

No. 12 of 1988.

***Teaching Service Act 1988.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 12 of 1988.

*Teaching Service Act 1988.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Teaching Service Act 1988,*

Being an Act to make provision for—

- (a) the Teaching Service Commission; and
- (b) the terms and conditions of service of members of the Teaching Service; and
- (c) other matters relating to the welfare and employment of teachers,

and for related purposes.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

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

“**ability**”, in relation to a position or a class of positions, means ability to carry out the duties of the position or a position of the class, combined with—

- (a) merit, diligence and good conduct; and
- (b) where the duty statement for the position includes a requirement of personal attributes or qualifications in accordance with Section 29(6)—the possession of those attributes or qualifications;

“**appointing authority**” means—

- (a) in relation to a national institution or to a school specified, for the purposes of this definition, by the Minister by notice in the Education Gazette—the National Education Board; or
- (b) in relation to any other education institution—the Provincial Education Board;

**“appointment”** means an appointment to a position and includes a promotion or transfer;

**“Assistant Secretary”**, in relation to an educational institution or a member of the Teaching Service in an educational institution, means the Assistant Secretary responsible for education matters in the province or National Capital District in which the institution is situated;

**“associate position”** means—

- (a) a position in an associate member school; or
- (b) a reserved teaching position in a member school; or
- (c) a position occupied for the time being by a member of the Teaching Service who was elected under Section 132 to become an associate member;

**“base-level position”** means a position (other than a position determined by the Commission to be an in-training position) in a category of positions the salary, or the maximum of the scale of salary, of which is the lowest in that category;

**“Board”** means the National Education Board or a Provincial Education Board as the case requires;

**“Chairman”** means the Chairman of the Teaching Service Commission;

**“classification”** means the arrangement of positions in classes, and includes the allotment to positions of salaries or scales of salaries;

**“the Commission”** means the Teaching Service Commission;

**“Commissioner”** means a Commissioner appointed under Section 2;

**“determination”** means a determination made under this Act;

**“the determinations”** means the determinations made under this Act;

**“Disciplinary Committee”** means a Provincial Disciplinary Committee, the National Education Board Disciplinary Committee or the Teaching Service Commission Disciplinary Committee, as the case requires;

**“education agency”** means the State or an organization or person recognized or deemed to be recognized under Division III.5 of the *Education Act 1983* as an education agency for the purposes of the Education System and of that Act;

**“education authority”** means an authority specified in Section 5 of the *Education Act 1983*;

**“educational institution”** means a school, vocational centre or national institution within the Education System;

**“eligibility”**, in relation to a promotional position or a class of promotional positions, means, subject to Subsection (2), the possession of

qualifications, professional skills and experience appropriate to the position or to positions of the class;

**“eligibility status”**, in relation to a promotional position or a class of promotional positions, means the possession of a declaration under Section 47(1) in relation to the position or to positions of the class;

**“industrial determination”** means a determination made in relation to the Teaching Service by the Public Services Conciliation and Arbitration Tribunal or the Teaching Service Conciliation and Arbitration Tribunal, or a registered award within the meaning of the *Industrial Relations Act 1962* relating to the Service;

**“institutional position”** means a position in an educational institution;

**“member of the Commission”** means a Commissioner and includes an acting Commissioner and a part-time Commissioner;

**“member of the Teaching Service”** or **“member”** means a full member, a provisional member or an associate member of the Teaching Service;

**“maximum retiring benefits age”** means the age of 60 years at which maximum pension benefits are payable—

(a) in the case of members of the Teaching Service who are contributors to the Public Officers Superannuation Fund—under the *Public Officers Superannuation Act 1990*; and

(b) in the case of members of the Teaching Service who are contributors to the Retirement Benefits Fund—under the *Retirement Benefits Act*;

<sup>1</sup>**“minimum retiring benefits age”** means the minimum age of 55 years at which pension benefits are payable—

(a) in the case of members of the Teaching Service who are contributors to the Public Officers Superannuation Fund—under the *Public Officers Superannuation Act 1990*; and

(b)<sup>2</sup> in the case of members of the Teaching Service who are contributors to the Retirement Benefits Fund—under the *Retirement Benefits Act*;

**“the National Education Board Disciplinary Committee”** means the National Education Board Disciplinary Committee established under Section 80;

**“non-institutional position”** means a position created under Section 30;

<sup>1</sup> Section 1 (definition of “maximum retiring benefits age”) The *Retirement Benefits Act* (Chapter 70) was repealed by the *State Services and Statutory Authorities Superannuation Fund Act 1990* (No. 31 of 1990).

<sup>2</sup> Section 1 (definition of “minimum retiring benefits age”) The *Retirement Benefits Act* (Chapter 70) was repealed by the *State Services and Statutory Authorities Superannuation Fund Act 1990* (No. 31 of 1990).

- “the Papua New Guinea Teachers’ Association”** means the body by that name registered under the *Industrial Organizations Act 1962*;
- “pay”** means salary and any prescribed allowances in the nature of salary, but does not include special conditions of service;
- “position”** means an institutional position or a non-institutional position, and includes a reserved teaching position and an associate position;
- “promotion”** means the appointment of a member of the Teaching Service to a promotional position the salary, or the maximum of the scale of salary, of which is greater than that of the position occupied by the member immediately before the appointment;
- “promotional position”** means a position in a category of positions classified above the base-level position in the category;
- “Provincial Disciplinary Committee”** means a Provincial Disciplinary Committee established under Section 79;
- “the Provincial Disciplinary Committee”**, in relation to a member of the Teaching Service, means the Provincial Disciplinary Committee established by the Provincial Education Board under Section 79;
- “the Provincial Education Board”**, in relation to an educational institution or a member of the Teaching Service in an educational institution, means the Provincial Education Board established under the *Education Act 1983* for the Province in which the institution is established;
- “pupil”** means a person receiving instruction in an educational institution;
- “the Regulations”** means any Regulation made under this Act;
- “retrenched”** means retired from the Teaching Service under Section 121;
- “salary”**, in relation to a position, means the salary payable in respect of the position, exclusive of allowances and any special conditions of service;
- “school year”** means the period commencing on the first day of the first school term determined under the *Education Act 1983* for any calendar year and ending at the end of the last day of the last school term so determined for that year;
- “sick leave”** means leave of a kind referred to in Section 98;
- “special conditions of service”** means any special conditions of service provided for any member or class of members by an education agency under Division XI.2;
- “suitability”**, in relation to a position or class of positions, means ability–
- (a) in the case of–
    - (i) a base-level position; or
    - (ii) a position in a class of positions as to which the Commission has made a determination under Section 50

that the holding of a current declaration under Section 47(1) is unnecessary;

combined with eligibility; and

- (b) in any other case—combined with eligibility status for the position or the class of position;

**“the Teaching Service Commission Disciplinary Committee”** means the Teaching Service Commission Disciplinary Committee established under Section 81;

**“this Act”** includes any Regulations and determinations made under this Act;

**“vacation leave”** means leave of a kind referred to in Section 96.

(2) For the purposes of this Act, a person whose registration or provisional registration as a teacher is subject to a limit or restriction entered in the Register of Teachers shall be deemed to have qualifications and eligibility only within the limit or subject to that restriction.

