

EDUCATION.

9° Elizabeth II., No. LVII.

No. 57 of 1960.

AN ACT to amend the Education Act, 1928-1957.

[Assented to 2nd December, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Education Act Amendment Act, 1960.*

Short title
and citation.

(2) In this Act the Education Act, 1928-1957, is referred to as the principal Act.

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14th June,
1957,
further
amended by
Act No. 72
of 1957.

(3) The principal Act as amended by this Act may be cited as the *Education Act, 1928-1960.*

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

Commence-
ment.

Long title
amended.

3. The long title of the principal Act is amended by adding after the word, "Education", being the last word in the long title, the passage, "to establish a Government School Teachers' Tribunal and for incidental and other purposes."

S. 3
amended.

4. Section three of the principal Act is amended—

(a) by substituting for the interpretation, "Director" the following interpretation—
"Director-General" means the Director-General of Education;

(b) by substituting for the word, "elementary" in line one of the interpretation, "Government School", the word, "primary", and by adding before the word, "or" in line two of that interpretation, the passage, "teachers' college, technical college";

(c) by deleting the passage, "assistant teacher, or" in line one of the interpretation, "Teacher"; and

(d) by adding after the interpretation, "Teacher" the following interpretations—
"Tribunal" means the Government School Teachers' Tribunal established under the provisions of section thirty-seven of this Act.

"Union" means The State School Teachers' Union of Western Australia (Incorporated).

S. 7
amended.

5. Section seven of the principal Act is amended—

(a) by deleting the passage, "-1950" in line two of paragraph (a) of subsection (1);

(b) by substituting for the word, "Director" in line two of the paragraph, the words, "Director-General";

- (c) by adding after the word, "Minister" in line one of subsection (2), the passage, "or the Director-General, where the Minister delegates to him the power conferred on the Minister by this subsection" and by deleting the words, "relating to the Board of Classifiers" in the last line of the subsection;
- (d) by substituting for the passage, "-1950." in the last line of subsection (3), the passage, ", and on and after the coming into operation of the Education Act Amendment Act, 1960, are not subject to the Government Employees (Promotions Appeal Board) Act, 1945 or the Public Service Appeal Board Act, 1920, but any appeal commenced under any of those Acts prior to the coming into operation of the Education Act Amendment Act, 1960, shall be heard and determined under the provisions of the Act under which it is made and effect shall be given to any decision made on the appeal as though the Education Act Amendment Act, 1960, had not been passed."

6. Section eight of the principal Act is amended S. 8 amended. by substituting for the words, "Director of Education" in line one, the words, "Director-General."

7. Section nine of the principal Act is amended S. 9 amended. by substituting for the word, "elementary" in line nine, the word, "primary."

8. Section nine A of the principal Act is amended S. 9A amended. by adding after the word, "and" at the end of subparagraph (ii) of paragraph (a), the following subparagraphs—

- (iii) for the purchase of books for school libraries to the extent of one-half of the total cost of the purchase up to a maximum amount equal to the amount of subsidy which would be granted to the school purchasing the books, if that school were a Government school; and

- (iv) for the purchase of pianos to the extent of one-half of the total cost of the purchase of not more than one piano in respect of any one school up to a maximum of one hundred and twenty-five pounds; and.

S. 10
amended.

9. Section ten of the principal Act is amended by adding after the word, "institutions" in line five, the words, "including teachers' colleges for the education of teachers."

S. 11
amended.

10. Section eleven of the principal Act is amended by substituting for the word, "elementary" in line two, the word, "primary."

S. 12
amended.

11. Subsection (1) of section twelve of the principal Act is amended by substituting for the words, "an elementary" in the last line, the words, "a primary."

S. 14
amended.

12. Paragraph (a) of section fourteen of the principal Act is amended by substituting for the word, "Director", in line four, the words, "Director-General."

S. 20
amended.

13. Subsection (7b) of section twenty of the principal Act is amended by substituting for the word, "Director" in line six of paragraph (a), in line three of paragraph (b), in lines five and six of paragraph (c) and in line five of paragraph (d), the words, "Director-General."

