

GOVERNMENT SCHOOL TEACHERS ARBITRATION AND APPEAL.

No. 65 of 1979.

AN ACT to provide for conciliation and arbitration in relation to conditions of service of teachers in government schools and for appeals in relation to certain matters for teachers in government schools, to establish a Government School Teachers Tribunal and for incidental purposes.

[Assented to 21st November, 1979.]

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:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Government School Teachers Arbitration and Appeal Act, 1979.* Short Title.

Commence-
ment.

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

Arrangement.

3. The arrangement of this Act is as follows—

PART I.—PRELIMINARY.

PART II.—GOVERNMENT SCHOOL TEACHERS
TRIBUNAL.

PART III.—GOVERNMENT SCHOOL TEACHERS
CONCILIATION AND ARBITRATION.

PART IV.—APPEALS BY GOVERNMENT SCHOOL
TEACHERS.

PART V.—MISCELLANEOUS.

PART VI.—TRANSITIONAL.

Interpreta-
tion.

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

“Chairman” means the Chairman of the Tribunal;

“Department” means the Education Department of the State;

“Director-General” means the person holding or acting in the office of Director-General of Education under the Education Act, 1928;

“government school” has the same meaning as it has in the Education Act, 1928;

“industrial matters” means—

(a) salaries or ranges of salaries, including the incremental steps therein;

(b) allowances for additional responsibility or additional duty;

(c) allowances for disabilities and reimbursement of expenses;

Employees (Promotions Appeal Board) Act, 1945 or the Public Service Act, 1978 applies;

“Tribunal” means the Government School Teachers Tribunal established under Part II of this Act;

“Union” means The State School Teachers’ Union of Western Australia (Incorporated) .

(2) A reference in Part II of this Act to the term “the Minister” shall be construed as a reference to the Minister charged with the administration of this Act otherwise the term shall be construed as the Minister charged with the administration of the Education Act, 1928.

Application.

5. This Act applies only to teachers and teaching staff within the meaning of those terms in section 4 of this Act.

PART II.—GOVERNMENT SCHOOL TEACHERS
TRIBUNAL.

Government
School
Teachers
Tribunal
established.

6. (1) There shall be a Tribunal to be known as the Government School Teachers Tribunal.

(2) Subject to this Act, the Tribunal shall consist of three members appointed by the Governor of whom—

- (a) one shall be appointed to be a member and Chairman of the Tribunal;
- (b) one shall be a person nominated for appointment by the Minister charged with the administration of the Education Act, 1928; and
- (c) one shall be a person nominated for appointment by the Union.

Terms of
office, etc.

7. (1) Subject to this Act—

- (a) a person appointed as Chairman shall hold office for a term of seven years and on the expiration of his term is eligible for re-appointment;
- (b) a person appointed as a member pursuant to paragraph (b) of subsection (2) of section 6, shall hold office for such period not exceeding three years as is specified in the instrument of his appointment and is eligible for re-appointment;
- (c) a person appointed as a member pursuant to paragraph (c) of subsection (2) of section 6 shall hold office for a period of three years and is eligible for re-appointment.

(2) If the person appointed to be Chairman is at the time of his appointment or re-appointment above the age of fifty-eight years, the term of his appointment or re-appointment, as the case may be, shall be the period that will expire on his attaining the age of sixty-five years.

(3) The Governor may remove a member referred to in paragraph (b) or paragraph (c) of subsection (2) of section 6, if—

- (a) being the member referred to in paragraph (b) of that subsection, the nomination of the Minister charged with the administration of the Education Act, 1928 of the member is withdrawn; or
- (b) being the member referred to in paragraph (c) of that subsection the member attains the age of sixty-five years or resigns from the Department,

and where he does so the office of that member becomes vacant.

(4) If a member—

- (a) is an incapable person within the meaning of section 5 of the Mental Health Act, 1962;

- (b) is convicted of an indictable offence;
- (c) is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
- (d) had his appointment terminated by the Governor for inability, inefficiency or misbehaviour,

his office becomes vacant and he is not eligible for re-appointment.

(5) A member may by writing under his hand addressed to the Minister resign from his office as member and thereupon his office as member becomes vacant.

(6) Where the office of a member has become vacant, otherwise than by effluxion of time, the Governor may, in accordance with section 6, appoint an eligible person to the vacant office for the unexpired part of the term of the office which so became vacant.

8. (1) Subject to the Salaries and Allowances Tribunal Act, 1975, the Chairman is entitled to such conditions of service as are determined by the Governor from time to time.