(3) In this Act, a reference to the *Public Services (Management) Act 1995* includes a reference to the Regulations, General Orders and determinations made under that Act.

(4) Unless the contrary intention appears, expressions used in this Act that are defined in the *Education Act 1983* have the same meaning as in that Act.

## PART II. – TEACHING SERVICE COMMISSION.

### 2. TEACHING SERVICE COMMISSION.

(1)<sup>3</sup> <sup>4</sup>There is established a Teaching Service Commission which consists of at least three Commissioners, one of whom shall be appointed as Chairman.

(2)<sup>5</sup> <sup>6</sup>The manner of appointment, suspension and dismissal of the Chairman and Commissioners is as specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

(3) A Commissioner shall be—

- (a) appointed for such period (not exceeding three years) as is determined by the Head of State, acting on advice; and
- (b) eligible for re-appointment.

(4) In appointing Commissioners, the Head of State, acting on advice, shall ensure that—

- (a) all Commissioners have knowledge of and experience in education and teaching; and
- (b) at least one Commissioner has experience in a church education agency.

### 3. CONDITIONS OF SERVICE OF MEMBERS OF THE COMMISSION.

<sup>7</sup>The Minister shall fix the salaries, allowances, leave of absence and other conditions of service (which may include part-time service of members of the Commission).

### 4. DISQUALIFICATIONS FROM MEMBERSHIP.

(1) A person who—

- (a) is an undischarged bankrupt or insolvent; or
- (b) is of unsound mind as that expression is used in the *Public Health Act 1973*; or
- (c) has been convicted of an offence punishable by death or imprisonment for one year or longer and, as a result of the conviction—
  - (i) is under sentence of death; or
  - (ii) is undergoing imprisonment; or
  - (iii) is under bond to appear for sentence if called on,

shall not be appointed as a member of the Commission.

<sup>3</sup> Section 2 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

<sup>4</sup> Section 2 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

<sup>5</sup> Section 2 Subsection (2) substituted by No. 97 of 2006, Sched. 1.

<sup>6</sup> Section 2 Subsection (2) substituted by No. 97 of 2006, Sched. 1.

<sup>7</sup> Section 3 amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

- (2) A member of the Commission shall be deemed to have vacated his office if—
- (a) subject to Subsection (3), he engages during his term of office in any paid employment outside the duties of his office; or
  - (b) he becomes a person specified in Subsection (1); or
  - (c) except on leave granted by the Minister, he absents himself from duty for 14 consecutive days, or for 28 days in any 12 months; or
  - (d) he becomes permanently incapable of performing his duties.

(3) The Minister may exempt a part-time member of the Commission from the provisions of Subsection (2)(a) on such term and conditions as he thinks proper.

#### **5. IMPROPER USE OF OFFICIAL INFORMATION.**

A member of the Commission who makes use of any information acquired by virtue of his position as a member of the Commission to gain, directly or indirectly, an improper advantage for himself, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding three years, or both.

#### **6. OATH AND AFFIRMATION OF OFFICE.**

(1) Before entering on the duties of his office, each member of the Commission shall take an oath or make an affirmation of office in the prescribed form.

(2) The oath or affirmation shall be taken or made before a Judge.

#### **7. SERVICE RIGHTS OF MEMBERS OF THE COMMISSION.**

(1) If an officer of the Public Service or a member of the Teaching Service is appointed to be a member of the Commission, his period as a member of the Commission shall be counted as service in the Public Service or the Teaching Service, as the case may be, for the purpose of determining his rights (if any) in respect of—

- (a) leave of absence on the ground of illness; and
- (b) long leave, furlough or pay in lieu (including pay to dependants or personal representatives on the death of the member).

(2) The *Public Services (Management) Act 1995* applies in so far as applicable in relation to the positions of members of the Commission.

#### **8. MEETINGS OF THE COMMISSION.**

(1)<sup>8</sup> <sup>9</sup>The Commission shall meet at such times and places as are fixed by the Chairman, but in any event not less frequently than once in each period of three months.

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<sup>8</sup> Section 8(1) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>9</sup> Section 8(1) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

(2) At a meeting of the Commission—

- (a) a quorum is such number of members of the Commission as is determined from time to time by the Head of State, acting on advice; and
- (b) the Chairman, or in his absence a Commissioner elected for the purpose by the Commissioners present, shall preside; and
- (c) subject to Subsection (3), all matters arising shall be decided by a majority of votes of members present and voting.

(3) Notwithstanding Subsection (2)(c), the Chairman may reserve any matter arising at a meeting of the Commission for decision by the Head of State, acting on advice, and in referring the matter to the Head of State, he shall forward the views of each member of the Commission.

(4) The Head of State, acting on advice, may give to the Commission a direction, not inconsistent with this Act or any other law, on any matter referred to the Head of State, under Subsection (3).

## **9. FUNCTIONS OF THE COMMISSION.**

(1) Subject to this Act, the functions of the Commission are—

- (a) to exercise a critical oversight of all matters relating to the terms and conditions of service and welfare of members of the Teaching Service; and
- (b) to ensure that decisions of other authorities under this Act or the *Education Act 1983* do not infringe or abrogate the rights or the conditions of service of members, and where those rights or conditions are infringed or abrogated—
  - (i) to give such directions; and
  - (ii) to take such other action within its power under this Act or any other law as may be necessary to correct the situation; and
- (c) to act as agent for the State in relation to the responsibilities of the State under this Act as an employer; and
- (d) subject to any direction of the Minister, to determine after consultation with the Salaries and Conditions Monitoring Committee—
  - (i) the salaries and allowances; and
  - (ii) the other terms and conditions of appointment and service as required and permitted by this Act,
    - of members of the Teaching Service (other than benefits under Division XI.2); and
- (e) to determine appeals as provided for by this Act; and



- (f) after consultation with the Departmental Head, to determine conditions for—
  - (i) the granting of free-place study and assisted study facilities in institutions inside or outside the country; and
  - (ii) study leave; and
  - (iii) in-service training; and
- (g) to advise education authorities on standard and special allowances that might be paid by education agencies in various circumstances and to recommend standards of accommodation for teachers and standard rentals; and
- (h) to advise the National Education Board on personnel aspects of the transfer of, and in-service training arrangements for, members of the Teaching Service; and
- (i) to collate and publish, or arrange for the collation and publication of, information in relation to the terms and conditions of appointment and service of members of the Teaching Service; and
- (j) any other functions that are necessary or convenient for carrying out, or that are ancillary to, the functions set out in this subsection.

(2) In the exercise and performance of its powers and functions, the Commission shall, as appropriate, consult and co-operate with, and tender advice to Provincial Governments, the Departmental Head, education agencies and the Papua New Guinea Teachers' Association on all matters in which they or any of them have common interest.

(3) In the exercise and performance of its powers and functions, the Commission shall have regard to any Code of Ethics in force under Section 28.

## **10. CONSULTATION WITH NATIONAL EDUCATION BOARD.**

(1) If either the Commission or the National Education Board considers that the other is taking or is likely to take any action in a way that impinges on its functions, it may call a joint meeting to resolve the matter.

(2) If the Commission and the National Education Board are unable to resolve a matter in accordance with Subsection (1), either party may refer the matter to the Head of State.

