

Western Australia

Education Act 1928

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Education Act 1928

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Western Australia

Education Act 1928

An Act to consolidate and amend the law relating to public education and for incidental and other purposes.

[Long title amended by No. 57 of 1960 s.3; No. 48 of 1979 s.3.]

1. Short title

This Act may be cited as the *Education Act 1928*.

[Section 1 amended by No. 100 of 1981 s.1.]

Part I — Introductory provisions

[Heading inserted by No. 72 of 1957 s.2.]

[1A. Repealed by No. 118 of 1984 s.40.]

[2. Omitted under the Reprints Act 1984 s.7 (4) (P).]

3. Interpretation

(1) In this Act, unless the context otherwise requires —

“care-centre” means an assembly at appointed times of 3 or more children over the age of 3 years, the majority of whom are more than one year below the minimum age for admission to year 1 of a Government primary school, for the care, guidance and education of those children, but does not include such an assembly —

- (a) at a Government school; or
- (b) where the children are members of the same family or of not more than 2 families;

“chief executive officer”, subject to subsection (2), means the person holding or acting in the office of chief executive officer of the Education Department, the Department of Training or the Office;

“department”, subject to subsection (3), means the Department of Training, the Education Department or the Office;

“Education Department” means the department of the Public Service designated “Education Department of Western Australia” at the commencement of Part 2 of the *Education Amendment Act 1996*;

“efficient schools” are schools certified by the Minister to be efficient for the purposes of this Act;

“Government school” means any pre-primary centre, primary school, or secondary school established or deemed to have been established by the Minister under this Act;

“leaving age” in relation to a child means the age of that child at the end of the school year in which he attains the age of 14 years, but on and after 1 January 1966, shall mean the age applicable in respect of the child under the provisions of section 13A;

“Minister” means the Minister for Education;

“Office” means the department of the Public Service designated “Western Australian Office of Non-Government Education” at the commencement of Part 2 of the *Education Amendment Act 1996*;

“parent” includes guardian and every person who is liable to maintain or has the actual custody of any child;

“pre-school centre” means an assembly at appointed times of 3 or more children over the age of 4 years, the majority of whom are one year or less below the minimum age for admission to year 1 of a Government primary school, for the education, guidance and care of those children, but does not include such an assembly —

- (a) at a Government school; or
- (b) where the children are members of the same family or of not more than 2 families;

“public service officer” has the meaning given by the *Public Sector Management Act 1994*;

“school” means a Government or efficient school;

“school year” in relation to a Government or efficient school means that part of a calendar year from and including the first day in that year on which that school opens for attendance of children to and including the last day in that year that such school is open for that purpose;

“teacher”—

- (a) in relation to any school not being a Government school, includes any person forming part of the teaching staff of the school; and

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- (b) in relation to a Government school or the department, includes any person engaged in teaching and any person holding or acting in a position in the department in respect of which a teaching academic qualification is required but does not include any person, whether or not he holds such a qualification, who is a public service officer within the meaning of the *Public Sector Management Act 1994*;

“teaching staff” in relation to a Government school or the department includes persons who are engaged in teaching and persons who hold or Act in positions in the department in respect of which a teaching academic qualification is required and includes any position in respect of which such a qualification is required but does not include persons who are public service officers;

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

“welfare officer” means a person appointed pursuant to section 15 by the Minister to secure the attendance of children at school.

[(2) repealed]

- (3) A reference in this Act to the department shall be taken to be —
 - (a) in relation to sections 9, 17A (3) (a), 26 (2), 27C (1) (b) and 34 (1), a reference to the Education Department;
 - (b) in relation to the definitions of “teacher” and “teaching staff” in section 3 (1) and in relation to sections 7A and 7C (2) (a), a reference to the department to which the person has been appointed;
 - (c) in relation to sections 28 (1) (a), (d1) and (p2) and 28A (3) (r), a reference to the Education Department or the Department of Training, or either as the case requires;
 - (d) in relation to section 32A, a reference to the Office; and

- (e) in relation to section 38, a reference to one or more, as the case requires, of the Education Department, the Department of Training or the Office.

[Section 3 amended by No. 30 of 1943 s.2; No. 30 of 1952 s.3; No. 72 of 1957 s.3; No. 57 of 1960 s.4; No. 37 of 1962 s.3; No. 26 of 1964 s.2; No. 91 of 1969 s.3; No. 89 of 1972 s.4; No. 15 of 1973 s.3; No. 61 of 1974 s.3; No. 10 of 1975 s.3; No. 27 of 1977 s.4; No. 48 of 1979 s.4; No. 118 of 1984 s.41; No. 94 of 1984 s.68; No. 7 of 1988 s.4; No. 53 of 1988 s.4; No. 48 of 1989 s.15; No. 17 of 1992 s.4; No. 32 of 1994 s.19; No. 1 of 1995 s.15; No. 22 of 1996 s.4; No. 42 of 1996 s.71(1); No. 17 of 1997 s.35.]

[3A. Repealed by No. 26 of 1964 s.3.]

Part II — Administration

[Heading amended by No. 72 of 1957 s.4.]

Division 1 — Minister's functions and matters relating to property vested in the Minister

[Heading inserted by No. 22 of 1996 s.5.]

[4. Repealed by No. 7 of 1988 s.5.]

5. Minister a body corporate

The Minister in office at the commencement of this Act, and his successors in office, shall, for the purposes of this Act, continue, without change of corporate entity, to be a body corporate under the name of the “**Minister for Education**”, with perpetual succession and a common seal; and by that name shall be capable of suing and being sued, acquiring, holding, leasing, and alienating real and personal property, and of doing and suffering all such other acts and things as may be necessary or expedient for carrying out the purposes of this Act.

6. Property vested in Minister

- (1) All lands, tenements, and hereditaments, chattels, goods, and choses in action, and all other property of whatsoever estate, interest, or kind at the commencement of this Act vested in the Minister for Education, shall continue to be vested in the Minister.
- (2) All property of whatsoever estate, interest, or kind which may be acquired for the purposes of this Act shall be conveyed, transferred, assigned, or delivered to the Minister, and shall thereupon vest in the Minister.
- (3) All property vested in the Minister shall be held by him in trust for the purposes of this Act, and for and on account of the Crown.

6AA. CEO may enter into agreements on Minister's behalf for improvement of school lands

The Minister may, by a signed instrument of delegation, delegate to the chief executive officer either generally or as otherwise provided in the instrument, the power —

- (a) to enter into; and
- (b) to sign,

on the Minister's behalf, an agreement for the provision of a building, structure or other erection, whether permanent or temporary, on land vested in the Minister, but the Minister cannot delegate this power of delegation.

[Section 6AA inserted by No. 22 of 1996 s.17.]

6A. Minister may grant licences for use of land etc.

- (1) The Minister may enter into arrangements with a local government to enable and provide for the management and control of the community use for educational or recreational purposes of land and facilities vested in the Minister.
- (2) For the purposes of subsection (1), the Minister may grant a licence to a local government for the use of land and facilities vested in the Minister upon such terms and subject to such conditions as may be specified in the licence.
- (3) A licence for the use of land and facilities granted under this section —
 - (a) may provide for the establishment, composition, powers and duties of a management committee to manage and control the use of the land and facilities in accordance with the licence;
 - (b) may provide for a payment to be made to the Minister by the local government by way of contribution towards the costs incurred in the provision of the facilities; and

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Division 1 Minister's functions and matters relating to property vested in the Minister

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- (c) may provide for the appointment and remuneration of staff with respect to the use of the land and facilities.

[Section 6A inserted by No. 63 of 1986 s.3. ²; No. 14 of 1996 s.4]

6B. Licences for use of school property by persons generally

- (1) The Minister may grant a licence to a person for the use of real or personal property vested in the Minister.
- (2) A licence under this section —
 - (a) must be in writing;
 - (b) has effect for up to one year or such lesser period as is specified in the licence;
 - (c) may provide for a payment to be made to the Minister in connection with the use of the property;
 - (d) may provide for an amount of money to be paid to the Minister as a security for the performance of the licensee's obligations under the licence; and
 - (e) is otherwise to be on such terms and subject to such conditions as may be specified in the licence.
- (3) The Minister may, by a signed instrument of delegation, delegate to the chief executive officer either generally or as otherwise provided in the instrument, the power —
 - (a) to grant; and
 - (b) to sign,on the Minister's behalf, a licence under this section.
- (4) The Minister may, by a signed instrument of delegation, delegate to the chief executive officer the power to delegate to another person the power —
 - (a) to grant; and
 - (b) to sign,on the Minister's behalf, a licence under this section.

- (5) The use of property in respect of which a licence can be granted under this section is not limited to the purposes of public education but the use must not interfere with the normal operations of any school to which the property relates.

[Section 6B inserted by No. 22 of 1996 s.18.]

6C. Financial provisions relating to licences

Where a licence granted under section 6B —

- (a) relates to property in respect of a particular school; and
- (b) requires an amount of money to be paid in accordance with section 6B (2) (c) or (d),

then the money may be credited to the school's Fund within the meaning of section 9B and shall be treated for the purposes of, but subject to, section 9B as moneys forming part of the Fund.

[Section 6C inserted by No. 22 of 1996 s.18.]

Division 2 — Persons required to administer Act

[Heading inserted by No. 22 of 1996 s.6.]

7. Appointment of officers and teachers

- (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*—
- (a) a chief executive officer of the Education Department;
 - (b) a chief executive officer of the Department of Training;
 - (c) a chief executive officer of the Office; and
 - (d) such other public service officers as may be necessary for the due administration of this Act.
- (2) The Minister may, in relation to either the Education Department or the Department of Training, appoint teachers and employees, other than public service officers, of that Department.

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- (3) The Minister, or, where the Minister delegates to him the power conferred on the Minister by this subsection, the chief executive officer, may, subject to the regulations, the *Industrial Relations Act 1979* and any applicable public sector standard established under the *Public Sector Management Act 1994*, transfer or promote any teacher or employee, other than a public service officer, of the department to which the teacher or employee was appointed.
- (4) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to teachers appointed, transferred or promoted under this section.

[(5) *repealed*]

[Section 7 inserted by No. 48 of 1979 s.5; amended by No. 94 of 1984 s.69; No. 7 of 1988 s.6; No. 32 of 1994 s.19; No. 1 of 1995 s.16; No. 22 of 1996 s.7; No. 42 of 1996 s.71(1).]

7AA. Chief executive officers

- (1) The chief executive officer of the Education Department is responsible for the administration of this Act except where another chief executive officer has responsibility under subsection (2) or (3).
- (2) The chief executive officer of the Department of Training is responsible for the administration of provisions of this Act which relate, amongst other things, to education provided by technical colleges but only to the extent that those provisions relate to education provided by technical colleges.
- (3) The chief executive officer of the Office is responsible for the administration of —
- (a) sections 9A, 32A, 32B and 33; and
 - (b) sections 27B and 27C but only to the extent that those provisions do not relate to care-centres or pre-school centres at which teachers or employees of the Education Department are employed.

[Section 7AA inserted by No. 22 of 1996 s.8.]

Division 3 — Disciplinary matters

[Heading inserted by No. 22 of 1996 s.8.]

7A. Application of sections 7A to 7E

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

[Section 7A inserted by No. 100 of 1981 s.2.]

7B. No preference in respect of membership of the Union

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.

[Section 7B inserted by No. 100 of 1981 s.2.]

