

EDUCATION ACT 1972

Reprint No. 1—1.7.91

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[New Part 5 and Appendices]

[New Parts 3 and 6 and Appendices]

[Whole Act replaced]

[New Parts 2, 2A and Appendices]

[New Parts 1, 4, 5, 6 and Appendices]

[New Parts 1, 2, 10 and Appendices]

[New Parts 1, 8, 10 and Appendices]

[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]

South Australia

EDUCATION ACT 1972

An Act to make proper provision for primary and secondary education in this State; to repeal the Education Act 1915; to amend the Statutes Amendment (Long Service Leave) Act 1958, and the Age of Majority (Reduction) Act 1970; and for other purposes.

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 31 May 2001.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 November 1984.

EDUCATION ACT 1972

being

Education Act 1972 No. 154 of 1972
[Assented to 7 December 1972]¹

as amended by

Education Act Amendment Act 1974 No. 26 of 1974 [Assented to 11 April 1974]²
Education Act Amendment Act (No. 2) 1974 No. 97 of 1974 [Assented to 5 December 1974]
Education Act Amendment Act 1976 No. 4 of 1976 [Assented to 19 February 1976]³
Education Act Amendment Act (No. 2) 1976 No. 113 of 1976 [Assented to 16 December 1976]⁴
Education Act Amendment Act 1979 No. 25 of 1979 [Assented to 15 March 1979]⁵
Children's Protection and Young Offenders Act 1979 No. 44 of 1979 [Assented to 15 March 1979]⁶
Education Act Amendment Act 1980 No. 31 of 1980 [Assented to 17 April 1980]
Education Act Amendment Act (No. 2) 1980 No. 108 of 1980 [Assented to 18 December 1980]⁷
Education Act Amendment Act 1981 No. 13 of 1981 [Assented to 19 March 1981]⁷
Education Act Amendment Act 1983 No. 93 of 1983 [Assented to 15 December 1983]⁸
Statute Law Revision Act 1984 No. 50 of 1984 [Assented to 24 May 1984]⁹
Education Act Amendment Act 1986 No. 83 of 1986 [Assented to 4 December 1986]¹⁰
Education Act Amendment Act 1987 No. 61 of 1987 [Assented to 22 October 1987]¹¹
Education Act Amendment Act 1989 No. 26 of 1989 [Assented to 27 April 1989]¹²
Education (Part-time Remuneration) Amendment Act 1991 No. 2 of 1991 [Assented to 14 March 1991]
Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act 1991 No. 34 of 1991
[Assented to 24 April 1991]¹³
Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]¹⁴
Education (Non-Government Schools) Amendment Act 1993 No. 19 of 1993 [Assented to 8 April 1993]¹⁵
Education (Truancy) Amendment Act 1993 No. 60 of 1993 [Assented to 27 May 1993]¹⁶
Statutes Amendment (Abolition of Compulsory Retirement) Act 1993 No. 75 of 1993 [Assented to 21 October
1993]¹⁷
Education (Teaching Service) Amendment Act 1996 No. 25 of 1996 [Assented to 2 May 1996]¹⁸
Education (Government School Closures and Amalgamations) Amendment Act 1998 No. 80 of 1998 [Assented
to 24 December 1998]
District Court (Administrative and Disciplinary Division) Amendment Act 2000 No. 4 of 2000 [Assented to
20 April 2000]¹⁹
Education (Councils and Charges) Amendment Act 2000 No. 92 of 2000 [Assented to 21 December 2000]²⁰

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 1.

- 1 Came into operation (except Part 4) 14 December 1972: *Gaz.* 14 December 1972, p. 2628; Part 4
Division 1 came into operation 1 July 1973: *Gaz.* 7 June 1973, p. 2422; remainder of Act came into
operation 1 February 1974: *Gaz.* 24 January 1974, p. 211.
- 2 Came into operation 1 July 1974: s. 2.
- 3 Came into operation 8 April 1976: *Gaz.* 8 April 1976, p. 1892.
- 4 Came into operation 29 January 1977: *Gaz.* 27 January 1977, p. 179.
- 5 Came into operation (except Part 3) 1 January 1978: s. 2(1); Part 3 came into operation 1 July 1979: *Gaz.*
28 June 1979, p. 1951.
- 6 Came into operation (except ss. 9(3)(b), 50(2), (3) and the part of the schedule affecting the Guardianship
of Infants Act 1940) 1 July 1979: *Gaz.* 28 June 1979, p. 1951; s. 50(2) came into operation 19 February
1981: *Gaz.* 19 February 1981, p. 455; remainder of suspended provisions repealed by Children's
Protection and Young Offenders Act Amendment Act 1980.
- 7 Came into operation 14 May 1981: *Gaz.* 14 May 1981, p. 1407.
- 8 Came into operation 15 December 1983: *Gaz.* 15 December 1983, p. 1673.
- 9 Came into operation (except Scheds. 1, 3, 4 and 5) 1 November 1984: *Gaz.* 1 November 1984, p. 1398;
Scheds. 1, 3 and 5 came into operation 1 January 1985: *Gaz.* 13 December 1984, p. 1811; Sched. 4 came
into operation 6 July 1985: *Gaz.* 9 May 1985, p. 1398.
- 10 Came into operation (except ss. 25 and 26) 1 December 1987: *Gaz.* 22 October 1987, p. 1176; new
ss. 75A and 75C (as inserted by s. 26) came into operation 9 May 1991: *Gaz.* 9 May 1991, p. 1489; s. 25
and new s. 75B (as inserted by s. 26) had not been brought into operation at the date of, and the
amendments effected by those provisions have not been included in, this reprint.
- 11 Came into operation 1 January 1988: *Gaz.* 10 December 1987, p. 1796.
- 12 Came into operation 23 June 1989: *Gaz.* 25 May 1989, p. 1394.
- 13 Came into operation 1 July 1991: *Gaz.* 27 June 1991, p. 2059.
- 14 Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.
- 15 Came into operation 12 July 1993: *Gaz.* 27 May 1993, p. 1752.
- 16 Came into operation 1 January 1994: *Gaz.* 4 November 1993, p. 2167
- 17 Came into operation 1 January 1994: s. 2.
- 18 Came into operation 5 December 1996: *Gaz.* 5 December 1996, p. 1812.
- 19 Schedule 1 (cl. 10) came into operation 1 June 2000: *Gaz.* 18 May 2000, p. 2554.
- 20 Came into operation (except definition of "affiliated committee" (as inserted by s. 3(a)), ss. 3(b), (c), 5, 7
and Scheds. 1 & 2) 1 February 2001: *Gaz.* 1 February 2001, p. 392; definition of "affiliated committee"
(as inserted by s. 3(a)), ss. 3(b), (c), 5, 7 and Scheds. 1 & 2 came into operation 31 May 2001:
Gaz. 31 May 2001, p. 1893.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Education Act 1972*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

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Interpretation

5. (1) In this Act, unless the contrary intention appears—

"**adult**" means a person who has attained 18 years of age;

"**affiliated committee**"—*see* section 86;

"**the Appeal Board**" means the Teachers Appeal Board constituted under this Act;

"**child of compulsory school age**" means a child of or above the age of six years who has not yet attained the age of fifteen years;

"**classify**" includes reclassify;

"**correspondence school**" means a correspondence school established under this Act;

"**the Department**" means the Education Department;

"**the Director-General**" means the person for the time being holding, or acting in, the office of Director-General of Education under this Act;

"**governing authority**" in relation to a non-Government school or proposed non-Government school, means the person, board, committee or other authority by which the school is or will be administered;

"**governing council**" means a school council that is, under its constitution, jointly responsible with the head teacher of the school for the governance of the school;

"**Government school**" means a school established under this Act, or the repealed Act, for the purpose of providing courses of instruction in pre-school, primary or secondary education;

"**head teacher**" means—

(a) in relation to a Government school—the person for the time being designated by the Director-General as the head teacher of the school;

(b) in relation to a non-Government school—the person for the time being designated by the governing authority as the head teacher of the school;

"**the Institute of Teachers**" means the South Australian Institute of Teachers Incorporated;

"**the Minister**" means the Minister of Education or any other Minister of the Crown for the time being exercising and discharging the functions and responsibilities of the Minister of Education;

"**non-Government school**" means any school or institution (not being a Government school) at which any person or body of persons provides, or offers to provide, courses of instruction in primary or secondary education;

"**officer**" in relation to the teaching service means a teacher holding office in the teaching service;

"**parent**" of a child includes—

- (a) a person who has legal custody or guardianship of the child; and
- (b) a person standing *in loco parentis* in relation to the child,

but does not include a parent of the child where another parent or person has legal custody or guardianship of the child to the exclusion of that parent;

"**pre-school education**" means the provision of courses of training and instruction to children who have not yet attained the age of five years;

"**promotional level**" in relation to a position in the teaching service means a classification level for a position declared by regulation to be a promotional level;

"**reclassify**" includes alter an officer's entitlement to an increment of remuneration;

"**recognised kindergarten**" means—

- (a) any kindergarten registered as a children's services centre under the *Children's Services Act 1985*; or
- (b) any other prescribed kindergarten;

"**the register**" means the register of teachers established under Part 4;

"**registered**", in relation to a teacher, means registered under Part 4, and "**registration**" has a corresponding meaning;

"**registered non-Government school**" means a non-Government school registered under Part 5;

"**the repealed Act**" means the *Education Act 1915* repealed by this Act;

"**residence**" means any form of accommodation provided by the Minister for an officer of the teaching service or any other person;

"**school**" means any Government or non-Government school;

"**special school**" means a school established for the benefit of a particular class of children who require some special form of education, treatment or care;

"**teacher**" means a person who gives or is qualified to give instruction in any course of—

- (a) pre-school education; or

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- (b) primary education; or
- (c) secondary education;

"**the teaching service**" means the teaching service constituted under Part 3, and includes the teaching service as constituted under the repealed Act;

"**technical education**" includes instruction in the principles and practice of any industrial, commercial, agricultural or domestic science or art.

(2) A reference in this Act to the effective service of an officer is a reference to—

- (a) the period (if any) of the officer's continuous service in the teaching service; and
- (b) any other period that is, by determination of the Minister, to be regarded as forming the whole, or part, of the officer's effective service,

but does not include any period that is, by determination of the Minister, not to be regarded as a period of effective service for the purposes of this Act.

(3) The Minister may, by instrument in writing, determine in relation to any specified officers, or officers of any specified class, that a period referred to in the instrument is, or is not, to be regarded as a period of effective service for the purposes of this Act.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

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PART 2
THE MINISTER AND THE DEPARTMENT

DIVISION 1—THE MINISTER

Administration of this Act

6. Subject to this Act, the Minister shall have the general administration of this Act and the administration and control of the teaching service.

The Minister

7. (1) The Minister—

- (a) shall be a body corporate with perpetual succession and a common seal; and
- (b) shall be capable in his corporate name of acquiring, holding and disposing of real and personal property; and
- (c) shall be capable of acquiring or incurring any other legal rights and liabilities and of suing or being sued; and
- (d) shall have the powers, authorities, duties and obligations prescribed by or under this Act.

(2) Where an apparently genuine document purports to bear the common seal of the Minister, it shall be presumed, in the absence of proof to the contrary, that the common seal of the Minister was duly affixed to that document.

Power of delegation

8. (1) The Minister may, by instrument in writing delegate to the Director-General or the person for the time being holding or acting in any position or office in the Department or the teaching service, any of his powers, duties, responsibilities and functions under this Act except his power to dismiss an officer of the teaching service.

(2) A delegation under this section shall be revocable at will and shall not prevent the exercise of any power by the Minister himself.

General powers of Minister

9. (1) The Minister shall establish and maintain such Government schools as may be necessary—

- (a) for the provision of primary and secondary education for children whose parents desire that they should receive education at Government schools; and
- (b) for the provision of pre-school education (to such an extent as the Minister considers practicable and desirable) for children whose parents desire that they should receive pre-school education at Government schools.

(2) The Minister shall establish and maintain such correspondence schools as he considers necessary or desirable in the public interest.

(3) Subject to Part 2A, the Minister may close or amalgamate Government schools.

(4) The Minister may appoint such officers and employees (in addition to the employees and officers of the Department and the teaching service) as he considers necessary for the proper administration of this Act or for the welfare of the students of any school.

(5) The Minister may establish such institutions and make such other provision as he considers necessary or expedient for the proper education and training of teachers.

(6) The Minister may, subject to this Act, establish and maintain such residences for the accommodation of teachers or students as he considers necessary or desirable for the purposes of this Act.

(7) The Minister may, subject to and in accordance with the *Land Acquisition Act 1969*, acquire land for the purposes of this Act.

(8) The Minister may, in such manner and to such extent as he thinks fit, provide or arrange for the transport of children to and from any school and may pay the whole or any portion of the cost of transporting children to and from any school.

(9) The Minister may establish any school, college or centre for the purpose of providing technical education or any other kind of education that he considers desirable in the public interest.

(9a) The Minister may provide courses of instruction or other services to students who do not reside in this State.

(10) The Minister may acquire, deal with, or dispose of, real or personal property as he thinks fit.

Advisory committees

10. (1) The Minister may appoint such advisory committees as he considers necessary to investigate, and advise him upon, any matters affecting the administration of this Act or the provision of proper pre-school, primary or secondary education in this State.

(2) An advisory committee constituted under this section shall consist of such members as the Minister thinks fit to appoint to the committee.

(3) A member of an advisory committee shall hold office at the pleasure of the Minister.

(4) Subject to any direction of the Minister, the procedure of an advisory committee shall be determined by the committee.

(5) The Minister may pay to the members of an advisory committee such allowances and expenses as may be determined by the Governor.

DIVISION 2—THE DEPARTMENT

Continuance of the Department

11. (1) The Department established under the *Public Service Act 1967* and entitled the "Education Department" shall continue in existence.

(2) There shall be a Director-General of Education who shall be the Chief Executive Officer of the Department.

(3) There shall be such Deputy Directors-General of Education as may be necessary or expedient for the purposes of this Act.

(4) There shall be such other employees in the Department as may be necessary or expedient for the proper administration of this Act.

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Duties of the Director-General

12. The Director-General—

- (a) shall be responsible to the Minister for maintaining a proper standard of efficiency and competency in the teaching service; and
- (b) shall have such other powers and perform such other duties as are invested in or imposed upon him under this Act or as he may be directed to exercise or perform by the Minister.

Delegation, etc.

13. (1) The Director-General may, with the consent of the Minister, delegate, by instrument in writing, any of his powers or functions to any person for the time being holding or acting in any position or office in the Department or the teaching service.

(2) Any such delegation shall be revocable at will and shall not prevent the exercise of any power by the Director-General himself.

(3) Where the Director-General is absent from the duties of his office for any reason, a Deputy Director-General shall act in the office of the Director-General and shall exercise and perform the powers, duties, functions and obligations of the Director-General.

Report

14. (1) The Director-General shall in each year make a report on the administration of the Department up to the thirty-first day of December of the year last preceding the date of the report.

(2) The Minister shall cause a copy of the report to be laid before each House of Parliament as soon as practicable after he receives the report.

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PART 2A
CLOSURE OR AMALGAMATION OF GOVERNMENT SCHOOLS

Application of Part

14A. (1) A Government school cannot be closed or amalgamated with another Government school except in accordance with this Part.

(2) However, this Part does not apply—

- (a) to the temporary closure of a Government school in an emergency or for the purposes of carrying out building work; or
- (b) to the closure of a Government school if—
 - (i) a majority of the parents of the students attending the school; or
 - (ii) where the school is wholly or principally for adult students—a majority of the students attending the school,

indicate that they are not opposed to the closure.