(3) The decision of the Head of State, acting on advice, on a matter referred to him under Subsection (2), is final.

## **11. GENERAL POWERS OF THE COMMISSION.**

(1) For the purpose of carrying out its or his duties and functions under this Act or any other law relating to education, the Commission or a member of the Commission may at any time—

- (a) enter the premises of a member school; and
- (b) attend any meeting of the National Education Board, a Provincial Education Board or a committee of a Provincial Education Board, when matters relating to the terms and conditions of appointment and service of members of the Teaching Service are being dealt with; and
- (c) establish Boards of Enquiry from time to time to investigate any matters relating to the terms and conditions of service and welfare of members; and
- (d) summon any person whose evidence appears to be material to the determining of any matter before the Commission to appear and give evidence; and
- (e) take evidence on oath or affirmation, and for that purpose administer oaths and affirmations; and
- (f) require any person to produce a document in his possession or control.

(2) A person who knowingly makes a false or misleading statement in evidence before the Commission or a member of the Commission is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(3) A person who, after payment or tender to him of reasonable expenses, neglects or fails, without reasonable excuse (proof of which is on him), to attend in obedience to a summons under Subsection (1), or to be sworn or affirmed or to answer questions or to produce a document when required under that subsection to do so, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(4) It is a defence to a charge of an offence against Subsection (3) for failing to answer a question or to produce a document, if the accused person proves—

- (a) that the question or document was not relevant to the subject matter of any matter before the Commission; or
- (b) in the case of a document—that it was prepared for the purpose of, or with a view to, or relates to, proceedings under any law relating to industrial conciliation or arbitration.

(5) A Board of Enquiry established under this section has such powers and functions as the Commission determines, including the power to summon any person whose evidence appears to be material to the matters referred to the Board, to appear before the Board and give evidence, and to take evidence on oath or affirmation and for that purpose administer oaths and affirmations, and may be delegated any of the Commission's functions under this Act.

(6) A Board of Enquiry shall consist of at least one member of the Commission and such other members as the Commission determines.

(7) The Commission shall provide a Board of Enquiry terms of reference for any investigation it is required to undertake.

(8) A Board of Enquiry may require any person to produce any document in his possession or control.

(9) The Commission shall appoint a Chairman to any Board of Enquiry established under this section.

## **12. COMMUNICATIONS WITH THE TEACHING SERVICE.**

The Commission may communicate directly with a member of the Teaching Service, and any member of the Teaching Service may communicate directly with the Commission.

## **13. GENERAL RIGHTS OF APPEAL.**

(1) Where—

- (a) a member of the Teaching Service is aggrieved by a decision or action of an education authority (other than the Commission) on the ground that it was unfair or unreasonable; and
- (b) no other provision is made by this Act for an appeal in the circumstances of the particular case; and
- (c) the decision or action is not expressed by this Act to be final or not appealable,

the member may appeal to the Commission against the decision or action.

(2) Where—

- (a) an education authority (other than the Commission) or a member of the Teaching Service is aggrieved by a decision or action of the Commission on the ground that it was unfair or unreasonable; and
- (b) no other provision is made by this Act for an appeal in the circumstances of the particular case; and
- (c) the decision or action is not expressed by this Act to be final or not appealable,

the member or authority may appeal to the Minister against the decision or action.

(3) The Commission or the Minister, as the case may be, shall make due inquiry and may give any direction and take any action, not inconsistent with this Act or any other law, that it or he thinks necessary or desirable to remedy the situation.

(4) A direction shall not be given or action taken under Subsection (3) that would adversely affect the rights of, or impose liabilities on, a member of the Teaching Service.

**14. ENFORCEMENT OF DECISIONS OF COMMISSION.**

Where a decision or direction of the Commission under this Act or any other law is not complied with by an education authority, the Commission, after satisfying itself that all the avenues of enforcement reasonably available to it have been exhausted, may release any member of the Teaching Service from all or any of his duties under this Act, and the member, without having any responsibility for the validity of the Commission's action, may cease performing those duties.

**15. DELEGATION BY MINISTER.**

The Minister may, by instrument under his hand, delegate to the Commission, a member of the Commission or the Departmental Head, all or any of his powers and functions under this Act (except this power of delegation).

**16. DELEGATION BY COMMISSION.**

The Commission may, by instrument, delegate to any person or to an education authority any of its powers and functions (except this power of delegation and any power or function held by it under delegation) under this Act or any other law relating to education.

**17. ANNUAL REPORTS.**

(1) As soon as practicable after 1 January in each year, the Chairman shall give to the Minister, for presentation to the Parliament, a report—

- (a) on the operations of the Commission and of this Act; and
- (b) on the Teaching Service,

during the year ended on the immediately preceding 31 December, recommending any changes in legislation or administration that seem necessary or desirable to improve the operation or to achieve the objects of this Act and of the Education System.

(2) The report shall specifically cover the workings of Subdivision V.2.C, and shall include statistical details of action taken under that subdivision.

**PART III. – THE TEACHING COUNCIL.**

**18. ESTABLISHMENT OF THE COUNCIL.**

- (1) A Teaching Council is hereby established.
- (2) The Teaching Council shall consist of—
  - (a) the Chairman, or a member of the Commission nominated by the Chairman; and
  - (b) not more than six persons appointed by the Chairman from a panel or panels of names submitted by the Papua New Guinea Teachers' Association; and
  - (c) not more than five Educational Secretaries, appointed by the Chairman as representing the major groupings of education agencies (other than the Government); and
  - (d) not more than four officers of the Department, appointed by the Departmental Head; and
  - (e) not more than two members of the National Education Board with teaching qualifications, appointed by the Board.

**19. FUNCTIONS OF THE COUNCIL.**

(1) The function of the Teaching Council is to provide an opportunity for discussion and consultation on the functioning of the Teaching Service.

(2) Any member of the Teaching Council may raise a matter for discussion, with or without notice.

(3) At each meeting of the Council, copies of all Directions, Instructions or other administrative notices issued by the Commission since the previous meeting shall be tabled.

**20. MEETINGS OF THE COUNCIL.**

(1) The Teaching Council shall meet at least once in each school term, at a time and place fixed by the Chairman.

(2) Notwithstanding Subsection (1), the Chairman may call a meeting of the Council at any time when he considers it desirable for the Council to meet.

(3) The Chairman shall convene a meeting of the Teaching Council at the request of not less than eight members of the Council.

(4) The Chairman or in his absence from a meeting a member of the Commission nominated under Section 18(2)(a), shall preside at all meetings of the Teaching Council.

(5) The Commission may call a member of the Teaching Service or other person to assist the Teaching Council in its deliberations.

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(6) The procedures of the Teaching Council are as determined by the Council.

**21. SITTING FEES, ETC.**

Members of the Teaching Council are not entitled to any fees, allowances or expenses of any kind in connection with their functions as members of the Council.

**PART IV. – MEMBERSHIP OF THE TEACHING SERVICE.**

***Division 1.***

***Admission, etc.***

**22. ADMISSION TO THE TEACHING SERVICE.**

(1) Subject to Subsection (3), the Commission may admit persons to membership of the Teaching Service.

