

EDUCATION.

No. 100 of 1981.

AN ACT to amend the Education Act 1928-1979.

[Assented to 4 December 1981.]

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 Amendment Act 1981*.

Short title
and citation.

(2) In this Act the Education Act 1928-1979 is referred to as the principal Act.

Reprinted as
approved 22
June 1976
and amended
by Acts Nos.
95 of 1976,
27 of 1977,
and 48 of
1979.

(3) The principal Act as amended by this Act may be cited as the Education Act 1928-1981.

Sections 7A,
7B, 7C, 7D,
and 7E
inserted.

2. The principal Act is amended by inserting after section 7 the following sections—

Application
of sections
7A to 7E.

“ 7A. Sections 7A to 7E (both inclusive) apply only to the teaching staff of the Department.

No preference
in respect
of
membership
of the
Union.

7B. In the appointment, transfer or promotion of any teacher no regard shall be had to whether the teacher is an officer or member of the Union or is a person who is not a member of the Union.

Disciplinary
action for
misconduct.

7C. (1) In this section—

“authorized person” means a person authorized by the Director-General for the purposes of this section;

“continuous service” means continuous service as defined by the regulations;

“service” means service as defined by the regulations;

“the regulations” means regulations made under this Act.

(2) For the purposes of this section a teacher shall be guilty of misconduct if—

(a) he disobeys or disregards a lawful order applicable to him as a person on the teaching staff of the Department;

(b) he fails to comply with or contravenes any of the provisions of this Act or the regulations;

(c) he is absent from school without leave;

(d) he wilfully makes a false entry in a return or register; or

(e) he engages in disgraceful or improper conduct, whether during or connected with his employment and functions as a teacher or not.

(3) Where it appears to the Director-General that a teacher may be guilty of misconduct the Director-General shall cause an inquiry to be held by an authorized person.

(4) It is not necessary for an inquiry under subsection (3) of this section to be formal but the teacher shall be informed of the nature of the alleged misconduct and be given an opportunity of furnishing an explanation in relation thereto.

(5) Where—

- (a) an inquiry is being held under subsection (3) of this section; or
- (b) a teacher has been charged with an offence against any other Act and it appears to the Director-General that if the teacher is convicted of the charge the offence may be such as to constitute misconduct by the teacher,

the Director-General may suspend the teacher from duty.

(6) Subject to subsection (7) and subsection (8) of this section, where the Director-General suspends a teacher from duty under subsection (5) the teacher shall not be paid his salary in respect of the period of the suspension.

(7) The Director-General may, at his discretion, determine that the teacher—

- (a) be paid his salary in respect of the period of the suspension;
- (b) be paid his salary in respect of such part of the suspension as the Director-General specifies; or
- (c) be paid such part of his salary as the Director-General specifies in respect

of the period of the suspension or in respect of such part of that period as the Director-General specifies.

(8) Where the Director-General has suspended a teacher from duty under subsection (5) of this section the Director-General may at any time remove the suspension.

(9) Where—

(a) after an inquiry has been held under subsection (3) of this section, the Director-General is not satisfied that the teacher has been guilty of misconduct; or

(b) upon the hearing by a court of the charge against a teacher referred to in paragraph (b) of subsection (5) of this section, who has been suspended from duty under that subsection the teacher does not plead guilty to, and is not found guilty of, the offence with which he was charged or of another offence that appears to the Director-General to be such as to constitute misconduct by the teacher, or the charge against such a teacher is not proceeded with,

the Director-General shall, if he has not already done so, remove the suspension.

(10) Where—

(a) a teacher has been suspended from duty under subsection (5) of this section;

(b) an amount of salary that would otherwise have been paid to the teacher in respect of the period of the suspension was not paid to him;

and

- (c) the Director-General removes the suspension,

the teacher shall be paid that amount of salary.

(11) The period of suspension imposed under subsection (5) of this section—

- (a) does not count as service unless it is subsequently removed by the Director-General under subsection (8) or (9) of this section;
- (b) does not constitute a break in continuous service.

(12) Where as a result of an inquiry under this section the Director-General determines that a teacher is guilty of misconduct he may—

- (a) by order in writing impose one or more of the following punishments on the teacher, namely—
 - (i) a reprimand;
 - (ii) a fine not exceeding \$200;
 - (iii) transfer the teacher at the teacher's own expense;
 - (iv) reduce the teacher's salary grade;
 - (v) reduce the teacher from one position to another carrying a lower salary or remuneration;or
 - (vi) subject to subsection (15) of this section, suspension for any period up to 12 months;or
- (b) make a report and recommendation to the Minister that the teacher be dismissed.

(13) Upon considering the report and recommendation of the Director-General made pursuant to subsection (12) (b) of this section and the explanation (if any) given by the teacher pursuant to subsection (4) of this section the Minister may order in writing that the teacher be dismissed and the order has effect accordingly.

