

WESTERN AUSTRALIA

CURRICULUM COUNCIL ACT 1997

ARRANGEMENT

(No. 17 of 1997)

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WESTERN AUSTRALIA

CURRICULUM COUNCIL ACT 1997

No. 17 of 1997

AN ACT to establish a council with functions relating to curriculum development and accreditation and certification of student achievement, to repeal the *Secondary Education Authority Act 1984*, and for related purposes.

[Assented to 8 July 1997.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Curriculum Council Act 1997*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

Interpretation

3. In this Act unless the contrary intention appears —

“**appointed member**” means a member of the Council appointed under section 6 (1) (a) or (c);

“**assessment**” includes examination;

“**chairperson**” means the chairperson of the Council;

“**chief executive officer**” means the person appointed as such for the purposes of section 20;

“**committee**” means a committee appointed under clause 14 of Schedule 1;

“**Council**” means the Curriculum Council established under section 5;

“**course of study**” means a course, education programme, subject or syllabus;

“**Education Department**” has the same meaning as in the *Education Act 1928*;

“education provider” means —

- (a) a governing body; and
- (b) a person providing home schooling;

“governing body” means —

- (a) in relation to a Government school as defined in the *Education Act 1928*, the chief executive officer of the Education Department;
- (b) in relation to any other school that is not part of a school system, the person or body of persons that has the ownership, management or control of the school; and
- (c) in relation to a school system, the person or body of persons that exercises supervisory control over the schools in the system;

“home schooling” means instruction that the Minister has decided is efficient for the purposes of section 14 (a) of the *Education Act 1928*;

“member of the Council” includes a person acting under clause 4 or 5 of Schedule 1;

“member of staff” means —

- (a) an officer referred to in section 21 (1);
- (b) a person referred to in section 21 (2);
- (c) a person engaged or appointed by the Council under section 100 of the *Public Sector Management Act 1994*; and
- (d) a person whose services are used under section 21 (6) or 22;

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“**school**” means a school, or pre-school centre, as defined in the *Education Act 1928*;

“**school system**” means a system of not less than 3 non-government schools under which a person or body exercises supervisory control over the schools in the system;

“**student**” means a student enrolled in a school or receiving home schooling;

“**vocational education and training**” has the same meaning as in the *Vocational Education and Training Act 1996*.

Objects

4. The main objects of this Act are to —

- (a) establish the Curriculum Council;
- (b) provide for the development and implementation of a curriculum framework for schooling which, taking account of the needs of students, sets out the knowledge, understanding, skills, values and attitudes that students are expected to acquire;
- (c) provide for the development and accreditation of courses of study for post-compulsory schooling; and
- (d) provide for the assessment and certification of student achievement.

PART 2 — THE CURRICULUM COUNCIL

Curriculum Council established

5. (1) A body called the Curriculum Council is established.

(2) The Council is a body corporate with perpetual succession.

(3) Proceedings may be taken by or against the Council in its corporate name.

(4) The Council is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.

Members of Council

6. (1) The Council is to consist of the following members —

(a) a chairperson appointed by the Minister;

(b) the chief executive officer; and

(c) 11 other persons appointed by the Minister.

(2) Of the persons appointed under subsection (1) (c) —

(a) 3 are, in the opinion of the Minister, to have experience and expertise in industry, education or community affairs;

(b) 2 are to be nominated by the chief executive officer of the Education Department;

(c) one is to be nominated by the Catholic Education Commission;

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- (d) one is to be nominated by the Association of Independent Schools of Western Australia;
- (e) one is to be nominated by the chief executive as defined in the *Vocational Education and Training Act 1996*;
- (f) one is to be nominated by either —
 - (i) the chief executive officer of Curtin University of Technology;
 - (ii) the chief executive officer of Edith Cowan University;
 - (iii) the Vice-Chancellor of Murdoch University;
 - (iv) the Vice-Chancellor of The University of Western Australia; or
 - (v) the Vice-Chancellor of the University of Notre Dame Australia,as determined by the Minister;
- (g) one is to be a representative of the interests of teachers and is to be appointed on the recommendation of the State School Teachers' Union of Western Australia and the Independent Schools Salaried Officers' Association; and
- (h) one is to be a representative of the interests of parents of children attending school and is to be appointed on the recommendation of the Western Australian Council of State School Organisations (Inc.) and the Parents and Friends' Federation of Western Australia (Inc.).