Remuneration, etc. of Chairman.

(2) Where the person appointed to be Chairman was, immediately before his appointment as Chairman, employed by the Crown in the right of the State, he shall retain his existing and accruing rights and privileges and for the purposes of determining those rights and privileges his service as Chairman shall be taken into account.

(3) Where the person appointed to be Chairman was, immediately before his appointment to that office, employed by the Crown in the right of the State, he shall, if he resigns from that office, or if the term of his appointment or re-appointment expires and is not renewed, be entitled to be employed by the Crown in the right of the State in a position of no less status than that enjoyed by him immediately prior to his appointment as Chairman.

(4) The Chairman shall, while he holds his office, be deemed to be an employee within the meaning of and for the purposes of the Superannuation and Family Benefits Act, 1938.

(5) If a person is a contributor within the meaning of the Superannuation and Family Benefits Act, 1938, at the time he is appointed to be Chairman, he may continue to be such a contributor notwithstanding his appointment as Chairman.

(6) The Chairman shall not engage in paid employment outside the duties of his office without the consent of the Governor.

Continuation in office.

9. (1) Notwithstanding the expiry of the period for which a member has been appointed, the Governor may continue him in office for such period as the Governor determines in order to enable the Tribunal to complete all matters, proceedings or inquiries that it had entered upon while the Tribunal was constituted with him as a member.

(2) The Governor may from time to time extend any period determined by him under subsection (1) for such period or periods as he thinks fit.

Deputies.

10. (1) The Governor may—

(a) appoint a person—

(i) who is or has been a barrister or solicitor of the Supreme Court of not less than seven years' standing and practice; or

(ii) who is or has been a stipendiary magistrate,

to be deputy of the Chairman;

Claim to be
made by
application.

13. A claim under this Part shall be made by application in writing.

Claim to be
submitted to
other party.

14. (1) The Minister or the Union may make a claim under this Part.

(2) A claim made under this Part shall be served on the other party to the claim.

(3) A copy of every claim made under this Part shall be filed at the office of the Tribunal by the party making the claim within seven days of the service of the claim on the other party thereto.

Require-
ment to
confer.

15. Where a claim is made under this Part the respondent to the claim is required to—

(a) confer with the applicant; or

(b) serve on the applicant a written answer to the claim,

within a period of one month commencing from the date that a copy of the claim is filed at the office of the Tribunal pursuant to subsection (3) of section 14.

Negotiated
agreement.

16. Where within the period referred to in section 15 the applicant and respondent to a claim confer on the claim and agree thereon or the respondent's answer to the claim indicates that the respondent agrees to the claim the terms of the agreement shall be reduced to writing and a copy of the written agreement shall be filed at the office of the Tribunal within seven days of the date of the execution thereof.

Agreements.

17. (1) Every agreement entered into under this Part that has been filed in the prescribed manner shall be—

(a) binding on the Minister and the Union;
and

(b) enforced in the same manner as an award, order or decision of the Tribunal.

(2) Subject to subsection (3), the Tribunal is empowered to determine any application to vary or rescind any provision of the agreement and may for that purpose make an order varying or rescinding any provision of an agreement.

(3) The provisions of this Part relating to the power or jurisdiction of the Tribunal to vary an award, and the provisions of this Part relating to things or conditions which are required to be done or fulfilled before the Tribunal may vary an award and, in particular, the provisions of subsections (2) and (3) of section 26 relating to the times at which awards may be altered and applications made therefor shall, except to the extent otherwise provided for in the agreement or any variation thereof, apply to and in relation to any amendment, or application therefor, of an agreement pursuant to subsection (2).

18. Where a claim has been made under this Part and the respondent to the claim fails to— Failure to agree.

- (a) confer with the applicant, or, having conferred with the applicant, the parties fail to agree on all the matters referred to in the claim; or
- (b) serve on the applicant a written answer to the claim, or, having served a written answer, the answer does not indicate agreement with all the matters referred to in the claim,

the applicant may by notice in writing submit the claim to the Tribunal for arbitration.

19. Where pursuant to section 18 any matter has been submitted to the Tribunal for arbitration the Tribunal shall order the respondent to serve upon the Tribunal a written answer to the claim and shall fix the period, not exceeding a period of seven days from the date of the making of the order, Tribunal to direct written answer to be served by respondent.

within which the order shall be complied with by the respondent and may, by further order upon application by the respondent, extend that period by such period, not exceeding fourteen days from the date of the application for the extension, as is fixed in the further order.