(14) A fine imposed pursuant to this section may be recovered—

- (a) notwithstanding the provisions of any other Act, by deduction from the salary of the teacher; or
- (b) as a debt to the Minister in any court of competent jurisdiction.

(15) A teacher shall not be paid his salary in respect of a period of suspension imposed as a punishment under subsection (12) of this section and such a period of suspension—

- (a) does not count as service;
- (b) does not constitute a break in continuous service.

No work
as ordered—
no pay.

7D. (1) In this section—

“declaration” means a declaration made under subsection (5) of this section;

“order” means an order given or purported to be given by or on behalf of the Director-General with respect to work that a teacher is performing or is to perform and includes an instruction in relation thereto;

“salary” includes wages or other remuneration and any allowances payable to a teacher;

“the regulations” means the regulations made under this Act;

“the Tribunal” means the Government School Teachers Arbitration and Appeal Tribunal established under the Tribunal Act;

“the Tribunal Act” means the Government School Teachers Arbitration and Appeal Act 1979.

(2) An order is deemed to have been given to a teacher for the purposes of this section if a school timetable or programme approved by or on behalf of the Director-General has been prepared and brought to the attention of the teacher (whether before or after the coming into operation of this section) specifying therein the subjects to be taught, or the activity to be carried out, by the teacher at a specified time or over specified periods of time.

(3) Subject to subsection (4) of this section, this section has full force and effect according to its tenor, notwithstanding any inconsistency—

- (a) with any other provision of this Act;
- (b) with any other law of the State enacted before the coming into operation of this section;
- (c) with any—
 - (i) determination made under this Act as in force before the coming into operation of the Education Act Amendment Act 1979; or
 - (ii) agreement or award under the Tribunal Act whether made before or after the coming into operation of this section.

(4) A declaration with respect to a teacher is not a punishment for the purposes of section 29 (1) (e) of the Tribunal Act but

a teacher who is aggrieved by a declaration may within 14 days of being served with notice of the declaration appeal to the Tribunal but only on the ground that the teacher did not refuse or fail to comply with an order and, notwithstanding anything in the Tribunal Act, on no other ground, and the Tribunal is hereby authorized to hear and determine such appeal.

(5) If—

- (a) a teacher has refused or failed to comply with an order or refuses or fails to comply with an order; and
- (b) the Director-General makes a declaration that the teacher has refused or failed to comply with an order or refuses or fails to comply with an order,

the teacher is not entitled to salary in respect of the period of such refusal or failure or commencing from the time of such refusal or failure as the case may be.

(6) A declaration shall include a statement of the period of time that a teacher refused or failed to comply with an order or the time and date from which he commenced to refuse or fail to do so, as the case requires.

(7) Where the Director-General is satisfied that a teacher in respect of whom a declaration has been made has complied with the order in respect of which the declaration was made the Director-General shall give a direction that the teacher's refusal or failure has ceased specifying in the direction the time and date of such cessation and where the Director-General gives such a direction the teacher again becomes entitled to salary.

(8) A declaration and any direction under subsection (7) of this section shall be in writing and is valid if signed or purported to be signed by the Director-General.

(9) A declaration may be cancelled, varied or revoked by the Director-General at any time either wholly or in relation to a specified teacher.

(10) A declaration may be made in relation to a teacher with respect to a refusal or failure of the teacher to comply with a particular order or with particular orders notwithstanding that the teacher—

- (a) attends for duty and performs work other than work to which that order, or any of those orders, as the case requires, relates; or
- (b) attends for duty and, in the performance of his work, complies with that order, or with some or all of those orders, as the case requires, in part only.

(11) Subject to subsection (12) of this section, the powers conferred on the Director-General by this section are in addition to, and not in substitution for, any other powers conferred by or under this Act on the Minister, the Director-General or any other person in relation to a teacher.

(12) No proceedings shall be taken with respect to a teacher under section 7C of this Act in relation to any matter in respect of which a declaration has been made in relation to the teacher.

(13) Notwithstanding subsection (12) of this section, where a declaration is in force with respect to a teacher the Director-General may terminate the declaration and proceed against the teacher under section 7C of this

Act but no such proceedings shall be taken against the teacher in respect of any refusal or failure of the teacher to comply with an order before the termination of the declaration.

(14) Where a declaration is made, varied, cancelled or revoked the Director-General shall cause such notice as he deems appropriate to be given of the making of the declaration, or of the variation, cancellation or revocation of the declaration as the case may be.

(15) The period during which a declaration is in force in respect of a teacher forms part of his period of service or employment under this Act for the purposes of the Superannuation and Family Benefits Act 1938 and shall, unless the Minister determines otherwise (as he is hereby authorized to do), form part of his period of service under this or any other Act.

No pay for
absence
without
leave.

7E. A teacher who is absent from duty without leave is not entitled to be paid in respect of the period that he has been so absent. ” .