Process for closure or amalgamation of Government schools

14B. The following provisions apply in relation to a closure or amalgamation of Government schools to which this Part applies:

- (a) schools cannot be closed or amalgamated except after a review has been conducted under this Part in relation to the schools;
- (b) a review under this Part is to focus on all of the Government schools within an area determined by the Minister and is to address the question whether all those schools continue to be required and, if not, whether a school should be closed or amalgamated with another school;
- (c) the Minister must give written notice of a proposed review under this Part to—
 - (i) the head teacher; and
 - (ii) the presiding member of the school council,of each of the schools subject to the review;
- (d) the Minister must, within 21 days of giving notice under paragraph (c)—
 - (i) appoint a committee to conduct the review; and
 - (ii) provide the committee with details of the Minister's reasons for the review.

Review committee

14C. (1) A committee appointed by the Minister under this Part will consist of—

- (a) at least two (but not more in total than the number gained by multiplying the number of schools being reviewed by two) persons nominated by the Minister (one of whom will be appointed by the Minister to be the presiding member); and

(b) —

- (i) if the schools are situated within the area of a council or councils constituted under the *Local Government Act 1934*—the mayor or chairman of each of those councils (or a person nominated by each such mayor or chairman); or
 - (ii) in any other case—a person nominated by the Minister for Local Government; and
- (c) the Director-General (or a person nominated by the Director-General); and
- (d) a person (not being a teacher at a school that is subject to the review) nominated by the Australian Education Union (S.A. Branch); and
- (e) the head teacher of each of the schools subject to the review; and
- (f) a nominee from the school council of each of the schools subject to the review.

(2) The Minister must appoint a member of the committee, nominated by the presiding member, to be the deputy presiding member.

(3) The terms and conditions of membership of the committee will be as determined by the Minister.

(4) The quorum for the transaction of business at a meeting of the committee is determined by dividing the number of persons entitled to attend and vote at the meeting by two, disregarding any fraction, and adding one.

(5) Each member of the committee is entitled to one vote on any question arising for decision by the committee.

(6) A decision supported by a majority of the votes cast by members of the committee present at a meeting of the committee is a decision of the committee.

(7) The presiding member or, in the presiding member's absence, the deputy presiding member will preside at any meeting of the committee.

(8) The person presiding at a meeting of the committee has, in addition to a deliberative vote, a casting vote in the event of an equality of votes.

(9) The committee may act despite a vacancy in its membership or a defect in the appointment of a member.

(10) Subject to this Part, the committee may determine its own procedures.

Conduct of review

14D. (1) A committee, in conducting a review in relation to the Government schools within a particular area, must—

- (a) call for submissions relating to—
 - (i) the present and future use of Government schools within the area; and
 - (ii) the likely effect on Government schools outside the area in the event of the closure or amalgamation of schools within the area; and

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- (b) in relation to each of the Government schools within the area—
- (i) invite submissions from and meet with—
 - (A) the school council; and
 - (B) teachers and parents of students of the school; and
 - (ii) invite submissions from representatives of local communities likely to be affected by a decision to close the school or to amalgamate it with another school.

(2) In making a recommendation relating to the closure of a school or the amalgamation of a school with another school, the committee must have regard to the educational, social and economic needs both of the local communities likely to be affected by the carrying out of the recommendation and of the State as a whole.

Report on review

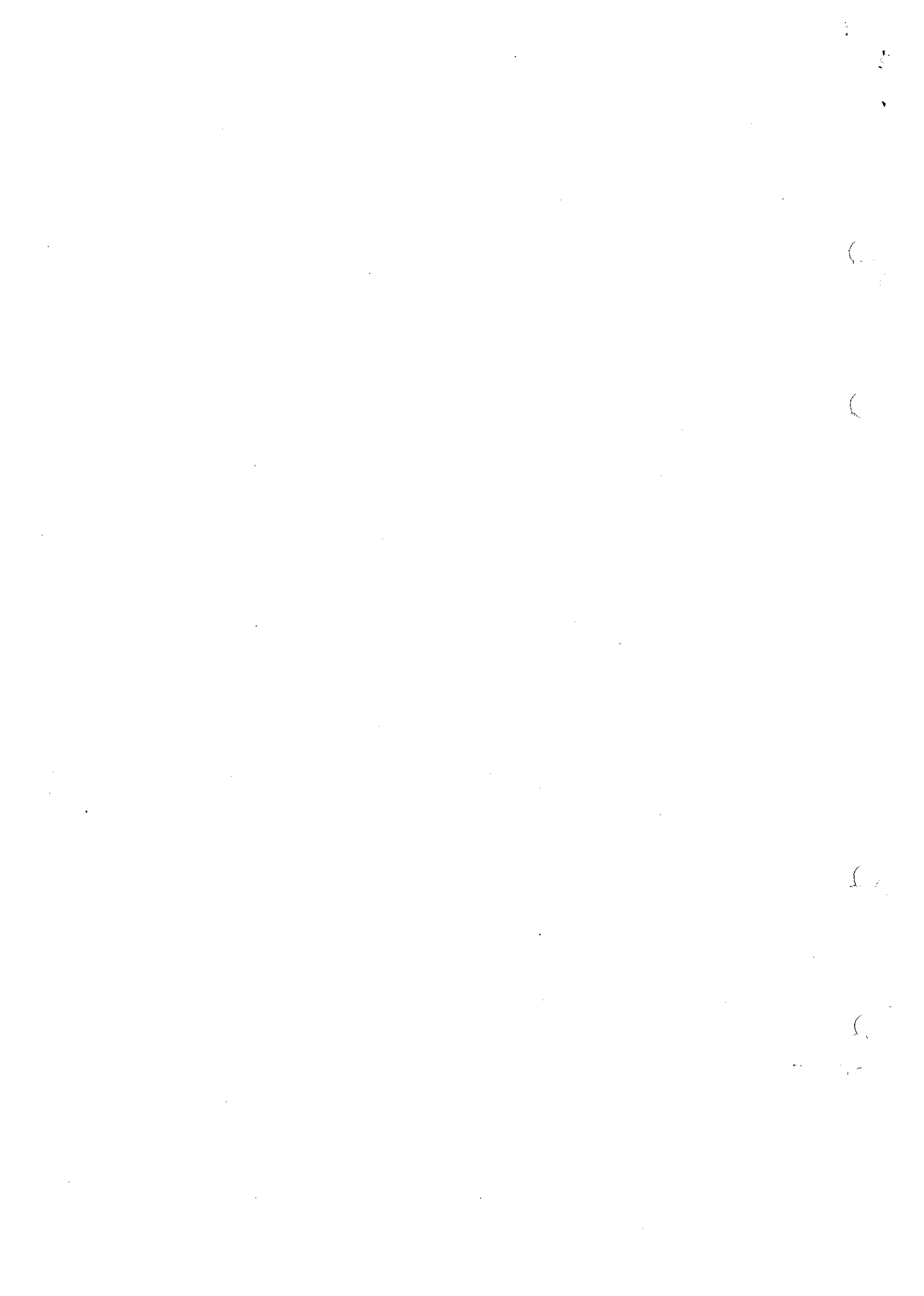
14E. A committee must, no later than a date specified by the Minister (being a date falling not less than three months after the date on which the committee was appointed), submit to the Minister its report on the review and the recommendations of the committee as to the retention, closure or amalgamation of the schools subject to the review.

Minister's decision as to closure or amalgamation

14F. (1) The Minister may close a Government school or amalgamate two or more Government schools after giving due consideration to the report and recommendations of a committee that has conducted a review under this Part in relation to the school or schools.

(2) The Minister must, as soon as reasonably practicable after making a decision to close a school or amalgamate schools, give written notice of the decision and of the reasons for it to the head teacher and school council of each of the schools affected by the decision.

(3) If the Minister makes a decision that a school should be closed or that schools should be amalgamated contrary to the recommendations of a committee, the Minister must, within three sitting days of giving notice under subsection (2), cause a copy of the committee's report and recommendations and a statement of the reasons for the Minister's decision to be laid before each House of Parliament.



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**PART 3
THE TEACHING SERVICE**

DIVISION 1—APPOINTMENT TO THE TEACHING SERVICE

Appointment to teaching service

15. (1) Subject to this Act, the Minister may appoint such teachers to be officers of the teaching service as he thinks fit.

(2) An officer may be so appointed on a permanent or temporary basis.

(3) The first appointment of an officer to the teaching service may be made upon probation.

(4) The probation shall be for such period of effective service (not exceeding two years effective service) as may be determined by the Minister.

(5) No officer appointed on a permanent basis shall be dismissed or retired from the teaching service except in accordance with the provisions of this Act.

(6) An officer appointed on a temporary basis shall hold office at the pleasure of the Minister.

DIVISION 1A—CLASSIFICATION, PROMOTION AND TRANSFER

Classification of officers and positions

15A. The Director-General may from time to time—

(a) fix the duties and titles of officers and positions in the teaching service;

(b) classify officers in the teaching service;

(c) in classifying officers, impose conditions, which may include conditions—

(i) limiting the classifications to specified terms; and

(ii) fixing the classifications of officers at the end of such terms;

(d) classify positions in the teaching service at promotional levels.

Appointment to promotional level positions

15B. (1) The Minister may, subject to this Act, appoint officers to positions in the teaching service classified at promotional levels.

(2) The Minister may, in making such appointments, impose conditions, which may include conditions—

(a) limiting the appointments to specified terms; and

(b) fixing their classifications at the end of such terms or fixing the processes to be followed for appointment of the officers at the end of such terms.

(3) The Director-General may appoint an officer to a position classified at a promotional level in an acting capacity for a term not exceeding 12 months.

Transfer

15C. The Director-General may transfer officers between positions in the teaching service but not so as to—

- (a) reduce an officer's salary without the officer's consent; or
- (b) effect promotion of an officer to a position at a higher classification level.

DIVISION 2—RETRENCHMENT AND RETIREMENT OF OFFICERS

Retrenchment of officers of the teaching service

16. (1) Where the Minister is satisfied that—

- (a) the volume of work in any section of the teaching service has diminished; and
- (b) in consequence a reduction in staff of the teaching service has become necessary in the interest of economy; and
- (c) an officer should be retrenched for that purpose,

the Minister may, by a written determination under his hand, retrench that officer as from a date specified in the determination.

(2) An officer who is retrenched under the provisions of this section shall be entitled to receive—

- (a) at least twelve weeks notice in writing prior to the date of retrenchment; or
- (b) where the notice is less than twelve weeks, a sum equal to his salary for the period by which the notice falls short of twelve weeks.

(3) An officer may, within fourteen days after he receives notice of a determination under this section, appeal against the determination to the Appeal Board.

(4) The Appeal Board may, upon the hearing of an appeal under this section, revoke the determination or, where the determination has taken effect, order that the officer be reinstated in the teaching service.

Incapacity of members of the teaching service

17. (1) Where the Director-General is satisfied that an officer is, by reason of mental or physical illness or disability, incapable of performing satisfactorily the officer's duties, the Director-General may do one or more of the following:

- (a) by written determination, transfer the officer to some other position in the teaching service or vary the officer's duties and assign an appropriate classification to the officer;
- (b) recommend to the Minister that the officer be transferred to some other employment in the Government of the State;
- (c) grant the officer leave of absence (without remuneration) from the teaching service;
- (d) recommend to the Minister that the officer be retired from the teaching service.

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(1a) The Director-General must, before taking action or making a recommendation under subsection (1) that would result in reduction of remuneration or retirement, be satisfied that a transfer or variation of duties without reduction of remuneration is not reasonably practicable in the circumstances.

* * * * *

(1c) The Minister, on receiving a recommendation under subsection (1)(b), may appoint the officer to an office or position pursuant to section 9(4) or take action with a view to securing for the officer some other appropriate employment in the Government of the State.

(2) The Minister, on receiving a recommendation under subsection (1)(d), may, in accordance with that recommendation, retire the officer from the teaching service.

(3) An officer may, within fourteen days after he receives notice of a determination under this section or of a decision made by the Minister to transfer or retire him in accordance with a recommendation under this section, appeal to the Appeal Board against the determination or decision.

(4) The Appeal Board may, upon the hearing of an appeal under this section, revoke the determination or decision and, where effect has been given to the determination or decision, order that the officer be reinstated as if no determination or decision had been made.

DIVISION 3—LONG SERVICE LEAVE

* * * * *

Long service leave

19. (1) An officer's entitlement to long service leave accrues as follows:

- (a) the officer is entitled to 63 days' leave in respect of the first seven years of effective service;
- (b) the officer is then entitled to 0.75 of a day's leave for each subsequent complete month of effective service until the end of the 15th year of effective service;
- (c) the officer is then entitled to 1.25 days' leave for each subsequent complete month of effective service.

(2) Where long service leave is taken by an officer, the officer's entitlement to long service leave is reduced accordingly.

(3) Every day from the commencement to the conclusion of a period of long service leave (whether a working day or not) will be counted as a day of that leave.

(4) This Division—

- (a) does not affect an entitlement to long service leave or payment in lieu of long service leave that accrued before the commencement of the *Education Act Amendment Act 1987*; and
- (b) does not prejudice an entitlement to *pro rata* long service leave arising after five years' effective service that would have come into existence if the *Education Act Amendment Act 1987* had not been enacted.

Taking of long service leave

20. (1) Subject to this section, an officer who has completed at least 10 years' effective service is entitled to take long service leave.

(2) The Director-General may permit an officer who has completed at least seven years' effective service to take long service leave.

(3) Long service leave may only be taken in respect of completed years of effective service.

(4) Long service leave may only be taken at times and for periods that are, in the opinion of the Director-General, convenient to the Department.

(5) Subject to this section, the salary to which an officer is entitled during long service leave is—

(a) where the effective service of an officer consists of full-time service—the salary applicable to the officer's position or classification level during that leave (disregarding any acting appointment);

(b) where the effective service of an officer consists in whole or in part of part-time service—a salary determined by the Director-General.

(6) An officer may elect to take long service leave on half salary and, in that event, may take two days' leave for each whole day of the officer's entitlement.

(7) Where the effective service of an officer consists in whole or in part of part-time service, the officer may elect to take long service leave on the salary applicable to full-time service and, in that event, the period of the long service leave will be reduced accordingly.

(8) The Director-General may authorise payment to an officer on long service leave of such additional salary or allowances as the Director-General considers appropriate.

Payment in lieu of long service leave

21. (1) Where a person ceases to be an officer in the teaching service after not less than seven years' effective service, the person is entitled to payment of the monetary equivalent of the officer's long service leave entitlement as at the date of cessation of service.

(2) Where an officer dies, the Minister must pay to—

(a) the officer's personal representative; or

(b) such of the officer's dependants as the Minister considers appropriate,

the monetary equivalent of the officer's long service leave entitlement as at the date of death.

(3) In determining the monetary equivalent of a long service leave entitlement no allowance will be made for an increase in salary that may or would have been made if the officer's service had not ceased.

(4) The Minister may apply any amount payable to or in respect of an officer under this section in satisfaction of a claim against the officer.

Interruption of service

22. (1) Where a person retires or retired from employment under this Act, or the repealed Act, on the ground of invalidity and is, or was, subsequently employed as an officer, his service before retirement and service after re-employment shall, for the purposes of this Division (except to the extent to which he has received long service leave, or payment in lieu of long service leave, in respect of any such period of service), be taken into account as though that service were continuous.