(2) A person shall not be admitted to membership of the Teaching Service unless–

- (a) he is registered as a teacher under the *Education Act 1983*; and
- (b) he provides evidence to the satisfaction of the Commission as to–
  - (i) his health and physical fitness; and
  - (ii) his age; and
  - (iii) his good character; and
- (c) he makes and subscribes the prescribed oath or affirmation; and
- (d) he satisfies the Commission that–
  - (i) he has secured an appointment to a vacant position as a teacher in an educational institution; and
  - (ii) he will be available for service as a teacher in the Education System for not less than 12 months.

(3) A non-citizen is not entitled to be admitted to membership of the Teaching Service otherwise than in accordance with the *Teaching Service (Auxiliary Members) Act 1973*.

(4)<sup>10</sup> <sup>11</sup>For the purposes of Subsection (2)(d)(i), “**appointment**” includes an acting appointment made under Section 71.

(5) A person shall not be admitted to membership under this section unless he has served at least 12 months of satisfactory service of provisional membership in accordance with the provisions of Section 23.

**23. PROVISIONAL MEMBERSHIP.**

(1) Where an appointing authority acting under Section 38 or 39 fills a vacancy in a position in the Teaching Service by the appointment of a teacher who is not a member of the Teaching Service, the teacher shall be deemed to be provisionally admitted to membership of the Teaching Service.

(2) An applicant for membership of the Teaching Service shall undergo a period of provisional membership of the Teaching Service.

<sup>10</sup> Section 22(4) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>11</sup> Section 22(4) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

(3) Provisional membership is subject to confirmation by the Commission.

(4) Provisional membership of the Teaching Service may be terminated by the Commission at any time, and where the provisional member is at that time employed in a position in the Teaching Service the appointment terminates at such time as is fixed by the Commission for the purpose.

(5) A provisional member of the Teaching Service shall not be confirmed as a member unless—

- (a) in the case of a person who has been provisionally registered as a teacher—his registration has been confirmed; and
- (b) he complies with the other requirements of Section 22; and
- (c) he satisfies the Commission as to his conduct, diligence and efficiency during the period of this provisional membership; and
- (d) in the case of a graduate from a Teacher's College who has not previously occupied a position in the Teaching Service he has completed 12 months of satisfactory service of provisional membership.

#### **24. CONTINUITY OF MEMBERSHIP.**

(1) Subject to this Act and to any other law, a member of the Teaching Service who maintains the continuity of his service in the Teaching Service is entitled to remain in the Service and to employment within the Education System until he reaches retiring age, and in particular—

- (a) to receive superannuation or other retirement benefits as provided by or under this Act; and
- (b) not to be reduced in status or classification.

(2) The Commission may recognize a period, not exceeding one year, of—

- (a) study leave without pay; or
- (b) attendance at in-service training courses approved by the Commission; or
- (c) any other leave granted under Part VIII,

as not interrupting service for the purposes of Subsection (1).

(3) Recognition under Subsection (2) may be extended from time to time by the Commission for periods each not exceeding one year.

(4) Subject to this Act, a member of the Teaching Service who—

- (a) vacates his position without giving to the Commission not less than three months' written notice, or such less notice (if any) as the Commission approves in any particular case, of his intention to do so; or
- (b) vacates his position without first securing appointment to another position; or



- (c) except with the consent of the Commission and subject to such conditions as are fixed by the Commission, ceases to carry out all the duties and functions of his position,

breaks the continuity of his service for the purposes of this section.

(5) Subject to the succeeding provisions of this section—

- (a) a person who breaks the continuity of his service in a manner referred to in Subsection (4) and whose period of absence from duty, or failure to carry out his duties, exceeds 12 months shall, unless otherwise determined by the Commission, be deemed to have resigned from the Teaching Service; and
- (b) a person who has ceased to be a member of the Teaching Service may be re-admitted as a member on such terms and conditions, and with such of the rights and entitlements that he would have had if he had not ceased to be a member, as the Commission determines.

(6) Where a person referred to in Subsection (5) ceased to be a member of the Teaching Service as a result of retirement under Section 120 and is re-admitted as a member within 12 months of ceasing to be a member, the continuity of his service shall be deemed not to have been broken for the purposes of Part VIII.

(7) Where a member of the Teaching Service is absent from teaching with the consent of the Commission for a period not exceeding three years for the purposes of—

- (a) extended study; or
- (b) professional experience; or
- (c) in the case of a female, family reasons,

the Commission may, in its discretion, declare that Section 37(4) does not apply in relation to his appointment to any position of a classification not higher than that of his last position, and if he is subsequently appointed to a position this Act applies as though he had not broken the continuity of his service.

(8) A person shall not be re-admitted as a member of the Teaching Service unless the Commission is satisfied that he meets, or will meet, the requirements of Section 22.

## ***Division 2.***

### ***Obligations of Membership.***

#### **25. GENERAL OBLIGATIONS.**

The primary obligation of a member of the Teaching Service appointed to a position under this Act is to discharge and perform to the best of his ability all the duties and functions, both curricular and extra-curricular, of the position.

**26. OUTSIDE ACTIVITIES.**

(1) A member of the Teaching Service appointed to a position under this Act shall not engage in outside activities that interfere or might interfere with the proper discharge of his duties.

(2) Subject to the obligation referred to in Subsection (1) and to Subsection (7), but without limiting in any way his normal rights as a member of the community, it is expressly declared that each member of the Teaching Service has the right to own property of any kind (including shares and interests in businesses) and to engage in outside religious and civic activities.

(3) Subject to the obligation referred to in Subsection (1), a member of the Teaching Service shall not engage in outside political activities.

(4) Except to the extent that—

- (a) the curricula determined under the *Education Act 1983* require or permit; or
- (b) national education policies dictate,

a member of the Teaching Service shall not, in carrying out the duties of his position, seek to promote the views or policies of any person, political party or organization.

(5) Where the Assistant Secretary is of the opinion that a member of the Teaching Service is engaged in any activities contrary to this section, he shall draw the attention of the member to the situation and direct him to rectify it.

(6) If the member fails to rectify the situation after being directed to do so, the Assistant Secretary or the Departmental Head may—

- (a) request a person authorized by the Commission under Part VII to institute disciplinary proceedings against the member; or
- (b) transfer the member; or
- (c) exercise his powers under both Paragraphs (a) and (b).

(7) Except with the permission of the Commission (which permission may be withdrawn at any time) a member of the Teaching Service shall not—

- (a) engage in or continue in the private practice of any profession, occupation or trade; or
- (b) enter into any employment, whether remunerative or not, with any person (natural or corporate); or
- (c) accept or engage in any remunerative employment other than in connection with the duties of his position in the teaching Service.

(8) The Commission shall, from time to time, issue instructions as to the procedures by which a member may request exemption from the provisions of Subsection (7).

**27. RECOGNITION OF COMMUNITY CUSTOMS AND VALUES.**

(1)<sup>12</sup> <sup>13</sup>As far as practicable, a member of the Teaching Service accepting an appointment in an educational institution under this Act ought to make himself aware of the customs and values of the community in which the institution is situated and of the communities that it services, and each appointing authority shall take whatever action seems to it necessary or desirable to that end.

