respect of whom this section applies is at any time not enrolled as required by this section, a parent of the child is guilty of an offence and is liable on conviction to a penalty not exceeding Five pounds.

6—(1.) Except on occasions as to which one or more of the excuses mentioned in sections seven, nine and ten of this Ordinance is shown, a parent of a child who is by the last preceding section required to be enrolled shall cause the child to attend the school at which he is enrolled, on every occasion when the school is open for instruction, until—

Attendance;
school.

- (a) if the child attains the school leaving age during a period between two school terms—the last day of the term immediately preceding that period; or
- (b) if the child attains the school leaving age during a school term—the last day of that term.

Penalty:

For a first offence—Five shillings;

For a subsequent offence, in respect of the same or any other child of that parent—Two pounds.

(2.) For the purposes of this section, morning and afternoon shall each count as a separate occasion.

(3.) Unless otherwise prescribed, where—

- (a) a manual training, domestic arts or other subject involving practical work is taught in connexion with the regular curriculum of a school, whether at the school or at some other place; and
- (b) a child is not present at the place where the subject is taught during a time provided by the curriculum for the teaching of the subject to the child, the child shall be deemed not to have attended the school on an occasion during which the school is open for instruction.

7. A child who does not attend school is excused—

(a) if—

- (i) he was prevented from attending school by his sickness, danger of being affected by infectious or contagious disease or temporary or permanent infirmity or by any other unavoidable or sufficient cause;
 - (ii) within three days after the beginning of the non-attendance, a parent of the child gives the head teacher of the school at which the child is enrolled notice in writing of the reason for the non-attendance; and
 - (iii) the parent produces to the head teacher a medical certificate of the existence of the reason for the non-attendance if requested in writing to do so by the Administrator in Council or a person authorized in writing by the Administrator in Council to make the request;
- (b) if the non-attendance is during the period specified in a notice given in accordance with sub-section (2.) of the next succeeding section; or
- (c) if the Administrator in Council or a person authorized in writing by the Administrator in Council to give notice under this section has in writing given notice, which is in force, to a parent of the child that the child is not to attend school on the grounds that the child is not capable of receiving instruction in a school.

Excuses for non-attendance. Amended by No. 22, 1959, s. 6 and First Schedule.

8—(1.) The Administrator in Council or a person authorized in writing by the Administrator in Council to give notice under this section may give notice in writing to a parent of a child that the child is not to attend school on the ground that—

Children not to attend school in certain circumstances. Sub-section (1.) amended by No. 22, 1959, s. 6 and First Schedule.

- (a) the child has not attained the age of six years;
- (b) the child has attained the school leaving age and is not enrolled at a high school or technical school; or
- (c) the child is not capable of receiving instruction in a school.

(2.) The head teacher of a school at which a child is enrolled may give notice in writing to a parent of the child that, during the period specified in the notice, the child is not to attend school on the ground that—

- (a) the child is suffering from an infectious or contagious disease; or
- (b) the presence of the child at school might be injurious to the health or welfare of other children attending school.

(3.) A parent of a child in respect of whom a notice has been given under this section shall ensure that the child does not attend school during the period specified in the notice or, if no period is so specified, during the subsistence of the ground specified in the notice.

Penalty:

For a first offence—Five shillings;

For a subsequent offence—Two pounds.

(4.) In this section, “attend school” means to be present at a school at any time during a session of the school.

9.—(1.) Notwithstanding anything contained in this Ordinance, the Administrator in Council or a person authorized by the Administrator in Council to grant an exemption under this section may in writing exempt a child from attendance at school during such period as he specifies in writing if in his discretion he deems it necessary to do so by reason of the poverty or sickness of a parent of the child or for any other cause which he deems adequate.

Administrator, &c., may exempt child from attendance. Sub-section (1.) amended by No. 22, 1959, s. 6 and First Schedule.

(2.) An exemption granted under the last preceding subsection is a sufficient excuse for the purposes of section six of this Ordinance.

Employment of
children
prohibited
at certain
times, &c.

10.—(1.) Subject to sub-section (3.) of this section, a person shall not employ or cause or permit to be employed a child who, under section five of this Ordinance, is required to be enrolled at a school—

- (a) during the ordinary school hours, in any labour or occupation; or
- (b) during any time of the day or night, in any labour or occupation which, by reason of the nature, duration, time or place of the labour or occupation, is more likely than not to prevent the child from profitably taking part in the school lessons on the day of the employment or the day next succeeding that day.

Penalty: Ten pounds.

(2.) A parent who employs his child in any labour or occupation exercised by way of trade or for the purpose of gain shall be deemed to employ the child in that labour or occupation within the meaning of this section.