7C. Disciplinary action for misconduct

(1) In this section —

“**authorized person**” means a person authorized by the chief executive officer 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;

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- (d) he wilfully makes a false entry in a return or register; or
 - (e) he engages in disgraceful or improper conduct in his official capacity or otherwise by reason of which he ceases to be a fit and proper person to hold office as a teacher.
- (3)³ Where it appears to the chief executive officer that a teacher may be guilty of misconduct the chief executive officer shall cause an inquiry to be held by an authorized person.
- (4) It is not necessary for an inquiry under subsection (3) 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); or
 - (b) a teacher has been charged with an offence against any other Act and it appears to the chief executive officer that if the teacher is convicted of the charge the offence may be such as to constitute misconduct by the teacher,
- the chief executive officer may suspend the teacher from duty.
- (6) Subject to subsections (7) and (8) where the chief executive officer 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 chief executive officer 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 chief executive officer specifies; or

- (c) be paid such part of his salary as the chief executive officer specifies in respect of the period of the suspension or in respect of such part of that period as the chief executive officer specifies.
- (8) Where the chief executive officer has suspended a teacher from duty under subsection (5) the chief executive officer may at any time remove the suspension.
- (9) Where —
- (a) after an inquiry has been held under subsection (3) the chief executive officer 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 subsection (5) (b) 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 chief executive officer to be such as to constitute misconduct by the teacher, or the charge against such a teacher is not proceeded with,
- the chief executive officer shall, if he has not already done so, remove the suspension.
- (10) Where —
- (a) a teacher has been suspended from duty under subsection (5);
 - (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 chief executive officer removes the suspension,
- the teacher shall be paid that amount of salary.

- (11) The period of suspension imposed under subsection (5) —
- (a) does not count as service unless it is subsequently removed by the chief executive officer under subsection (8) or (9);
 - (b) does not constitute a break in continuous service.
- (12) Where as a result of an inquiry under this section the chief executive officer 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), 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 chief executive officer made pursuant to subsection (12) (b) and the explanation (if any) given by the teacher pursuant to subsection (4) 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) and such a period of suspension —
- (a) does not count as service;
 - (b) does not constitute a break in continuous service.

[Section 7C inserted by No. 100 of 1981 s.2; amended by No. 26 of 1983 s.2; No. 7 of 1988 s.11.]

7D. No work as ordered — no pay

- (1) In this section —

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

“order” means an order given or purported to be given by or on behalf of the chief executive officer 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 Commission” means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*;

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

- (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 chief executive officer 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), 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*¹; or
 - (ii) agreement or award in force under the *Industrial Relations Act 1979*.
- (4) A declaration with respect to a teacher is not a punishment for the purposes of section 23B (1) (a) of the *Industrial Relations Act 1979* but a teacher who is aggrieved by a declaration may within 14 days of being served with notice of the declaration appeal to the Commission on the ground that the teacher did not refuse or fail to comply with an order and on no other ground, and the Commission may hear and determine such an 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 chief executive officer 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 chief executive officer 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 chief executive officer 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 chief executive officer gives such a direction the teacher again becomes entitled to salary.

- (8) A declaration and any direction under subsection (7) shall be in writing and is valid if signed or purported to be signed by the chief executive officer.
- (9) A declaration may be cancelled, varied or revoked by the chief executive officer 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) the powers conferred on the chief executive officer 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 chief executive officer or any other person in relation to a teacher.
- (12) No proceedings shall be taken with respect to a teacher under section 7C in relation to any matter in respect of which a declaration has been made in relation to the teacher.
- (13) Notwithstanding subsection (12) where a declaration is in force with respect to a teacher the chief executive officer may terminate the declaration and proceed against the teacher under section 7C 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.

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- (14) Where a declaration is made, varied, cancelled or revoked the chief executive officer 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.

[Section 7D inserted by No. 100 of 1981 s.2; amended by No. 94 of 1984 s.70; No. 7 of 1988 s.11; No. 1 of 1995 s.17.]

7E. No pay for absence without leave

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.

[Section 7E inserted by No. 100 of 1981 s.2.]

[8. *Repealed by No. 22 of 1996 s.9.]*

Part III — Schools and other means of public education

[Heading amended by No. 72 of 1957 s.5.]

9. Power to establish and maintain schools

The Minister may, subject to this Act, continue and maintain and carry on any Government schools in existence at the commencement of this Act, and may establish and maintain and carry on such other Government schools, and such other means of instruction, as he deems necessary or convenient for public education and the purposes of this Act.

All Government schools for primary and secondary instruction established before the commencement of this Act, and under the control of the department, shall be deemed to have been established under this Act.

[Section 9 amended by No. 57 of 1960 s.7; No. 7 of 1988 s.8; No. 42 of 1996 s.71(1).]

9A.⁴ Financial assistance to non-government schools

(1) In this section unless the context otherwise requires —

“non-government school” means an efficient school conducted by a person, body or organization other than the Minister or the State and includes a centre that is a care-centre or a pre-school centre operated in conjunction with such an efficient team;

“non-government school system” means a number of non-government schools that in the opinion of the Minister constitute a school system;

“prescribed scholar” means a scholar attending a non-government school who is a permanent resident in Australia.

(2) Subject to this section moneys appropriated by Parliament for the assistance of non-government schools and scholars

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attending non-government schools shall be applied with respect to prescribed scholars and, for the purpose of applying those moneys, the Minister may by notice published in the *Government Gazette* declare the purposes for which and the manner in which such moneys will be applied.

- (3) The Minister may by notice published in the *Government Gazette* amend or repeal any notice under subsection (2).
- (4) A notice under subsection (2) or (3) shall take effect on such day as is specified in the notice which may include a date earlier than the date on which the notice is published.
- (5) Without derogating from the generality of subsection (2) a notice under this section may —
 - (a) provide for any moneys payable under the notice to be made payable to a body or organization operating a non-government school system;
 - (b) provide for guidelines to be issued by the Minister from time to time expressing the principles upon which assistance will be given;
 - [(c) deleted]*
 - (d) provide that any moneys not applied to the purposes specified in the notice may, with the approval of the Minister, be applied to any other purpose approved by the Minister;
 - (e) provide for any moneys or assistance provided under this section to be subject to such conditions, limitations or restrictions as are specified in the notice.
- (6) Notwithstanding anything in this section, a notice under this section may provide that where the Minister considers that exceptional circumstances justify assistance being given to a scholar attending a non-government school who is not a prescribed scholar, the Minister may approve of moneys mentioned in subsection (2) being applied with respect to the

scholar subject to such conditions, limitations or restrictions as the Minister thinks fit.

- (7) The Minister may require any body or organization to whom or to which money or other assistance is provided under this section to furnish to the Minister a report as to the application of the moneys or assistance so provided and the benefits obtained by the scholars and may, where the Minister is of the opinion that any money or assistance has not been applied in accordance with a notice under this section, or, where the body or organization fails or refuses to provide the report, as requested, or where any condition, limitation or restriction is not complied with, recover any such money or the amount of such assistance as a debt in any court of competent jurisdiction.
- (8) The provisions of section 43 (7), (8) and (9) of the *Interpretation Act 1984* apply in relation to a notice as though a notice were subsidiary legislation.

[Section 9A inserted by No. 7 of 1988 s.9; amended by No. 17 of 1992 s.5; No. 22 of 1996 s.24; No. 27 of 1998 s.4.]

9B. Government schools — school fund and bank account

- (1) Each Government school shall have a fund for the purposes of this section to be called the “(name of the school) Fund”.
- (2) The chief executive officer shall for each Government school designate —
 - (a) a person who is to have management of the Fund; and
 - (b) at least 2 persons who are to jointly operate the account referred to in subsection (5) (b).
- (3) The chief executive officer may amend, revoke or replace a designation under subsection (2).
- (4) There shall be credited to the Fund —
 - (a) moneys from time to time allocated to the school from funds appropriated by Parliament;

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- (b) grants and advances to the school from government and private sources;
 - (c) fees and charges levied for the purposes of the school;
 - (d) donations and voluntary contributions for the purposes of the school;
 - (e) the proceeds of any investment under subsection (5) (c); and
 - (f) other moneys properly receivable into the Fund for the purposes of the school.
- (5) Moneys forming part of the Fund —
- (a) subject to paragraph (aa), may only be expended by or with the authority of the person designated under subsection (2) (a) and in accordance with —
 - (i) the prescribed instructions; and
 - (ii) any directions (not being inconsistent with the prescribed instructions) issued by the chief executive officer either generally or in any particular case;
 - (aa) comprising an amount of money paid under a licence granted under section 6B as a security for the performance of an obligation may only be applied in accordance with the licence, and paragraph (a) only applies to that money if the money has been forfeited under, and in accordance with, the licence;
 - (b) shall be paid into an account at a bank approved by the chief executive officer which may be operated only by the persons designated under subsection (2) (b); and
 - (c) may, until required to be paid out under paragraph (a) or (aa), be invested in the name of the school by the person designated under subsection (2) (a) in the manner in which certain public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*.

- (6) If a school is closed or amalgamated with another school —
- (a) monies in the Fund —
 - (i) subject to subparagraph (ii), shall be dealt with as the chief executive officer may direct;
 - (ii) comprising an amount of money paid under a licence granted under section 6B as a security for the performance of an obligation may only be applied in accordance with the licence, and subparagraph (i) only applies to that money if the money has been forfeited under, and in accordance with, the licence;
- and
- (b) the bank account for the Fund may be operated by the chief executive officer for the purpose of giving effect to a direction under paragraph (a).
- (7) This section has effect notwithstanding sections 6 and 34 of the *Financial Administration and Audit Act 1985*, but nothing in this section shall be read as affecting the responsibilities of the chief executive officer as accountable officer under that Act in respect of moneys referred to in subsection (4).
- (8) In this section —
- “**bank**” means an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth;
 - “**Fund**” means the Fund referred to in subsection (1); and
 - “**prescribed**” means prescribed by the Minister by order published in the *Government Gazette*.

[Section 9B inserted by No. 36 of 1990 s.4; amended by No. 22 of 1996 s.19; No. 26 of 1999 s.75.]

9C. Minister may lend money

- (1) The Minister may lend money for capital works to —

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- (a) a non-government school within the meaning of section 9A(1);
 - (b) a non-government school system within the meaning of section 9A(1);
 - (c) a care-centre; or
 - (d) a pre-school centre.
- (2) Any such loan is to be made out of moneys borrowed by the Minister under section 9D.
- (3) The terms and conditions of any such loan, including the interest to be paid —
- (a) may be less onerous than those that might reasonably apply to such a loan made commercially; and
 - (b) are to be approved by the Treasurer.
- (4) In subsection (1) —
- “capital works”** means the acquisition of land, the construction, modification and renovation of buildings and the purchase of plant and equipment, or any of those things.

[Section 9C inserted by No. 27 of 1998 s.5.]

9D. Borrowing by the Minister

- (1) The Minister may borrow moneys for the purpose of lending under section 9C —
- (a) from the Treasurer on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes; or
 - (b) with the prior written approval of the Treasurer, and on such terms and conditions as the Treasurer approves, from persons other than the Treasurer.
- (2) Any moneys borrowed by the Minister under subsection (1)(b) 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 borrowed by the Minister under subsection (1)(b) in any one financial year is not to exceed such amount as the Treasurer approves.

[Section 9D inserted by No. 27 of 1998 s.5.]