(3) If, within 30 days of a request to do so, a person or body referred to in paragraph (b), (c), (d), (e), (f), (g) or (h) of subsection (2) fails to nominate a person in accordance with that request, the Minister may make such appointment for the purpose of that provision as the Minister thinks fit.

Constitution, proceedings etc.

7. Schedule 1 has effect with respect to the Council and its members.

Remuneration of members

8. A member of the Council or a committee, other than the chief executive officer, is to be paid such remuneration and travelling and other allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

PART 3 — FUNCTIONS AND POWERS**Curriculum framework**

- 9.** (1) It is a function of the Council to —
- (a) control, direct and coordinate the development of a curriculum framework for schooling;
 - (b) approve a curriculum framework for schooling;
 - (c) evaluate, review and revise as it thinks fit the curriculum framework;
 - (d) determine and coordinate arrangements to be used or followed for the implementation of the curriculum framework;
 - (e) identify priorities and develop, distribute and evaluate curriculum documentation and other materials which facilitate implementation of the curriculum framework;
 - (f) develop professional development plans necessary to support implementation of the curriculum framework;
 - (g) establish, in accordance with the approved curriculum framework, the minimum requirements for graduation from secondary school and for the issue of a certificate of student achievement; and
 - (h) establish, determine the criteria for, and administer, exhibitions and awards to be granted in recognition of student achievement.

- (2) The Council is to ensure that —
- (a) each school receives free of charge a hard copy of the most recent curriculum framework approved by the Council; and
 - (b) that curriculum framework is made available to the public in any manner the Council thinks fit.

Implementation of curriculum framework

- 10.** (1) Subject to section 11 —
- (a) a governing body is to ensure that each school of which it is the governing body provides schooling in accordance with the most recent curriculum framework approved by the Council; and
 - (b) a person providing home schooling to a student is to ensure that the schooling is provided in accordance with the most recent curriculum framework approved by the Council.
- (2) The Council may, after consultation with an education provider and with the approval of the Minister, give directions to the education provider as to —
- (a) the implementation of the curriculum framework within a school system or school or in respect of a student receiving home schooling, as the case requires; and
 - (b) reporting requirements in relation to the implementation of the curriculum framework.
- (3) Directions issued under this section are to be followed by the education provider to whom or which they are directed.

s. 11**Exemption from curriculum framework**

11. (1) The Minister may by instrument exempt an education provider from section 10 (1) if the Minister is satisfied that it is appropriate in the circumstances to do so.

(2) Before the Minister grants an exemption under subsection (1), the Minister is to seek the advice of the Council and allow the Council a period of not less than 14 days to make a recommendation on the matter.

(3) The Minister is to have regard to any recommendation made by the Council under subsection (2), but is not bound to give effect to the recommendation.

(4) Section 10 (1) does not apply to an education provider who or which is exempted by the Minister under subsection (1) if the conditions of the exemption are being complied with.

(5) An exemption may be limited in its operation to a specified period.

(6) The Minister may —

(a) make the exemption subject to any condition; and

(b) impose any further condition or vary or revoke a condition at any time.

Post-compulsory schooling

12. It is a function of the Council to —

(a) establish guidelines for the development and accreditation of courses of study in which students undertaking post-compulsory schooling may be assessed for purposes of certification;

- (b) accredit and evaluate courses of study prepared by the Council, or prepared in accordance with guidelines approved by the Council;
- (c) accredit, for the purposes of certification of students undertaking post-compulsory schooling, partially completed secondary courses of study taken outside the State;
- (d) after consultation with such persons and bodies having functions relating to secondary education, vocational education and training, and university education as the Council thinks fit, establish and carry into effect procedures for —
 - (i) assessment of achievement of students undertaking post-compulsory schooling, and the proper conduct of that assessment, including school and external assessment for the purposes of certification; and
 - (ii) ensuring the comparability of assessments of student achievement;
- (e) after consultation with such persons and bodies having functions relating to secondary education, vocational education and training and university education as the Council thinks fit, determine the courses of study to be assessed within secondary schools or by the Council for the purpose of entrance to a university or as a prerequisite for vocational education and training;
- (f) consult with universities, and persons and bodies having functions relating to vocational education and training, with respect to requirements and procedures for admission to university and vocational education and training, and review from time to time the effects of those requirements and procedures; and

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- (g) provide information to universities, and persons and bodies having functions relating to vocational education and training, on the achievement of students seeking admission to university or to vocational education and training.