S. 22
amended.

14. Section twenty-two of the principal Act is amended—

- (a) by adding after the word, "persons" in line three of subsection (1), the words, "being over the age of eighteen years who are";

(b) by deleting lines seven and eight of subsection (1); and

(c) by repealing subsection (2) and re-enacting it as follows—

(2) An association desirous of doing so may affiliate with the body known as The Western Australian Federation of Parents and Citizens' Associations upon such terms and conditions as shall from time to time be determined by that body.

15. Section twenty-three of the principal Act is repealed and re-enacted as follows—

S. 23
repealed and
re-enacted.

23. The objects of an association shall be to promote the interests of the Government school or group of Government schools in relation to which it is formed, by endeavouring to bring about closer co-operation between the parents or guardians of the pupils attending the school or the group, other citizens, the teachers at the school or the group, and those pupils and generally to endeavour to foster community interest in educational matters.

Objects of an
Association.

16. Section twenty-four of the principal Act is repealed.

S. 24
repealed.

17. Section twenty-five of the principal Act is repealed.

S. 25
repealed.

18. Section twenty-six of the principal Act is repealed and re-enacted as follows—

S. 26
repealed and
re-enacted.

26. (1) An association shall expend or invest all amounts received by it that are in excess of expenditure for the benefit of the children who are attending the Government school or the group of Government schools in relation to which the association is formed.

Profit of
association
to be used
for benefit
of children
attending
Government
schools.

(2) All property of whatsoever estate, interest or kind purchased by an association for the use of a Government school whether purchased with or without any financial assistance from the Minister or the Education Department shall by force of this section be vested in the Minister for the purposes of this Act.

S. 27
amended.

19. Section twenty-seven of the principal Act is amended by deleting the words, "or school board" in line one.

S. 28
amended.

20. Section twenty-eight of the principal Act is amended—

- (a) by adding after the word, "examination" in line one of paragraph (d) of subsection (1), the passage, "certification, classification," ;
- (b) by adding after paragraph (d) of subsection (1) the following paragraph—
 - (d1) Prescribing grounds, including such moral grounds, whether connected with the employment and functions of teachers or not, as the Minister thinks fit, which for the purposes of this Act amount to misconduct and for which a teacher may be dismissed from the Education Department. ;
- (c) by repealing paragraph (e) of subsection (1);
- (d) by adding after the word, "scholarships" in line one of paragraph (h) of subsection (1), the words, "and boarding allowances";
- (e) by repealing paragraph (m1) of subsection (1);
- (f) by substituting for the words, "the Teachers' College" in line one of paragraph (n) of subsection (1), the words, "teachers' colleges", and by deleting the passage "salaries," and the words, "principal and" in lines three and four of that paragraph;

- (g) by deleting the passage commencing, “; the” in line two of paragraph (o) of subsection (1) down to and including the passage, “boards;” in line seven, and substituting for the words, “twenty-eight” in the last line of that paragraph, the words, “twenty-seven”;
- (h) by repealing subsection (2) and re-enacting it as follows—

(2) (a) Subject to the provisions of section thirty-seven AE of this Act the Minister shall determine the salaries and allowances payable under this Act to teachers.

(b) The Minister shall publish or cause to be published in the *Government Gazette* a copy of the salaries and allowances as so determined as soon as practicable after he has made his determination. ; and

- (i) by repealing subsection (2a) and re-enacting it as follows—

(2a) The Minister shall determine the salaries and allowances payable under this Act to teachers as provided in subsection (2) of this section, at least once in every five years.

21. Subsection (1) of section twenty-nine of the principal Act is amended— S. 29
amended.

- (a) by substituting for the word, “elementary” in line one, the words, “primary and secondary”; and
- (b) by substituting for the word, “Director” in the last line of paragraph (b), the words, “Director-General.”

22. Subsection (1) of section thirty-four of the principal Act is amended— S. 34
amended.

- (a) by substituting for the word, “elementary” in line two, the word, “primary”; and

- (b) by substituting for the word, "elementary" in line one of paragraph (c), the word, "primary."