Tribunal
may
determine
claim.

20. Where the Tribunal has pursuant to section 19 made an order for the service of a written answer by a respondent to a claim and the respondent fails to comply with the order within the period specified in the order or within any extension of the period granted under that section, the Tribunal may determine the claim.

Conciliation.

21. (1) Where the Chairman is of the opinion that—

- (a) a matter submitted to the Tribunal for arbitration pursuant to section 18; or
- (b) any other matter within the jurisdiction of the Tribunal under this Part,

can be resolved by conciliation, the Chairman may at the request of either the Minister or the Union, or on his own motion, order the parties, orally or in writing, into conference presided over by himself.

(2) A conference convened pursuant to subsection (1) shall be held in private unless the Chairman and the parties otherwise agree.

(3) Where as a result of a conference held pursuant to subsection (1) an agreement is reached as to the whole of the matters in the claim, a memorandum of the terms of the agreement shall be—

- (a) drawn up by, or at the direction of the Chairman;
- (b) executed by the parties; and
- (c) signed by the Chairman.

Tribunal may decline to hear certain claims.

23. The Tribunal may refrain from hearing, or from further hearing, or from determining a claim or application submitted to it under this Part, or a matter forming part of or arising out of such a claim or application, if the subject matter of the claim or application or matter is trivial, or that on any other ground it is unnecessary or undesirable in the public interest to deal with that claim, application or matter.

Costs not allowable.

24. No costs shall be allowed in respect of any proceedings under this Part.

Determination of Tribunal to be final.

25. Subject to sections 26 and 27, no award, order or decision of the Tribunal made under this Part shall be challenged, appealed against, reviewed, quashed or called in question, or be subject to any prohibition or mandamus, in any court on any account whatever.

Duration of award.

26. (1) The term of any award made by the Tribunal under this Part shall be three years from the date of the award.

(2) Notwithstanding subsection (1)—

- (a) the Tribunal may, with the consent of the Minister and the Union, fix the term of the award for a period less than three years;
- (b) the Tribunal may direct in an award that all or any of the provisions thereof be referred to it for review, at such intervals of time as it may think fit, and the Tribunal may vary or rescind all or any of those provisions;
- (c) at any time after the expiration of the first twelve months from the date of commencement of the operation of an award or after the expiration of any period of twelve months from the date of commencement of the operation of any

(4) An appeal under this section shall be made within one month after the date of the award, order or decision appealed against, and may be made by—

- (a) the Minister or the Union; or
- (b) the Minister to whom the administration of this Act is committed by the Governor on behalf of the Crown, where in his opinion the public interest is, or is likely to be, adversely affected by that award, order or decision.

(5) The provisions of the Industrial Arbitration Act, 1912, and the regulations in force thereunder, with such modifications as are necessary for that purpose, apply to and in relation to an appeal made under this section.

PART IV.—APPEALS BY GOVERNMENT SCHOOL
TEACHERS.

Proceedings
of Tribunal
under this
Part.

28. (1) For the purposes of exercising its jurisdiction under this Part the Tribunal shall meet at such time and place as the Chairman may appoint.

(2) To the extent to which it is not prescribed the Tribunal may regulate its own procedure for the purposes of this Part.

(3) Subject to subsection (4), the Tribunal shall keep a record of its proceedings and its decisions thereon which shall be open to public inspection and available for future reference.

(4) No record relating to an appeal against a punishment imposed on a teacher shall be open to public inspection.

(5) The decision of the Tribunal, or of a majority of the members of the Tribunal, on an appeal under this Part shall be reported in writing by the Tribunal to the parties to the appeal and shall be final and effect shall be given to every such decision.

29. (1) Under this Part the Tribunal has jurisdiction to hear and determine—

Jurisdiction
of the
Tribunal
under this
Part.

- (a) subject to subsection (2), and to section 30 an appeal by a teacher against a recommendation of the Director-General recommending the promotion of a teacher to a new office or vacancy in the teaching staff of the Department;
- (b) an appeal by a teacher or the Union against a decision of the Minister in relation to an interpretation or application of any provision of any Act or regulation governing the service of the teacher or of a group of teachers;
- (c) an appeal by a teacher against a decision of the Director-General in relation to the salary fixed with respect to the teacher at the time of his appointment to the Department;
- (d) any matter referred to it by the Minister, or, jointly by the Minister and the Union, concerning the interpretation or application of any Act or regulation governing the service of a teacher, a group of teachers or teachers generally;
- (e) an appeal by a teacher against any punishment for alleged misconduct imposed on him under the Education Act, 1928 other than a punishment that is a reprimand or a fine that does not exceed fifty dollars;
- (f) an appeal by a teacher against the amount of the rent of a house, being a house that was completed and ready for occupation prior to the 1st January, 1946, that is provided for his use by the Department and that is valued or revalued pursuant to the regulations made under the Education Act, 1928;
- (g) such matters as are prescribed for the purposes of this Part.