(2) Where either before or after the commencement of this Act the service of a person employed under this Act, or the repealed Act, was interrupted otherwise than by resignation or dismissal for misconduct and he is, or was, subsequently appointed as an officer of the teaching service within two years after the date of that interruption, his service before the interruption and his service after the interruption shall, for the purposes of this Division (except to the extent to which he has received long service leave, or payment in lieu of long service leave, in respect of any such period of service), be taken into account as though that service were continuous.

(3) Where either before or after the commencement of this Act the service of an officer was interrupted otherwise than by resignation or dismissal for misconduct for a period exceeding two years, the Minister may grant a certificate under this section.

(4) Where the Minister grants a certificate under subsection (3), the service of the officer shall be regarded as continuous notwithstanding the interruption, but the period of the interruption shall not be taken into account in determining the period of the officer's service.

Transfer of teachers to other Government employment

23. (1) If an officer is transferred to any other employment in the Government of the State, and his service in that employment is continuous with his service as an officer, his service as an officer shall be taken into account for the purpose of computing long service leave to which he may be entitled in respect of that other employment.

(2) This section does not apply to service in respect of which long service leave has been granted, or a payment in lieu of long service leave has been made, to the officer under this Act.

Rights of persons transferred to the teaching service

24. (1) Where an officer has previously been in prescribed employment and his service in the prescribed employment is continuous with his service as an officer, the long service leave to which he is entitled under this Act shall be determined on the basis that his service in the prescribed employment is service in the teaching service.

(2) In this section—

"prescribed employment" means—

- (a) employment in the Public Service of the Commonwealth; and
- (b) employment in the Public Service of this State; and
- (c) employment by the Government of the State otherwise than in the Public Service; and
- (d) employment in the Public Service of any other State or Territory of the Commonwealth; and
- (e) employment by a University or College of Advanced Education established in this State; and

(f) any other employment approved by the Minister.

(3) This section does not apply to service in respect of which long service leave has been granted or a payment in lieu of long service leave has been made.

(4) For the purposes of this section, continuity of service is not interrupted by an interval, not exceeding six weeks, between the time that service in the prescribed employment terminated and the time the officer took up his employment as such.

(5) Where there is an interval of more than six weeks between the conclusion of service in the prescribed employment and the commencement of service in the teaching service, the Minister may, if he thinks special reasons exist for so doing, declare that that interval shall not disrupt the continuity of service, and the declaration shall have effect according to its terms.

DIVISION 4—RETIRING AGE

Retiring age

25. (1) An officer may retire on or after the day on which he reaches the age of fifty-five years.

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DIVISION 5—DISCIPLINE

Disciplinary action

26. (1) If an officer—

- (a) contravenes or fails to comply with any provision of this Act; or
- (b) contravenes or fails to comply with any lawful direction given to him under this Act; or
- (c) is negligent, inefficient or incompetent in the discharge of his duties; or
- (d) is absent from duty without proper cause; or
- (e) is guilty of any disgraceful or improper conduct,

there shall be sufficient cause for disciplinary action against that officer.

(2) Where the Director-General finds that there is sufficient cause for disciplinary action under this section—

- (a) he may, by written determination under his hand—
 - (i) reprimand the officer; or
 - (ii) impose a fine upon the officer not exceeding the amount of one weeks salary of the officer; or

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- (iii) reduce the remuneration of the officer by—
 - (A) transferring the officer to another position in the teaching service; or
 - (B) varying the officer's duties and classifying or reclassifying the officer; or
 - (C) removing an entitlement to an increment of remuneration; or
- (iv) suspend the officer from duty (without pay) for a period not exceeding one year; or

(b) he may recommend to the Minister that the officer be dismissed from the teaching service.

(3) The Minister may, upon receipt of a recommendation under subsection (2), dismiss the officer from the teaching service.

(4) An officer may, within fourteen days after he receives notice of a determination under this section or a decision made by the Minister to dismiss him under this section, appeal to the Appeal Board against the determination or decision.

(5) The Appeal Board may, upon the hearing of an appeal under this section, vary or revoke the determination or decision subject to appeal and, if the determination or decision has taken effect, order that the officer be reinstated in the teaching service as if no such determination or decision had been made.

(6) Any fine imposed on an officer under this section may be deducted from the salary or other remuneration payable to that officer.

Suspension

27. (1) Where in the opinion of the Director-General the nature or circumstances of any matter alleged against an officer are such that the officer should not continue in the performance of his duties, the Director-General may suspend the officer.

(2) A suspension under subsection (1) may be made whether or not the officer has been charged with an offence.

(3) Unless the Minister otherwise directs, a person suspended under this section shall be entitled to his salary in respect of the period of suspension.

(4) Where a direction has been given under subsection (3) and the guilt of the suspended officer of the matter alleged against him is not established by due process of law, he shall be entitled to receive the salary to which he would have been entitled if there had been no direction under subsection (3).

DIVISION 6—RECLASSIFICATION

Application to Director-General for reclassification

28. (1) Subject to the regulations, if an officer considers that the classification of the officer or a position occupied by the officer is not appropriate in view of the duties of the officer or on any other ground, the officer may lodge with the Director-General an application for reclassification.

(2) An application under subsection (1) must be made in a manner and form approved by the Director-General.

(3) The Director-General may, on the application of an officer, reclassify the officer or a position occupied by the officer.

(4) Nothing in this section limits the Director-General's general power to reclassify officers or positions in the teaching service.

Classification review panels

29. (1) The Minister may establish classification review panels for the purposes of this Division.

(2) A review panel is to consist of three persons appointed by the Minister, of whom—

(a) one will be appointed to chair the panel; and

(b) one will be an officer of the teaching service selected by the Minister from a panel of officers nominated by the Institute of Teachers; and

(c) one will be an officer of the teaching service selected by the Minister from a panel of officers nominated by the Director-General.

(3) The Minister may from time to time invite the Institute of Teachers to nominate officers to constitute the panel referred to in subsection (2)(b).

(4) If the Institute of Teachers fails to make a nomination in response to an invitation under subsection (3) within the time allowed in the invitation (which must be at least 30 days), the Minister may choose officers instead of nominees of the Institute and any officers so chosen are to be taken to have been nominated to the relevant panel.

(5) A person ceases to be a member of a panel if the person—

(a) was selected from a panel of officers of the teaching service and ceases to be an officer of the teaching service; or

(b) resigns by notice in writing addressed to the Minister; or

(c) is removed from the panel by the Minister on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties; or

(d) has completed a period of two years as a member of the panel since being appointed to the panel, and is not reappointed to the panel.

(6) If proceedings before a panel are part-heard when a member of the panel ceases to be an officer of the teaching service, resigns under this section or completes a period of two years' service on the panel, the member may continue on the panel for the purpose of completing the hearing and determination of the proceedings.

Review of Director-General's decision

30. (1) An officer who—

(a) has made an application for reclassification under this Division to the Director-General; and

(b) is dissatisfied with the decision on the application,

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may, within 30 days after receiving notice of the decision, lodge with the Director-General an application for a review of the classification of the officer or a position occupied by the officer.

(2) The Director-General must, within 14 days after receiving an application for review, refer the application to a review panel.

(3) A review panel to which an application for review is referred must afford—

(a) the applicant; and

(b) the Director-General, or a nominee of the Director-General,

a reasonable opportunity to make submissions orally or in writing to the panel on the questions raised by the application.

(4) If an applicant wishes to make oral submissions, the applicant may appear before the panel personally or by a representative (who may not be a legal practitioner).

(5) On completion of a review, the review panel may—

(a) confirm the existing classification of the applicant or the applicant's position; or

(b) decide that the applicant or the applicant's position should be reclassified with effect from a date determined by the panel (which may not be earlier than the date of the application for review nor later than three months from the date of that application).

(6) A decision in which any two or more members of a review panel concur is a decision of the panel.

(7) If a review panel decides that an officer or a position should be reclassified, the Director-General must reclassify the officer or position in accordance with the decision.

Exclusion of other appeal rights

31. (1) No appeal lies against a decision of the Director-General on an application under this Division (but without affecting the right to apply for a review by a review panel under this Division).

(2) No appeal lies against a decision of a review panel under this Division or a reclassification of an officer or a position in accordance with a decision of a review panel.

DIVISION 8—THE TEACHERS APPEAL BOARD

The Teachers Appeal Board

45. (1) There shall be a board entitled the "Teachers Appeal Board".

(2) The Appeal Board is to consist of—

(a) such presiding members as may be nominated from time to time by the President of the Industrial Court of South Australia from amongst the members of the Industrial Court for the hearing and determination of appeals to the Appeal Board; and

- (b) the members of a panel of employees in the Department appointed by the Governor on the nomination of the Minister; and
- (c) the members of a panel of officers of the teaching service appointed by the Governor on the nomination of the Institute of Teachers made after elections have been held in accordance with the regulations; and
- (d) the members of a panel of employees in the Department of Further Education appointed by the Governor on the nomination of the Minister; and
- (e) the members of a panel of officers of the teaching service under the *Further Education Act 1976* appointed by the Governor on the nomination of the Institute of Teachers made after elections have been held in accordance with the regulations.

(3) For the purpose of hearing and determining an appeal by an officer of the teaching service under this Act, the Appeal Board shall be constituted of:

- (a) a member of the Industrial Court nominated by the President of the Industrial Court to be the presiding member of the Appeal Board; and
- (b) a member of the panel appointed under subsection (1)(b) (or a temporary member of the Board) selected by the Director-General; and
- (c) a member of the panel appointed under subsection (1)(c) (or a temporary member of the Board) selected by the appellant or appellants or, where there are two or more appellants and they fail to agree on the selection of the member, a member of that panel selected by the presiding member.

(4) For the purpose of hearing and determining an appeal by an officer of the teaching service under the *Further Education Act 1976*, the Appeal Board shall be constituted of—

- (a) a member of the Industrial Court nominated by the President of the Industrial Court to be the presiding member of the Appeal Board; and
- (b) a member of the panel appointed under subsection (1)(d) (or a temporary member of the Board) selected by the Director-General of Further Education; and
- (c) a member of the panel appointed under subsection (1)(e) (or a temporary member of the Board) selected by the appellant or appellants or, where there are two or more appellants and they fail to agree on the selection of the member, a member of that panel selected by the presiding member.

(5) The Appeal Board, separately constituted under this section, may sit simultaneously to hear separate appeals.

(6) In this section—

"member of the Industrial Court" means—

- (a) the President of the Industrial Court of South Australia; or
- (b) a Deputy President of the Industrial Court of South Australia; or
- (c) an Industrial Magistrate.

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Terms and conditions on which members of Appeal Board hold office

46. (1) Subject to this Act, a member of the Appeal Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment and, upon the expiration of his term of office, he shall be eligible for reappointment.

(2) The Governor may appoint a suitable person to be a temporary member of the Appeal Board for any period not exceeding six months, and any such temporary member shall be entitled to act as a member of the Board where there is a vacancy in its membership or where a member of the Board is unable, or fails, for any reason, to act in his capacity as such.

(3) The Governor may remove a member of the Appeal Board from office for—

- (a) mental or physical incapacity to perform satisfactorily the duties of the office; or
- (b) neglect of duty; or
- (c) dishonourable conduct; or
- (d) any other cause considered sufficient by the Governor.

(4) The office of a member of the Appeal Board shall become vacant if—

- (a) he dies; or
- (b) his term of office expires; or
- (c) he resigns by written notice addressed to the Minister; or
- (d) he is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of a member of the Appeal Board becoming vacant, a person shall be appointed in accordance with this Act to the vacant office but, where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

(6) This section does not apply in relation to presiding members of the Appeal Board.

Allowances and expenses

47. A member of the Appeal Board shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Decision of Appeal Board

48. A decision in which two members of the Appeal Board concur shall be a decision of the Board.

Jurisdiction of Appeal Board

49. The Appeal Board shall exercise such jurisdiction as is conferred on the Board under this Act or any other Act.

Powers of Appeal Board

50. (1) In the exercise of its powers and functions under this Act, or under any other Act that confers jurisdiction on the Appeal Board, the Board may—

- (a) by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person; or

- (b) by summons signed on behalf of the Board by a member of the Board, require the production of any books, papers or documents; or
- (c) inspect any books, papers or documents produced before the Board and retain them for such reasonable period as it thinks fit and make copies of any of them or of any of their contents; or
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Board relating to any matter being inquired into by the Board (which oath or affirmation may be administered by any member of the Board); or
- (e) require any person appearing before the Board (including any person whose conduct is subject to inquiry by the Board) to answer any relevant questions put to him by any member of the Board or by any other person appearing before the Board.

(2) Subject to subsection (3), if any person—

- (a) who has been served with a summons to attend before the Appeal Board fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons; or
- (b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons; or
- (c) misbehaves himself before the Board, wilfully insults the Board or any member of the Board or interrupts the proceedings of the Board; or
- (d) refuses to be sworn or to affirm or to answer any relevant question when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of any proceedings, the Appeal Board may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact from the evidence that it considers proper; or
- (b) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court that may be relevant to the proceedings.

Representation before Appeal Board

51. Any person entitled to appear before the Appeal Board may appear personally or by counsel or other representative.

Appeal Board not bound by the rules of evidence

52. In any proceedings under this Division, the Appeal Board shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and it shall not be bound by any rules of evidence, but may inform itself in such manner as it thinks fit.

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Appeals in respect of appointments to promotional level positions

53. (1) A person shall not be appointed to a position to which this section applies except in accordance with this section.

(2) This section applies to a position in the teaching service classified at a promotional level.

(2a) This section does not apply to—

(a) appointment of an officer to a position in an acting capacity for a period not exceeding 12 months; or

(b) transfer of an officer between positions in the teaching service.

(3) Applications for a position to which this section applies shall be submitted in accordance with the regulations either—

(a) to the Director-General; or

(b) to a committee established by the Minister and consisting of members appointed by the Minister with the agreement of the Institute of Teachers (one or more of whom must be nominees of the Institute),

and the Director-General, or the committee, may provisionally recommend to the Minister that an applicant be appointed to the vacant position.

(4) Notice of the provisional recommendation shall be given to every officer who applied for the position.

(5) Subject to subsection (6), any such officer may appeal to the Appeal Board against the provisional recommendation.

(6) There shall be no appeal against a provisional recommendation made by the committee established under this section but, if any such provisional recommendation is that an officer be appointed to the vacant position and the Minister, acting upon the recommendation of the Director-General, declines to make an appointment in accordance with the provisional recommendation, the officer in whose favour the provisional recommendation was made may appeal to the Appeal Board against the recommendation of the Director-General.

(7) The Appeal Board shall, after consideration of an appeal under this section—

(a) in the case of an appeal against a provisional recommendation under subsection (5)—

(i) confirm the provisional recommendation made by the Director-General; or

(ii) quash the provisional recommendation and direct the Minister to appoint the appellant to the vacant position; or

(b) in the case of an appeal against a recommendation of the Director-General under subsection (6)—

(i) confirm the recommendation of the Director-General; or

(ii) quash the recommendation of the Director-General and direct the Minister to appoint the appellant to the vacant position.

Additional rights of appeal

54. (1) In addition to the rights of appeal otherwise conferred on an officer by or under this Act, an officer may appeal to the Appeal Board against any administrative action or decision affecting the officer in relation to which a right of appeal is conferred by the regulations.

(2) Upon the hearing of any appeal under this section, the Appeal Board may give such orders and directions as it considers just in the circumstances of the case.

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PART 4
REGISTRATION OF TEACHERS

DIVISION 1—CONSTITUTION OF THE TEACHERS REGISTRATION BOARD

The Teachers Registration Board

55. (1) There shall be a board entitled the "Teachers Registration Board".