9E. Moneys to be credited and charged to operating account

- (1) The following moneys are to be credited to an operating account approved by the Treasurer —
 - (a) repayments of moneys loaned under section 9C; and
 - (b) moneys borrowed under section 9D.
- (2) The following moneys are to be charged to the operating account —
 - (a) moneys loaned under section 9C; and
 - (b) repayments of moneys borrowed under section 9D.
- (3) In this section —

“operating account” means a trust account established and administered under section 15B of the *Financial Administration and Audit Act 1985*.

[Section 9E inserted by No. 27 of 1998 s.5.]

9F. Guarantee by the Treasurer

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee payments to be made by the Minister in respect of moneys borrowed by the Minister under section 9D(1)(b).
- (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 —
 - (a) the Minister is to give to the Treasurer such security as the Treasurer requires; and

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- (b) all instruments that are necessary for the purpose are to be executed.
- (4) The Treasurer may fix charges to be paid by the Minister to the credit of the Consolidated Fund in respect of a guarantee given under this section.

[Section 9F inserted by No. 27 of 1998 s.5.]

9G. Payments under guarantee

- (1) The due payment of moneys under a guarantee given under section 9F is to be —
 - (a) made by the Treasurer; and
 - (b) charged to, and paid out of, the Consolidated Fund,and this subsection appropriates that Fund accordingly.
- (2) The Treasurer is to cause to be credited to the Consolidated Fund any amounts received or recovered from the Minister or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 9F.

[Section 9G inserted by No. 27 of 1998 s.5.]

[Part IV Repealed by No. 89 of 1972 s.5.]

Part V — Attendance at schools

[Heading inserted by No. 72 of 1957 s.7.]

11. No fees at primary schools or pre-primary centres

No fees shall be payable for children attending any Government primary school or Government pre-primary centre.

[Section 11 amended by No. 57 of 1960 s.10; No. 61 of 1974 s.4.]

12. Fees at Government schools

- (1) The Minister may authorize and determine a scale of fees to be paid by any person for his or her own instruction in any Government school other than a primary school or pre-primary centre.
- (2) All such fees for instruction shall be paid to and received by the several persons authorized in that behalf by the Minister, and may be recovered by the Minister or by the person so authorized, by plaint and summons in a local court, or before a court of summary jurisdiction; and the production of a document, in writing, purporting to be signed by the Minister, authorizing any person to collect such fees, or a copy of the *Gazette* containing therein a notice to that effect, shall be *prima facie* proof that such person is so authorized.

[Section 12 amended by No. 57 of 1960 s.11; No. 61 of 1974 s.5.]

13. Attendance at school compulsory

- (1) Unless some reasonable excuse for non-attendance is shown —

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- (a) the parent of every child of not less than 6 nor more than 9 years of age shall, if there is a Government or efficient school within 3 kilometres of such child's residence, measured by the nearest road or other reasonable means of access, cause such child to attend such school on such days as the school is open;
- (b) the parent of every child of not less than 9 years of age nor more than leaving age shall, if there is a Government or efficient school within 5 kilometres of such child's residence measured by the nearest road or other reasonable means of access, cause such child to attend such school on the days on which the school is open;
- [(c) deleted]*
- (d) the parent of every child of not less than 6 nor more than 9 years of age shall, if satisfactory means of conveyance to a Government or efficient school is available so that the distance to be travelled by the child on foot does not exceed 2 kilometres, cause such child to attend such school on the days on which the school is open. The Minister shall be sole judge of the question whether the means of conveyance is satisfactory;
- (e) the parent of every child of not less than 9 years of age nor more than leaving age shall, if satisfactory means of conveyance to a Government or efficient school is available so that the distance to be travelled by the child on foot does not exceed 3 kilometres, cause such child to attend such school on the days on which the school is open. The Minister shall be sole judge of the question whether the means of conveyance is satisfactory.

Provided always, that a continuous attendance of 2 hours for secular instruction by any child shall count as half a day's attendance; but this proviso shall not justify the absence of a child during any portion of the prescribed time for attendance, or the withdrawal of a child before the prescribed time for closing the school:

Provided also that where in accordance with the regulations a grant, at a prescribed rate per day is made to and accepted by the parent or guardian of a child who rides, drives or is conveyed to school, in lieu of a satisfactory means of conveyance being available, then in such a case a satisfactory means of conveyance shall be deemed to be available within the meaning of paragraphs (d) and (e).

(1a) A Government pre-primary centre is not a Government school for the purposes of this section.

[(2) repealed]

(3) Where the Minister is of the opinion that a child has been sent or is kept away from the place where his parents or one of his parents reside or resides in order to avoid the compulsory provisions of this section the Minister may require the parents or parent of the child to send the child to a Government or other efficient school to which the parents or parent would have been obliged under this section to send the child if the child had resided with the parents or parent from whose place of residence the child has been sent or kept away.

(3a) Without affecting the provisions of subsection (3), where —

- (a) the place of residence of a child of not less than six years of age nor more than the leaving age, is so situated that the provisions of subsection (1) do not require his parent to cause him to attend any Government or efficient school;
- (b) the child does not attend a Government or efficient school; and
- (c) the Minister is of opinion that the child is not receiving regular and efficient instruction,

the Minister may, by notice in writing served on the parent, require the parent to cause the child to attend a Government or efficient school on such days as the school is open.

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- (3b) A notice served under subsection (3a) continues to have effect until it is revoked by subsequent notice served on the parent, or the child attains leaving age, whichever first occurs.
- (3c) Notwithstanding the provisions of subsection (1) where the parent of a child is required by a direction served and in force under section 20A to cause the child to attend a school specified in the direction he shall, unless that school is not open or some reasonable excuse for non-attendance is shown, cause the child to attend that school during such times as are specified in the direction.
- (4) Notwithstanding the provisions of subsection (1), the Minister may exempt a child who has attained the age of 14 years from further attendance at school —
- (a) if the child satisfies the Minister that he is assured of employment and that it is necessary for him to leave school in order to engage in that employment, and the Minister is of opinion that the employment is suitable for the child and the best interests of the child would be served by his leaving school to engage in that employment; or
 - (b) if the child has successfully completed 2 years of secondary education in Western Australia or a course of education that the Minister considers is of an equivalent or higher standard, and satisfies the Minister that he desires to leave school in order to undertake full-time education in a vocational course other than at a Government school or an efficient school,
- but the exemption in respect of paragraph (b) shall apply only while the child continues to receive such full-time education in a vocational course as is referred to in that paragraph.
- (5) Notwithstanding the provisions of subsection (1) or (3c), where —

- (a) a child wishes to be exempted from attendance at school for a period during which he intends to engage in employment of a nature that is related to his education at the school that he attends; and
- (b) the principal of that school is satisfied that the engaging by the child in that employment for the proposed period would be in the best interests of the education of the child,

the Minister may exempt the child from attendance at school for such period as is specified in the instrument of exemption.

- (6) Any exemption granted pursuant to subsection (5) may, notwithstanding that the period specified therein has not expired, be revoked at any time by the Minister, and unless so revoked expires —
 - (a) upon the expiration of the period specified; or
 - (b) when the employment with respect to which it was granted comes to an end,

whichever first occurs.

[Section 13 amended by No. 30 of 1943 s.3; No. 30 of 1952 s.6; No. 72 of 1957 s.8; No. 37 of 1962 s.5; No. 26 of 1964 s.5; No. 37 of 1966 s.2; No. 12 of 1967 s.2; No. 23 of 1968 s.6; No. 77 of 1970 s.7; No. 94 of 1972 s.4; No. 61 of 1974 s.6; No. 95 of 1976 s.2.]

13A. Leaving age after 1 January 1966

On and after 1 January 1966, the leaving age applicable in respect of any child shall be the age of the child at the end of the year in which he attains the age of 15 years; but this section shall not apply to any child who attains that age during the year 1966 unless the child attends school during that year.

[Section 13A inserted by No. 26 of 1964 s.6.]

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14. Reasonable excuse

Any of the following reasons shall be deemed a reasonable excuse:

- (a) That a child is under regular and efficient instruction at home or elsewhere of which fact notice in writing has been given by the parents or parent to the chief executive officer not more than 14 days after such instruction is commenced or not more than 14 days after the date when the parents or parent would be in the ordinary course obliged under section 13 to send the child to a Government or efficient school; and whether such instruction is efficient or not shall be a matter for the decision of the Minister, who may require the report of a superintendent of education thereon.
- (b) That the child has been prevented from attending school by sickness, danger of infection, temporary or permanent infirmity, or any unavoidable causes, but such excuse shall not be entertained unless the parent has given the teacher notice thereof, in writing, within 7 days after the occurrence of such prevention, or within such extended time as the court may deem to have been reasonable in the circumstances. A medical certificate must be produced if required by the Minister, or by a person authorized by the Minister to require production of it.

[Section 14 amended by No. 30 of 1943 s.4; No. 30 of 1952 s.7; No. 72 of 1957 s.9; No. 57 of 1960 s.12; No. 7 of 1988 s.11.]

15. Welfare officers may accost children in public places

- (1) The Minister may from time to time appoint persons as welfare officers whose duty it shall be to secure the attendance of children at school as required by this Act, and the officers so appointed shall be empowered to accost in any place to which the public resort or are admitted whether on payment of a fee for admission or not, and obtain the names and addresses of

children who are apparently of school age, and who are apparently not in attendance at school, and to escort any such child to the parent, or to one of the parents, of the child at his home, but if no such parent is then at that home, to escort the child to the school at which he should be in attendance.

- (2) Any person who accosts a child in any place referred to in subsection (1) and falsely represents that he is a welfare officer, shall be guilty of an offence and liable on summary conviction to a penalty not exceeding \$200.
- (3) Every person shall permit the entry of any officer appointed under this section to any place referred to in subsection (1) for the purpose of carrying out his duties and exercising his powers under this section; and any person who hinders or obstructs any such officer in the carrying out of his duties or the exercise of his powers aforesaid shall be guilty of an offence.

Penalty: \$200.

[Section 15 amended by No. 30 of 1943 s.5; No. 72 of 1957 s.10; No. 37 of 1962 s.6; No. 37 of 1966 s.10; No. 102 of 1975 s.3.]

16. Parents neglecting to cause child to attend school

- (1) The parent of any child of not less than 6 years of age nor more than leaving age, who, without reasonable excuse, neglects to cause such child to attend a Government or other efficient school, in accordance with this Act, may be summoned before a court of summary jurisdiction, on the complaint of a welfare officer or a superintendent of education, or of any other person authorized in that behalf by the Minister, and subject to the provisions of subsection (1a), shall be guilty of an offence against this Act, punishable upon conviction before such court, and shall be liable to a penalty not exceeding \$200.
- (1a) Where the court is satisfied that the parent has without reasonable excuse neglected to cause the child to attend a Government or other efficient school as required by this Act,

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the court, if, having regard to the circumstances of the case, it thinks fit to do so, may, instead of imposing a penalty under subsection (1), refrain from recording a conviction, if the parent gives security in such form as the court approves, to secure regular attendance at school by the child as required by this Act for such period, not extending beyond attainment by the child of leaving age, as the court fixes.

- (2) The allegations in the complaint that the complainant is a welfare officer, a superintendent of education, or a person authorized in that behalf by the Minister, and that a child is not less than 6 years of age nor more than leaving age, and that the parent thereof neglects to cause such child to attend such school without reasonable excuse as aforesaid, shall be deemed *prima facie* evidence of the fAct until the contrary is proved, and in every case the parents of a child may be witnesses.
- (3) A certificate purporting to be under the hand of the principal teacher of a Government or efficient school stating that a child is or is not attending such school, or stating the particulars of attendance of a child at such school, shall be evidence of the facts stated in such certificate.