(2) In relation to the jurisdiction conferred on the Tribunal by paragraph (a) of subsection (1)—

- (a) an appeal lies by a teacher who is employed in the Department in other than a permanent capacity if and only if—
 - (i) the person recommended by the Director-General to the new office or vacancy in office is not employed in the Department in a permanent capacity; and
 - (ii) the appellant is in continuous employment in the Department in a full-time capacity;
- (b) an appeal does not lie by a teacher who was not an applicant for the recommendation of the Director-General to a new office or vacancy in the teaching staff of the Department;
- (c) an appeal does not lie in respect of a recommendation of the Director-General recommending the promotion of a teacher to a new office, or vacancy in an office, in the teaching staff of the Department that is an office within the class of office prescribed for the purposes of this paragraph;
- (d) the Tribunal shall, in hearing and determining any appeal, have regard to the order of preference for employment submitted by an appellant in his application for promotion to a new office or vacancy but where the appellant satisfies the Tribunal that circumstances have changed since the date of his application and that those changed circumstances justify a change in the order of preference so submitted the Tribunal shall permit the appellant to alter the order of preference submitted by the teacher and shall have regard to the order of preference as so altered.

30. (1) In this section—

Grounds of
appeal in
respect of
appoint-
ments and
promotions.

“efficiency” means efficiency as defined in the regulations in force under this Act;

“seniority” means, as between teachers, seniority by longer period of continuous full-time service as a teacher in the Department calculated from the date of the appointment of the teacher to the Department and excluding any previous service as a teacher with the Department prior to that date;

“service” includes service as—

- (a) a monitor;
- (b) a student pursuing a teacher education course that was commenced by the teacher before the 1st January, 1977 and undertaken with financial assistance provided by the Minister under the Education Act, 1928;
- (c) a science teacher exhibitor at the University of Western Australia with the financial assistance provided by the Minister under the Education Act, 1928;
- (d) a teacher in the Department in a temporary capacity if that service immediately precedes and is continuous with service as a teacher in the Department in a permanent capacity;
- (e) a teacher under the Director of Technical Education in his capacity as Regional Director of Industrial Training for Commonwealth Training Schemes, if that service immediately precedes and is continuous with service as a teacher in the Department in a permanent capacity.

(2) An appeal under paragraph (a) of subsection (1) of section 29 may be on the ground of—

- (a) superior efficiency; or
- (b) equal efficiency and seniority to the teacher recommended for promotion by the Director-General.

(3) The Tribunal may, in relation to any appeal under paragraph (a) of subsection (1) of section 29—

- (a) fix the costs of the appeal and direct by whom and in what manner the costs shall be paid; and
- (b) by recommendation in writing signed by the Chairman, 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 or both in travelling to the place where the appeal was heard and for board and lodging whilst attending the appeal.

Costs on
appeals
against
punishment.

31. Any costs awarded by the Tribunal in the exercise of the jurisdiction conferred on it pursuant to paragraph (e) of subsection (1) of section 29—

- (a) against any party other than the Minister shall be recoverable by the Treasurer in any court of competent jurisdiction as a debt due to the Crown;
- (b) to any party to an appeal other than the Minister shall be paid by the Minister out of moneys appropriated by Parliament for the administration of this Act.

PART V.—MISCELLANEOUS.

Appearance
before
Tribunal.

32. (1) The Minister may appear before the Tribunal by any person duly appointed in writing for that purpose, or subject to subsection (4), by a legal practitioner.

(2) The Union may appear before the Tribunal by any person appointed in writing by the President of the Union for that purpose, or, subject to subsection (4), by a legal practitioner.

(3) Any teacher, being a party to an appeal may appear in person or by an agent appointed in writing by the teacher for that purpose, or, subject to subsection (4), by a legal practitioner.

(4) Except as provided by this Act, a legal practitioner may appear before the Tribunal on behalf of a party if, and only if, the Tribunal consents to the appearance and where it does so every other party to the proceedings in question is entitled to appear by a legal practitioner.