Advice to Minister

13. It is a function of the Council to advise the Minister on matters arising under this Act and, in particular, to advise the Minister on the granting of exemptions under section 11.

Information and register

14. (1) The Council is to —

(a) prepare and keep —

(i) records of assessment made or recognized by the Council; and

(ii) a register of courses of study which may be entered on a certificate of student achievement;

(b) liaise with governing bodies as to access by the Council to, and the maintenance of, records of assessment made within schools and school systems; and

(c) provide such statistics, information and records to any education provider on achievement of students of that education provider as the Council thinks fit.

(2) The Council is to provide, on payment of the prescribed fee, if any, a certificate of student achievement to a person who has completed secondary education and met the minimum requirements for graduation from secondary school.

(3) The Council is to provide to any person, on the request of that person and payment of the prescribed fee, if any, a copy of the record of assessment kept by the Council in relation to that person.

Powers

15. (1) The Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the Council has power to —

- (a) conduct and promote relevant research;
- (b) provide such facilities as the Council thinks necessary for or conducive to the performance of its functions;
- (c) acquire, hold, manage, develop, dispose of and otherwise deal in real and personal property;
- (d) apply for, obtain and hold intellectual property rights and design rights;
- (e) enter into a contract or arrangement with any person including any government, governmental agency or governmental instrumentality, whether inside or outside Australia —
 - (i) to provide products, consultancy or other services in the course of or incidental to the performance of its functions; or
 - (ii) for the commercial exploitation of the rights referred to in paragraph (d), whether by assignment, licensing or otherwise;
- (f) publish and sell information acquired by it; and

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- (g) charge for services it provides to any person, including any government, governmental agency or governmental instrumentality, whether inside or outside Australia.

Performance of functions

16. (1) In performing its functions the Council is to have regard to the capacity, financial and otherwise, of education providers to respond to decisions of the Council and to the impact of the decisions on education providers.

(2) In performing its functions the Council may act alone or in conjunction with any person, firm, department of the Public Service, government agency or instrumentality, or government of any other place.

(3) The Council is to —

- (a) consult and collaborate with such persons and bodies having functions relating to education and training and members of the community as the Council thinks fit in relation to the performance of its functions;
- (b) provide a forum for consultation and collaboration between persons and bodies having functions relating to secondary education and vocational education and training and universities on matters relating to admission to university and vocational education and training;
- (c) advise and confer with employers, organizations of employees and employers, and such other persons and bodies as the Council thinks fit, with respect to recognition by those persons and bodies of courses of study assessed by the Council or within secondary schools, and advise those persons and bodies with respect to levels and methods of assessment and methods of certification; and

- (d) provide structures for co-operation and consultation in relation to professional development and the development of support documentation.

Delegation

17. (1) The Council may, by instrument, delegate the performance of any of its functions, except this power of delegation, to —

- (a) a member or members of the Council;
- (b) a member or members of staff;
- (c) a committee; or
- (d) any other person.

(2) A function performed by a delegate under this section is to be taken to be performed by the Council.

(3) Where a delegate performs a function under this section the delegate is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(4) Nothing in this section is to be read as limiting the ability of the Council to act through its officers and agents in the normal course of business.

Minister may give directions

18. (1) The Minister may give directions in writing to the Council with respect to the performance of its functions, either generally or in relation to a particular matter, and the Council is to give effect to any such direction.

(2) The text of a direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Council under section 66 of the *Financial Administration and Audit Act 1985*.

s. 19**Minister to have access to information**

- 19.** (1) The Minister is entitled —
- (a) to have information in the possession of the Council;
and
 - (b) where the information is in or on a document, to have,
and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Council to furnish information to the
Minister;
 - (b) request the Council to give the Minister access to
information;
 - (c) for the purposes of paragraph (b) make use of a
member of staff of the Council to obtain the
information and furnish it to the Minister.
- (3) The Council is to comply with a request under
subsection (2) and make its facilities and members of staff
available to the Minister for the purposes of paragraph (c) of that
subsection.
- (4) In this section —
- “document”** includes any tape, disc or other device or
medium on which information is recorded or stored
mechanically, photographically, electronically or
otherwise;
- “information”** means information specified, or of a
description specified, by the Minister that relates to
the functions of the Council.