(2) The Board shall consist of the following members:

- (a) a chairman appointed by the Governor on the nomination of the Minister; and
- (b) two persons appointed by the Governor on the nomination of the Director-General; and
- (c) six persons (of whom at least one is a teacher employed by a non-Government school) appointed by the Governor on the nomination of the Institute of Teachers made after holding an election in accordance with the regulations; and
- (d) one person appointed by the Governor on the nomination of the South Australian Independent Schools Board of Headmasters and Headmistresses Incorporated (which nomination shall be made after an election has been held in accordance with the regulations); and
- (e) one person appointed by the Governor on the nomination of the South Australian Commission for Catholic Schools; and
- (ea) one person appointed by the Governor on the nomination of the Association of Teachers in Independent Schools (South Australia) made after holding an election in accordance with the regulations; and
- (f) one member appointed by the Governor on the nomination of the Tertiary Education Authority of South Australia who is a member of the academic staff of an institution in which courses of instruction at a tertiary level are provided for the education or training of those who desire to be trained as teachers; and
- (g) one person appointed by the Governor on the nomination of the person holding or acting in the office of the Director of Children's Services.

Terms and conditions on which members of the Board hold office

56. (1) Subject to this Act, a member of the Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment and, upon the expiration of his term of office, he shall be eligible for reappointment.

(2) The Governor—

- (a) may appoint a suitable person to be a temporary member of the Board for a period not exceeding six months, and any such temporary member shall be entitled to act as a member of the Board where there is a vacancy in its membership or where a member of the Board is unable, or fails, for any reason, to act in his capacity as such; and

(b) may appoint a suitable person to be a deputy of a member of the Board, and any person so appointed shall be entitled to act as a member of the Board where the member of the Board of whom he has been appointed a deputy is unable, or fails, for any reason, to act in his capacity as such.

(3) The Governor may remove a member of the Board from office for—

(a) mental or physical incapacity to perform satisfactorily the duties of the office; or

(b) neglect of duty; or

(c) dishonourable conduct; or

(d) any other cause considered sufficient by the Governor.

(4) The office of a member of the Board shall become vacant if—

(a) he dies; or

(b) his term of office expires; or

(c) he resigns by written notice addressed to the Minister; or

(d) he is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of a member of the Board becoming vacant, a person shall be appointed in accordance with this Act to the vacant office but, where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed to his place shall be appointed only for the balance of the term of his predecessor.

Quorum, etc.

57. (1) Eight members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting unless a quorum is present.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Board shall be a decision of the Board.

(3) The chairman shall preside at any meeting of the Board at which he is present.

(4) In the absence of the chairman from a meeting of the Board, the members present shall elect one of their number to preside at that meeting.

(5) Each member of the Board shall be entitled to one vote on any matter arising for the decision of the Board.

(6) Subject to this Act, the business of the Board shall be conducted in such manner as the Board thinks fit.

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Validity of acts of Board and immunity of its members

58. (1) An act or proceeding of the Board shall not be invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability shall attach to a member of the Board for any act or omission by him, or by the Board, in good faith and in the exercise of his or its powers or functions, or in the discharge of his or its duties, under this Act.

(3) A liability that would, but for subsection (2), attach to a member of the Board shall attach to the Crown.

Allowances and expenses

59. The members of the Board shall be entitled to receive such allowances and expenses as may be determined by the Governor.

DIVISION 2—REGISTRATION

Functions of the Board

60. (1) The function of the Board is to establish, maintain and operate a system of registration of teachers with a view to safeguarding the public interest in pre-school, primary and secondary education by ensuring that it is undertaken only by competent persons.

(2) In the exercise of its powers under this Act, the Board shall confer and collaborate with the Tertiary Education Authority of South Australia and with other institutions providing tertiary education in this State with a view to ensuring that the students who desire to be trained for the teaching profession receive the requisite education and training for registration under this Part.

(3) The Board shall collaborate with authorities exercising similar functions in the other States of Australia and as far as practicable with authorities exercising similar functions elsewhere with a view to promoting uniformity in the standards and qualifications required for admission to the teaching profession.

Qualifications for registration

61. (1) A person who proves to the satisfaction of the Board—

(a) that he is a fit and proper person to be registered under this Part; and

(b) that—

(i) he holds prescribed qualifications and has had prescribed experience as a teacher; or

(ii) he has obtained qualifications and has had experience as a teacher adequate, in the opinion of the Board, for the purpose of registration,

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shall, upon payment of the prescribed fee, be registered as a teacher.

(2) The Board may provisionally register any applicant for registration notwithstanding that he does not have the qualifications and experience required for registration under subsection (1).

(3) Provisional registration shall, subject to this Part, be effective for such period not exceeding five years as may be determined by the Board.

(4) The Board may grant registration, or provisional registration, of a teacher subject to conditions—

- (a) restricting the subjects that he may teach; or
- (b) restricting the kind, level or grade of instruction that he may provide.

Renewal of registration

62. (1) Where a person is registered, or provisionally registered, as a teacher under this Part, the registration shall be effective until the thirty-first day of January last occurring before the expiration of three years from the grant of the registration.

(2) Where a registered teacher has applied in the prescribed manner for an extension of the period of his registration and has paid the prescribed fee, an extension or further extension of the period of registration for a period of three years expiring on the thirty-first day of January shall, subject to subsection (3), be granted by the Board.

(3) No extension of a period of provisional registration shall be granted beyond the limits determined in relation to that provisional registration by the Board.

DIVISION 3—OBLIGATION TO BE REGISTERED

Unregistered persons not to hold certain appointments

63. (1) No person shall, without the authority in writing of the Board—

- (a) accept or undertake employment in a Government or registered non-Government school—
 - (i) as a teacher; or
 - (ii) as administrator of the school or as administrator or supervisor of any course of instruction in pre-school, primary or secondary education provided at the school; or
- (b) accept or undertake employment in a recognised kindergarten—
 - (i) as a teacher; or
 - (ii) as administrator of the kindergarten or as administrator or supervisor of any course of instruction in pre-school education provided at the kindergarten; or
- (c) provide, or offer to provide, for fee or reward, instruction in any course of primary or secondary education,

unless that person is registered as a teacher.

Penalty: One hundred dollars.

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(2) The Board may grant an authority under subsection (1):

- (a) in respect of any specified person; or
- (b) in respect of persons of a specified class; or
- (c) in respect of any person holding office in any specified kindergartens or schools.

(3) A registered teacher shall not provide, or offer to provide, for fee or reward, instruction that he is not entitled to provide in accordance with the terms and conditions upon which he is registered.

Penalty: One hundred dollars.

(4) The Minister may, upon the recommendation of the Board, by instrument published in the *Gazette*, suspend the operation of this section to such extent as he may consider necessary or expedient in the public interest.

Offences

64. (1) Any person who fraudulently obtains, or attempts to obtain, registration, or a certificate of registration, as a teacher under this Act shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars or imprisonment for six months.

(2) Any person who fraudulently procures, or attempts to procure, for any other person registration, or a certificate of registration, as a teacher under this Act shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars or imprisonment for six months.

(3) Any person who fraudulently impersonates, or represents himself as being, a person registered as a teacher under this Act, or lawfully entitled to be employed as a teacher when in fact he is not entitled to be so employed, shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars or imprisonment for six months.

(4) No person shall assume the title "registered teacher", either alone or in combination with any other word or words or letters, or any name, title or description implying that that person is a registered teacher or is recognised by law as such, unless that person is registered as a teacher under this Part.

Penalty: Five hundred dollars.

DIVISION 4—CANCELLATION OF REGISTRATION

Grounds for cancellation

65. (1) The Board may, upon the application of the Registrar or of its own motion, inquire into the conduct of any registered teacher.

(2) If after conducting an inquiry under subsection (1) the Board is satisfied that the registered teacher—

- (a) is guilty of gross incompetence; or
- (b) is guilty of any disgraceful or improper conduct; or

- (c) is subject to a serious mental or physical incapacity by virtue of which he is unable properly to exercise and discharge the functions and duties of a registered teacher,

it may cancel the registration of that teacher.

Powers of Board upon an inquiry

66. (1) For the purposes of an inquiry under this Division, the Board may—

- (a) by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person; or
- (b) by summons signed on behalf of the Board by a member of the Board, require the production of any books, papers or documents; or
- (c) inspect any books, papers or documents produced before the Board and retain them for such reasonable period as it thinks fit and make copies of any of them or of any of their contents; or
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Board or by any person appearing before the Board (which oath or affirmation may be administered by any member of the Board); or
- (e) require any person appearing before the Board, including a person whose conduct is subject to an inquiry (whether he has been summoned to appear or not), to answer any relevant questions put to him by any member of the Board or by any person appearing before the Board.

(2) Subject to subsection (3), if any person—

- (a) who has been served with a summons to attend before the Board fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons; or
- (b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons; or
- (c) misbehaves himself before the Board, wilfully insults the Board or any member of the Board or interrupts the proceedings of the Board; or
- (d) refuses to be sworn or to affirm or to answer any relevant question when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A person shall not be obliged to answer any question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of any inquiry, the Board may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact from the evidence that it considers proper; or

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- (b) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court that may be relevant to the proceedings.

Notice of inquiry

67. (1) The Board shall give to any person whose conduct is subject to an inquiry under this Part at least twenty-one days notice of the time and place at which it proposes to hold the inquiry and shall afford that person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board.

(2) If the person to whom notice is given under subsection (1) does not attend at the time and place fixed by the notice, the Board may proceed with the inquiry in his absence.

(3) A person whose conduct is subject to an inquiry under this Part may appear before the Board personally or by counsel or other representative.

DIVISION 5—RIGHT OF APPEAL

Appeal

68. (1) A right of appeal to the Administrative and Disciplinary Division of the District Court lies against any decision of the Board made in the exercise or purported exercise of any of its powers or functions under this Part.

(2) The appeal must be instituted within one month of the making of the decision or order appealed against.

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DIVISION 6—MISCELLANEOUS

Board to give reasons for its decision

69. (1) The Board shall, if so required by any person against whom a decision has been made under this Part, state in writing the reasons for its decision.

(2) If the reasons of the Board are not given in writing at the time of making the decision and the appellant then requests the Board to state its reasons in writing, the time for instituting an appeal under this Part against that decision shall run from the time the appellant receives a written statement of those reasons.

Registrar of the Board

70. (1) There shall be a Registrar of the Board.

(2) The Governor may appoint a person employed in the Public Service of the State to be the Registrar of the Board.

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(4) The Registrar shall perform such duties and functions as may be determined by the Board.

Register to be kept

71. (1) The Registrar shall cause a register to be kept in which shall be entered the names of all teachers registered under this Part and such other information as may be determined by the Board.

(2) The register shall be available for public inspection at such times and places as may be determined by the Board.

(3) The name of any registered teacher who dies, whose registration is not renewed or whose registration is cancelled shall be removed from the register.

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**PART 5
NON-GOVERNMENT SCHOOLS**

DIVISION 1—THE NON-GOVERNMENT SCHOOLS REGISTRATION BOARD

Non-Government Schools Registration Board

72. (1) There shall be a board entitled the "Non-Government Schools Registration Board".

(2) The Board shall consist of the following members:

- (a) a chairman appointed by the Governor on the nomination of the Minister; and
- (b) three persons appointed by the Governor on the nomination of the Minister, of whom one must be an officer of the Department or an officer of the teaching service; and
- (c) two persons appointed by the Governor on the nomination of the South Australian Commission for Catholic Schools; and
- (d) two persons appointed by the Governor on the nomination of the South Australian Independent Schools Board Incorporated.

(3) A person who is either an officer of the Department or employed as a teacher in, or in the administration of, a Government or a non-Government school is ineligible for appointment as the chairman of the Board.

(4) Before the Minister nominates a person for appointment as the chairman of the Board, he shall consult with the Advisory Committee on Non-Government Schools in South Australia in relation to the proposed appointment.

Term of office of members of the Board

72A. (1) Subject to this Act, a member of the Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment and, upon the expiration of his term of office, he shall be eligible for reappointment.

(2) The Governor—

- (a) may appoint a suitable person to be a temporary member of the Board for a period not exceeding six months, and any such temporary member shall be entitled to act as a member of the Board where there is a vacancy in its membership or where a member of the Board is unable, or fails, for any reason, to act in his capacity as such; and
- (b) may appoint a suitable person to be a deputy of a member of the Board, and any person so appointed shall be entitled to act as a member of the Board where the member of the Board of whom he has been appointed a deputy is unable, or fails, for any reason, to act in his capacity as such.

(3) The Governor may remove a member of the Board from office for—

- (a) mental or physical incapacity to perform satisfactorily the duties of the office; or
- (b) neglect of duty; or

- (c) dishonourable conduct; or
 - (d) any other cause considered sufficient by the Governor.
- (4) The office of a member of the Board shall become vacant if—
- (a) he dies; or
 - (b) his term of office expires; or
 - (c) he resigns by written notice to the Minister; or
 - (d) he is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of a member of the Board becoming vacant, a person shall be appointed in accordance with this Act to the vacant office but, where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed to his place shall be appointed only for the balance of the term of his predecessor.

Quorum, etc.

72B. (1) Five members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting unless a quorum is present.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Board shall be a decision of the Board.

(3) The chairman shall preside at any meeting of the Board at which he is present.

(4) In the absence of the chairman from a meeting of the Board, the members present shall elect one of their number to preside at that meeting.

(5) Each member of the Board who is present at a meeting of the Board (including the person presiding at the meeting) shall be entitled to one vote on any question arising for the decision of the Board at that meeting and, in the event of an equality of votes, no casting vote shall be exercised.

(6) Subject to this Act, the business of the Board shall be conducted in such manner as the Board thinks fit.

Validity of acts of Board and immunity of its members

72C. (1) An act or proceeding of the Board shall not be invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability shall attach to a member of the Board for any act or omission by him, or by the Board, in good faith and in the exercise of his or its powers or functions, or in the discharge of his or its duties, under this Act.

(3) A liability that would, but for subsection (2), attach to a member of the Board shall attach to the Crown.

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Allowances and expenses

72D. The members of the Board shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Registrar

72E. (1) There shall be a Registrar of the Board.

(2) The Governor may appoint a person employed in the Public Service of the State to be the Registrar.

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DIVISION 2—REGISTRATION

Non-Government schools to be registered

72F. (1) If after a date to be fixed by proclamation for the purposes of this section students are enrolled or receive instruction at an unregistered non-Government school, the governing authority of the school shall be guilty of an offence.

(2) The penalty for an offence against subsection (1) is as follows—

(a) for a first offence—\$10 000;

(b) for a subsequent offence—\$10 000 or \$500 for every day on which students have received instruction since the date on which the authority was last convicted under subsection (1), whichever is greater.

Registration of non-Government schools

72G. (1) The governing authority of a non-Government school, or proposed non-Government school, or a person authorised by the governing authority may apply for registration of the school or proposed school.

(2) An application for registration of a non-Government school must—

(a) be made in a manner and form determined by the Board; and

(b) be accompanied by the prescribed fee.

(3) Where the Board is satisfied on an application under this section that—

(a) the nature and content of the instruction offered, or to be offered, at the school is satisfactory; and

(b) the school provides adequate protection for the safety, health and welfare of its students; and

(c) the school has sufficient financial resources to enable it to comply with paragraphs (a) and (b) in the future,

the Board must register that non-Government school for such period as it thinks fit.