[Section 16 amended by No. 30 of 1943 s.6; No. 30 of 1952 s.8; No. 72 of 1957 s.11; No. 26 of 1964 s.7; No. 37 of 1966 s.10; No. 102 of 1975 s.4; No. 49 of 1988 s.58.]

17. School children not to be employed in school hours

- (1) No person shall take into his employment or cause or suffer or allow to be employed during school hours any child under leaving age who is not exempt from school attendance.
- (2) A parent who employs his child in any labour exercised by way of trade, or for the purpose of gain, shall be deemed under this section to take such child into his employment.
- (3) Every person who takes a child into his employment or causes or suffers or allows a child to be employed in contravention of

this section shall be guilty of an offence, and liable on conviction to a penalty of not exceeding \$500.

[(4) repealed]

- (5) A parent who gives to an employer of his child, or to any duly appointed officer, false information on any matter to which this section relates, shall be guilty of an offence, and liable on conviction to a penalty of not exceeding \$200.

[Section 17 amended by No. 30 of 1943 s.7; No. 72 of 1957 s.12; No. 37 of 1966 s.10; No. 102 of 1975 s.5.]

17A. Truancy

- (1) A child who, without a reason which is deemed a reasonable excuse under section 14, absents himself, although not habitually, from school when he should be attending school as required by this Act, commits the offence of truancy.
- (2) On complaint made by a welfare officer, or by a superintendent of education, or by any other person authorized by the Minister to make complaints of offences against this Act, that a child has committed the offence of truancy, the child may be summoned before the Children's Court to be charged with the offence, and the parent of the child may be summoned to attend with the child before the court.
- (3) If the court is satisfied that the charge is proved, the court —
- (a) may record a conviction and may release the child on probation for such period, not extending beyond the attainment by the child of leaving age, as the court fixes, on such conditions as the court imposes, and in any event on condition that during the period of probation fixed by the court the child shall attend school as required by this Act; in which case the child shall be subject to the supervision of the department, during the period of probation fixed by the court; or

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- (b) if, having regard to the circumstances of the case it thinks fit to do so, the court may refrain from recording a conviction if the parent gives security in such form as the court approves, to secure regular attendance at school by the child as required by this Act for such period, not extending beyond the attainment by the child of leaving age, as the court fixes.

[Section 17A inserted by No. 72 of 1957 s.13; amended by No. 37 of 1962 s.7; No. 26 of 1964 s.8; No. 102 of 1975 s.6; No. 7 of 1988 s.11; No. 49 of 1988 s.59.]

17B. Court may commit child on probation to care of department

- (1) If the conditions of probation upon which a child is released under section 17A are not observed by that child or the person or persons responsible for him, or if the chief executive officer is not satisfied with the conduct of that child or those persons whilst the child is released on probation, the chief executive officer may cause the child to be summoned before the Children's Court.
- (2) If the court is satisfied that the conditions of probation upon which the child was released have not been observed by the child or the person or persons responsible for him, or that the conduct of that child or those persons whilst he is released on probation has been such as not to warrant continuance of the release on probation, the court may order that the child be no longer released on probation and that he be committed to the care of the department established under section 4 of the *Community Services Act 1972* until he attains leaving age, or during such shorter period as the court may think sufficient.

[Section 17B inserted by No. 37 of 1962 s.8; amended by No. 102 of 1975 s.7; No. 121 of 1984 s.38; No. 7 of 1988 s.11; No. 49 of 1988 s.60; No. 57 of 1997 s.51.]

18. Habitual truants

- (1) If a child is habitually absent from school without a reason which is deemed a reasonable excuse under section 14, the parent of such child may be summoned on the complaint of a welfare officer or a superintendent of education, or of any other person authorized in that behalf by the Minister, before the Children's Court to show cause why such child should not be committed to the care of the department established under section 4 of the *Community Services Act 1972* under that Act.
- (2) Upon the hearing of the summons the court may, without prejudice to any proceedings against the parent for an offence against section 17, order such child to be committed to the care of the department established under section 4 of the *Community Services Act 1972* for any period not exceeding 6 months.
- (3) If the court is satisfied by the parent that he has used all reasonable efforts to cause the child to attend school but that the child is beyond his control, the court may, without inflicting a penalty, order the child to be committed to the care of the department established under section 4 of the *Community Services Act 1972* for such period not extending beyond the attainment by the child of leaving age as the court fixes.
- [(4) repealed]*
- (5) This section shall, *mutatis mutandis*, apply to any child whose attendance at school would, owing to immorality or gross misconduct, be harmful to other children.

[Section 18 amended by No. 30 of 1943 s.8; No. 72 of 1957 s.14; No. 37 of 1962 s.9; No. 26 of 1964 s.9; No. 102 of 1975 s.8; No. 121 of 1984 s.39; No. 49 of 1988 s.61; No. 57 of 1997 s.51.]

19. Parent summoned to produce child to court

Whenever a parent is summoned to attend a court, it shall be obligatory upon such parent to produce to the court the child in

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respect of whom complaint has been made, if required in writing to do so by a welfare officer or other person authorized in that behalf.

Penalty: \$200.

[Section 19 amended by No. 72 of 1957 s.15; No. 37 of 1966 s.10; No. 102 of 1975 s.9.]

20. Definition of “advisory panel”

In section 20A, 20B or 20C the term “**advisory panel**” means an advisory panel convened and constituted under section 20D.

[Section 20 inserted by No. 95 of 1976 s.3.]

20A. Children requiring special education

- (1) Where it appears to an advisory panel that a child of not less than 6 years of age nor more than leaving age has a mental or physical disorder or disability of such a nature that the interests of that child would be best served if he were to attend a school providing education of a kind specially suited to persons suffering from such a disorder or disability, the Minister may, on the recommendation of the panel, serve on the parent of the child a direction in writing requiring the parent to cause the child to attend such school or schools as is or are specified in the direction during such times as are so specified.
- (2) Subject to section 20E (5) a direction served under this section shall come into force on such date as is specified in the direction and shall remain in force until —
 - (a) it lapses or is revoked or cancelled under this Act;
 - (b) the parent of the child to whom it relates is served with another direction under this section or a direction under section 20B; or
 - (c) the child to whom it relates attains leaving age,whichever occurs first.

- (3) At any time whilst a direction under this section is in force in relation to a child the Minister may —
- (a) serve on the parent of that child a notice in writing revoking the direction; or
 - (b) on the recommendation of an advisory panel, serve on the parent of that child another direction under this section in relation to the child.
- (4) Notwithstanding section 14, whilst a direction served under this section is in force in relation to a child the mental or physical disorder or disability by reason of which the direction was served shall not be regarded as providing a reasonable excuse for the non-attendance of that child at a school specified in the direction.

[Section 20A inserted by No. 95 of 1976 s.4.]

20B. Children with severe disorders

- (1) Where it appears to an advisory panel that a child has a mental or physical disorder or disability of so severe a nature that the presence of that child in a Government school would disrupt the normal operation of the school the Minister may, on the recommendation of the panel, serve on the parent of the child a direction in writing directing the parent to refrain from causing the child to attend any Government school and whilst the direction remains in force the Minister shall refuse to permit the child to attend any Government school.
- (2) A direction served under this section shall come into force on the day following the day on which it is served and shall remain in force until —
- (a) it lapses or is revoked or cancelled under this Act; or
 - (b) the parent of the child to whom it relates is served with a direction under section 20A,
- whichever occurs first.

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- (3) At any time whilst a direction under this section is in force in relation to a child the Minister may serve on the parent of that child a notice in writing revoking the direction.
- (4) The provisions of sections 13 and 16 do not apply to or in relation to a child whilst a direction served under this section is in force in relation to that child.

[Section 20B inserted by No. 95 of 1976 s.5.]

20C. Review and confirmation of direction by Minister

- (1) Where a direction served under section 20A or 20B is in force in relation to a child the parent to that child may —
 - (a) within 21 days after the expiration of a period of one year from the date of the service of the direction; and
 - (b) within 21 days after the expiration of any subsequent period of 2 years,

serve on the Minister a request in writing requesting the Minister to reconsider the direction and, within 60 days after being served with that request, the Minister shall consider whether it is necessary for the direction to remain in force and may, on the recommendation of an advisory panel, serve a notice in writing on the parent confirming the direction.

- (2) If the Minister does not confirm a direction within 60 days after being served with a request under subsection (1) and the direction is still in force at the expiration of that period, the direction shall thereupon lapse.

[Section 20C inserted by No. 95 of 1976 s.6.]

20D. Advisory panels

- (1) The Minister may convene an advisory panel whenever he considers it necessary or desirable to do so for the purposes of section 20A, 20B or 20C.

- (2) An advisory panel shall consist of 2 or more persons who, because of their professional or other qualifications or experience, are in the opinion of the Minister qualified to give advice as to the educational or other needs of a child having regard to the disorder or disability from which the child suffers.
- (3) Of the members of an advisory panel —
 - (a) at least one shall be a teacher; and
 - (b) at least one shall be either a guidance officer appointed under this Act or a psychologist.

[Section 21D inserted by No. 95 of 1976 s.7; amended by No. 48 of 1979 s.6.]

20E. Children’s Court may cancel or confirm direction

- (1) A parent who has been served with —
 - (a) a direction under section 20A or 20B; or
 - (b) a notice under section 20C confirming a direction under section 20A or 20B,may, within 30 days after the service of that direction or notice, as the case may be, on complaint duly laid before the Children’s Court and served on the Minister as defendant to the proceedings, apply to the court for an order cancelling the direction.
- (2) In any proceedings under this section the onus shall lie on the Minister to show cause why the direction should not be cancelled.
- (3) In any proceedings under this section the Minister may be represented by a person authorized by the Minister in that behalf.
- (4) On the hearing of a complaint under this section the court shall make an order —
 - (a) cancelling the direction; or
 - (b) confirming the direction,

s. 20F

and may, if it thinks fit, make an order as to the costs of the proceedings.

- (5) Where, within 30 days after being served with a direction under section 20A, a parent lays a complaint under this section before the Children's Court —
- (a) if the direction is not in force when the complaint is laid — the direction shall not come into force until the court has heard and determined the complaint;
 - (b) if the direction is in force when the complaint is laid — the direction shall, by operation of this subsection, cease to be in force from the time when the complaint is laid until the court has heard and determined the complaint.
- (6) Nothing in subsection (5) prevents the Minister from exercising his powers under section 20A (3) or section 20B (3) at any time whilst the determination of a complaint laid under this section is pending.

[Section 20E inserted by No. 95 of 1976 s.8; amended by No. 49 of 1988 s.62.]

20F. Contents of directions and notices

- (1) There shall be included in every direction served under section 20A or 20B a statement advising the parent of the child to whom the direction relates that he may —
- (a) within 21 days after the expiration of a period of one year from the date of the service of the direction; and
 - (b) within 21 days after the expiration of any subsequent period of 2 years,
- serve on the Minister a request in writing requesting the Minister to reconsider the direction.
- (2) There shall be included in —
- (a) every direction served under section 20A or 20B; and

- (b) every notice served under section 20C confirming a direction served under section 20A or 20B,

a statement advising the parent of the child to whom the direction relates that he may, within 30 days after the service of the direction or notice, as the case may be, apply to the Children's Court pursuant to section 20E for an order cancelling the direction.

[Section 20F inserted by No. 95 of 1976 s.9; amended by No. 49 of 1988 s.63.]