PART 4 — STAFF

Chief executive officer

20. (1) A chief executive officer of the Council is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

(2) Subject to the control of the Council, the chief executive officer is responsible for, and has the necessary powers to administer, the day to day operations of the Council.

Other staff

21. (1) Public service officers may be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Council to perform its functions.

(2) The Council may engage persons as staff otherwise than under Part 3 of the *Public Sector Management Act 1994*.

(3) Persons referred to in subsection (2) are to be employed, subject to any relevant industrial award, order or agreement, on such terms and conditions as the Council determines.

(4) Nothing in subsection (3) affects the operation of the *Workplace Agreements Act 1993*.

(5) Subsections (1) and (2) do not affect the power of the Council to engage a person under a contract for services or appoint a person on a casual employment basis under section 100 of the *Public Sector Management Act 1994*.

(6) The Council may, by arrangement on such terms as are agreed with the relevant parties, make use of the services of a person employed by another person.

Use of other government staff etc.

22. (1) The Council may by arrangement make use, either full-time or part-time, of —

- (a) the services of any officer or employee in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the Public Service or of a State agency or instrumentality.

(2) An arrangement under subsection (1) is to be made between the Council and the relevant employing authority and is to be made on such terms as they agree.

PART 5 — FINANCIAL PROVISIONS

Funds of Council

23. The funds available for the purpose of enabling the Council to perform its functions consist of —

- (a) moneys from time to time appropriated by Parliament;
- (b) moneys received by the Council in the performance of its functions;
- (c) moneys borrowed by the Council under section 25 or 26; and
- (d) other moneys lawfully received by, made available to, or payable to, the Council.

Curriculum Council Account

24. (1) The funds referred to in section 23 are to be credited to an account to be called the Curriculum Council Account —

- (a) at the Treasury; or
- (b) with the approval of the Treasurer, at a bank,

and if paragraph (a) applies that Account is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.

(2) The Account referred to in subsection (1) is to be charged with —

- (a) the remuneration and allowances payable under section 8;

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- (b) interest on and repayment of moneys borrowed by the Council under section 25 or 26; and
- (c) all other expenditure lawfully incurred by the Council in the performance of its functions.

Borrowing from Treasury

25. The Council may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.

Other borrowing

26. (1) In addition to its powers under section 25, the Council may with the prior written approval of the Treasurer and on such terms and conditions as the Treasurer approves, borrow moneys for the purpose of performing its functions.

(2) Any moneys borrowed by the Council under subsection (1) may be raised —

- (a) as one loan or as several loans; and
- (b) in such manner as the Treasurer approves.

(3) The total amount of the moneys so borrowed in any one financial year is not to exceed such amount as the Treasurer approves.

Guarantee by Treasurer

27. (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable by the Council in respect of moneys borrowed by the Council under section 26.

(2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.

(3) Before a guarantee is given, the Council is to —

(a) give to the Treasurer such security as the Treasurer requires; and

(b) execute all instruments that are necessary for the purpose.

Effect of guarantee

28. (1) The due payment of moneys payable by the Treasurer under a guarantee given under section 27 is guaranteed by the State.

(2) Any such payment is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.

(3) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Council or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 27.

Application of *Financial Administration and Audit Act 1985*

29. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Council and its operations.

PART 6 — MISCELLANEOUS

Protection from liability

30. (1) An action in tort does not lie against a person, other than the Council, for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

(2) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(3) This section does not relieve the Council or the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.

(4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

Execution of documents by Council

31. (1) The Council is to have a common seal.

(2) A document is duly executed by the Council if —

- (a) the common seal of the Council is affixed to it in accordance with subsections (3) and (4); or
- (b) it is signed on behalf of the Council by a person or persons authorized to do so under subsection (5).

(3) The common seal of the Council is not to be affixed to any document except as authorized by the Council.

(4) The common seal of the Council is to be affixed to a document in the presence of 2 members of the Council, and each of them is to sign the document to attest that the common seal was so affixed.

(5) The Council may, by writing under its seal, authorize a member or members of the Council or a member or members of staff to sign documents on behalf of the Council, either generally or subject to such conditions or restrictions as are specified in the authorization.

(6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.