(3.) The Administrator or a person authorized in writing by the Administrator to grant exemptions under this section may in writing grant exemption from a provision of sub-section (1.) of this section in respect of a child if in his discretion he deems it necessary to do so by reason of the poverty or sickness of a parent of the child or other pressing necessity.

(4.) An exemption granted under the last preceding sub-section for employment during the ordinary school hours is a sufficient excuse for the purposes of section six of this Ordinance.

Arrangements
with States.

11. The Minister may from time to time make arrangements with the Government of a State—

- (a) for or in relation to the education in institutions in that State of blind, deaf, mute or mentally defective children ordered to be sent or committed to institutions under the provisions of this Ordinance; and
- (b) for the payment of expenses of or in relation to that education.

Blind, deaf,
mute and
mentally
defective
children.

12.—(1.) A parent of a blind, deaf, mute or mentally defective child shall, if he is able, provide the child, from the time when the child attains the age of six years until he attains the age of sixteen years, with efficient and suitable education.

(2.) If a parent having the actual custody of a blind, deaf, mute or mentally defective child is unable to provide the child with efficient and suitable education, he shall give notice in

writing to the Administrator of his inability to do so and shall, from such date as is specified in writing by the Administrator, send the child to such institution (if any) as the Administrator in writing directs, and shall pay to the Administrator such periodical sums towards the cost of the maintenance of the child at that institution as are agreed between the parent and the Administrator.

(3.) If no periodical sums are so agreed, upon the complaint of the Administrator or a person authorized by the Administrator to make a complaint under this section, a court may, if satisfied that the parent is able to contribute towards the maintenance of the child, make an order that the parent shall pay to the Administrator such periodical sums, not exceeding Ten shillings a week, towards the maintenance of the child at the institution as the court deems proper and specifies in the order.

(4.) If the parent—

(a) fails to provide the child with efficient and suitable education and fails to give notice to the Administrator that he is unable to do so; or

(b) fails to send the child to such institution (if any) as the Administrator directs under sub-section (2.) of this section,

the parent may be summoned on the complaint of the Administrator, or of a person authorized in writing by the Administrator to make a complaint under this section, to attend before a court, at a time and place mentioned in the summons, to show cause why the child should not be sent to an institution.

(5.) Upon the hearing of the summons the court may, if it is of the opinion that the application should be granted—

(a) order that the child be sent to an institution specified by the court; or

(b) commit the child to an institution so specified.

(6.) If the court orders that the child be sent to an institution, the parent shall, in the absence of one or more of the excuses specified in sections seven, nine and ten of this Ordinance, cause the child to attend the specified institution on every occasion on which it is open.

Penalty:

For a first offence—Five shillings;

For a subsequent offence—Two pounds.

(7.) If the court commits the child to an institution, the mandate of commitment shall state a period to be the period of detention.

(8.) The detention shall cease—

(a) in the case of a mentally defective child—

- (i) when the child attains the age of twenty-one years;
 - (ii) when the mandate is discharged, upon the complaint of any person, by the order of a court, made on medical evidence showing to the satisfaction of the court that the child is mentally fit to be admitted to intercourse with the general public;
 - (iii) when the mandate is discharged by order of the Supreme Court;
 - (iv) when an Order is made under the *Mental Defectives Ordinance* 1940-1955 in accordance with Form 5 of that Ordinance; or
 - (v) when the period stated by the court to be the period of detention expires,
- whichever first occurs; or

(b) in the case of a blind, deaf or mute child—

- (i) when the child attains the age of sixteen years; or
 - (ii) when the period stated by the court to be the period of detention expires,
- whichever first occurs.

(9.) A court may, at any time, on the application of the Administrator or of a person authorized in writing by the Administrator to make an application under this section, commit a child who has been committed to an institution under this section to another institution to be kept there for the remainder or any part of the period for which the child was committed to the first mentioned institution.

(10.) Subject to sub-section (12.) of this section, where under sub-section (5.) of this section a court commits a child to an institution—

- (a) the court, at the time of the committal; or
- (b) the court or another court at any time after the committal, upon the complaint (which may be made at any time) of the Administrator or of a person authorized in writing by the Administrator to make a complaint under this section,

may, if satisfied that a parent of the child is able to contribute towards the maintenance of the child, make an order that the parent shall pay to the Administrator such periodical sums, not

exceeding Ten shillings a week, towards the maintenance of the child at the institution as the court making the order deems proper and specifies in the order.

(11.) Upon the complaint (which may be made at any time) of the Administrator, a person authorized in writing by the Administrator to make a complaint under this section or a parent who has, by an order made under any provision of this section, been ordered to make payments, a court may from time to time according to the ability of a parent who has been so ordered to make payments or the respective abilities of that parent and any other parents of the child, make a further order—

- (a) varying the periodical sums to be paid by virtue of the first mentioned order;
- (b) continuing or varying those sums and distributing the liability to pay them amongst the parents; or
- (c) suspending or renewing the operation of the first mentioned order or any further order,

but so that the periodical sums ordered to be paid do not exceed Ten shillings a week.