(2) Subject to Subsections (3) and (4), where, in the opinion of the appointing authority, the conduct of a member of the Teaching Service is such as wilfully to ridicule and bring into contempt customs and values referred to in Subsection (1), the authority may transfer him to some other position, of not lower classification, within its jurisdiction.

(3) In arriving at a decision whether a member of the Teaching Service should be transferred under Subsection (2), the appointing authority shall take into consideration whether the customs and values wilfully ridiculed or brought into contempt by him are—

- (a) repugnant to the general principles of humanity or not in the public interest; or
- (b) improper, in the opinion of the authority, to be taken into account.

(4) Before taking action under Subsection (2), the appointing authority shall—

- (a) cause notice of its intention to do so to be served, personally or by post, on the member concerned; and
- (b) give to the member a reasonable opportunity of making any representations on the matter that he may care to make in writing or orally, by himself or with the assistance of another member; and
- (c) consider all the representations so made.

(5) The transfer of a member under this section shall be deemed not to be for disciplinary reasons or on account of unsatisfactory service.

(6) A person shall not be transferred under this section and also dealt with under Part VII in respect of the same matter.

(7) The Commission may request an appointing authority to provide any details of action under this section, and the appointing authority shall promptly provide the information.

**28. CODE OF ETHICS.**

(1) The Papua New Guinea Teachers' Association may—

- (a) adopt a Code of Ethics for the guidance of the teaching profession in the country; and

<sup>12</sup> Section 27(1) amended by *Teaching Service (Amendment) Act* 1995 (No. 20 of 1995), s6 and Schedule.

<sup>13</sup> Section 27(1) amended by *Teaching Service (Amendment) Act* 1995 (No. 20 of 1995), s6 and Schedule.

(b) amend the Code from time to time.

(2) All teachers and persons seeking registration as teachers shall be given an opportunity to subscribe to the Code of Ethics.

(3) The Commission has no powers to amend the Code of Ethics in any way, but may inform members of the Teaching Service and others of the extent (if any) to which the Commission supports the Code, whether in its original form or in an amended form.

**PART V. – INTERNAL ADMINISTRATION.**

***Division 1.***

***Institutional and Non-institutional Positions.***

**29. ESTABLISHMENTS, ETC.**

(1) The Commission may, after consultation with all education authorities concerned, create, reclassify or abolish positions and classes of positions in the Teaching Service, and may—

- (a) determine salaries or scales of salaries for a position or class of positions; and
- (b) determine the duties of a position or class of positions; and
- (c) determine the qualifications for a position or class of positions.

(2) Within such limits as are fixed by the National Education Board under Section 9 of the *Education Act 1983*, the Commission may, after consultation with all agencies concerned, fix the number of positions in each class of positions—

- (a) in relation to the whole of the country; or
- (b) in relation to a province; or
- (c) in relation to a particular educational institution or class of educational institutions.

(3) In fixing establishments under this section, the Commission shall have regard to the standard pupil/teacher ratios fixed under Section 33, and shall not exceed the maximum pupil/teacher ratios fixed or permitted under Section 27(1)(d) of the *Education Act 1983*.

(4) The Commission shall fix establishments that will adequately cover all tasks and situations required by the National Education Board to be dealt with by the Teaching Service.

(5) Establishments fixed under this section shall be used by the National Education Board in planning the development of the Education System.

(6) If the education agency conducting the institution so requests, the duty statement or statement of qualifications for a position in an educational institution may include a requirement of certain personal attributes or qualifications intended to preserve and strengthen the identity and character of the institution, but no such requirement shall relate to attributes of a sectarian, tribal or party-political nature.

**30. NON-INSTITUTIONAL POSITIONS.**

(1) The positions that may be created and abolished under Section 29(1) include any non-institutional positions—

- (a) that are required for the effective operation of the Education System; or

- (b) that the Commission thinks necessary or desirable to meeting the short-term needs of the Education System; or
- (c) that are required to provide postings for members of the Teaching Service who are—
  - (i) selected by the National Education Board to undertake special courses of training or in-service training; or
  - (ii) for some other reason, detached from teaching duties.

(2) A member who is placed in a non-institutional position retains such rights in relation to his former position as are prescribed.

### **31. TEMPORARY RE-CLASSIFICATION.**

The Commission may temporarily raise the classification of a position.

### **32. EFFECT OF ABOLITION OR RE-CLASSIFICATION.**

(1) Where the Commission—

- (a) abolishes a position; or
- (b) raises or lowers the classification of a position under Section 29,

the Commission shall appoint the member who occupied the position immediately before its abolition or reclassification to a non-institutional position with the same classification he had immediately before the abolition or reclassification.

(2) Where the Commission makes the same alteration to the classification of all positions having the same classification and designation, the Commission may by notice in the *Education Gazette*, direct that Subsection (1) does not apply.

### **33. PUPIL/TEACHER RATIOS.**

After consultation with the Commission, the Departmental Head shall fix standard pupil/teacher ratios in educational institutions and in classes of educational institutions.

### **34. COMMISSION TO BE KEPT INFORMED OF DEVELOPMENTS.**

For the purpose of allowing the Commission properly to perform its functions under this Division, the National Education Board shall keep the Commission fully informed on actual, prospective and planned educational development throughout the country.

**Division 2.**

***Vacancies, Appointments, Promotions, Transfers, etc.***

***Subdivision A. – General.***

**35. ADVERTISEMENT OF VACANCIES.**

(1) Subject to this section, the National Education Board and Provincial Education Boards, may by advertisement, invite persons to apply for appointment to vacant positions in the Teaching Service.

(2) Unless the Commission otherwise approves, all vacant positions (including all positions filled by acting appointments under Section 71, or by teachers appointed under Section 72) shall be advertised, at least once in each calendar year, in accordance with the succeeding provisions of this section.

(3) A vacant base-level position in a community school shall be advertised by the Provincial Education Board.

(4) Vacant promotional positions in community schools, and all vacant positions in provincial high schools, technical schools, vocational centres and national institutions, shall be advertised by the National Education Board in the *Education Gazette*.

(5) An advertisement under this section shall include as much information as it is reasonably practicable to provide about—

- (a) the vacancy; and
- (b) the qualifications for the position; and
- (c) the nature and location of the educational institution; and
- (d) the availability of accommodation; and
- (e) the conditions of appointment and service,

and such other information as is directed by the Commission.

(6) This section does not prevent an education agency from publishing in connection with, or in relation to, an advertisement under this section a general statement of its education philosophy and identity for the information of intending applicants.

**36. ANTICIPATED VACANCIES.**

(1) Where, in the opinion of the National Education Board or the Provincial Education Board, as the case requires, there will be or may be a vacancy in a position—

- (a) because it is expected that a member will leave the Teaching Service; or
- (b) because of the promotion or transfer, or expected promotion or transfer, of the member or person holding the position; or

(c) because of the creation or expected creation of a new position, or otherwise, the Board may, by notice in the *Education Gazette*, declare that the expected vacancy may be treated in accordance with Subsection (2) as though it had already occurred.

(2) Where a Board makes a declaration under Subsection (1)–

(a) any action may be taken under this Act that might be taken if the position were vacant as at the date of the declaration; and

(b) any resultant appointment, promotion or transfer takes effect only if the vacancy actually occurs.

### **37. APPOINTMENTS TO VACANT POSITIONS.**

(1) Where a vacancy exists in a position in the Teaching Service, it shall be filled in accordance with this Division.