(7) When a document is produced bearing a seal purporting to be the common seal of the Council, it is to be presumed that the seal is the common seal of the Council until the contrary is shown.

Confidentiality

32. (1) A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under this Act;
- (b) as required or allowed by this Act or under another law;
- (c) with the written consent of the person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty: \$10 000 and imprisonment for 12 months.

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(2) Subsection (1) applies to any person who is or has been —

- (a) a member of the Council;
- (b) a member of a committee; or
- (c) a member of staff.

Regulations

33. (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to the purposes of this Act.

(2) Without limiting the operation of subsection (1), the Governor may make regulations providing for —

- (a) fees and charges to be paid to the Council for or in connection with —
 - (i) the assessment of courses of study for purposes of certification;
 - (ii) an application to the Council;
 - (iii) the supply of certificates, records or materials by the Council; and
 - (iv) the supply of services by the Council;
- and
- (b) protection of examination papers and related materials.

(3) Subsection (2) (a) (iv) does not limit the power of the Council under section 15 (2) (g) to charge for services.

Repeal

34. (1) The *Secondary Education Authority Act 1984* is repealed.

(2) Schedule 2 has effect with respect to savings and transitional provisions.

Consequential amendments

35. The Acts specified in Schedule 3 are amended as set out in that Schedule.

Review of Act

36. (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.

(2) In the course of that review the Minister is to consider and have regard to —

- (a) the effectiveness of the operations of the Council;
- (b) the need for the continuation of the functions of the Council; and
- (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

SCHEDULE 1

[Section 7]

Division 1 — Provisions as to constitution and proceedings of the Council

Term of office

1. (1) Subject to clause 2 an appointed member holds office for such term, not exceeding 3 years, as is specified in the member's instrument of appointment, and is eligible for reappointment.

(2) An appointed member whose term of office expires by the passage of time continues in office until that member is reappointed or the successor of that member comes into office.

Resignation, removal etc.

2. (1) The office of an appointed member becomes vacant if the member —

- (a) resigns the office by written notice addressed to the Minister;
- (b) is an insolvent under administration, as that term is defined in the Corporations Law; or
- (c) is removed from office by the Minister under subclause (2).

(2) The Minister may remove an appointed member from office if the Minister is satisfied that the member —

- (a) has neglected his or her duty;
- (b) has misbehaved;
- (c) is incompetent; or
- (d) is suffering from mental or physical incapacity impairing the performance of his or her functions under this Act.

Leave of absence

3. The Council may grant leave of absence to a member of the Council on such terms and conditions as it thinks fit.

Appointed member unable to act

4. (1) If an appointed member other than the chairperson is unable to act by reason of illness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while so acting according to the tenor of his or her appointment, that other person is to be taken to be a member of the Council.

(2) If a member is performing the functions of the chairperson under clause 8 (2), the Minister may, under subclause (1), appoint another person to act in his or her place as a member.

(3) The appointment of a person under subclause (1) may be terminated at any time by the Minister.

Chief executive officer unable to attend

5. The chief executive officer may, in writing delivered to the person presiding at a meeting of the Council, nominate a member of staff to represent him or her at that meeting if he or she is unable to attend by reason of sickness, absence or other cause; and while so attending the person so nominated is to be taken to be a member of the Council.

Saving

6. No act or omission of a person acting in place of another under clause 4, 5 or 8 (2) is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

Calling of meetings

7. (1) Subject to subclause (2), meetings are to be held at the times and places that the Council determines.

(2) A special meeting of the Council may at any time be convened by the chairperson.

(3) The first meeting of the Council is to be convened by the chairperson.

Presiding officer

8. (1) The chairperson is to preside at all meetings of the Council at which he or she is present.

(2) If the chairperson is absent from a meeting the members present are to appoint one of their number to preside.

Sch. 1

Quorum

9. A quorum for a meeting of the Council is 7 members.

Voting

10. (1) At any meeting of the Council each appointed member present has a deliberative vote.

(2) Subject to subclause (3), if the votes cast on a question are equally divided, the question remains unresolved until a subsequent meeting of the Council.

(3) If the votes cast on a question at a meeting of the Council were equally divided and the votes cast on the question at a subsequent meeting of the Council are again equally divided, the question is to be taken to have been resolved in the negative.

Minutes

11. The Council is to cause accurate minutes to be kept of the proceedings at its meetings.

Resolution without meeting

12. A resolution in writing signed or assented to by each member by letter or facsimile is as effectual as if it had been passed at a meeting of the Council.