20G. Child may be suspended from Government school

- (1) If a person holding or acting in a prescribed class of position is of the opinion that the conduct and behaviour of a child attending a Government school is not conducive to the good order and proper management of the Government school the person may suspend the child from attendance at the Government school in accordance with and subject to the regulations.
- (2) Where, pursuant to subsection (1), a person holding or acting in a prescribed class of position suspends a child from attending a Government school the person may in addition recommend to the Minister that the child be excluded from attending the Government school.
- (3) A recommendation made under subsection (2) shall be subject to review and confirmation by a panel constituted in accordance with the regulations.
- (4) On receipt of a recommendation made under subsection (2) that has been confirmed in accordance with subsection (3) the Minister may, on the recommendation of the chief executive officer, by order exclude the child in relation to whom the recommendation is made from attending at the Government school specified in the order or at any Government school.

s. 21

- (5) In any order made under this section the Minister may give such further directions as he thinks fit relating to the education of the child with respect to whom the order is made.
- (6) An order made in relation to a child under this section may be varied or revoked by the Minister by further order and shall remain in force for the period specified in the order or if no such period is specified, until further order made by the Minister under this section with respect to the child.
- (7) Where —
 - (a) the Minister excludes a child from attending a Government school and pursuant to subsection (5) gives directions relating to the education of the child in relation to whom the order is made; and
 - (b) the child fails to comply with such directions without an excuse that is deemed a reasonable excuse under section 14,

the child is deemed to be habitually absent from school for the purposes of section 18 and the provisions of that section apply accordingly.

- (8) The suspension or exclusion of a child from attending a Government school under this section has effect notwithstanding any other provision of this Act and is a defence in any proceeding under this Act relating to the child's non-attendance at school.

[Section 20G inserted by No. 96 of 1982 s.3; amended by No. 7 of 1988 s.11.]

21. Minister may refuse child admission to Government school

- (1) Subject to the remaining provisions of this section, the Minister may refuse the admission of any child to any Government school if accommodation has been provided for such child in another Government school nearer to his dwelling-place, or if

there is more suitable accommodation in some other Government school within the prescribed distance.

- (2) The Minister may, by notice published in the *Government Gazette*, declare —
- (a) that any child ordinarily resident within the area described in the notice may be refused admission to any Government school other than that specified in the notice;
 - (b) that any child whose last attendance at school prior to commencing his secondary education was at a Government primary school specified in the notice and who has not since that attendance changed his place of residence may be refused admission to any Government secondary school other than that specified in the notice,

and subject to subsection (4) a notice so published has effect for the purposes of this Act according to its tenor.

- (3) Where a child who wishes to attend a Government secondary school —
- (a) did not attend a Government school during the year in which he completed his primary education; or
 - (b) has since his last attendance at school prior to his commencing his secondary education changed his place of residence,

the Minister may refuse admission of that child to any Government secondary school other than that determined by the Minister.

- (4) A notice published pursuant to subsection (2) may be cancelled or from time to time varied by a subsequent notice published in the *Government Gazette*, and any such subsequent notice, other than a notice of cancellation, shall have and take effect on and after the first day of January next following the date of its publication.

s. 21A

- (5) In this section “**primary school**” and “**secondary school**” have the respective meanings that are for the time being prescribed.

[Section 21 amended by No. 37 of 1966 s.3.]

21A. Appointment of persons to prosecute etc. offences

- (1) The Minister may appoint and authorize such persons as he thinks fit to make complaints, and conduct prosecutions, of offences alleged against any of the provisions of this Part.
- (2) Production by a person named in it, of a written appointment and authorization purporting to have been made and signed by the Minister pursuant to subsection (1), is *prima facie* evidence that the person is duly appointed and authorized under that subsection to make complaints, and conduct prosecutions, of offences alleged against any of the provisions of this Part.

[Section 21A inserted by No. 72 of 1957 s.17.]

21B. Members of Police Force may prosecute offences etc.

- (1) For the purposes of this Act every member of the Police Force, by virtue of his office and without appointment or authority other than this subsection, is appointed and authorized by this subsection to make complaints and conduct prosecutions of offences alleged against any of the provisions of this Part whenever requested by the chief executive officer to do so.
- (2) In any proceedings for any offence against any of the provisions of this Part, no proof is required that a complaint made or a prosecution conducted by a member of the Police Force was made or is conducted, as the case requires, by that member at the request of the chief executive officer.

[Section 21B inserted by No. 37 of 1966 s.4; amended by No. 7 of 1988 s.11.]

21BA. Proof of certain matters

- (1) On any hearing in any court in respect of a complaint of an offence alleged against any of the provisions of this Part, any allegation in the complaint that —
- (a) the complainant has an office, status, title, or authority specified in the complaint;
 - (b) a child is not less than 6 years of age nor more than leaving age;
 - (c) a child is of any other age, is not less than any other age, or is not more than any other age, specified in the complaint; or
 - (d) a child attained an age specified in the complaint on a date specified in the complaint,

shall be deemed *prima facie* evidence to that effect until the contrary is proved.

- (2) The provisions of subsection (1) are in addition to, and not in derogation of, any other provision of this Part.

[Section 21BA inserted by No. 59 of 1973 s.4.]

Part VA — School decision-making groups

[Heading inserted by Act No. 74 of 1990 s.3.]

21C. Interpretation

In this Part —

“**school**” means a Government school;

“**school decision-making group**” means a school decision-making group established under this Part;

“**staff**” in relation to a school, includes any teacher, employee or public service officer employed at the school.

[Section 21C inserted by Act No. 74 of 1990 s.3; amended by No. 22 of 1996 ss.10 and 20; No. 42 of 1996 s.71(1).]

21D. School decision-making groups

- (1) A school decision-making group shall be established in respect of each school and shall comprise —

- (a) parents of students at the school;
- (b) staff at the school;
- (c) members of the local community; and
- (d) where the school is a school other than a pre-primary centre or primary school, students at the school,

but nothing in this section requires students to be represented on a school decision-making group if the students have chosen not to be represented on the group.

- (2) The functions of a school decision-making group are —
- (a) to participate in the planning and review of the school’s development and, as part of that process, to participate in the formulation of educational objectives and priorities for the school; and

- (b) to formulate and approve, after consultation with the school community, a dress code to be complied with by students at the school when the students are attending or representing the school.
- (3) Notwithstanding subsection (1), the Minister may by notice published in the *Government Gazette* declare that that subsection does not apply in respect of a school or schools specified in the notice.
- (4) For the purposes of subsection (2) (b), a school's "school community" shall comprise —
 - (a) parents of students at the school;
 - (b) staff at the school; and
 - (c) students at the school.

[Section 21D inserted by No. 22 of 1996 s.21.]

21E. Regulations relating to school decision-making groups

- (1) The Minister may make such regulations as are necessary or convenient for the purposes of giving effect to section 21D.
- (2) Without limiting the generality of subsection (1), regulations may be made —
 - (a) prescribing the procedure for the establishment of school decision-making groups;
 - (b) prescribing the functions of school decision-making groups;
 - (c) with respect to the composition of school decision-making groups;
 - (d) providing for the manner in which persons become members of school decision-making groups;
 - (e) enabling a school decision-making group to co-opt members of the local community to the group and prescribing the capacity in which such persons may be co-opted to a group;

s. 21F

- (f) requiring the preparation of a school development plan for each school;
- (g) requiring school development plans to be approved by a specified person and prescribing requirements and procedures to be adopted in relation to such approval;
- (ga) providing for the matters which may, or cannot, be provided for in a school dress code;
- (gb) providing for the procedures to be followed by a school decision-making group in respect of the formulation and approval of a dress code for the school;
- (gc) enabling the principal of a school to exempt a student at the school from complying with any requirement of a dress code approved by the school's school decision-making group;
- (h) with respect to the proceedings of school decision-making groups;
- (i) with respect to the liability of members of school decision-making groups;
- (j) providing for a method of reviewing a school's performance in relation to the implementation of a school development plan;
- (k) providing in specified circumstances for the dissolution of school decision-making groups by the Minister.

[Section 21E inserted by Act No. 74 of 1990 s.3; amended by No. 22 of 1996 s.22.]

21F. School decision-making group not to exercise authority over staff

Notwithstanding sections 21D and 21E, a school decision-making group shall not exercise any authority over the staff, or interfere in any way with the control or management of any school.

[Section 21F inserted by No. 74 of 1990 s.3.]

Part VI — Parents and Citizens' Associations

[Heading amended by No. 72 of 1957 s.18]

22. Parents etc. may form association

- (1) The parents or guardians of children attending any Government school, or group of schools, together with other persons being over the age of 18 years who are interested in the welfare of such schools, may, in the prescribed manner, form a **“Parents and Citizens' Association”**, hereinafter referred to as an association.
- (2) An association desirous of doing so may affiliate with the body known as The Western Australian Council of State School Organisations upon such terms and conditions as shall from time to time be determined by that body.

[Section 22 amended by No. 57 of 1960 s.14; No. 59 of 1973 s.7.]

23. Objects of an association

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 by providing facilities and amenities for the school or group, including buildings, swimming pools and any type of recreational or educational facilities and amenities, and generally to endeavour to foster community interest in educational matters.

[Section 23 inserted by No. 57 of 1960 s.15; amended by No. 37 of 1966 s.5.]

[24. Repealed by No. 57 of 1960 s.16.]

s. 26

[25. Repealed by No. 57 of 1960 s.17]

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

- (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 any Government school.
- (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 department shall by force of this section be vested in the Minister for the purposes of this Act.

[Section 26 inserted by No. 57 of 1960 s.18; amended by No. 26 of 1964, s.11; No. 7 of 1988 s.11.]

27. Association not to exercise authority over teaching staff

An association shall not exercise any authority over the teaching staff, or interfere in any way with the control or management of any Government school.

[Section 27 amended by No. 57 of 1960 s.19.]

Part VIA — Care-centres and pre-school centres

[Heading inserted by No. 27 of 1977 s.5.]

27A. Conduct of care-centres etc. to be authorized

- (1) No person shall conduct or carry on or be employed or engaged or serve or engage, whether as principal, servant or agent, in the conducting or carrying on of a care-centre or pre-school centre unless the conducting or carrying on of that centre is authorized by a permit issued by the Minister under this Act.

Penalty: \$200 or imprisonment for a period not exceeding 6 months.

- (2) The conducting or carrying on of a pre-school centre approved pursuant to the scheme established by the *Pre-School (Education and Child Care) Act 1973*⁵, shall be deemed to have been authorized by a permit issued by the Minister under this Act unless or until the Minister, by notice in writing, cancels that permit which he is hereby empowered to do in circumstances which would justify the cancellation of a permit issued pursuant to section 27B.

[Section 27A inserted by No. 27 of 1977 s.6.]

27B. Permits to conduct care-centres etc.

- (1) An application for a permit to conduct or carry on a care-centre or a pre-school centre shall be made in writing in the prescribed form to the Minister and shall be supported by such other particulars or information as is prescribed or as the Minister requires.
- (2) The Minister may —
- (a) grant a permit to conduct or carry on a care-centre or pre-school centre, either unconditionally or subject to such conditions as are prescribed or as may be specified in the permit;
 - (b) refuse to grant a permit; or

s. 27C

- (c) cancel any permit at any time if, in the opinion of the Minister —
 - (i) the conditions subject to which the permit was granted are not being observed; or
 - (ii) the regulations made under this Act relating to that centre are contravened.