S. 34A
amended.

23. Section thirty-four A of the principal Act is amended—

- (a) by substituting for the word, "Director" in line two of subsection (6), the words, "Director-General"; and
- (b) by substituting for the word, "Director" in line four and again in line six of subsection (7), the words, "Director-General."

S. 37
repealed and
re-enacted.

24. The principal Act is amended by repealing and re-enacting section thirty-seven as follows:—

Establish-
ment of
Government
School
Teachers'
Tribunal.

37. (1) For the purposes of this Act, there shall be constituted under and in accordance with the provisions of this Act a Tribunal to be called the Government School Teachers' Tribunal having the duties imposed and the powers conferred by this Act.

Constitution
of Tribunal.

(2) The Tribunal shall consist of three members who shall be appointed by the Governor.

(3) Of the three members—

- (a) one shall be chairman;
- (b) one shall be a nominee member; and
- (c) one shall be an elected member.

Qualifica-
tions of
chairman.

(4) A person is not eligible for appointment to the office of chairman unless he is a practitioner as defined by the Legal Practitioners Act, 1893, of not less than seven years' practice and standing.

Term of
office of
chairman.

(5) The chairman—

- (a) is, subject to the provisions of this Act, entitled to hold office for a term of seven years from the date of his appointment as chairman, but upon expiration of any term of appointment is eligible for re-appointment;

- (b) is entitled to such remuneration and allowances as the Governor determines, and is hereby authorised to determine, from time to time. Remuneration of chairman.
- (6) The nominee member shall be a person nominated by the Minister to be and act as the representative of the Minister. Nominee member.
- (7) The elected member shall be a member of the Union elected in prescribed manner by the members of the Union to be and act as the representative of those members. Elected member.
- (8) Subject to the provisions of this Act a person appointed as nominee member or elected member shall be appointed to hold office for a term of three years from the date of appointment, but upon expiration of any term of appointment is, subject to the provisions of this Act, eligible for re-appointment. Tenure of office of nominee and elected members.
- (9) Subject to the provisions of this Act the office of a member including the chairman shall become vacant if the member— Vacancy in office of member.
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
 - (b) is absent from his duties for a period of thirty days or longer without the consent of the Minister;
 - (c) becomes permanently incapable of performing his duties;
 - (d) dies, or resigns his office by written notice under his hand sent to the Governor and the resignation is accepted by the Governor;
 - (e) in the case of the chairman, he attains the age of seventy years, and, in the case of the nominee member or elected member, he attains the age of sixty-five years;

- (f) becomes a person who would not be qualified to be appointed a member;
- (g) is removed from office on the ground of misbehaviour or incapacity.

Ss. 37AA to
37AJ added.

25. The principal Act is amended by adding after section thirty-seven the following sections—

Filling of
vacancies in
membership.

37AA. (1) Where by the operation of the provisions of subsection (9) of section thirty-seven of this Act an office of member of the Tribunal becomes vacant, the vacancy shall be deemed to be an extraordinary vacancy.

(2) On the occurrence of any vacancy in any office of member of the Tribunal, a qualified person shall, in accordance with the provisions of this Act, be appointed by the Governor to fill the vacancy, and any person appointed to fill an extraordinary vacancy holds office, subject to those provisions, for the remainder of the term of office of the person in whose place he is appointed.

Deputies.

37AB. (1) The Governor may appoint a person, who has the requisite qualifications, as deputy to act in the office of chairman of the Tribunal in the absence of the occupant of that office.

(2) Persons nominated or elected in accordance with the provisions of subsection (6) or subsection (7) of section thirty-seven of this Act as the case requires may be appointed by the Governor as deputies to act in the respective offices of the nominee member or elected member in the absence of the occupants of those offices.

(3) The provisions of subsection (9) of section thirty-seven of this Act apply in respect to deputies for members as though they were members and not deputies.