(12.) A person shall not, by any order made under this section, be ordered to make any payment unless the summons or a notice of the hearing of the complaint on which the order is to be made has been served on him or he has had such other notice of the hearing as the court deems reasonable.

(13.) For all the purposes of this section and in any proceedings under this section—

- (a) a certificate purporting to be signed by a legally qualified medical practitioner, certifying that in his opinion the sight, hearing, speech or mind of the child mentioned in the certificate is so defective as to render the child unfit to be educated except by special means, shall be *prima facie* evidence that the child is blind, deaf, mute or mentally defective, according to the nature of the certificate; and
- (b) whether efficient and suitable instruction is being provided for a blind, deaf, mute or mentally defective child or not shall be a matter for the decision of the Administrator, who may, if he deems it necessary, obtain a report on the instruction by an inspector or some other person authorized by him in writing to do so; and the Administrator's decision on the matter shall be conclusive.

Medical
Inspector
of school
children.

13.—(1.) The Administrator may appoint a person who is a registered medical practitioner under the *Medical Practitioners Registration Ordinance 1935-1957* to be a Medical Inspector of School Children.

(2.) A Medical Inspector of School Children shall, at least once in each year, make a medical examination of every child not under six years of age but under the school leaving age whose attendance at a school is required by the provisions of this Ordinance.

Dental
Inspector of
school children.

14.—(1.) The Administrator may appoint a person who is a registered dentist under the *Dentists Registration Ordinance 1953-1957* to be the Dental Inspector of School Children.

(2.) The Dental Inspector of School Children shall, at least once in each year, make a dental examination of every child not under six years of age but under the school leaving age whose attendance at any school is required by the provisions of this Ordinance.

Responsibility
of parent or
guardian
regarding
medical and
dental
examinations.

15. A parent of a child not under six years of age but under the school leaving age whose attendance at a school is required by the provisions of this Ordinance shall not refuse to permit the child to undergo a medical or dental examination proposed to be made in pursuance of section thirteen of this Ordinance or the last preceding section.

Penalty: One pound.

Religious
instruction
in public
schools.
Sub-section (1.)
amended by
No. 22, 1959,
s. 6 and First
Schedule.

16.—(1.) Subject to this section, a Minister of religion, either personally or by the agency of a person authorized by him and approved by the Administrator in Council, may, with the consent of the Administrator in Council, during school hours give, to the children in attendance at a public school who are members of the religious society or denomination of which he is a Minister, religious instruction during one hour in every week on such school day or school days, and at such times, as the Administrator in Council determines.

(2.) A parent of a child may withdraw the child from all religious instruction in a public school if the parent notifies the head teacher of the public school that he wishes to do so.

Averments.

17.—(1.) In a prosecution for an offence against a provision of this Ordinance, an averment of the prosecutor contained in the information or complaint is evidence of the matter averred.

(2.) This section applies to a matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or any other matter is given; or
- (b) the matter averred is a mixed question of law and fact,

but where the matter averred is a mixed question of law and fact the averment is evidence of the fact only.

(3.) Evidence given in support or rebuttal of the matter so averred shall be considered on its merits and the credibility and probative value of that evidence shall be neither increased nor diminished by reason of this section.

(4.) This section does not lessen or affect any burden of proof otherwise falling upon the defendant.

18.—(1.) An averment shall not be made under the last preceding section unless the Crown Law Officer is satisfied that the averment is reasonably necessary for the administration of justice and will not impose hardship upon, or occasion injustice to, the defendant, and certifies to that effect on the paper containing the averment.

Restrictions
on use of
averments.

(2.) An averment is not evidence for the purposes of the last preceding section unless a copy of the paper containing the averment has been served on the defendant in the same manner as the process requiring his attendance before the court.

(3.) Service of the copy of the paper containing the averment may be proved in the same manner as the service of the process requiring the attendance of the defendant before the court.

(4.) Upon the hearing of an information or complaint in respect of an offence against a provision of this Ordinance, the court may, if the amendments can be made without hardship or injustice to the defendant, allow such amendments to be made in the writing containing an averment as appear to the court to be necessary or desirable to enable the real question in dispute to be determined.

(5.) Where the court considers that a defendant has been misled by the form of an averment, it may refuse to allow an amendment of the averment or may adjourn the hearing of the case for such period as it thinks fit.

(6.) Upon an adjournment under the last preceding subsection, the court may make such order as to the costs of the adjournment as it thinks fit.

Regulations.

19. The Administrator may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and, in particular, for prescribing penalties, not exceeding a fine of Ten pounds, for offences against the regulations.