33. (1) In relation to every claim, application or appeal made to the Tribunal under this Act, the Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Tribunal
to act
according
to equity.

(2) Notwithstanding anything in this Act, the Tribunal may reconsider any matter that has been dealt with by it and may rescind, alter or amend any decision or order made by it.

34. (1) For the purposes of this Act, the Tribunal shall, as regards any claim, appeal, or application submitted to it under this Act, have power—

Powers of
Tribunal.

- (a) to summon any witness before it, and to compel the production before it of books, documents and things for the purpose of reference to such matters as relate to the matter of the claim, appeal or application;
- (b) to take evidence on oath or affirmation, and either in public or in camera at its discretion;

- (c) where any witness is resident more than fifty kilometres from the place where the Tribunal is sitting, to take the evidence of the witness by affidavit;
- (d) to direct the payment of witness fees to witnesses, other than witnesses employed by the Government, such witness fees to be payable by the party calling the witness;
- (e) to allow the amendment or withdrawal of any claim, appeal or application;
- (f) to direct parties to confer;
- (g) to adjourn proceedings from time to time;
- (h) to dismiss any claim, appeal or application;
- (i) generally to do all such things as the Tribunal deems necessary or expedient to give effect to the intention of this Act.

(2) In addition to the powers conferred on the Tribunal by subsection (1) the Tribunal has in relation to any matter within its jurisdiction under this Act all the powers of a Royal Commission under the Royal Commissions Act, 1968, and any reference to the Chairman of a Royal Commission under that Act shall, in relation to any such matter, be deemed to be a reference to the Chairman.

(3) Any person who on being summoned as a witness refuses or fails, without lawful excuse and after tender of reasonable expenses, to appear in obedience to the summons, or refuses or fails without lawful excuse to be sworn or make an affirmation or to produce books, documents and things which he is lawfully required to produce, or to answer questions which he is lawfully required to answer, commits an offence.

Penalty: One hundred dollars.

Costs.

35. Except as provided by this Act, no costs shall be allowed in respect of any proceedings under this Act.

36. (1) There may be appointed a Clerk to the Tribunal. Clerk to the Tribunal.

(2) The Clerk to the Tribunal shall be appointed under and subject to the Public Service Act, 1978, and may hold office in conjunction with any other office in the Public Service of the State.

37. The Governor may make regulations for any purpose for which regulations are contemplated, or required or permitted under this Act and may make all such other regulations as may, in his opinion, be necessary or expedient for giving full effect to the provisions of, and for the due administration of, this Act. Regulations.

PART VI.—TRANSITIONAL.

38. (1) In this section— Transitional.

“amended Act” means the Education Act, 1928 as in force immediately before the proclaimed date;

“former Tribunal” means the Government School Teachers’ Tribunal constituted under the amended Act;

“new Tribunal” means the Government School Teachers Tribunal established under this Act;

“pending proceedings” means any application, appeal or other claim made to the former Tribunal under the amended Act which was commenced before the former Tribunal immediately before the proclaimed date;

“proclaimed date” means the date on which this Act comes into operation.

(2) On and after the proclaimed date—

(a) subject to this Act, the former Tribunal is preserved and shall continue as the new Tribunal; and

(b) each person who held office on the former Tribunal immediately prior to the proclaimed date shall be deemed to have

been appointed under and subject to this Act to the corresponding office on the new Tribunal and his term of office shall be deemed to have commenced on the date on which his term in the corresponding office in the former Tribunal commenced.

(3) Subject to this section, all salaries, salary ranges and allowances in force under the amended Act as in force immediately before the proclaimed date shall continue in force unless and until they are revised, altered or amended in accordance with the provisions of this Act.

(4) Subject to subsection (5), the provisions of this Act apply to and in relation to any matter within the jurisdiction of the Tribunal under this Act whether the determination, decision, or recommendation appealed from was made before or after the proclaimed date.

(5) Pending proceedings may be continued and dealt with under the amended Act as in force immediately before the proclaimed date.

(6) Notwithstanding anything in this Act, for the purposes of completing and determining pending proceedings—

- (a) the former Tribunal shall continue;
- (b) if the office of any member of the former Tribunal becomes vacant whether by effluxion of time or not the Governor may—
 - (i) continue that person in office; or
 - (ii) appoint another person to that office,

but any person holding office pursuant to this subsection is subject to the provisions of the amended Act as in force immediately before the proclaimed date.

(7) Nothing in this section affects the operation of the Interpretation Act, 1918.