(4) Any person so appointed a deputy is entitled in the event of the absence from a meeting or sitting of the Tribunal of the member for whom he is the deputy, to attend that meeting or sitting and when so attending shall be deemed to be a member of the Tribunal and is authorised to carry out any function which the member for whom he is the deputy, if present, could exercise or would be required to carry out under this Act.

(5) The exercise of a power or the performance of a function by the Tribunal is not invalidated by reason only of there being a vacancy in the membership of the Tribunal.

Vacancy in membership not to invalidate acts of Tribunal.

(6) The appointment of a member is not invalidated and shall not be called in question by reason of a defect or irregularity in or in connection with his nomination or election as the case may be.

Defect in nomination or election of member not to invalidate appointment.

37AC. (1) The member who is the chairman of the Tribunal shall retire on the day on which he attains the age of seventy years and the nominee member and the elected member of the Tribunal shall retire on the day on which that member attains the age of sixty-five years unless the Governor directs in the case of any nominee or elected member that he shall be at liberty to continue in office at the Governor's pleasure during the expiration of the unexpired period of the term for which he was nominated or elected or a period of twelve months after he attains the age of sixty-five years, whichever is the less.

Retirement.

(2) Any member of the Tribunal who ceases to hold office by virtue of this section may nevertheless complete any matter which the Tribunal of which he was sitting as a member had entered upon and had not completed before the member has attained the age on which he is due to retire.

**Prohibition
of other
employment.**

37AD. No member of the Tribunal shall engage in any business or occupation for remuneration other than that of his office on the Tribunal, without the consent of the Minister.

**Jurisdiction
of Tribunal.**

37AE. (1) Subject to the provisions of this Act, the Tribunal has jurisdiction to examine into, hear and determine the matters set forth in this section, and the action or decision of the Tribunal thereon is final and conclusive.

(2) Nothing in subsection (1) of this section shall prevent the Tribunal from reconsidering any matter that has been dealt with by it, or from rescinding, altering, or amending, any decision or order previously made, all of which the Tribunal has authority to do.

(3) The Tribunal has jurisdiction—

- (a) to hear and determine any appeal by a teacher or the Union against the salary and allowances of any teacher or class of teachers as determined by the Minister under subsection (2) of section twenty-eight of this Act;
- (b) to hear and determine any matter in dispute relating to the salaries and allowances of teachers and the allowances of students or a group of students attending a course of training at a teachers' college which, after negotiation between the Minister and that Union, is unresolved and which is referred to the Tribunal on the joint application of the Minister and the Union;
- (c) to hear any application by the Union for a review of the salary and allowances of teachers and to make a recommendation to the Minister after hearing and considering the application;

- (d) where a vacancy in, or a new office created in the Education Department has been filled after it has been advertised in accordance with and as required by the regulations by the promotion of a teacher who has been recommended by the Director-General for the vacancy or new office, to hear and determine any appeal against that recommendation by a teacher who applied for appointment to or employment in the vacancy or new office and who has not been recommended therefor;
- (e) to hear and determine an appeal of a teacher against an assessment of efficiency of the teacher given by a Superintendent of Education under and in accordance with the regulations, where the Director-General has refused a written request by the teacher for a reconsideration of the assessment and the issue of a further assessment, or where, after such reconsideration and issue of a further assessment, the teacher is dissatisfied with the procedure used by, or the method adopted by, the Superintendent when making the further assessment;
- (f) to hear and determine an appeal by a teacher or by the Union against, or a matter referred to it by the Minister concerning, any decision involving the interpretation or application of any Act or regulation governing the service of the teacher or group of teachers;
- (g) with respect to the following allowances payable under the regulations to teachers teaching in Government schools situated in the remote areas of the State as graded in accordance with

the regulations, travelling and transfer allowances payable to teachers and allowances payable to teachers where a teacher is relieving another teacher—