(4) The Board may impose such conditions on the registration of a non-Government school as it thinks necessary—

- (a) with respect to the safety, health and welfare of students at the school; and
- (b) to ensure that those students receive education of a satisfactory standard.

(4a) The Board may, at any time, on the application of the school concerned, vary or revoke a condition imposed on the registration of the school pursuant to subsection (4).

(5) Where the Board decides—

- (a) to refuse an application for registration of a non-Government school; or
- (b) to grant an application subject to conditions; or
- (c) to register a non-Government school for a limited period,

it shall, within one month after making that decision, inform the applicant in writing of its reasons for making the decision.

Certificates of registration

72GA. (1) Where the Board registers a non-Government school, the Registrar must issue to the school a certificate of registration in a form approved by the Minister that includes the following information:

- (a) the name of the school; and
- (b) the address of each of the school's campuses; and
- (c) the identity of the governing authority of the school; and
- (d) the conditions (if any) that apply to the registration of the school.

(2) Where a registered non-Government school has more than one campus, the Registrar must issue a sufficient number of duplicate certificates of registration to enable the school to comply with subsection (3).

(3) A registered non-Government school must at all times display its certificate of registration, or a duplicate certificate of registration, in a conspicuous place at each of the school's campuses.

Penalty: \$100.

(4) The governing authority of a non-Government school must, within 14 days after—

- (a) a condition of the school's registration has been varied or revoked; or
- (b) any other change in the information recorded in the certificate of registration has occurred; or

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- (c) the registration has been cancelled,

return the certificate of registration and the duplicate certificates (if any) to the Registrar.

Penalty: \$100.

(5) On receipt of a certificate of registration, or duplicate certificate of registration, pursuant to subsection (4), the Registrar—

- (a) must, if the school's registration has been cancelled, destroy the certificate or duplicate certificate;
- (b) may, in any other case, alter the certificate or duplicate certificate or issue a new certificate or duplicate certificate in respect of that school.

Register to be kept

72H. (1) The Board shall cause a register to be kept in which shall be entered the names of all non-Government schools registered under this Part and such other information as may be determined by the Board.

- (2) The register shall be available for public inspection.

(3) The name of any registered non-Government school, the registration of which is cancelled or has expired, shall be removed from the register.

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**DIVISION 2A—APPROVAL TO ENROL FULL FEE PAYING
OVERSEAS STUDENTS**

Interpretation

72I. For the purposes of this Part, a student is to be regarded as a full fee paying overseas student if—

- (a) the student holds a temporary entry permit in force under the *Migration Act 1958* of the Commonwealth; and
- (b) the Commonwealth and the State disregard the student (or a class of students to which that student belongs) when calculating the amount of any assistance to the school at which the student is enrolled.

Approval

72IA. (1) The governing authority of a non-Government school, or proposed non-Government school, or a person authorised by the governing authority may apply to the Board for approval of the school for the enrolment of full fee paying overseas students.

- (2) An application for approval under this section—

- (a) must be made in a manner and form determined by the Board; and
- (b) must be accompanied by the prescribed fee.

(3) Where the Board is satisfied on application under this section that—

- (a) the school has sufficient financial resources to enable it to provide satisfactory services to full fee paying overseas students; and
- (b) the school has made suitable arrangements to ensure compliance with the code of conduct approved by the Minister under section 72IB,

the Board must, by endorsement of the registration of the school, approve the school for the enrolment of full fee paying overseas students for such period as it thinks fit.

(4) The Board may impose such conditions on the registration of a non-Government school that is approved under this section as it thinks necessary—

- (a) to ensure that the school continues to meet the criteria for approval;
- (b) to ensure that adequate records are kept in relation to full fee paying overseas students.

(5) The Board may, at any time on the application of the school concerned, vary or revoke a condition imposed on the registration of a school under subsection (4) or extend the period of approval.

(6) Where the Board decides—

- (a) to refuse an application under this section; or
- (b) to grant an application subject to conditions; or
- (c) to limit the period of approval,

it must, within one month after making that decision, inform the applicant in writing of its reasons for making the decision.

(7) An application for approval under this section may be dealt with at the same time as an application for registration under Division 2.

Code of conduct

72IB. (1) The Minister may, by notice in the *Gazette*, approve a code of conduct for the purposes of this Part.

(2) A code of conduct approved by a notice under subsection (1) may consist of or incorporate, subject to any modifications specified in the notice, any specified document or part of a document, either as published by a specified body or authority at the time of approval of the code, or as so published from time to time.

(3) The Minister may, by subsequent notice in the *Gazette*, vary or revoke a notice under this section.

(4) The Minister must cause a copy of any code of conduct approved under this section (including any document or part of any document referred to in the code of conduct) to be made available for inspection by members of the public without charge.

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DIVISION 3—REVIEW OF REGISTRATION

Review of registration

72J. (1) The Board may, upon the application of the Registrar or of the school concerned or of its own motion, review the registration of any registered non-Government school.

(1a) The Board shall review the registration of every registered non-Government school at least once in every five year period during the registration of the school.

(2) If after reviewing the registration of a non-Government school under this section—

(a) the Board is satisfied—

(i) that the nature and the content of the instruction offered at the school is unsatisfactory; or

(ii) that the school provides inadequate protection for the safety, health and welfare of its students; or

(b) the Board is satisfied that the governing authority of the school has contravened, or failed to comply with, a condition imposed on the registration of the school; or

(ba) the Board is satisfied, in relation to a school that is approved under Division 2A—

(i) that the school does not have sufficient financial resources to provide satisfactory services to full fee paying overseas students; or

(ii) that the school has contravened or failed to comply with a provision of the code of conduct approved by the Minister under section 72IB,

the Board may, by notice in writing addressed to the governing authority of the school, exercise one or more of the following powers:

(c) the Board may vary or revoke a condition imposed on the registration of the school; or

(d) the Board may impose such further conditions on the registration of the school as it thinks fit; or

(e) the Board may limit or reduce the period of the school's registration by directing that its registration will terminate at a time fixed in the notice; or

(ea) the Board may, in relation to a school that is approved under Division 2A, withdraw the approval and cancel the endorsement of registration recording the approval or limit or reduce the period of approval by directing that the approval will terminate at a time fixed in the notice; or

(f) the Board may cancel the school's registration.

(2a) The Board shall, in a notice referred to in subsection (2), state the reasons for its decision.

(2b) Notice in writing addressed to the governing authority identified in the certificate of registration of a non-Government school and—

- (a) left at the school with someone apparently over the age of 18 years; or
- (b) sent by post to the school in a pre-paid envelope addressed to the governing authority identified in the certificate of registration,

will be taken to be service of the notice on the governing authority of the school for the purposes of subsection (2).

(3) The Board may cancel the registration of a non-Government school if the school is defunct.

Powers of Board upon a review

72K. (1) For the purposes of a review under this Division, the Board may—

- (a) by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person; or
- (b) by summons signed on behalf of the Board by a member of the Board, require the production of any books, papers or documents; or
- (c) inspect any books, papers or documents produced before the Board and retain them for such reasonable period as it thinks fit and make copies of any of them or of any of their contents; or
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Board or by any person appearing before the Board (which oath or affirmation may be administered by any member of the Board); or
- (e) require any person appearing before the Board to answer any relevant questions put to him by any member of the Board or by any person appearing before the Board.

(2) Subject to subsection (3), if any person—

- (a) who has been served with a summons to attend before the Board fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons; or
- (b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons; or
- (c) misbehaves himself before the Board, wilfully insults the Board or any member of the Board or interrupts the proceedings of the Board; or
- (d) refuses to be sworn or to affirm or to answer any relevant question when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

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(3) A person shall not be obliged to answer any question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of a review of the registration of a non-Government school, the Board may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact from the evidence that it considers proper; or
- (b) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court that may be relevant to the proceedings.

Notice of review

72L. (1) The Board shall give the governing authority of a registered non-Government school that is subject to a review of its registration under this Part at least twenty-one days notice of the time and place at which it proposes to hold the proceedings and of the matters to which the review relates, and shall afford the governing authority opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board.

(2) If a person representing the governing authority of the school does not attend at the time and place fixed by the notice, the Board may proceed with the review *ex parte*.

DIVISION 4—RIGHT OF APPEAL

Appeal

72M. (1) If the governing authority of a non-Government school is aggrieved by any decision of the Board made in the exercise or purported exercise of any of its powers or functions under this Part, it may appeal against that decision to the Administrative and Disciplinary Division of the District Court.

(2) Subject to this Act, the appeal shall be instituted within one month of receipt by the appellant of notice in writing of the decision appealed against.

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DIVISION 5—MISCELLANEOUS

Records to be kept in non-Government schools

72N. (1) The head teacher of a registered non-Government school shall keep such records in relation to the attendance of students at the school as may be prescribed or as the Minister may determine.

(2) The head teacher of a registered non-Government school shall furnish the Minister with such returns in relation to the attendance of students at the school as may be prescribed or as the Minister may require.

(3) The head teacher of a registered non-Government school who fails to comply with the provisions of this section is guilty of an offence.

Penalty: \$500.

Minister may provide certain forms of assistance to non-Government schools

72O. (1) The Minister may, at the request of the governing authority or head teacher of any registered non-Government school, cause the school to be visited by an appropriate person or persons for the purpose of advising the governing authority or head teacher in relation to any matter connected with the administration of the school.

(2) The Minister may, at the request of the governing authority or head teacher, of any registered non-Government school, cause the school to be visited by a medical or dental officer, health inspector or nurse for the purpose of medical or dental examination of those who attend the school or for the purpose of advising the governing authority or head teacher of the school on any matter relating to the health of those who attend the school.

Inspection of non-Government schools

72P. (1) For purposes connected with the administration of this Part, the Board may, by instrument in writing, authorise a panel of not less than three persons nominated by the Board and approved by the Minister to carry out an inspection of any non-Government school, or premises proposed to be used, or reasonably suspected by the Board of being used, for the purposes of a non-Government school, and the members of the panel may, at any reasonable time, enter and inspect the school or premises specified in their authority.

(1a) A panel referred to in subsection (1) must include—

- (a) an officer of the Department or of the teaching service; and
- (b) a person employed as a teacher in, or in the administration of, a non-Government school; and
- (c) the Registrar of the Board.

(2) A person who prevents the members of a panel from carrying out an inspection under subsection (1), or hinders such an inspection, is guilty of an offence.

Penalty: \$500.

Furnishing information to Board

73. (1) The Board may, for the purpose of determining an application under Division 2 or 2A, require the applicant to furnish the Board with such further information as the Board may require.

(2) A person must not, in furnishing any information in an application under Division 2 or Division 2A or pursuant to a requirement of the Board under subsection (1), make a statement that is false or misleading in a material particular.

Penalty: \$1 000.

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**PART 6
COMPULSORY ATTENDANCE AT SCHOOLS**

Interpretation

74. (1) In this Part—

"school" means a Government school or a registered non-Government school.

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Compulsory enrolment of children

75. (1) A child of compulsory school age must be enrolled at a primary school or secondary school (according to the educational attainments of the child).

(2) A child of compulsory school age whose educational attainments are such that he should be enrolled at a secondary school and who is resident within a secondary school district established under this Part must, except where otherwise determined by the Director-General, be enrolled at the school for which the district is established or at a non-Government school.

(3) Where in the opinion of the Director-General it is in the best interests of a child that he be enrolled at a special school, the Director-General may direct that the child be enrolled at a special school nominated in the direction and, where such direction has been given, the child must be enrolled at that special school.

(4) A child is enrolled at a school in accordance with this section if he is entitled, in accordance with the regulations, to be enrolled at a Correspondence School and is so enrolled.

(5) If a child of compulsory school age is not enrolled as required by this section, each parent of the child shall be guilty of an offence and liable to a penalty not exceeding one hundred dollars.

(6) The obligation of a parent under this section is discharged where the parent has supplied the head teacher of the school with the name, date of birth and place of residence of the child.

Direction by Director-General that child be enrolled in particular school

75A. (1) The Director-General may, subject to the regulations, if satisfied that a child has disabilities or learning difficulties such that it would be in the best interests of the child to do so, direct that the child be enrolled at a special school or some other particular Government school nominated in the direction.

(2) Where a direction is given under subsection (1) in respect of a child, the child shall not be enrolled at any Government school other than the school nominated in the direction.

(3) The Director-General may give a direction under this section, or vary or revoke a direction under this section—

(a) on the application of a parent of the child; or

(b) at the Director-General's initiative,

but, in either case, after taking reasonable steps to consult each parent of the child.

Appeal against direction of Director-General or Minister

75C. (1) A parent of a child may, if aggrieved—

- (a) by a direction of the Director-General or the Minister given in respect of the child under section 75A and 75B; or
- (b) by decision of the Director-General or the Minister on an application by the parent under section 75A or 75B,

appeal to the Administrative and Disciplinary Division of the District Court against the direction or decision.

(2) The appeal must be instituted within one month of receipt by the appellant of notice in writing of the direction or decision appealed against.

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(4) No order for costs shall be made against the appellant unless the court is satisfied that the appeal is frivolous or vexatious.

Compulsory attendance

76. (1) A child is required to attend at the school for which he is enrolled on every day, and for such parts of every day, as instruction is provided at the school for the child.

(2) Subsection (1) does not apply—

- (a) in respect of a child enrolled in accordance with the regulations at a Correspondence School; or
- (b) in respect of a child exempted from attendance in accordance with the provisions of this Part; or
- (c) in respect of a child for whom a parent presents, within a reasonable time, a prescribed reason for the non-attendance of the child at the school.

(3) Where a child fails to attend school as required by subsection (1), each parent of the child shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(4) It shall be a defence to a charge under subsection (3) that the failure of the child to attend school did not result from any failure of the parent to exercise proper care and control of the child.

(5) This section does not apply in respect of a child exempted from attendance at school under this Part.

Exemption by Minister

77. (1) The Minister may exempt any child from attendance at school during any period specified in the exemption.

(2) The Minister may, at any time, revoke an exemption granted under this section.

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Employment of children of compulsory school age

78. (1) No person (whether or not he is a parent of the child) shall employ a child of compulsory school age or cause or permit such a child to be employed—

- (a) during the hours at which he is required to attend school; or
- (b) during any part of a day or night, in any labour or occupation that is such as to render the child unfit to attend school as required by this Part or to obtain the proper benefit from the instruction provided for him.

Penalty: Five hundred dollars.

(2) The Minister may grant an exemption from all or any of the provisions of this section in respect of a child if, in his discretion, he considers it appropriate to do so.

Attendance at school

79. Authorised officers must take all practicable action to ensure attendance at school by children of compulsory school age.

Powers in relation to suspected truancy

80. (1) The following persons shall be authorised officers for the purposes of this Part:

- (a) any member of the police force; or
- (b) any person authorised in writing by the Director-General of Community Welfare to exercise the powers of an authorised officer under this Act; or
- (c) any person authorised in writing by the Director-General to exercise the powers of an authorised officer under this Act.

(2) Where an authorised officer observes any child who appears to him to be a child of compulsory school age in any public place at a time when the child should normally be attending school, he may accost the child and seek to obtain from the child the following information:

- (a) the name and address of the child; and
- (b) the age of the child; and
- (c) the reason for his non-attendance at school.

(2a) An authorised officer may in the circumstances referred to in subsection (2), if the child is in the charge or company of some person apparently over the age of eighteen years, request that person to furnish the authorised officer with the information referred to in that subsection.

(2b) If it appears to an authorised officer who is a member of the police force, after enquiring into the child's reasons for not being at school, that the child does not have a proper reason for being absent from school, the authorised officer may take the child into his or her custody and return the child—

- (a) to someone in authority at the school; or
- (b) to a parent or guardian of the child.