[(3) repealed]

- (4) The chief executive officer shall cause a list of all care-centres and pre-school centres for the time being authorized, or deemed to be authorized, under this Act to be published in the *Government Gazette* not less than once in each calendar year.

[Section 27B inserted by No. 27 of 1977 s.7; amended by No. 7 of 1988 s.11; No. 22 of 1996 s.11; No. 27 of 1998 s.6.]

27C. Financial assistance to care-centres etc.

- (1) The Minister may, out of such moneys as may be provided by Parliament for the purposes of this Act, render assistance to care-centres and to pre-school centres by way of —
 - (a) subsidies or grants for capital or recurrent expenses;
 - (b) teachers and teacher aides employed by the department;
 - (c) consultative and advisory services; and
 - (d) equipment and supplies.
- (2) Moneys representing assistance rendered pursuant to subsection (1) may be paid at such times, in such manner and subject to such conditions as are prescribed.
- (3) The Minister may, out of such moneys as may be provided by Parliament for the purposes of this Act, provide for loans to be made to care-centres and to preschool centres and for interest payable in respect of loans of moneys borrowed for the establishment, construction or acquisition of land, buildings, plant and equipment by care-centres and pre-school centres to

be subsidized and for repayments of such loans to be made on the terms fixed by the Minister.

[Section 27C inserted by No. 27 of 1977 s.8; amended by No. 7 of 1988 s.11; No. 22 of 1996 s.25.]

27D. Repeal and transitional provisions

- (1) The *Pre-School (Education and Child Care) Act 1973*, is repealed.
- (2) All the right, title and interest in and to any property which immediately prior to the coming into operation of this section was vested in the body known as the Western Australian Pre-School Board established by the *Pre-School (Education and Child Care) Act 1973*, is by force of this section transferred to and vested in the Minister for the purposes of this Act, and all obligations and liabilities of that body existing immediately prior thereto are in like manner imposed on the Minister.

[Section 27D inserted by No. 27 of 1977 s.9.]

Part VII — Regulations

[Heading amended by No. 72 of 1957 s.19.]

28. Regulations

- (1) The Minister may make regulations for all or any of the following purposes:
 - (a) The appointment, powers and duties of teachers and employees, other than officers, of the department.
 - (a1) The powers and duties of public service officers to whom section 7 (1) (d) applies.
 - (b) The establishment, maintenance and classification of schools.
 - (c) The general management of schools, the admission, transfer, and classification of children and pupils, the discipline to be enforced, including discipline for not complying with a requirement of a dress code approved by a school decision- making group under Part VA, and the time and mode of teaching in schools, including religious instruction.
 - (d) The admission, training, examination, certification, classification, appointment, promotion, transfer, suspension, dismissal, resignation, leave of absence, discipline, and duties of teachers.
 - (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 department.
 - [(e) deleted]*
 - [(f) deleted]*

- (g) The qualifications for admission of pupils to secondary schools and other schools, and continuation classes, and the fees to be paid by pupils, and the course of instruction in such schools and continuation classes.
- (h) The establishment of scholarships and boarding allowances, and the conditions connected therewith.
- (i) The inspection of schools, and the powers and duties of Superintendents of Education.
- (j) The staffing and accommodation of schools, and the maintenance and management of school premises and equipment.
- (k) The making of grants to assist in the conveyance of children to school.
- (l) The furnishing of information by parents of children as to the names of such children and their parents, date of birth, their residence, and the school last attended.
- (m) Health regulations, and the prohibition of attendance at a Government school of any child whose presence is injurious to the health, welfare or morality of the other children.
- (n) The management of institutions similar to teachers' colleges.
- (o) The constitution of parents and citizens' associations and for all such other matters as may be deemed necessary to give effect to sections 22 to 27.
- (o1) The general management of care-centres and of pre-school centres, and for all such other matters relating thereto as may be necessary to give effect to sections 27A to 27D.
- (p) The prescribing of registers and records to be kept, returns to be made, and forms to be used.
- (p1) The terms, reservations and conditions upon which any property vested in the Minister under this Act may be leased to a teacher for living quarters.

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- (p2) The collection, by way of salary deduction or otherwise, of the rent payable by a teacher of the department in respect of living quarters leased to the teacher by the Crown, the Minister, or any agent or instrumentality of the Crown.
- (q) Any other purpose that may be necessary or convenient for carrying out the provisions of this Act.
- (r) Imposing a penalty not exceeding \$200 for the breach of any regulation.

[(2), (2a), (3), (4) and (5) deleted.]

[Section 28 amended by No. 30 of 1943 s.9; No. 30 of 1952 s.10; No. 57 of 1960 s.20; No. 26 of 1964 s.12; No. 17 of 1965 s.4; No. 37 of 1966 ss.6. and 10; No. 89 of 1972 s.6; No. 10 of 1975 s.5; No. 95 of 1976 s.10; No. 27 of 1977 s.10; No. 48 of 1979 s.7; No. 7 of 1988 s.11; No. 22 of 1996 ss.12 and 23; No. 42 of 1996 s.71(1).]

28A. Regulations for the control and management of school lands

- (1) For the purposes of this section —
“**school lands**” means any lands vested in or under the control and management of the Minister or both that are used for or in connection with a Government school and includes all buildings, structures and erections of whatsoever kind or nature and whether permanent or temporary, standing or being on such lands.
- (2) In addition to the powers conferred on the Minister by section 28 the Minister may make such regulations as he considers are expedient or necessary or convenient for the management, care, protection, control and superintendence of school lands.
- (3) Without limiting the generality of subsection (1) the Minister may make regulations —

- (a) providing for the appointment of authorized persons for the purposes of the regulations;
- (b) providing for the issue of administrative instructions for the purpose of facilitating the administration of the regulations;
- (c) prohibiting or regulating the admission to school lands of persons, vehicles and animals;
- (d) prescribing the times when and the purposes for which school lands may be used, and the time when and the purposes for which those lands shall be open or closed and prohibiting the use thereof or access thereto at any other times, or for any other purpose;
- (e) prohibiting the use of vehicles, including provisions as to speed, manner of driving, class of vehicles, routes, entrances and exits, one-way traffic, noise, parking or standing, the removal of vehicles by an authorized person and for the regulation of traffic generally;
- (f) providing —
 - (i) that, where an allegation is made of a breach of a regulation and an element of the breach is the use, driving, parking, standing, or leaving of a vehicle and the identity of the driver or person in charge of the vehicle at the time of the breach cannot be immediately established, a notice of the allegation may be addressed to the owner of the vehicle at his last known place of residence or business or may be served on the owner of the vehicle by leaving it in or upon, or attaching it to, the vehicle;
and
 - (ii) that if —
 - (I) the prescribed penalty is not paid within the period specified in the notice; or

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- (II) the owner of the vehicle does not, within the period specified for the payment of the penalty —
 - (A) identify the person who was the driver or person in charge of the vehicle at the relevant time to an authorized person; or
 - (B) satisfy an authorized person that, at the relevant time the vehicle had been stolen or unlawfully taken or used,the owner is deemed to be the driver or person in charge of the vehicle at the time of the alleged breach;
- (g) prescribing the circumstances under which an authorized person may remove a vehicle or cause it to be removed from the school land to any specified place, whether on those lands or not, prescribing his further powers in relation thereto, providing for the recovery of costs and expenses incurred by the Minister in moving and holding the vehicle, and authorizing the Minister to hold the vehicle until all costs and expenses are paid;
- (h) prescribing the method of notifying a person alleged to have committed an offence against any regulation made pursuant to this subsection of that alleged offence and how it shall be dealt with, and prohibiting the removal by any person other than the driver or owner of a vehicle in respect of which an offence against such a regulation is alleged to have been committed of any notice relating to the offence affixed to the vehicle or left in or on the vehicle by an authorized person;
- (i) prescribing a modified penalty or modified penalties payable to the Minister by a person or one of a class of persons who does not contest an allegation that he committed any specified breach of the regulations and providing that the due payment of a modified penalty is a defence to a charge in respect of which that modified penalty was paid;

- (j) prescribing fees, charges and exemptions;
 - (k) providing for the prevention of damage to or interference with school lands, and the trees, shrubs, bushes, flowers, gardens and lawns on or in those lands;
 - (l) providing for the use, safety and preservation of buildings, structures, erections, fixtures, fittings and chattels;
 - (m) providing for the conduct of meetings and the interruption of meetings or classes by noise, unseemly behaviour or other means;
 - (n) providing for the prohibition of nuisances, or any offence, indecent or improper act, conduct, language, or behaviour;
 - (o) providing for the prohibition, restriction or regulation of the possession, use or supply of alcoholic liquor or deleterious substances;
 - (p) providing for the recovery of summary compensation for damage to the property of the Minister;
 - (q) requiring any person, of and when required to do so by an authorized person, to give his name and address to the authorized person; and
 - (r) providing for the apprehension of persons guilty of a breach of any regulation by any Police Officer, authorized person, teacher, public service officer or employee of the department.
- (4) Regulations made pursuant to this section —
- (a) apply only within the boundaries of school lands;
 - (b) may be limited in their application, to time, place or circumstance;
 - (c) may provide that any Act or thing shall be done with the approval or to the satisfaction of a specified person or class of person or class of persons and may confer a discretionary authority;

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- (d) may impose a penalty not exceeding \$200 for any breach or non-observance thereof.
- (5) With respect to any contravention of a regulation made under this section by a student the Minister may direct that a student be dealt with —
 - (a) in accordance with any regulation relating to discipline made pursuant to section 28; or
 - (b) by way of complaint under the *Justices Act 1902*,but not both.
- (6) No regulation made under this section takes away, restricts or otherwise affects any liability, civil or criminal arising under any provision of any Act other than this Act or at common law.

[Section 28A inserted by No. 48 of 1979 s.8; amended by No. 22 of 1996 s.13.]

Part VIII — Miscellaneous provisions

[Heading amended by No. 72 of 1957 s.20.]

29. Religious instruction permitted

- (1) In every Government primary and secondary school a portion of each week may be set apart when the children of any religious persuasion may be instructed by clergymen or other religious teachers of such persuasion, accredited by the denominational authority, subject to the conditions following:
 - (a) The children receiving such religious instruction shall be separated from the other children of the school.
 - (b) The time during which such religious instruction is given shall be fixed by the head teacher of such school, subject to the approval of the chief executive officer.
 - (c) The religious instructions to be so given shall in every case be the religious instruction authorized by the church to which the clergyman or other religious teacher belongs.
- (2) If the clergyman or religious teacher does not attend during any portion of the period set apart for religious instruction, such period shall be devoted to the ordinary secular instruction in such school.
- (3) In all Government schools the teaching shall be strictly non-sectarian, but the words “**secular instruction**” shall be held to include general religious teaching as distinguished from dogmatic or polemical theology.
- (4) No child shall be required to receive any instruction in religious subjects if the parent of such child signifies his objection to such religious instruction by notice in writing to the head teacher of the school.

[Section 29 amended by No. 57 of 1960 s.21; No. 7 of 1988 s.10.]

s. 30

30. Conditions about religious worship etc. not to be imposed

- (1) It shall not be required, as a condition of any child being admitted into or continuing in any school, that he shall attend or abstain from attending any Sunday school, or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs.
- (2) It shall be no part of the duty of a superintendent of education to inquire into any instruction in religious subjects given at any school, or to examine any scholar in religious knowledge, or in any religious subject or book.

[Section 30 amended by No. 26 of 1964 s.13.]