Telephone or video meetings

13. A communication between not less than 7 members of the Council by telephone, audio-visual or other electronic means is a valid meeting of the Council if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings.

Committees

14. The Council may appoint committees, consisting of or including persons who are not members of the Council, to assist it in the performance of its functions, and may discharge or alter any committee so appointed.

Council to determine own procedures

15. Subject to this Act, the Council is to determine its own procedures.

Division 2 — Disclosure of interests, etc.

Disclosure of interests

16. (1) A member of the Council who has a material personal interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

Penalty: \$1 000 or imprisonment for 3 months, or both.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

Voting by interested members

17. A member of the Council who has a material personal interest in a matter that is being considered by the Council —

- (a) must not vote whether at a meeting or otherwise —
 - (i) on the matter; or
 - (ii) on a proposed resolution under clause 18 in respect of the matter, whether relating to that member or a different member;
 - and
 - (b) must not be present while —
 - (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a) (ii),
- is being considered at a meeting.

Clause 17 may be declared inapplicable

18. Clause 17 does not apply if the Council has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and

Sch. 1

- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

Quorum where clause 18 applies

19. (1) Despite clause 9, if a member of the Council is disqualified under clause 17 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

(2) The Minister may deal with a matter insofar as the Council cannot deal with it because of subclause (1).

Minister may declare clauses 17 and 19 inapplicable

20. (1) The Minister may by writing declare that clause 17 or 19 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.

(2) The Minister must within 14 days after a declaration under subclause (1) is made cause a copy of the declaration to be laid before each House of Parliament.

SCHEDULE 2 — TRANSITIONAL AND SAVINGS PROVISIONS

[Section 34 (2)]

Definitions

1. In this Schedule, unless the contrary intention appears —

“assets” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and includes without limitation —

- (a) choses in action;
- (b) goodwill; and
- (c) rights, interests and claims of every kind in or to property,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

“Authority” means the Secondary Education Authority under the repealed Act as in force before the commencement day;

“commencement day” means the day on which this Act comes into operation;

“liability” means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

“repealed Act” means the *Secondary Education Authority Act 1984*;

“right” means any right, power, privilege or immunity whether actual, contingent or prospective.

Interpretation Act to apply

2. This Schedule does not limit the operation of the *Interpretation Act 1984*.

Sch. 2**Authority abolished**

3. Subject to clause 8, on the commencement day the Authority ceases to exist and its members go out of office.

Devolution of Authority's assets, liabilities etc.

4. On and after the commencement day —

- (a) the assets and rights of the Authority that were immediately before that day vested in that body vest in the Council by force of this clause;
- (b) the liabilities of the Authority immediately before that day become, by force of this clause, the liabilities of the Council;
- (c) any proceedings or remedy that immediately before that day might have been brought or continued by or available against or to the Authority, may be brought or continued and are available, by or against or to the Council; and
- (d) the Authority is to deliver to the Council all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to its operations.

Transition to staff of Council

5. (1) All persons who were employed by the Authority under section 17 (1) of the repealed Act immediately before the commencement day are to be taken to be employed by the Council under section 21 (2).

(2) All persons who were engaged under contracts for services by the Authority under section 17 (4) of the repealed Act are taken to be engaged under contracts for services by the Council under section 100 of the *Public Sector Management Act 1994*.

(3) Nothing in this clause prevents the exercise by the Council after the commencement day of its powers in relation to the management of the members of staff of the Council.

(4) This clause does not apply to the Director and Deputy Director of the Authority.

Employees' rights preserved

6. Except as otherwise agreed by an employee, the operation of clause 5 does not —

- (a) affect the employee's pay, as that term is defined by regulation 3 of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994*;

- (b) prejudice the employee's existing or accruing rights in respect of annual leave, long service leave, sick leave or parental leave;
- (c) affect any rights under a superannuation scheme; or
- (d) interrupt continuity of service.

Funds

7. On the commencement day the fund under section 21 (2) of the repealed Act is to be closed and the moneys placed to the credit of the Account referred to in section 24 of this Act.

Annual report for part of a year

8. (1) The accountable authority, as defined in the *Financial Administration and Audit Act 1985*, of the Authority is to report in respect of the Authority as required by section 66 of that Act, but limited to the period from the preceding 1 July to the commencement day, and Division 14 of Part II of that Act applies as if that period were a full financial year.