(3) An authorised officer may, at any time in the day, call at a dwelling house and request any person to furnish him with the following information:

- (a) the full names of all children of compulsory school age resident in the dwelling house; and
- (b) the respective ages of those children; and
- (c) the schools (if any) at which those children are enrolled in pursuance of this Part.

(4) Any person who, when requested to furnish information under subsection (2a) or (3), fails to furnish the information to the best of the person's knowledge or belief, or wilfully furnishes any false information, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Evidentiary provision

81. (1) An apparently genuine document purporting to be under the hand of the head teacher of a school stating that any child named in the certificate did or did not attend that school on the occasion or occasions specified in the certificate shall, in any legal proceedings, be proof of the matters so stated in the absence of proof to the contrary.

(2) In any proceedings under this Act, an apparently genuine document purporting to be under the hand of an authorised officer and stating that—

- (a) a specified person is a parent of a child named in the document; or
- (b) the child named in the document is of, above or below a specified age; or
- (c) at a specified time, the child named in the document was or was not enrolled at a specified school; or
- (d) a person named in the document is the head teacher of a specified school; or
- (e) at a specified time, instruction was provided for the child named in the document at the school specified in the document,

shall, in the absence of proof to the contrary, be deemed to be proved.

PART 7
COURSES OF INSTRUCTION

Determination of curriculum

82. (1) The Director-General shall be responsible for the curriculum in accordance with which instruction is provided in Government schools.

(2) For the purpose of assisting the Director-General to determine the curriculum in accordance with which instruction is to be provided, the Minister may appoint—

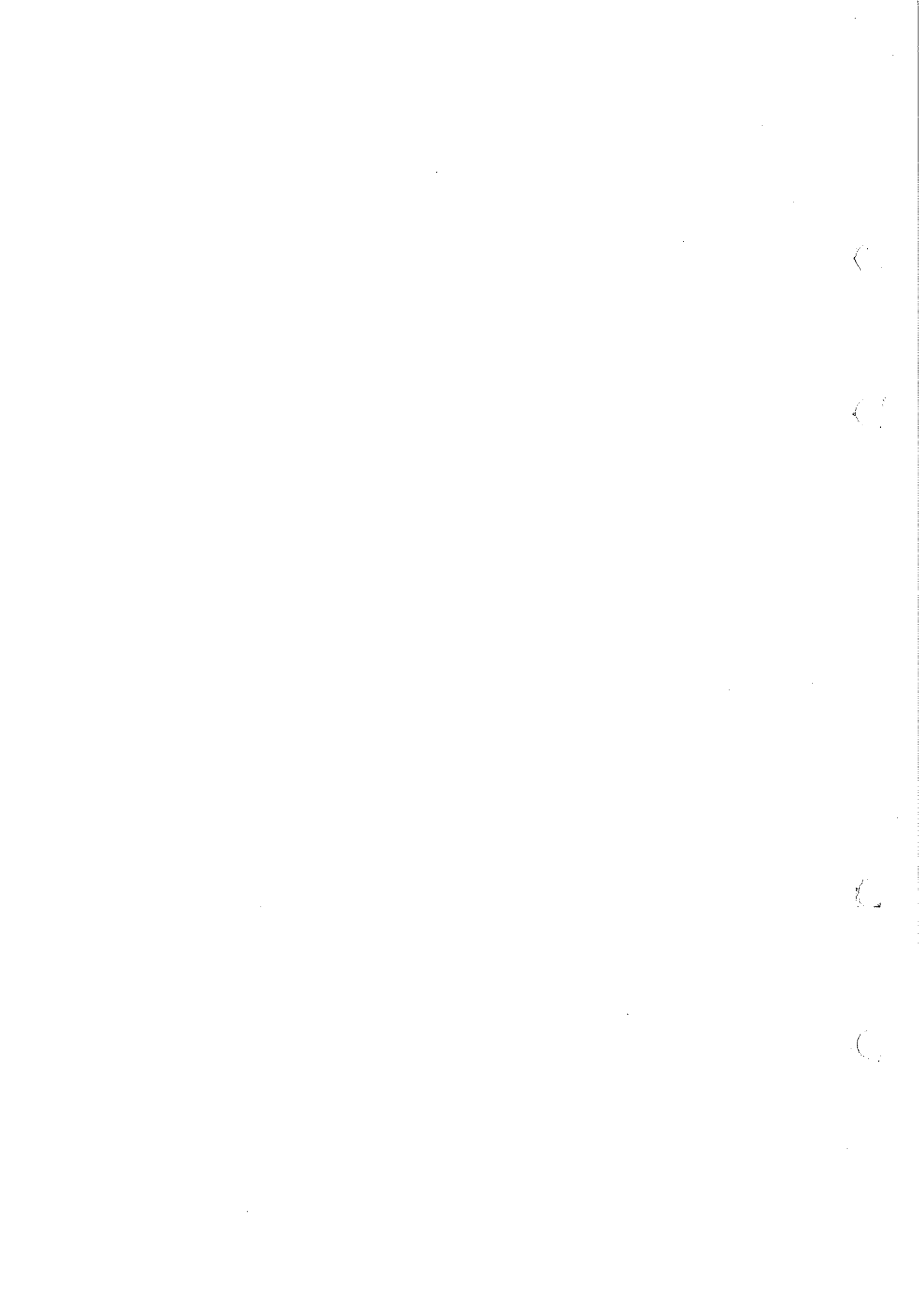
- (a) an Advisory Curriculum Board; and
- (b) such advisory committees as the Minister may determine on the recommendation of the Director-General.

(3) The Advisory Curriculum Board and any committee appointed under this section shall consist of—

- (a) such employees in the Department and officers of the teaching service; and
- (b) such representatives of registered non-Government schools and other organisations,

as may be determined by the Minister on the recommendation of the Director-General.

(4) A member of the Advisory Curriculum Board or a committee appointed under this section shall hold office upon such terms and conditions as may be determined by the Minister.



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PART 8
SCHOOL COUNCILS

School councils

83. (1) Each Government school providing courses of instruction in primary or secondary education is to have a school council.

(2) The same body may be the school council for two or more Government schools.

(3) A school council—

- (a) is a body corporate with perpetual succession and a common seal; and
- (b) is to operate under a constitution approved by the Minister; and
- (c) is to consist of members as prescribed by its constitution; and
- (d) has the functions prescribed by or under this Act or its constitution; and
- (e) has, subject to this Act and its constitution, all the powers of a natural person that are capable of being exercised by a body corporate; and
- (f) is not an agency or instrumentality of the Crown.

Constitution of school council

84. (1) The constitution of a school council must assign a name to the council and contain—

- (a) provisions determining the membership of the council and stipulating—
 - (i) except in the case of a school that is wholly or principally for adult students, that a majority of the members are to be parents of students of the school; and
 - (ii) that the head teacher of the school is to be an *ex officio* member; and
 - (iii) that a presiding member is to be appointed from amongst the members; and
 - (iv) in the case of a governing council, that the presiding member is not to be a member of the staff of the school or a person employed in an administrative unit for which the Minister is responsible; and
- (b) provisions specifying the functions of the council (which may include functions relating to pre-school education or to the education, care, recreation, health or welfare of students outside of school hours); and
- (c) provisions specifying the quorum and the procedures of the council, which may include provisions—
 - (i) for the establishment of, and the delegation of functions or powers to, committees comprised of members, non-members or both members and non-members; or
 - (ii) for the delegation of functions or powers to another school council; or
 - (iii) allowing procedures to be determined by the council from time to time; and

- (d) provisions specifying the accounting and auditing practices and procedures to be followed by the council; and
- (e) in the case of a governing council—provisions stipulating—
 - (i) that the council is jointly responsible with the head teacher of the school for the governance of the school; and
 - (ii) that the council is to fulfil the roles specified in the constitution in respect of—
 - (A) strategic planning for the school; and
 - (B) determining policies for the school; and
 - (C) determining the application of the total financial resources available to the school; and
 - (D) presenting operational plans and reports on its operations to the school community and the Minister; and
 - (iii) that the members are to comply with a code of practice approved by the Minister; and
 - (iv) that the council is to participate in a scheme for the resolution of disputes between the council and the head teacher; and
- (f) provisions setting out the manner in which amendments to the constitution are to be made; and
- (g) provisions of any other kind considered appropriate by the Minister.

(2) The constitution of a school council may include provisions limiting the powers that may be exercised by the council.

(3) The constitution of a governing council may include provisions under which the membership of the council is such that it may also constitute the management committee of a registered children's services centre under the *Children's Services Act 1985*.

Establishment and dissolution of school councils

85. (1) The Minister may, by notice in the *Gazette*, do one or more of the following:

- (a) establish a school council for a Government school or proposed Government school;
- (b) dissolve the school councils of two or more Government schools and establish a single school council for those schools;
- (c) if Government schools are amalgamated, dissolve the school councils of those schools and establish a school council for the schools as amalgamated;
- (d) if a school council operates for two or more Government schools, dissolve the council and establish separate school councils for those schools;
- (e) dissolve a school council if the Government school is permanently closed.

(2) A notice under subsection (1) may include provisions of a transitional or ancillary nature.

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(3) The Minister may, in establishing a school council, determine the constitution under which the council is to operate and make arrangements for the election or appointment of the council's elected or appointed members.

(4) The Minister may only determine that a council is to operate under a constitution appropriate to a governing council if the council is established under paragraph (b), (c) or (d) of subsection (1) and the council or each of the councils dissolved under the paragraph was, immediately before its dissolution, a governing council.

(5) If a school council is dissolved—

- (a) the Minister may, by written order, transfer assets or liabilities (or both) of the council to one or more other school councils or to any other person; and
- (b) any remaining assets and liabilities of the council or affiliated committee vest in the Minister.

(6) No stamp duty is payable under a law of the State in respect of a transfer effected under subsection (5) and no person has an obligation under the *Stamp Duties Act 1923* to lodge a statement or return relating to such a transfer or to include information about such a transfer in a statement or return.

(7) The Registrar-General or any other authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application by the Minister or a person nominated by the Minister for the purpose, register or record a transfer under subsection (5).

Affiliated committees (eg Parents & Friends)

86. (1) The Minister may authorise the establishment of committees to be affiliated with a school council.

(2) An affiliated committee operates under a constitution approved by the Minister.

Constitution of affiliated committee

87. The constitution of an affiliated committee must assign a name to the committee and contain—

- (a) provisions determining the membership of the committee; and
- (b) provisions specifying the functions of the committee and its relationship to the school council; and
- (c) provisions specifying the quorum and the procedures to be followed by the committee (which may include provisions allowing procedures to be determined by the committee from time to time); and
- (d) provisions specifying the accounting and auditing practices to be followed by the committee; and
- (e) provisions providing for the dissolution of the committee and the distribution of assets held by the committee on dissolution; and
- (f) provisions setting out the manner in which amendments to the constitution are to be made; and

- (g) provisions of any other kind considered appropriate by the Minister.

Amendment of constitution of school council or affiliated committee

88. (1) The Minister may, by notice in writing to the presiding member of a school council or affiliated committee, direct the school council or affiliated committee to make such amendments to its constitution as are specified in the notice.

(2) The Minister must not give a direction under subsection (1) until the expiration of three months after the Minister has informed the school council or affiliated committee in writing of the amendments that the Minister requires.

(3) Before the direction is given the school council or affiliated committee may make representations to the Minister in relation to the proposed amendments and the Minister must give proper consideration to those representations.

(4) The Minister may not give a direction under subsection (1) that would result in a school council becoming a governing council.

(5) An amendment to the constitution of a school council or affiliated committee has no effect until submitted to, and approved by, the Minister.

(6) A school council may only submit to the Minister an amendment to the constitution that would result in the council becoming a governing council if the council, the head teacher of the school and the Director-General are signatories to an agreement that contemplates that result.

Model constitutions

89. (1) The Minister may publish model constitutions for school councils and affiliated committees.

(2) If a school council or affiliated committee applies to the Minister for approval of a constitution, or an amendment of a constitution, that contains an alteration to a model constitution, the council or committee must inform the Minister of the alteration and the reasons for the alteration.

(3) The Minister has absolute discretion to approve or refuse to approve the constitution or an amendment of the constitution of a school council or affiliated committee that contains an alteration to a model constitution.

Copies of constitutions and codes of practice to be available for inspection

90. The Minister is to keep available for public inspection during normal office hours at an office determined by the Minister—

- (a) a copy of the constitution (as in force from time to time) of each school council and each affiliated committee; and
- (b) a copy of each code of practice (as in force from time to time) with which members of a governing council must comply.

Limitation on power to deal with real property

91. A school council may only enter into a transaction involving the acquisition or disposal of real property with the Minister's written consent.

Limitation on power to borrow money

92. (1) A school council may only borrow money with the Minister's written consent.

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(2) The Minister will establish an advisory committee to provide advice to the Minister on school council proposals to borrow money.

(3) The Treasurer may guarantee repayment by a school council of a loan (together with interest and incidental charges connected with the loan).

(4) A liability of the Treasurer arising under a guarantee under this section will be satisfied out of the Consolidated Account (which is appropriated to the necessary extent).

General limitation in respect of curriculum, discipline and staff

93. (1) A school council or affiliated committee must not interfere, or take any action that interferes, with—

- (a) the provision, or the day-to-day management of the provision, of instruction in the school in accordance with the curriculum determined by the Director-General under Part 7; or
- (b) the administration of discipline within the school.

(2) A school council or affiliated committee must not give directions to the head teacher, or any other member of the staff of the school (other than an employee of the school council), in relation to the manner in which the person carries out his or her duties.

(3) A complaint received by a council or affiliated committee against the head teacher or any other member of the staff of the school (other than an employee of the school council) must—

- (a) in the case of a complaint against the head teacher—be passed on without comment to the Director-General; and
- (b) in any other case—be passed on without comment to the head teacher.

Conflict of interest

94. (1) A member of a school council who has a direct or indirect pecuniary interest in a contract or proposed contract with the council—

- (a) must, as soon as the member becomes aware of the interest, disclose the nature of the interest to the council; and
- (b) must not take part in deliberations or decisions of the council with respect to that contract.

Maximum penalty: \$5 000.

(2) If a member discloses an interest in a contract or proposed contract in accordance with this section—

- (a) the contract is not liable to be avoided by the council on any ground arising from the fiduciary relationship between the member and the council; and
- (b) the member is not liable to account for profits derived from the contract.

Accounts

95. The Director-General or the Auditor-General may, at any time, inspect or audit accounts kept by a school council or affiliated committee.

Administrative instructions

96. (1) The Minister may, from time to time, issue administrative instructions to school councils or affiliated committees.

(2) An administrative instruction may be varied or revoked by further administrative instruction.

(3) An administrative instruction—

(a) may be of general application or limited application;

(b) may vary in its terms according to whether or not the school council is a governing council or any other factor.

(4) School councils and affiliated committees are bound by administrative instructions.

Minister's power to remove members

97. The Minister may remove a member of a school council or affiliated committee from office—

(a) for misconduct; or

(b) for failure or incapacity to carry out the duties of office satisfactorily; or

(c) if—

(i) irregularities have occurred in the conduct of the council or committee; or

(ii) the council or committee has failed to carry out its functions satisfactorily; or

(iii) the council or committee has failed to comply with directions, or administrative instructions, of the Minister given under this Act,

and the membership of the council or committee should, in the opinion of the Minister, be reconstituted for that reason; or

(d) for any other reasonable cause.