31. Census may be taken

The Minister, from time to time, may cause an educational census to be taken of all children within any area, and upon notice of such census appearing in the *Government Gazette* the Minister shall appoint some person to call at every house within such area, and every householder shall thereupon give such information to such person as enables him to fill up the form of return in the Second Schedule; or, if from any case such information is not then given, such person may thereupon leave at the house of any householder neglecting to give such information a copy of such form of return, and after the expiration of 7 days call for the same; and every householder at whose house such form of return has been left shall, within 7 days, fill up the same or cause it to be filled up, and return it when called for, and whenever and as often as any householder neglects to fill up such form of return or cause the same to be filled up, and to return the same when called for, or wilfully fills the same up with an untrue statement, or gives false information

to such person aforesaid, the householder shall be guilty of an offence against this Act, and summarily punishable upon conviction before a court of summary jurisdiction, and shall be liable to a penalty not exceeding \$100.

[Section 31 amended by No. 37 of 1966 s.10; No. 102 of 1975 s.11.]

[32. Repealed by No. 30 of 1952 s.12.]

32A. Certain schools to apply to be registered as efficient

- (1) The proprietor, headmaster or principal teacher of any school which provides instruction up to and including the final year of secondary education, shall apply to the Minister, within one month from the commencement of the *Education Act Amendment Act 1952*¹, or the establishment of the school, to have the school registered in the register of efficient schools kept in the department for the purpose.

Penalty: \$200.

[(2) omitted under the Reprints Act 1984 s.7 (4) (e).]

[Section 32A inserted by No. 30 of 1952 s.13; amended by No. 37 of 1966 s.10; No.102 of 1975 s.12; No. 7 of 1988 s.11.]

32B. Inspection of schools applying to be found efficient

- (1) The Minister shall cause the school in respect of which application for registration under section 32A (1) has been made to be visited by a person authorized by the chief executive officer for the purpose of inspecting the school or the scholars attending the school, if upon inspection the school is found to be efficient as to the instruction given the Minister shall certify the school to be efficient for the purposes of this Act and shall cause the school to be included in the register of efficient schools.

s. 33

- (2) The Minister shall cause a copy of the list of schools which have been inspected and found efficient to be published from time to time in the *Gazette*.
- (3) The Minister may from time to time cause a school included in the register of efficient schools to be inspected by a person authorized by the chief executive officer for that purpose and may remove from the register a school that at any time is found on inspection not to be efficient and a school which is so removed from the register thereupon ceases to be an efficient school.

[Section 32B inserted by No. 30 of 1952 s.13; amended by No. 102 of 1975 s.13; No. 22 of 1996 s.14.]

[32C-32D. Repealed by No. 95 of 1976 s.11.]

33. Non-Government schools to keep registers of attendance and provide information when requested

The proprietor, head-master, or principal teacher of any school not being a Government school established under an Act relating to public education, shall keep a register or list of attendances of all scholars attending his school, in a form approved by the Minister for Education, which shall be open to inspection at such times in every year as may be mutually agreed upon by a person authorized by the chief executive officer for that purpose, welfare officer, or other person duly authorized by the Minister; and such proprietor, head-master, or principal teacher shall furnish, when required, to a person authorized by the chief executive officer for that purpose, welfare officer, or other person duly authorized by the Minister, either in writing or verbally, any information concerning the attendance of any scholar entered on the roll of his school, and shall allow the said person authorized by the chief executive officer, welfare officer, or other person duly authorized by the Minister, to inspect and make copies from the said register.

[Section 33 amended by No. 30 of 1952 s.14; No. 72 of 1957 s.21; No. 22 of 1996 s.15.]

34. Non-Government schools to provide information periodically

- (1) The proprietor, head-master, or principal teacher of every primary or secondary school, not being a Government school established under an Act relating to public education —

s. 36

- (a) shall forward to the department in Perth within the first 7 days of every month, a return in the form of the Third Schedule, giving the names of all scholars between the age of 6 years and leaving age who have been absent on any occasion without satisfactory excuse during the preceding month, and a list of all scholars between those ages who have been admitted, with the date of admission, and the name of the last school attended, and a list of all the scholars who have left during the preceding month; and
 - (b) shall forward to the department in Perth, within 7 days after the close of every school term, such statistical information as may be prescribed;
 - (c) for the purposes of this section “**primary school**” means any school which has not been placed on the list of secondary schools of the department.
- (2) If the provisions of this section are not duly complied with, the proprietor shall be liable to a penalty not exceeding \$100.

[Section 34 amended by No. 30 of 1943 s.10; No. 30 of 1952 s.15; No. 72 of 1957 s.22; No. 57 of 1960 s.22; No. 37 of 1966 s.10; No. 102 of 1975 s.15; No. 95 of 1976 s.12; No. 7 of 1988 s.11.]

[34A. Repealed by No. 15 of 1973 s.4.]

[35. Repealed by No. 48 of 1979 s.9.]

36. Regulations as to examinations for certain bursaries and scholarships

All bursaries and scholarships granted by the Governor out of the public funds shall be open for competition among the children being educated at any Government or other efficient school.

36A. Superannuation of former employees of the W.A. Pre-School Board

The Minister, with the approval of the Treasurer of the State, may, on behalf of any teacher who, immediately before he became a teacher, was —

- (a) an employee of the Western Australian Pre-School Board; and
- (b) a contributor to a scheme maintained by that Board for the purposes of making financial provision in respect of the retirement, invalidity or death of employees of that Board,

participate in that scheme and make contributions under the scheme in respect of any such teacher, but nothing in this section shall authorize the Minister to continue to make any contributions to that scheme on behalf of a teacher who becomes a contributor for the purposes of the *Superannuation and Family Benefits Act 1938*.

[Section 36A inserted by No. 18 of 1976 s.2.]

[37. Repealed by No. 48 of 1979 s.10.]

[37AA, 37AB, 37AC, 37AD, 37AE, 37AF, 37AG, 37AH, 37AI, 37AJ. Repealed by No. 48 of 1979 s.10.]

37A. Financial assistance to post-secondary students etc.

- (1) The Minister may give financial assistance to a student pursuing, or seeking to be admitted to —
 - (a) a course of post-secondary education; or
 - (b) any course of study approved by the Minister under subsection (4),

either by way of a loan or by entering into an agreement for a bond conditioned on the due performance and observance by the student of the terms and conditions on his part to be performed and observed and contained in the agreement.

s. 38

- (2) The amount, the time and method of payment and repayment, and the terms and conditions applicable to the financial assistance given shall be as prescribed.
- (3) Where an agreement in a form prescribed is entered into under the provisions of this section between the Minister and a student either alone or with others, that agreement shall —
- (a) if a parent or guardian of the student, or if he has no parent or guardian a stipendiary magistrate, endorses his consent to the execution by the student of the agreement; and
 - (b) if the student accepts any financial assistance under the agreement,

be binding upon the student and all other parties to the agreement as to each and every term and condition expressed therein to be binding upon him or them notwithstanding that at the time when he executed the agreement the student was under the age of majority.

- (4) The Minister may by instrument in writing approve any course of study for the purposes of subsection (1) (b).

[Section 37A inserted by No. 14 of 1973 s.5; amended by No. 10 of 1975 s.9; No. 48 of 1989 s.16.]

[37B. Repealed by No. 17 of 1992 s.6.]

38. Application of *Financial Administration and Audit Act 1985*

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

[Section 38 inserted by No. 98 of 1985 s.3.]

39. Application of *Interpretation Act 1918*

Sections A, F, G, and H of the Second Schedule to the *Interpretation Act 1918*, are incorporated with this Act.

40. Jurisdiction and powers of Children's Court

Where this Act requires any matter to be heard and determined by the Children's Court or confers on that court any jurisdiction, power or authority, that court may, in respect of the matter, jurisdiction, power or authority exercise, without prejudice to any of the provisions of the *Children's Court of Western Australia Act 1988* or the *Child Welfare Act 1947*, any jurisdiction, power, or authority conferred on it by either of those Acts.

[Section 40 inserted by No. 49 of 1988 s.64; amended by No. 15 of 1991 s.21.]

[FIRST SCHEDULE omitted under the Reprints Act 1984 s.7 (4) (f).]

Second Schedule

Second Schedule

[s.31.]

EDUCATION ACT 1928

Return of children below school leaving age

No.	Name of each Child in full	Sex	Age	Where under instruction, showing whether at home, or at private or other schools.
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				

Second Schedule

I, _____, of _____
certify the above to be a true return concerning all children now residing in this
dwelling house who are below the leaving age fixed by the above Act.

Dated the _____ day of _____, 19 ____.

(Signature or mark, with witness thereof, of person certifying).

To _____ residing at _____

TAKE NOTICE that this return will be called for on or after the
_____ day of _____, 19 ____, and that any householder neglecting to fill it
up by that day, and return it when called for, or wilfully filling it up with an
untrue statement, or giving false information to the person leaving the same, is
liable, on conviction, to a penalty not exceeding \$100.

*[SECOND SCHEDULE amended by No. 37 of 1966 s.10; No. 95 of 1976 s.15;
No. 17 of 1992 s.7.]*

Third Schedule

Third Schedule

[s.34.]

WESTERN AUSTRALIA

EDUCATION ACT 1928

Compulsory Form

Names of all scholars between the age of 6 years and leaving age who have been absent on any occasion without satisfactory excuse during the month of . . .

This form to be made up and forwarded to the Education department, Perth, within the first 7 days of every month.

Name of child	Age and Standard	Name and full address of parents	No. of half-days school was opened	No. of half-days attended	Reason tendered for absence, if any	Result of compulsory officer's inquiry
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School

Date

Proprietor [or Headmaster or Principal Teacher]

[THIRD SCHEDULE amended by No. 95 of 1976 s.16.]

[FOURTH SCHEDULE deleted by No. 30 of 1952 s.16.]

Notes

- ^{1.} This is a compilation of the *Education Act 1928* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Education Act 1928</i>	33 of 1928	28 Dec 1928	28 Dec 1928
<i>Education Act Amendment Act 1929</i>	43 of 1929	31 Dec 1929	31 Dec 1929
<i>Education Act Amendment Act 1930</i>	7 of 1930	19 Nov 1930	19 Nov 1930
<i>Education Act Amendment Act 1943</i>	30 of 1943	12 Nov 1943	12 Nov 1943
<i>Education Act Amendment Act 1952</i>	30 of 1952	5 Dec 1952	29 May 1953 (see <i>Gazette</i> 29 May 1953 p.1073)
<i>Education Act Amendment Act 1955</i>	44 of 1955	5 Dec 1955	5 Dec 1955
<i>Education Act Amendment Act 1957</i>	72 of 1957	10 Dec 1957	10 Dec 1957
<i>Education Act Amendment Act 1960</i>	57 of 1960	2 Dec 1960	17 Apr 1961 (see <i>Gazette</i> 24 Feb 1961 p.475)
<i>Education Act Amendment Act 1961</i>	40 of 1961	16 Nov 1961	17 Apr 1961 (see section 2 (2))
<i>Education Act Amendment Act 1962</i>	37 of 1962	29 Oct 1962	9 Nov 1962 (see <i>Gazette</i> 9 Nov 1962, pp. 3679-3680)
<i>Education Act Amendment Act 1964</i>	26 of 1964	4 Nov 1964	4 Nov 1964
<i>Education Act Amendment Act 1965</i>	17 of 1965	1 Oct 1965	1 Oct 1965
<i>Education Act Amendment Act (No. 2) 1965</i>	61 of 1965	19 Nov 1965	19 Nov 1965
<i>Education Act Amendment Act 1966</i>	37 of 1966	31 Oct 1966	31 Oct 1966
<i>Education Act Amendment</i>	12 of 1967	20 Oct 1967	20 Oct 1967