(2) Despite the repeal effected by section 34 (1), the accountable authority continues in existence for the purpose of reporting as required by this clause.

(3) Despite clause 3, on the commencement day, for the purposes of this clause the Authority is to —

- (a) be constituted by a person appointed by the Minister; and
- (b) perform the functions referred to in subclause (1) through that person.

(4) The person referred to in subclause (3) (a) holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.

(5) The Authority as constituted under this clause has the powers that are necessary or convenient for the purposes of subclause (1).

(6) The Council is to provide the clerical or other assistance that the Authority reasonably requires for the purposes of subclause (1).

Completion of things commenced

9. Anything commenced to be done by the Authority under the repealed Act before the commencement day may be continued by the Council so far as the doing of that thing is within the functions of the Council after the commencement day.

Continuing effect of things done

10. (1) Any act, matter or thing done or omitted to be done before the commencement day by, to or in respect of the Authority, to the extent that that act, matter or thing has any force or significance after that day is to be taken to have been done or omitted, by, to or in respect of the Council.

(2) Without limiting the generality of subclause (1) —

- (a) any guidelines prepared;
- (b) any course of study prepared, approved or accredited;
- (c) any criteria established for awards and prizes;
- (d) the minimum requirements for graduation from a secondary school established;
- (e) the register of subjects established; and
- (f) the procedures for ensuring comparability of student performance established,

by the Authority under the repealed Act are, subject to any determination made by the Council, to have effect as though prepared, approved, accredited or established by the Council under this Act.

Immunity to continue

11. Despite the repeal effected by section 34 (1), where the Authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, that immunity continues in that respect for the benefit of the Council.

Agreements and instruments generally

12. Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which the Authority was a party; or
- (b) which contains a reference to the Authority,

has effect after that day as if —

- (c) the Council were substituted for the Authority as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the Authority were (unless the context otherwise requires) amended to be or include a reference to the Council.

Further transitional provision may be made

13. (1) If there is no sufficient provision in this Schedule for any matter or thing necessary or convenient to give effect to the transition from the Authority to the Council the Minister may make that provision by order published in the *Gazette*.

(2) An order under this clause may be made so as to have effect from the commencement day.

(3) To the extent that a provision of any such order has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —

- (a) to affect, in a manner prejudicial to any person (other than the State, the Council or any authority of the State), the rights of that person existing before the day of its publication; or
- (b) to impose liabilities on any person (other than the State, the Council or any authority of the State), in respect of anything done or omitted to be done before the day of publication.

Exemption from State tax

14. (1) In this clause —

“**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a law of the State.

(2) State tax is not payable in relation to —

- (a) anything that occurs by operation of this Schedule; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Schedule, or to give effect to this Schedule, or for a purpose connected with or arising out of, giving effect to this Schedule.

Registration of documents

15. The Registrar of Titles is to take notice of the provisions of this Schedule and is empowered to record and register in the appropriate manner the necessary documents, and otherwise to give effect to this Schedule.

Saving

16. The operation of any provision of this Schedule is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

SCHEDULE 3 — CONSEQUENTIAL AMENDMENTS

[Section 35]

1. *Constitution Acts Amendment Act 1899*

In Part 3 of Schedule V —

(a) delete “The Board of Secondary Education constituted under the *Education Act 1928*.”; and

(b) insert after the item commencing “The Country High Schools Hostels Authority” the following item —

“
The Curriculum Council established under the
Curriculum Council Act 1997.
”.

2. *Education Act 1928*

Delete the definition of “post-secondary education” in section 3 (1).

3. *Financial Administration and Audit Act 1985*

In Schedule 1 —

(a) insert in the appropriate alphabetical position the following —

“ Curriculum Council ”; and

(b) delete “Secondary Education Authority”.

4. *Government Employees Superannuation Act 1987*

In Part B of Schedule 1 —

(a) delete “Secondary Education Authority”; and

(b) insert in the appropriate alphabetical position the following —

“ Curriculum Council ”.

5. *Public Sector Management Act 1994*

In Schedule 2 —

- (a) delete item 42; and
- (b) insert after item 5 the following item —

“
5A. Curriculum Council, established under the
Curriculum Council Act 1997.
”