Minister's power to suspend powers or functions in urgent circumstances

98. (1) If the Minister is of the opinion that it is necessary or desirable to limit the powers or functions of a school council or affiliated committee as a matter of urgency, the Minister may, by written notice to the presiding member of the school council or affiliated committee (as the case may require), prohibit or restrict the exercise of a specified power or the performance of a specified function for a specified period or until further order of the Minister.

(2) A prohibition or restriction imposed under this section has effect despite the provisions of the constitution of the school council or affiliated committee.

Validity of acts

99. An act or proceeding of a school council or affiliated committee is not invalid by reason only of a vacancy in its membership or a defect in the election or appointment of a member.

Immunity

100. (1) No personal liability attaches to—

(a) a member or former member of a school council; or

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(b) a member or former member of a committee established by a school council; or

(c) a member or former member of an affiliated committee,

for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of a power or function of the council or committee (as the case requires).

(2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

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**PART 10
MISCELLANEOUS**

Special provisions relating to rate of remuneration for part-time officers and employees

101A. (1) Where an officer is employed on a part-time basis (that is to say, on the basis that he or she will work in any pay period a specified percentage of the time ordinarily expected of an officer employed on a full-time basis) the rate of remuneration applicable to the officer (including any allowances that may be payable) is that same percentage applied to the rate of remuneration that would apply if he or she were employed on a full-time basis.

(2) Subject to subsection (3), subsection (1)—

- (a) applies in relation to salary, notwithstanding any Act or law (including the provisions of any contract of employment or award) to the contrary; and
- (b) applies in relation to an allowance, subject to any express provision of a contract of employment or an award that provides for payment of the full amount of the allowance to the officer; and
- (c) applies regardless of the number of working days, and the period of time in any one day, over which the officer performs the required amount of work in any pay period; and
- (d) applies in relation to any past or present entitlement to remuneration, whether it arose before or arises after the commencement of this section.

(3) Nothing in this section affects the payment in full of any allowance to an officer employed on a part-time basis if—

- (a) the payment was made before the commencement of this section; or
- (b) the payment is made after the commencement of this section in respect of an allowance that was being paid in full immediately prior to that commencement.

(4) Nothing in this section affects—

- (a) the judgement of the court in Action No. 3580 of 1989 in the Local Court of Adelaide insofar as it determines the rights of the plaintiff in that action; or
- (b) the determination of any other claim made by or on behalf of any person who was at any time or is an employee under this Act, if that claim was lodged with the Department at its Central Office or an Area Office before 5 March 1991.

(5) In this section, "officer" means an officer of the teaching service or any other person employed under this Act.

Religious education

102. (1) Regular provision shall be made for religious education at a Government school, under such conditions as may be prescribed, at times during which the school is open for instruction.

(2) The regulations shall include provision for permission to be granted for exemption from religious education on conscientious grounds.

Arrangements under which land, buildings and facilities may be used for both school and community purposes

102A. The Minister may, if of the opinion that it is expedient to do so—

- (a) permit Government school land, buildings or facilities to be used for community purposes upon conditions determined by the Minister;
- (b) provide assistance to community bodies (whether by the making of grants or loans or otherwise) upon conditions that secure for schools rights to make use of land, buildings or facilities of the bodies.

Educational census

103. (1) The Minister may, at any time, by notice in the *Gazette*, direct that an educational census be taken in the area specified in such notice.

(2) For the purpose of taking such a census, the Minister may appoint some person or persons to call at every dwelling house in the area and collect information.

(3) Every occupier of a dwelling house in the area shall, upon the request of any person appointed under this section, give him such information as will enable him to complete a return in a prescribed form.

(4) If for any reason the information is not supplied when a person appointed under this section calls at any dwelling house to obtain the information, a return may be left at the dwelling house.

(5) The occupier of the dwelling house at which the return is left shall, within seven days thereafter, complete the return and give it to a person appointed under this section when he calls and asks for the return after the expiration of those seven days.

(6) If any occupier of a dwelling house—

- (a) fails to comply with any of the provisions of subsection (5); or
- (b) wilfully supplies any false information,

he shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Expiation fee: Division 10 fee.

Offence of insulting a teacher

104. Any person who behaves in an offensive or insulting manner to a teacher who is acting in the course of his duties as such shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Expiation fee: Division 9 fee.

Proceedings for offences

105. (1) Proceedings for offences against this Act shall be disposed of summarily.

(2) Proceedings for an offence against this Act shall not be commenced without the consent in writing of the Minister.

(3) In any proceedings for an offence against this Act, an apparently genuine document purporting to be under the hand of the Minister and to record his consent to the commencement of the proceedings shall be accepted as proof of that consent in the absence of proof to the contrary.

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Moneys required for the purposes of this Act

106. The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

Materials and services charge

106A. (1) The head teacher of a Government school that provides courses of instruction in primary or secondary education may, in respect of any calendar year, fix a materials and services charge payable in respect of each student enrolled at the school for the whole or part of that year, as follows:

- (a) the charge must not exceed—
 - (i) in the case of a student enrolled at a secondary level—\$215 multiplied by the relevant indexation factor; or
 - (ii) in the case of a student enrolled at a primary level—\$161 multiplied by the relevant indexation factor,

or, if some other amount is prescribed by regulation, that amount;

- (b) in fixing the amount of the charge—
 - (i) regard may be had to the cost of stationery, books, apparatus, equipment, organised activities or other materials and services to be provided to or for students in connection with courses of instruction provided in accordance with the curriculum determined by the Director-General; and
 - (ii) regard may not be had to the cost of teachers' salaries or teachers' materials or costs associated with school buildings or fittings;
- (c) the basis on which the charge is proposed to be fixed must be disclosed to the school council and the amount of the proposed charge must be approved by the school council.

(2) Different charges may be fixed according to the year level for which the student is enrolled or any other factor.

(3) Liability for the materials and services charge is to be determined as follows:

- (a) if the student is not an adult, the parents of the student are jointly and severally liable for the charge;
- (b) if the student is an adult—
 - (i) in the case of a student who is a dependant of his or her parents—the student and the parents are jointly and severally liable for the charge;
 - (ii) in any other case—the student is liable for the charge.

(4) The student, or the parents of the student, must be given written notice (in a form approved by the Director-General) of the amount of the materials and services charge payable in respect of a particular year and the period, being not less than 14 days from the date of the notice, within which payment is required.

(5) Subject to any directions of the Director-General, the head teacher of a Government school may, in a particular case or class of cases—

- (a) allow a materials and services charge to be paid by instalments; or
 - (b) waive or reduce a materials and services charge; or
 - (c) refund a materials and services charge in whole or in part.
- (6) A materials and services charge is recoverable as a debt due to the school council.

(7) In any legal proceedings, an apparently genuine document purporting to be a certificate signed by the head teacher of a Government school certifying that a specified amount of a materials and services charge payable by a specified person is outstanding at a specified date constitutes proof of the matters so certified in the absence of proof to the contrary.

(8) A student is not to be refused materials or services by reason of non-payment of a materials and services charge.

(9) In this section—

"CPI" means the Consumer Price Index (All Groups) for the City of Adelaide published by the Australian Bureau of Statistics;

"relevant indexation factor" means 1 or the quotient obtained by dividing the CPI for the quarter ending 30 September in the year immediately preceding the year for which the materials and services charge is payable by the CPI for the quarter ending 30 September 1999, whichever is the greater.

Charges for certain overseas and non-resident students

106B. (1) The Director-General may, by notice in the *Gazette*, fix charges payable by—

- (a) a full fee paying overseas student (within the meaning of Part 5—see section 72I) of a Government school; or
- (b) a student of a Government school who is not resident in the State.

(2) Different charges may be fixed according to the school, the year level or subject for which the student is enrolled or proposed to be enrolled or any other factor.

(3) Liability for charges fixed under this section is to be determined as follows:

- (a) if the student is not an adult, the parents of the student are jointly and severally liable for the charge;
- (b) if the student is an adult—
 - (i) in the case of a student who is a dependant of his or her parents—the student and the parents are jointly and severally liable for the charge;
 - (ii) in any other case—the student is liable for the charge.

(4) The Director-General may, in a particular case or class of cases—

- (a) allow the charges to be paid by instalments; or
- (b) waive or reduce the charges; or

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- (c) refund, in whole or in part, the charges; or
 - (d) require a person to give security for payment of the charges.
- (5) Charges payable under this section are recoverable as a debt due to the Minister.

(6) In any legal proceedings, an apparently genuine document purporting to be a certificate signed by the Director-General certifying that a specified amount of charges payable under this section by a specified person is outstanding at a specified date constitutes proof of the matters so certified in the absence of proof to the contrary.

(7) In this section—

"student" includes a prospective student.

Certain other payments unaffected

106C. Nothing in this Act prevents—

- (a) charges being made in connection with—
 - (i) courses of instruction other than those provided in accordance with the curriculum determined by the Director-General; or
 - (ii) extra-curricular activities; or
 - (iii) curricular activities that do not form part of the core of activities in which students are required to participate; or
- (b) charges being made in connection with courses of instruction or activities undertaken by adults otherwise than as students enrolled in a course of secondary education; or
- (c) charges being made to the governing authority of a non-Government school in respect of students of the non-Government school undertaking courses of instruction provided by a Government school; or
- (d) the Director-General or the head teacher or school council of a Government school inviting or receiving voluntary payments from parents, students or others for the purposes of the school.

Review and expiry

106D. (1) The Minister must—

- (a) cause Part 8 and sections 106A to 106C of this Act to be reviewed in light of the Report of the Parliamentary Select Committee on DETE Funded Schools established on 9 November 2000; and
 - (b) cause the results of the review to be embodied in a written report; and
 - (c) cause a copy of the report to be laid before both Houses of Parliament no later than three months after the making of the Report of the Parliamentary Select Committee.
- (2) Sections 106A to 106C of this Act expire on 1 December 2002.

Regulations

107. (1) The Governor may make such regulations as are contemplated by this Act, or as he considers necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may make provision with respect to the following matters:

- (a) the establishment, maintenance and control of Government schools and the management of all land, buildings and equipment used in connection with such schools; and
- (b) the provision of residences for teachers and boarding accommodation to be used in connection with a Government school; and
- (c) the provision of religious education in Government schools and exemption from religious education on conscientious grounds; and
- (d) the terms and conditions upon which officers of the teaching service or other persons employed under this Act shall hold office, their rights to leave of absence and any other privileges, their rights upon retirement from the teaching service and any other matter whatsoever affecting their employment; and
- (e) the salary and other remuneration to be paid to officers of the teaching service or other persons employed under this Act; and
- (f) the appointment, practice and procedure of any board or committee established under this Act; and
- (g) the courses of instruction to be provided in Government schools; and
- (h) the provision of books and materials for pupils at any school; and
- (i) the provision of grants to schools and the conditions applicable to those grants; and
- (j) the enrolment of pupils; and
- (k) the conditions upon which pupils are to be admitted to schools; and
- (l) the establishment of scholarships and the provision of allowances to pupils; and
- (m) school vacations, the hours at which instruction is to be provided at schools, the method to be adopted in teaching and the discipline to be observed and enforced in Government schools; and
- (n) the transport of children to and from school and the payment of part or all of the costs of transport; and
- (o) the use of the buildings or facilities of Government schools; and
- (p) the prohibition of trespass upon the grounds of any Government school and the regulation of the driving, parking or ranking of vehicles on the grounds of any Government school; and
- (q) the conditions governing the registration of teachers and any other matter affecting the registration of teachers; and

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- (r) the fees to be charged in relation to any registration, or renewal of registration, as a teacher; and
- (s) the furnishing of returns to the Department by the head teachers of schools, the matters to be contained in any such returns and any other information to be provided to the Minister or the Director-General; and
- (sa) any matter pertaining to school councils, affiliated committees or the operation of school councils or affiliated committees (and such a regulation may confer discretionary powers on the Minister or the Director-General); and

* * * * *

- (t) any other matter necessary or expedient for the proper administration of this Act.

(3) A regulation made under this Act shall not be invalid on the ground that it relates to circumstances that occurred before the commencement of this Act.

(4) A regulation under this Act may provide for a penalty not exceeding two hundred dollars for breach of, or non-compliance with, any provision of the regulation.

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APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Industrial Conciliation and Arbitration (Commonwealth Provisions) Amendment Act 1991, s. 55(11))

(11) The following provisions apply in relation to the amendment of the *Education Act 1972* and the *Technical and Further Education Act 1976*:

- (a) an award of the Teachers' Salaries Board in force immediately before those amendments will, after those amendments, be taken to be an award of the Commission and will, subject to the principal Act, continue to have the same operation; and
- (b) any proceedings before the Teachers' Salaries Board at the time of those amendments may continue before the Teachers' Salaries Board as if those amendments had not been effected.

(Transitional provision from Education (Teaching Service) Amendment Act 1996, s. 10)

Transition and ratification

10. (1) Each position recorded in the records of the Department from time to time before the commencement of this Act as a position in the teaching service classified at a promotional level will be taken to have been duly established as a position in the teaching service and classified at that level by the Director-General under the principal Act as amended by this Act (and for that purpose it is to be assumed that this Act had been enacted and was in force at the relevant time).

(2) Each appointment made to a position referred to in subsection (1) from time to time before the commencement of this Act will be taken to have been duly made by the Minister under the principal Act as amended by this Act (and for that purpose it is to be assumed that this Act had been enacted and was in force at the relevant time).

(3) If an appointment referred to in subsection (2) was made on the basis that it was to continue only for a period specified in the instrument notifying the officer of his or her appointment, the Minister will be taken to have duly imposed, under the principal Act as amended by this Act, a condition limiting the term of the appointment to the period so specified (and for that purpose it is to be assumed that this Act has been enacted and was in force at the relevant time).

(4) Each officer recorded in the records of the Department as being classified at the Advanced Skills Teacher Level 1 or a lower level immediately before the commencement of this Act will be taken to have been duly classified at that level by the Director-General under the principal Act as amended by this Act (and for that purpose it is to be assumed that this Act had been enacted and was in force at the relevant time).

(5) If an officer's classification referred to in subsection (4) was on the basis that it was to continue only for a period specified in the instrument notifying the officer of his or her classification, the Director-General will be taken to have duly imposed, under the principal Act as amended by this Act, a condition limiting the term of the classification to the period so specified (and for that purpose it is to be assumed that this Act had been enacted and was in force at the relevant time).

(6) In this section—

"promotional level" in relation to a position in the teaching service means a classification level other than Teacher or Advanced Skills Teacher Level 1.

(Transitional provisions from Education (Councils and Charges) Amendment Act 2000, Sched. 1)

Head teachers

1. A person who is, immediately before the commencement of this clause, the head teacher of a school will be taken, for the purposes of the definition of "head teacher" in the principal Act (as amended by this Act), to have been designated by the Director-General or governing authority of the non-Government school (as the case requires) as the head teacher of the school.

School councils

2. (1) A school council in existence immediately before the commencement of this clause will, on that commencement, be taken—

- (a) to continue in existence as the same body corporate; and
- (b) to consist of the members of the council holding office immediately before that commencement.

(2) An elected or appointed member of a school council will hold office for the same term as applied to the member immediately before the commencement of this clause.

(3) A school council may, within 6 months after the commencement of this clause, adopt a constitution.

(4) If the school is a Partnerships 21 site, the constitution adopted by the council must be one appropriate to a governing council.

(5) A constitution adopted by a school council has no effect until submitted to, and approved by, the Minister.