- (i) to hear and determine an appeal by the Union against the determination of the Minister in respect of any such allowances in a particular or general case;
 - (ii) to order on the application of the Minister or the Union that any agreement between the Minister and the Union in relation to any such allowances be confirmed and determine any matter in dispute relating to any such allowances, which after negotiation between the Minister and the Union is unresolved, and which is referred to the Tribunal on the joint application of the Minister and the Union;
 - (iii) to hear and determine an appeal by a teacher against any decision involving the interpretation or application of the regulations with respect of any such allowances that are payable to him;
- (h) to hear and determine any appeal by a teacher who, for alleged misconduct or breach of the regulations, is—
- (i) fined any amount in excess of two pounds;
 - (ii) transferred at his own expense;
 - (iii) reduced to a lower class or grade;
 - (iv) reduced from any position to a position carrying a lower salary;
- or

- (v) suspended or dismissed,
against any such penalty or punishment;
- (i) to hear and determine an appeal by a student enrolled in a teachers' college whose course of training thereat has been terminated by the Minister, against the termination and to determine the terms and conditions on which the course of training shall be terminated;
- (j) to hear and determine an appeal by a teacher against the amount of rent payable by him to the Education Department pursuant to the regulations in respect of quarters provided for him that were completed and ready for occupation prior to the first day of January, one thousand nine hundred and forty-six, which has resulted from a valuation or revaluation of those quarters made pursuant to those regulations;
- (k) to hear and determine, or determine, such other matters as may be prescribed.

37AF. (1) Subject to the provisions of subsection (3) of this section, any teacher, or the Union on behalf of any teacher or group of teachers, may, in the prescribed manner, and within the prescribed time, appeal or make application to the tribunal in respect of any matter within the jurisdiction of the Tribunal which affects that teacher or affects that group of teachers.

Minister,
teacher or
Union
empowered
to invoke
jurisdiction
of Tribunal.

(2) The Minister, or the Minister and the Union jointly, may, in manner and within the time prescribed, refer to the Tribunal for determination any matter within its jurisdiction.

(3) (a) Where an appeal is made to the Tribunal pursuant to the power conferred on the Tribunal by paragraph (d) of subsection (3) of section thirty-seven AÆ of this Act, the appeal may be made on the ground of seniority to the teacher who is promoted and such other grounds as are prescribed.

(b) For the purposes of this subsection "seniority" means, as between teachers, seniority by longer period of service as a teacher with the Education Department which service includes service as a monitor and as a student in a teachers' college; but where the whole of that service of a teacher has not been continuous, his service for the purpose of determining his seniority, shall be calculated only as from the day on which he was last appointed as teacher in the Department and from which his service has been continuous.

Secretary to
Tribunal.

37AG. The Minister may, with the approval of the Public Service Commissioner, appoint a person who is subject to the provisions of the Public Service Act, 1904, to be secretary to the Tribunal, and the remuneration and allowances of the secretary shall be such as the Minister determines.

Meetings of
Tribunal and
records of
proceedings.

37AH. (1) The Tribunal shall meet for the despatch of business as often as is required, and as soon as is practicable after an appeal or application is lodged with it the Tribunal shall fix the earliest convenient time for the hearing of the appeal or application.

(2) The Tribunal shall keep a record of its proceedings and its decisions thereon, which shall be available for future reference to any party to an appeal or an application to the Tribunal.

Majority
decision is
decision of
the Tribunal.

(3) The jurisdiction of the Tribunal shall be exercised by the three members of the Tribunal sitting together, but if all the members are not unanimous upon any appeal, application or

matter before the Tribunal, the decision of the majority of those members shall prevail and shall be deemed to be the decision of the Tribunal.

(4) The decision of the Tribunal shall in each case be reported in writing by the Tribunal to the Governor and the Minister and effect shall be given to the decision according to its tenor.

Decision
to be
reported.

(5) (a) Where, at any stage of the hearing of an appeal, the Tribunal is of the opinion that the appeal is frivolous, unreasonable or vexatious, the Tribunal may decline to hear it further and may thereupon dismiss it and may fine the appellant a sum not exceeding ten pounds.

Tribunal
empowered
to impose
penalty for
frivolous
appeals.

(b) The amount of any such fine may be recovered from the appellant by the Treasurer in any court of competent jurisdiction as a debt due by the appellant to the Crown.