(2) Where the vacancy exists in a base-level position, it shall be filled by the appointment of the most suitable person for the position, irrespective of whether or not he is a member of the Teaching Service.

(3) The right to appoint under Subsection (2) a person who is not a member may be limited by the Commission if in its opinion it is likely that the total number of members available for duty substantially exceeds the total number of available institutional and general non-institutional positions.

(4) Where the vacancy exists in a promotional position, the vacancy shall not be filled from outside the Teaching Service, unless after the procedures prescribed by Section 60 have been carried out, the Commission is satisfied that no member of the Service who is an applicant for the position is as suitable for the position as the proposed appointee who is not a member.

(5) Notwithstanding any other provision of this Division, where a vacancy exists in a position, the vacancy shall not be filled on a substantive basis by an applicant who is in his first year of service in a different substantive position at the same level as the vacant position.

(6) In making an appointment, an appointing authority shall take into account the education philosophy and identity of the educational institution concerned and not appoint a person who is unable to meet the qualifications, including the personal attributes or qualifications referred to in Section 29(6), but a member shall not be refused appointment solely on the ground of his sectarian, tribal or party-political beliefs or affiliations.

### **38. APPOINTMENTS IN COMMUNITY SCHOOLS AND VOCATIONAL CENTRES.**

(1) Appointments to positions in community schools and vocational centres shall be made by the Provincial Education Board acting, in the case of an



appointment of a promotional position, after having received the recommendation of a Selection Panel appointed under this section.

(2) A Selection Panel shall consist of—

- (a) the Assistant Secretary, who shall be the Chairman; and
- (b) not more than two members appointed by the Provincial Education Board from a panel or panels of names submitted by the Papua New Guinea Teachers' Association; and
- (c) if the education agency conducting the school or centre concerned so desires, one representative of that agency; and
- (d) if the Provincial Education Board so desires, one other member appointed by the Board.

(3) The procedure at a meeting of the Selection Panel shall be as prescribed.

(4) Appointments to base-level positions of members of the Teaching Service employed outside the province may be made only in accordance with such conditions as are laid down by the Commission for the transfer of members from one province to another.

### **39. APPOINTMENTS IN PROVINCIAL HIGH AND TECHNICAL SCHOOLS AND IN NATIONAL INSTITUTIONS.**

(1) Appointments to positions in a provincial high school or a technical school shall be made by the Provincial Education Board, after having received the recommendation of the Board of Governors of the school concerned.

(2) Appointments to positions in a national institution shall be made by the National Education Board, after having received the recommendation of the Governing Council of the national institution concerned.

(3) If the appointing authority is not prepared to accept the nomination of the governing body concerned, it shall call for another nomination, and if an acceptable nomination is not received within 14 days the vacancy shall be re-advertised.

### **40. QUALIFICATIONS FOR APPOINTMENT TO VACANT POSITIONS.**

A person who is not a member of the Teaching Service shall not be appointed under Sections 38 and 39 unless he is eligible under Section 22 for admission to membership of the Teaching Service.

### **41. PROCEDURES IN MAKING APPOINTMENTS.**

In making appointments, the National Education Board and a Provincial Education Board shall, as far as practicable, use fair and reasonable procedures and criteria, and it is the responsibility of the Commission to suggest such procedures and criteria.

**42. OBLIGATION TO APPOINT.**

(1) If any member of the Teaching Service who is suitable for appointment to an advertised vacancy in a promotional position applies for the appointment, the appointing authority shall—

- (a) appoint him or some other suitable member to the vacant position; or
- (b) immediately re-advertise the position.

(2) Subject to Subsection (3), Subsection (1) applies to and in relation to a re-advertisement as it applies to an original advertisement.

(3) If after a re-advertisement under this section—

- (a) the appointing authority does not make an appointment within what, in the opinion of the Commission, is a reasonable time; and
- (b) there were suitable applicants for the appointments,

the Commission may direct the appointing authority to make an appointment from among the suitable applicants.

**43. NOTICE OF APPOINTMENT.**

(1) The appointing authority shall send, by registered mail, to each applicant for appointment to an advertised vacancy, notice of any appointment to the position, and in the notice shall—

- (a) if the date on which the appointment is to be taken up is other than the first day of the next school year—specify the date; and
- (b) advise an unsuccessful applicant of the reasons why he was unsuccessful; and
- (c) give the details of any available right of appeal.

(2) If the appointing authority has rejected a recommendation of a Selection Panel under Section 38, or of a Board of Governors or Governing Council under Section 39, the appointing authority shall include in the notice under Subsection (1) a statement of that fact and of the authority's reason for the rejection.

(3) Where an applicant has no means of receiving registered mail, the notice under Subsection (1) shall be sent by the normal means by which the applicant receives mail, and the appointing authority shall, as far as is reasonably practicable, check that the notice was in fact received.

**44. FAILURE TO TAKE UP APPOINTMENT.**

(1) Subject to Subsection (2), where a successful applicant for an advertised vacancy fails without reasonable excuse to take up the appointment on or before the first day of the next school year or the date specified in the notice under Section 43, as the case may be, he forfeits both the appointment and his former appointment, and he may apply and be considered for any future advertised vacancy only on such conditions as are fixed by the Commission.

(2) The Commission may, for any reason submitted by the appointee that it thinks adequate—

- (a) postpone the date on which the appointee is required to take up the appointment; or
- (b) cancel the appointment and authorize his transfer to another position,

on such conditions as the Commission determines.

**45. APPLICATION OF SUBDIVISION A TO NON-INSTITUTIONAL POSITIONS.**

Subject to this Act, appointments to non-institutional positions shall be made by the National Education Board after consultation with the Commission and, where the Board considers if necessary to do so, appointments shall be made after advertisement and in accordance with this subdivision.

*Subdivision B. – Eligibility Status.*

**46. PERSONAL REPORTS.**

(1) This section does not derogate the powers and responsibilities of the Departmental Head under Section 27(c) of the *Education Act 1983*.

(2) On application by a member of the Teaching Service, the Departmental Head shall cause a professional assessment to be made of the work of the member.

(3) The assessment under Subsection (2) shall include an inspection of the work of the member at the educational institution at which he is teaching.

(4) The Departmental Head shall—

- (a) cause a copy of the report of the assessment to be given as soon as practicable to the member, together with any comments by the Departmental Head; and
- (b) give the member the opportunity of making any representations that he thinks fit to make.

**47. DECLARATION AS TO ELIGIBILITY STATUS.**

(1) On application by a member of the Teaching Service, the Departmental Head may make a declaration as to the eligibility of the member for any promotional position or class of promotional positions.

(2) A declaration under Subsection (1) shall be—

- (a) made after consideration of the professional skills appropriate to the position or class of positions concerned; and
- (b) based on—
  - (i) reports under Section 46; and

(ii) such additional matters as are determined by the Departmental Head; and

(iii) any representations made by the member concerned.

(3) As soon as practicable, a copy of a declaration under Subsection (1) shall be given to the member concerned.

(4) A member aggrieved by the failure or refusal of the Departmental Head to make a declaration under Subsection (1) in relation to a promotional position or a class of promotional positions may appeal in accordance with Subdivision C.