(6) If—

- (a) a school council does not adopt a constitution and submit it to the Minister for approval within 6 months after the commencement of this clause; or
- (b) the Minister refuses to approve a constitution so submitted by a school council,

the Minister may, by notice in writing to the presiding member of the school council, determine that the council is to operate under a constitution specified in the notice.

(7) The Minister may not make a determination under subclause (6) that a school council is to operate under a constitution appropriate to a governing council unless, at the time the direction is given, the school is a Partnerships 21 site.

(8) Until a constitution takes effect in relation to a school council under this clause, the council must operate in accordance with the provisions of the Act, and the regulations made under the Act, as in force immediately before the commencement of this clause (subject to any modifications prescribed by regulation and despite the repeal or revocation of those provisions).

(9) For the purposes of this clause, a school is a Partnerships 21 site only if it is so designated by an agreement (known as a "Services Agreement") to which the presiding member of the school council, the head teacher of the school and the Director-General (or a former presiding member, head teacher and Director-General) are signatories.

Affiliated committees

3. (1) An affiliated committee established by the Minister under the principal Act and in existence immediately before the commencement of this clause will, on that commencement, be taken—

- (a) to continue in existence as an affiliated committee authorised by the Minister under the principal Act (as amended by this Act); and
- (b) to consist of the members of the committee holding office immediately before that commencement.

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(2) An elected or appointed member of an affiliated committee will hold office for the same term as applied to the member immediately before the commencement of this clause.

(3) An affiliated committee may, within 6 months after the commencement of this clause, adopt a constitution.

(4) A constitution adopted by an affiliated committee has no effect until submitted to, and approved by, the Minister.

(5) If—

(a) an affiliated committee does not adopt a constitution and submit it to the Minister for approval within 6 months after the commencement of this clause; or

(b) the Minister refuses to approve a constitution so submitted by an affiliated committee,

the Minister may, by notice in writing to the presiding member of the affiliated committee, determine that the committee is to operate under a constitution specified in the notice.

(6) Until a constitution takes effect in relation to an affiliated committee under this clause, the committee must operate in accordance with the provisions of the Act, and the regulations made under the Act, as in force immediately before the commencement of this clause (subject to any modifications prescribed by regulation and despite the repeal or revocation of those provisions).

Legislative History

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 3 of *The Public General Acts of South Australia 1837-1975* at page 536.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 November 1984. A schedule of these alterations was laid before Parliament on 13 November 1984.
- Legislative history since 3 February 1976 (entries in bold type indicate amendments incorporated since the last reprint) is as follows:

Section 2(2):	deleted in pursuance of the <i>Acts Republication Act 1967</i> as it is now obsolete
Section 3:	amended by 4, 1976, s. 3; 108, 1980, s. 3; 93, 1983, s. 3; deleted in pursuance of the <i>Acts Republication Act 1967</i>
Section 4:	repealed by 50, 1984, s. 3(1) (Sched. 2)
Section 5(1): (previously section 5)	redesignated as s. 5(1) by 25, 1979, s. 4 definition of "adult" inserted by 92, 2000, s. 3(a) definition of "affiliated committee" inserted by 92, 2000, s. 3(a) definition of "approved non-Government school" inserted by 25, 1979, s. 9(a); repealed by 108, 1980, s. 4(a) definition of "the Classification Board" repealed by 25, 1996, s. 3(a) definition of "classify" inserted by 25, 1996, s. 3(a) definition of "governing authority" substituted by 108, 1980, s. 4(b) definition of "governing council" inserted by 92, 2000, s. 3(b) definition of "Government school" amended by 113, 1976, s. 3(a); substituted by 25, 1979, s. 9(b) definition of "handicapped child" repealed by 113, 1976, s. 3(b) definition of "head teacher" substituted by 92, 2000, s. 3(c) definition of "officer" amended by 113, 1976, s. 3(c) definition of "parent" substituted by 83, 1986, s. 3(a) definition of "pre-school education" inserted by 25, 1979, s. 9(c) definition of "promotional level" inserted by 25, 1996, s. 3(b) definition of "reclassify" inserted by 25, 1996, s. 3(b)

- definition of "recognised kindergarten" inserted by 113, 1976, s. 3(d);
amended by 83, 1986, s. 3(b)
- definition of "registered non-Government school" inserted by 108, 1980,
s. 4(c)
- definition of "the Salaries Board" repealed by 34, 1991, s. 53(a)
- definition of "special school" inserted by 113, 1976, s. 3(e)
- definition of "teacher" substituted by 113, 1976, s. 3(f)
- definition of "the teaching service" substituted by 113, 1976, s. 3(g)
- Section 5(2): inserted by 25, 1979, s. 4; amended by 61, 1987, s. 3
- Section 5(3): inserted by 25, 1979, s. 4
- Section 8(1): amended by 83, 1986, s. 4
- Section 9(1): substituted by 25, 1979, s. 10
- Section 9(3): amended by 113, 1976, s. 4(a); substituted by 80, 1998, s. 2
- Section 9(4): amended by 83, 1986, s. 5
- Section 9(9a): inserted by 92, 2000, s. 4
- Section 9(10): inserted by 113, 1976, s. 4(b)
- Section 10(1): amended by 25, 1979, s. 11
- Section 10(5): amended by 83, 1986, s. 6
- Section 11(2): amended by 83, 1986, s. 7(a)
- Section 11(4): amended by 83, 1986, s. 7(b)
- Section 13(1): amended by 83, 1986, s. 8
- Part 2A comprising ss. 14A - 14F and heading inserted by 80, 1998, s. 3
- Section 15(4): amended by 25, 1979, s. 12(a)
- Section 15(5): amended by 25, 1979, s. 12(b); 31, 1980, s. 2(a)
- Section 15(6): amended by 31, 1980, s. 2(b)
- Division 1A of Part 3 comprising ss. 15A - 15C inserted by 25, 1996,
s. 4
- Section 17(1): substituted by 83, 1986, s. 9(a); amended by 25, 1995, s. 5(a), (b)
- Section 17(1a): inserted by 83, 1986, s. 9(a); substituted by 25, 1996, s. 5(c)
- Section 17(1b): inserted by 83, 1986, s. 9(a); repealed by 25, 1996, s. 5(c)
- Section 17(1c): inserted by 83, 1986, s. 9(a)
- Section 17(2): amended by 83, 1986, s. 9(b)
- Section 17(3): amended by 83, 1986, s. 9(c)
- Section 18: repealed by 25, 1979, s. 5
- Section 19: amended by 25, 1979, s. 6; substituted by 61, 1987, s. 4
- Section 20: substituted by 25, 1979, s. 7; 61, 1987, s. 4
- Section 20(5): amended by 25, 1996, s. 6
- Section 21: amended by 25, 1979, s. 8; substituted by 61, 1987, s. 4
- Section 22(1): amended by 113, 1976, s. 5(a)
- Section 22(2): amended by 113, 1976, s. 5(b)
- Section 24(1): amended by 113, 1976, s. 6
- Section 24(2): amended by 83, 1986, s. 10
- Section 25(1): substituted by 31, 1980, s. 3; amended by 50, 1984, s. 3(1) (Sched. 2);
75, 1993, s. 11(a)
- Section 25(1a): inserted by 31, 1980, s. 3; repealed by 50, 1984, s. 3(1) (Sched. 2)
- Section 25(2): repealed by 83, 1986, s. 11
- Section 25(3): inserted by 113, 1976, s. 7; repealed by 75, 1993, s. 11(b)
- Section 26(2): amended by 25, 1979, s. 13; 25, 1996, s. 7
- Division 6 of Part 3 comprising ss. 28 - 33 amended by 83, 1986, s. 12;
repealed and ss. 28 - 31 inserted in its place by 25, 1996, s. 8
- Division 7 of Part 3 comprising ss. 34 - 44 and heading amended by
4, 1976, s. 4; 25, 1979, s. 14; 83, 1986, s. 13; repealed by 34, 1991,
s. 53(b)
- Section 45(2): amended by 4, 1976, s. 5(a), (b); 83, 1986, s. 14; 26, 1989, s. 3(a)

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Section 45(3):	amended by 4, 1976, s. 5(c); 26, 1989, s. 3(b), (c)
Section 45(4):	inserted by 4, 1976, s. 5(d); amended by 26, 1989, s. 3(d), (e)
Section 45(5) and (6):	inserted by 26, 1989, s. 3(f)
Section 46(3):	amended by 83, 1986, s. 15
Section 46(6):	inserted by 26, 1989, s. 4
Section 49:	amended by 4, 1976, s. 6
Section 53(2):	amended by 26, 1989, s. 5; substituted by 25, 1996, s. 9
Section 53(2a):	inserted by 25, 1996, s. 9
Section 54(1):	substituted by 26, 1989, s. 6
Section 55(2):	amended by 113, 1976, s. 8; 25, 1979, s. 15; 108, 1980, s. 5; 83, 1986, s. 16
Section 56(3):	amended by 83, 1986, s. 17
Section 57(1):	amended by 113, 1976, s. 9(a)
Section 57(5):	amended by 113, 1976, s. 9(b)
Section 58(2):	amended by 108, 1980, s. 6(a), (b)
Section 58(3):	inserted by 108, 1980, s. 6(c)
Section 60(1):	amended by 113, 1976, s. 10(a)
Section 60(2):	amended by 113, 1976, s. 10(b); 83, 1986, s. 18
Section 61(1):	amended by 113, 1976, s. 11(a); 50, 1984, s. 3(1) (Sched. 2)
Section 61(1)(b)(iii):	repealed by 50, 1984, s. 3(1) (Sched. 2)
Section 61(4):	substituted by 113, 1976, s. 11(b)
Section 63(1):	amended by 113, 1976, s. 12(a); 25, 1979, s. 16; 108, 1980, s. 7; 50, 1984, s. 3(1) (Sched. 2)
Section 63(2):	amended by 113, 1976, s. 12(b)
Section 63(4):	amended by 113, 1976, s. 12(c)
Section 67(1):	amended by 113, 1976, s. 13
Section 68(1):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 10(a))
Section 68(2):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 10(b))
Section 68(3):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 10(c))
Section 70(2):	substituted by 83, 1986, s. 19
Section 70(3):	repealed by 83, 1986, s. 19

Part 5 comprising ss. 72, 73 and heading amended by 25, 1979, ss. 17, 18; repealed and ss. 72 - 72P and headings inserted in its place by 108, 1980, s. 8

Section 72(2):	amended by 13, 1981, s. 3; 93, 1983, s. 4(a); 19, 1993, s. 3
Section 72(3) and (4):	inserted by 93, 1983, s. 4(b)
Section 72A(3):	amended by 83, 1986, s. 20
Section 72B(1):	amended by 13, 1981, s. 4; 93, 1983, s. 5(a)
Section 72B(5):	substituted by 93, 1983, s. 5(b)
Section 72E(2):	substituted by 83, 1986, s. 21
Section 72E(3):	repealed by 83, 1986, s. 21
Section 72F:	amended and redesignated as s. 72F(1) by 83, 1986, s. 22
Section 72F(2):	inserted by 83, 1986, s. 22(b); amended by 19, 1993, s. 4
Section 72G(2):	substituted by 13, 1981, s. 5; 93, 1983, s. 6(a); amended by 26, 1989, s. 7
Section 72G(3):	amended by 93, 1983, s. 6(b); substituted by 19, 1993, s. 5
Section 72G(4):	substituted by 19, 1993, s. 5
Section 72G(4a):	inserted by 93, 1983, s. 6(c)
Section 72G(5):	substituted by 93, 1983, s. 6(d)
Section 72GA:	inserted by 19, 1993, s. 6
Section 72H(3):	amended by 93, 1983, s. 7
Section 72I:	repealed by 13, 1981, s. 6

Division 2A of Part 5 comprising ss. 72I - 72IB and heading inserted by 26, 1989, s. 8

Heading preceding section 72J:	substituted by 93, 1983, s. 8; 19, 1993, s. 7
Section 72J(1):	amended by 93, 1983, s. 9(a)
Section 72J(1a):	inserted by 93, 1983, s. 9(b)

Section 72J(2):	substituted by 93, 1983, s. 9(b); amended by 26, 1989, s. 9
Section 72J(2a):	inserted by 93, 1983, s. 9(b); amended by 50, 1984, s. 3(1) (Sched. 2)
Section 72J(2b):	inserted by 19, 1993, s. 8
Section 72K(1):	amended by 93, 1983, s. 10(a)
Section 72K(4):	amended by 93, 1983, s. 10(b)
Section 72L(1):	amended by 93, 1983, s. 11(a)-(c)
Section 72L(2):	amended by 93, 1983, s. 11(d)
Section 72M(1):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 10(d))
Section 72M(2):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 10(e))
Section 72M(3):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 10(f))
Section 72N(3):	substituted by 19, 1993, s. 9
Section 72O(1):	amended by 13, 1981, s. 7
Section 72P(1):	amended by 13, 1981, s. 8; 93, 1983, s. 12(a)-(c); 83, 1986, s. 23
Section 72P(1a):	inserted by 93, 1983, s. 12(d)
Section 72P(2):	amended by 93, 1983, s. 12(e); substituted by 19, 1993, s. 10
Section 73:	inserted by 26, 1989, s. 10
Section 74(1):	inserted by 25, 1979, s. 19(a); 108, 1980, s. 8
Section 74(1) and (2):	redesignated as s. 74(2) and (3) respectively by 25, 1979, s. 19(b); repealed by 83, 1986, s. 24
Section 75(1):	amended by 113, 1976, s. 14(a)
Section 75(3):	substituted by 113, 1976, s. 14(b)
Sections 75A and 75C:	inserted by 83, 1986, s. 26
Section 75C(1):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 10(g))
Section 75C(2):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 10(h))
Section 75C(3):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 10(i))
Section 76(3):	amended by 83, 1986, s. 27
Section 78(1):	amended by 83, 1986, s. 28
Section 79:	substituted by 44, 1979, Sched.; 60, 1993, s. 3
Section 80(2):	substituted by 113, 1976, s. 15(a)
Section 80(2a):	inserted by 83, 1986, s. 29(a)
Section 80(2b):	inserted by 60, 1993, s. 4
Section 80(3):	amended by 113, 1976, s. 15(b)
Section 80(4):	substituted by 83, 1986, s. 29(b)
Section 81(1):	amended by 25, 1979, s. 20
Section 82(2):	substituted by 25, 1979, s. 21
Section 82(3):	substituted by 25, 1979, s. 21; amended by 108, 1980, s. 10; 83, 1986, s. 30
Section 82(4):	substituted by 25, 1979, s. 21
 Part 8 comprising ss. 83 - 90 and heading amended by 113, 1976, s. 16; 25, 1979, s. 22, 83, 1986, ss. 31, 32; repealed and ss. 83 - 100 and heading inserted in its place by 92, 2000, s. 5	
 Part 9 comprising ss. 91 - 101 and heading repealed by 4, 1976, s. 7	
Section 101A:	inserted by 2, 1991, s. 2
Section 102A:	inserted by 83, 1986, s. 33
Section 103(6):	amended by 83, 1986, s. 34; 71, 1992, s. 3(1) (Sched.)
Section 104:	amended by 83, 1986, s. 35; 71, 1992, s. 3(1) (Sched.)
Sections 106A - 106D:	inserted by 92, 2000, s. 6
Section 107(2):	amended by 25, 1979, s. 23; 108, 1980, s. 11; 50, 1984, s. 3(1) (Sched. 2); 26, 1989, s. 11; 2, 1991, s. 3; 92, 2000, s. 7(a), (b)
Section 107(2)(sb):	repealed by 92, 2000, s. 7(b)
Section 107(4):	amended by 83, 1986, s. 36

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APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.