(6) Where the Tribunal has heard an appeal pursuant to the jurisdiction conferred on it by the provisions of paragraph (d) of subsection (3) of section thirty-seven AE of this Act, the Tribunal on completion of the hearing may, in writing signed by the chairman of the Tribunal, recommend the payment to the appellant or the respondent or both of an amount in respect of the expenses necessarily incurred by the appellant or the respondent in travelling to the place where the appeal was heard and for his board and lodging whilst attending the appeal.

Expenses of
successful
appellant.

(7) The Tribunal shall present the recommendation to the Governor or cause it to be so presented, and if the Governor approves of the recommendation the Minister shall pay the amount of expenses referred to therein to the appellant out of the moneys appropriated by Parliament for the purposes of this Act.

Procedure of
Tribunal.

37AI. (1) The Tribunal—

- (a) may, subject to the regulations, regulate all matters in respect of its own procedure;
- (b) may, in hearing and determining any appeal, application or matter under this Act, conduct its enquiries without regard to legal form, and shall direct itself by the best evidence it can procure or that is laid before it; and
- (c) may, where any witness is resident more than thirty miles from the place where the Tribunal is sitting, take the evidence of the witness by affidavit, but, if the Tribunal thinks just cause exists for doing so, may summon the person making the affidavit to attend before it as a witness for further examination or cross-examination;
- (d) has in relation to appeals under this Act all the powers of a Royal Commission under the Royal Commissioners' Powers Act, 1902, and any reference to the chairman of a Royal Commission under that Act shall, in relation to such appeals, be deemed to be a reference to the chairman of the Tribunal;
- (e) may, with respect to any other matter before it for hearing and determination, or determination, s u m m o n a n d examine witnesses on oath, and call for the production of papers and documents relevant to the matter;
- (f) may confirm, modify or reverse any decision, determination or finding appealed against or determine any matter referred to it for determination;

(g) may fix the costs of any appeal made to it pursuant to the jurisdiction conferred on the Tribunal by the provisions of paragraph (h) of subsection (3) of section thirty-seven AE of this Act, and direct by whom and in what manner the costs shall be paid.

(2) The Tribunal shall hear all appeals, applications or other matters which come before it in public except where the Tribunal directs that any such appeal, application or other matter shall be heard in private.

Hearing of
appeals, etc.
and repre-
sentation.

(3) Upon the hearing by the Tribunal of any appeal, application or matter under and in accordance with this Act any party to such appeal, application or matter has the right to appear and be heard in person by the Tribunal or to be represented by an agent, but no legal practitioner within the meaning of the Legal Practitioners Act, 1893, shall appear on behalf of any such party unless in any particular case the Tribunal grants permission in accordance with this section for him to do so.

(4) Where a party to any such appeal, application or matter requests permission to be represented by a legal practitioner, he shall make written application in that behalf to the Tribunal at the same time as he lodges his notice of appeal or application or when the matter is referred to the Tribunal, and as soon as practicable thereafter he shall serve a copy of the application on every other party to the appeal, application or matter.

(5) Where permission is so granted by the Tribunal each party to the appeal, application or matter shall be entitled to be represented by a legal practitioner.

(6) At the hearing such parties are entitled to give evidence before the Tribunal and, with the approval of the Tribunal, to summon witnesses in the same manner and subject to the

same penalties and conditions as witnesses may be summoned to give evidence before justices in petty sessions, and to have all witnesses examined on oath or affirmation.

Recovery of costs.

37AJ. (1) Any costs awarded by the Tribunal pursuant to paragraph (g) of section thirty-seven AI of this Act against any party to an appeal made to the Tribunal under the provisions of this Act, other than the Minister, shall be recoverable by the Treasurer in a court of competent jurisdiction as a debt due to the Crown.

(2) Any costs awarded to an appellant or applicant, other than the Minister, shall be paid by the Education Department out of the moneys appropriated by Parliament for the administration of this Act.

S. 37A amended.

26. Section thirty-seven A of the principal Act is amended by substituting for the word, "the" where secondly occurring in line five, the word, "a."