#### **48. CURRENCY OF DECLARATIONS.**

(1) Subject to Subsection (4), a declaration under Section 47(1) remains in force—

(a)<sup>14</sup> for a period of two years, or such longer period as is prescribed, from the date of the last report on the member under Section 46 made before the making of the declaration; or

(b) until the making of a fresh declaration under Section 47(1) in relation to the member concerned; or

(c) until cancelled by the Departmental Head under Subsection (2),

whichever first happens.

(2) Where the Departmental Head is satisfied that a member's professional performance is such that his declaration of eligibility should be cancelled, the Departmental Head may cancel the declaration.

(3) A member aggrieved by a decision of a Departmental Head under Subsection (2), may appeal in accordance with Subdivision C.

(4) Where the Departmental Head is satisfied that, through no fault of the member, it has not been practicable to make a further report on the member under Section 46 within the period for which the last declaration made in respect of the member under Section 47(1) is in force, the Departmental Head may extend the period for such time as he thinks proper, whether or not the period has already expired.

#### **49. LIMITATION OF NUMBER OF DECLARATIONS.**

(1) The Commission may, by written notice to the Departmental Head, limit the number of declarations that may be made under Section 47(1) in excess of the number of vacant positions.

(2) A limitation under Subsection (1) may relate to a particular promotional position or to a class of promotional positions.

<sup>14</sup> Section 48(1)(a) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

**50. EFFECT OF DECLARATIONS.**

Unless in relation to any position or class of positions the Commission determines that the holding of a current declaration is unnecessary, a member of the Teaching Service is not qualified for promotion to a promotional position unless he holds a current declaration under Section 47(1) for the position or for a class of positions that includes the position.

***Subdivision C. – Appointment and Promotion Appeals, Confirmation of Appointment or Promotion, etc.***

**51. INTERPRETATION OF SUBDIVISION C.**

In this Subdivision–

“**Committee**” means a Teaching Service Appeals Committee established under Section 53;

“**qualified member**” means a member of the Teaching Service who–

- (a) is eligible for promotion to a vacant position; and
- (b) was an applicant for promotion to the position,

other than such a member who stated in his application for the position that he could not meet, or was not prepared to meet, the housing, financial or other requirements or conditions associated with the position.

**52. APPLICATION OF SUBDIVISION C.**

This Subdivision does not apply to or in relation to an appointment–

- (a) to a promotional position in a community school or vocational centre where the unanimous recommendation of a Selection Panel appointed under Section 38 was accepted by the Provincial Education Board; or
- (b) that is declared to be not appealable by this Act.

**53. TEACHING SERVICE APPEALS COMMITTEES.**

(1) For the purpose of this Subdivision, there shall be such number of Teaching Service Appeals Committees as the Commission thinks necessary.

(2) The Committees shall deal with–

- (a) appeals against the cancellation of declaration of eligibility under Section 48; and
- (b) appeals against promotions, under Section 59; and
- (c) recommendations as to appointments to promotional positions from outside the Teaching Service, under Section 60; and

- (d) appeals against the refusal of declarations as to eligibility status, under Section 62; and
- (e) appeals against a declaration of vacant position under Section 63; and
- (f) appeals against reduction in classification under Section 64.

(3) Each Committee shall consist of—

- (a) a Chairman appointed by the Commission; and
- (b) a professional officer of the Department, of at least the rank of Inspector of Schools, nominated by the Departmental Head; and
- (c) a member of the Teaching Service nominated by the Papua New Guinea Teachers' Association.

(4) As far as practicable, the membership of the Committees shall remain constant for each class of positions.

(5) The Chairman and members of a Committee, while acting as such, are not subject to direction by any person or authority.

#### **54. TENURE OF OFFICE.**

Subject to this Act, the members of a Committee hold office on such terms and conditions as are prescribed.

#### **55. OBSERVERS.**

Where it appears to the Commission desirable to do so for the purposes of giving them training or experience, the Commission may appoint not more than two members to be observers at any meeting of a Committee.

#### **56. OATH, AFFIRMATION AND DECLARATION.**

(1) Each member of a Committee, before proceeding to perform the duties or exercise the powers of a member, and each observer before taking part in any meeting of a Committee, shall take the prescribed oath or make the prescribed affirmation and make the prescribed declaration of secrecy.

(2) The oath or affirmation shall be taken or made, and the declaration of secrecy shall be made, before a person authorized by the Commission for the purpose.

#### **57. DISQUALIFICATION.**

A person shall not act as a member of a Committee or as an observer in any case in which he is the appointee or an appellant.

#### **58. PROCEDURES OF COMMITTEES.**

A Committee shall make full inquiries into an appeal or matter referred to it under this Subdivision, without regard to legal forms and solemnities.

**59. APPEALS AGAINST PROMOTIONS.**

(1) Where a member of the Teaching Service is promoted to a promotional position, any qualified member may appeal, within the prescribed time and in the prescribed manner, against the promotion on the ground that—

- (a) the suitability of the appellant was not adequately considered by the appointing authority because—
  - (i) all the evidence was not available; or
  - (ii) due weight was not given to the evidence,  
and his suitability for the position is superior to that of the promotee; or
- (b) the position was filled by the appointing authority on conditions other than those advertised under Section 35.

(2) The Committee shall consider the matter and shall—

- (a) confirm the promotion; or
- (b) cancel the promotion and recommend to the Commission that it direct the appointing authority to—
  - (i) appoint a specified appellant to the position; or
  - (ii) re-advertise the vacancy under Section 35.

(3) Where an appeal is upheld under this section, the unsuccessful promotee shall be deemed to be an appellant on the grounds specified in Subsection (1) against all other promotees to all other positions for which he was an applicant, except where—

- (a) the time for appeal has expired without an appeal being made; or
- (b) all appeals have been finalized.

**60. REVIEW OF OUTSIDE APPOINTMENTS.**

(1) When an appointing authority wishes to appoint an applicant, who is not a member of the Teaching Service, to a promotional position, it shall recommend to the Commission that he be appointed.

(2) The Commission shall refer the matter to a Committee, together with full details of all qualified members.

(3) The Committee shall consider the relative suitability of the proposed appointee and all qualified members, and shall—

- (a) approve the appointment; or
- (b) reject the recommendation and recommend to the Commission that it direct the appointing authority to—
  - (i) appoint a specified qualified member to the position; or

- (ii) re-advertise the vacancy under Section 35.

#### **61. CONFIRMATION OF PROMOTIONS, ETC.**

(1) Where no appeal is made against a promotion within the prescribed period, the Commission shall confirm the promotion as soon as practicable.

(2) Where a Committee accepts a promotion or approves an appointment under this Subdivision, the Commission shall confirm the promotion or appointment.

(3) Where a Committee makes a recommendation under Section 59(2)(b)(i) or 60(3)(b)(i), the Commission shall direct the appointing authority to—

- (a) appoint the specified person to the position; or
- (b) re-advertise the vacancy under Section 35.

(4) The appointment of a member in accordance with a direction of the Commission under Subsection (3) is not subject to appeal.

(5) Where a Committee makes a recommendation under Section 59(2)(b)(ii) or 60(3)(b)(ii), the Commission shall direct the appointing authority to re-advertise the vacancy under Section 35.