Education Act 1928

Short title	Number and year	Assent	Commencement
<i>Act 1967</i>			
<i>Education Act Amendment Act (No. 2) 1967</i>	48 of 1967	24 Nov 1967	1 Jan 1968
<i>Education Act Amendment Act 1968</i>	23 of 1968	16 Oct 1968	1 Jan 1969
<i>Education Act Amendment Act 1969</i>	91 of 1969	17 Nov 1969	17 Nov 1969
<i>Education Act Amendment Act 1970</i>	4 of 1970	29 Apr 1970	29 Apr 1970
<i>Education Act Amendment Act (No. 2) 1970</i>	77 of 1970	30 Nov 1970	30 Nov 1970
<i>Education Act Amendment Act 1972</i>	3 of 1972	8 May 1972	1 Jan 1972
<i>Education Act Amendment Act (No. 3) 1972</i>	89 of 1972	4 Dec 1972	23 Aug 1974 (see <i>Gazette</i> 23 Aug 1974 p.3115)
<i>Metric Conversion Act 1972</i>	94 of 1972	4 Dec 1972	The relevant amendments, as set out in the First Schedule, took effect on 1 Jan 1973 (see section 4 (2) and <i>Gazette</i> 29 Dec 1972 p.4811)
<i>Education Act Amendment Act 1973</i>	14 of 1973	30 May 1973	1 Jan 1973
<i>Education Act Amendment Act (No. 3) 1973</i>	15 of 1973	30 May 1973	1 Jul 1973 (see <i>Gazette</i> 29 Jun 1973 p.2488)
<i>Education Act Amendment Act (No. 4) 1973</i>	59 of 1973	19 Nov 1973	19 Nov 1973
<i>Education Act Amendment Act 1974</i>	61 of 1974	9 Dec 1974	17 Jan 1975 (see <i>Gazette</i> 17 Jan 1975 p.106)
<i>Education Act Amendment Act 1975</i>	10 of 1975	9 May 1975	Sections 3, 4, 5, 6, 8 and 9 deemed to have come into operation on 1 Jan 1975 (see section 2 (2)). Balance on assent
<i>Education Act Amendment</i>	33 of 1975	16 May 1975	31 Oct 1975 (see <i>Gazette</i>

Short title	Number and year	Assent	Commencement
<i>Act (No. 2) 1975</i>			31 Oct 1975 p.4016)
<i>Education Act Amendment Act (No. 3) 1975</i>	102 of 1975	1 Dec 1975	Sections 3, 4, 5, 9, 10, 11, 12 (b), 14, 15 and 16 came into operation on 1 Jan 1976 (see <i>Gazette</i> 31 Dec 1975 p.4698). Balance on assent.
<i>Education Act Amendment Act 1976</i>	18 of 1976	3 Jun 1976	3 Jun 1976
<i>Education Act Amendment Act (No. 2) 1976</i>	95 of 1976	12 Nov 1976	12 Nov 1976
<i>Education Act Amendment Act 1977</i>	27 of 1977	27 Oct 1977	13 Jan 1978 (see <i>Gazette</i> 13 Jan 1978 p.107)
<i>Education Act Amendment Act 1979</i>	48 of 1979	7 Nov 1979	1 Feb 1980 (see <i>Gazette</i> 1 Feb 1980 p.285)
<i>Education Amendment Act 1981</i>	100 of 1981	4 Dec 1981	4 Dec 1981
<i>Education Amendment Act 1982</i>	96 of 1982	1 Dec 1982	22 Jun 1984 (see <i>Gazette</i> 22 Jun 1984 p.1663)
<i>Education Amendment Act 1983</i>	26 of 1983	1 Dec 1983	1 Dec 1983
<i>Acts Amendment and Repeal (Industrial Relations) (No. 2) Act 1984, Part III</i>	94 of 1984	11 Dec 1984	1 Mar 1985 (see <i>Gazette</i> 1 Mar 1985 p.778)
<i>Secondary Education Authority Act 1984, Part VI</i>	118 of 1984	27 Dec 1984	1 Feb 1985 (see <i>Gazette</i> 25 Jan 1985 p.283)
<i>Acts Amendment (Department of Community Service) Act 1984, Part X</i>	121 of 1984	19 Dec 1984	1 Jan 1985 (see <i>Gazette</i> 28 Dec 1984 p.4197)
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see <i>Gazette</i> 30 Jun 1986 p.2255)

Education Act 1928

Short title	Number and year	Assent	Commencement
<i>Education Amendment Act 1986</i>	63 of 1986	28 Nov 1986	26 Dec 1986
<i>Acts Amendment Public Service Act 1987, section 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see <i>Gazette</i> 16 Mar 1988 p.813)
<i>Acts Amendment (Education) Act 1988</i>	7 of 1988	30 Jun 1988	8 Jul 1988 (see <i>Gazette</i> 8 Jul 1988 p.2371)
<i>Acts Amendment (Children's Court) Act 1988, Part 9</i>	49 of 1988	22 Dec 1988	1 Dec 1989 (see <i>Gazette</i> 24 Nov 1989 p.4327)
<i>Education Amendment Act 1988</i>	53 of 1988	8 Dec 1988	Sections 4 and 5: 21 Jun 1991 (see <i>Gazette</i> 21 Jun 1991 p.3005). Balance to be proclaimed
<i>Acts Amendment and Repeal (Post-Secondary Education) Act 1989, Part 5</i>	48 of 1989	9 Jan 1990	1 Jan 1990 (see section 2)
<i>Education Amendment Act 1990</i>	36 of 1990	26 Oct 1990	1 Feb 1991 (see <i>Gazette</i> 1 Feb 1991 p.511)
<i>Education Amendment Act (No. 2) 1990</i>	74 of 1990	22 Dec 1990	20 Dec 1991 (see <i>Gazette</i> 20 Dec 1991 p.6289)
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991, Section 21</i>	15 of 1991	21 Jun 1991	9 Aug 1991 (see <i>Gazette</i> 9 Aug 1991 p.4101)
<i>Education Amendment Act 1992</i>	17 of 1992	17 Jun 1992	17 June 1992
<i>Acts Amendment (Public Sector Management) Act 1994, Part 4</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see <i>Gazette</i> 30 Sep 1994 p.4948)
<i>Industrial Legislation</i>	1 of 1995	9 May 1995	9 May 1995

Short title	Number and year	Assent	Commencement
<i>Amendment Act 1995, Part 2, Division 2</i>			
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see section 2)
<i>Education Amendment Act 1996</i>	22 of 1996	11 Jul 1996	Parts 1, 2 (other than the provision of s.4 (2) to the extent it refers to ss. 6AA and 6B of the principal Act) and Part 5 operative on assent; s.4 (2) (to the extent referred to in section 2 (2) of the Act), Parts 3 and 4 proclaimed 1 January 1997 (see <i>Gazette</i> 24 Dec 1996 p.7097)
<i>Vocational Education and Training Act 1996, Section 71 (1)</i>	42 of 1996	16 Oct 1996	1 Jan 1997 (see section 2 and <i>Gazette</i> 12 Nov 1996 p.6301)
<i>Curriculum Council Act 1997, section 35</i>	17 of 1997	8 Jul 1997	1 Aug 1997 (see section 2 and <i>Gazette</i> 25 Jul 1997 p.3907)
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 51</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see section 2)
<i>Acts Amendment (Education Loan Scheme) Act 1998, Part 2</i>	27 of 1998	30 Jun 1998	30 Jun 1998 (see section 2)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999,</i>	26 of 1999	29 Jun 1999	1 Jul 1999 (see section 2(1) and <i>Gazette</i> 30 Jun 1999 p.2905)

Short title	Number and year	Assent	Commencement
section 75			

N.B. The *Education Act 1928* was affected by ss. 2 and 6 of the *Justices Act Amendment Act 1932*.

² Section 4 of the Education Amendment Act 1986 (Act No. 63 of 1986) reads as follows —

“

4. Validation

Every arrangement entered into and licence granted before the commencement of this Act that would have been lawful if section 6A of the principal Act had been in force at the time the arrangement was entered into or the licence was granted and every Act or thing done by or on behalf of the Minister under such an arrangement or licence is hereby validated.

”.

³ Section 3 (a) and (b) of the *Education Act Amendment Act 1983* (Act No. 26 of 1983) reads as follows —

“

- (a) where an inquiry is being held in relation to a teacher under subsection (3) of section 7C of the principal Act, based on alleged misconduct described in paragraph (e) of subsection (2) of that section as in force immediately before the coming into operation of this Act, but that inquiry has not been finally determined when this Act comes into operation, the inquiry shall continue to be dealt with and determined in all respects as if this Act had not been enacted; and
- (b) where it is alleged that prior to the coming into operation of this Act a teacher has been guilty of the kind of misconduct described in paragraph (e) of subsection (2) of section 7C of the principal Act as in force immediately before the coming into operation of this Act, an inquiry may be held and dealt with in all respects under that section after the coming into operation of this Act.

”.

⁴ Section 8 of the *Education Act Amendment Act 1992* (Act No. 17 of 1992) reads as follows —

“

8. Validation

- (1) Any application before the commencement of this Act of prescribed moneys for purposes which would have been lawful if section 9A, as amended by section 5 of this Act, had been in force at the time of the application, and every Act or thing done by or on behalf of the Minister in that regard is hereby validated.
- (2) In subsection (1) “**prescribed moneys**” means moneys appropriated by Parliament for the assistance of non-government schools and scholars attending non-government schools.

”.

⁵ Repealed by Act No. 27 of 1977 s.9. See s. 27D of this Act.

⁶ Part 5 of the *Acts Amendment (Education Loan Scheme) Act 1998* (Act No. 27 of 1998) reads as follows —

“

Part 5 — Transitional

9. Existing loans may be varied

Despite the repeal of sections 9A(5)(c) and 27C(3) of the *Education Act 1928*, section 17 of the *Vocational Education and Training Act 1996* and section 25A of the *University of Notre Dame Australia Act 1989*, the terms and conditions of a loan made under any of those provisions before the coming into operation of this Act may be varied in the same manner and to the same extent as if the provision had not been repealed.

10. Moneys may be borrowed and paid to Treasurer

- (1) Any moneys advanced to the Education Minister or the Vocational Education and Training Minister under the authorization of the Treasurer’s Advance Authorization Act 1997 for the purpose of lending under the *Education Act 1928*, the *Vocational Education and Training Act 1996* or the *University of Notre Dame Australia Act 1989* and not repaid to the Treasurer before the coming into operation of this Act, are to be repaid, together with the interest accrued and due on those moneys, by the relevant Minister to the Treasurer.

- (2) The Education Minister may borrow moneys under section 9D(1) of the *Education Act 1928*, as amended by this Act, or section 25C(1) of the *University of Notre Dame Australia Act 1989*, as amended by this Act, for the purpose of meeting obligations under subsection (1).
- (3) The Vocational Education and Training Minister may borrow moneys under section 17A(1) of the *Vocational Education and Training Act 1996*, as amended by this Act, for the purpose of meeting obligations under subsection (1).
- (4) In this section —
- “**Education Minister**” means the Minister in whom the administration of the *Education Act 1928* is for the time being committed by the Governor;
- “**Vocational Education and Training Minister**” means the Minister in whom the administration of the *Vocational Education and Training Act 1996* is for the time being committed by the Governor.

”.