(6) The Commission shall not confirm a promotion or approve an appointment, or direct an appointment, under this section where—

- (a) the promotee or appointee has died, resigned or retired; or
- (b) disciplinary proceedings against the promotee or appointee under this Act—
  - (i) have been instituted but not completed—in which case the promotion or appointment shall not be confirmed or directed until the proceedings have been completed; or
  - (ii) have been instituted and completed—in which case the promotion or appointment shall not be confirmed, approved or directed unless—
    - (A) the promotee or appointee is found not guilty; or
    - (B) the decision on the proceedings recognizes that the appointment may be confirmed.

(7) The Commission shall, on behalf of the appointing authority, notify in the *Education Gazette* any appointment which has been confirmed or made under this section.

#### **62. APPEAL AGAINST REFUSAL OF DECLARATION AS TO ELIGIBILITY STATUS.**

(1) A member of the Teaching Service, who is aggrieved by the failure or refusal of the Departmental Head to make a declaration under Section 47(1) in relation to a promotional position or a class of promotional positions, may appeal to



the Committee against the failure or refusal in such manner and in such time as are prescribed.

(2) On an appeal under this section, the Committee shall grant or refuse a declaration as to the eligibility of the member for the position or class of positions concerned, and, subject to Subsection (3), the declaration shall be deemed, for all purposes, to be a declaration under Section 47(1).

(3) A declaration under this section shall not be taken into account in calculating the number of declarations in force under Section 47(1) at any time for the purposes of Section 49, but until the number of current declarations returns to the number limited under Section 49 no new declarations may be made under Section 47(1).

### **63. APPEAL AGAINST RE-ADVERTISEMENT OF POSITION.**

(1) Where an appointing authority decides in accordance with the provisions of Section 67(1) to declare a position vacant, the appointing authority shall inform the member occupying the position by registered post no later than the last school day of the year prior to the year in which it is decided the position shall be re-advertised.

(2) A member aggrieved by a decision of the appointing authority may appeal to the Teaching Service Appeals Committee in the prescribed manner.

(3) The Teaching Service Appeals Committee shall consider the appointing authority's reasons for declaring the position vacant, including any professional reports referred to in Section 67, together with any other consideration the Committee deems relevant and shall either—

- (a) uphold the appointing authority's decision; or
- (b) cancel the appointing authority's decision and order that the member continue to hold the position substantively for a minimum period of 12 months.

(4) Where a member appeals under the provisions of this Section he continues to hold the position substantively until the Committee determines the appeal.

### **64. APPEAL AGAINST REDUCTION IN CLASSIFICATION.**

(1)<sup>15</sup> <sup>16</sup>A member of the Teaching Service who is aggrieved by a decision of the Departmental Head to reduce him to a lower classification under Section 69 may appeal to the Committee against the reduction in classification in such manner and in such time as are prescribed.

(2) On an appeal under this section the Committee shall consider the Departmental Head's reasons for the reduction in classification including the professional reports referred to in Section 69(1) together with any other considerations the Committee deems relevant and shall—

<sup>15</sup> Section 64(1) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>16</sup> Section 64(1) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

- (a) uphold the Departmental Head's decision; or
- (b) reduce the member to a classification other than that determined by the Departmental Head; or
- (c) cancel the determination of the Departmental Head and direct the appointing authority that the member is to be given the same classification which he held immediately before the reduction in classification.

**65. APPEAL AGAINST CANCELLATION OF ELIGIBILITY.**

(1) A member of the Teaching Service who is aggrieved by a decision of the Departmental Head to cancel his declaration of eligibility under Section 48 may appeal to the Committee in such manner and in such time as are prescribed.

(2) On an appeal under this section the Committee shall consider the Departmental Head's reasons for the cancellation of declaration of eligibility together with any other considerations the Committee deems relevant and shall—

- (a) uphold the Departmental Head's decision; or
- (b) allow the appeal and restore the declaration of eligibility for such period as it may determine.

**66. FRIVOLOUS APPEALS.**

(1) If, in the opinion of the Chairman of a Committee, an appeal under this Part is of a frivolous nature and the appeal is not withdrawn before the hearing commences, he shall notify the appellant accordingly and require him to make, within a reasonable time fixed in the notice, any explanation or representation that he may care to make.

(2) If, after considering the explanation and representations (if any) made under Subsection (1), the Committee is of the opinion that the appeal was of a frivolous nature, the Committee may—

- (a) report to the Commission accordingly; and
- (b) recommend that the appellant pay a fine not exceeding K20.00.

(3) The Commission shall—

- (a) accept the report and recommendation and fine the appellant an amount not exceeding K20.00; or
- (b) reject the report or recommendation,

and its decision is final.

***Subdivision D. – Review of Appointments.*****67. RE-ADVERTISEMENT OF POSITIONS.**

(1) Subject to Subsection (7), where a member has been appointed to a position in accordance with the provisions of Subdivision V.2.A. and has held the position for a period of not less than three years and—

- (a) within the initial period of three years of the appointment or at any time thereafter receives a professional report which, in the opinion of the Departmental Head, indicates that his performance in the position is unsatisfactory; or
- (b) within the initial period of three years he does not apply for or receive a personal report under Section 46; or
- (c) in any two year period after the initial three years of the appointment expires he does not apply for or receive a personal report under Section 46 of this Act,

the appointing authority may declare the position vacant and—

- (d) in the case of a base-level position in a community school re-advertise the position; or
- (e) in the case of a promotional position in a community school or any position in a vocational centre, technical school, provincial high school or national institution, direct the National Education Board to re-advertise the position.

(2) Where an appointing authority is satisfied that through no fault of the member, it has not been practicable to make a report within the period specified in Subsection (1)(b) or (c), the appointing authority shall not declare the position vacant until it is satisfied that the member has had an opportunity of obtaining a report and has neglected to do so.

(3) A member occupying a position referred to in Subsection (1) may apply for the position and shall be given equal consideration with any other applicants for the position provided that he still possesses the qualifications for the position.

(4) Where a member referred to in Subsection (1) is not re-appointed to the position and is not given either a substantive appointment or an acting appointment to any other position, the member shall either—

- (a) request the Commission to grant him leave without pay under Section 103; or
- (b) resign from the Teaching Service.

(5) A member who is granted leave without pay under Subsection (4) and who within 12 months fails to obtain an appointment to a position within the Teaching Service shall be deemed to have resigned from the Teaching Service.

(6) The Departmental Head may, from time to time, issue instructions concerning the eligibility of members who are not re-appointed under Subsection (4) and are granted leave without pay under Subsection (4)(a).

(7) Where a member occupies a position for which an education agency has requested that the Duty Statement include a requirement of certain personal attributes or qualifications pursuant to Section 29(6) and, in the opinion of the agency, the member no longer possesses those attributes or qualifications, it may request the appointing authority to—

- (a) declare the position vacant; and
- (b) re-advertise the position.

(8) Where an appointing authority re-advertises a position in accordance with Subsection (7), the provisions of Subsections (3), (4), (5) and (6) shall apply.

(9) Where an education agency is aggrieved by a decision of an appointing authority under Subsection (7), it may appeal to the Commission and the Commission may direct the appointing authority to—

- (a) declare the position vacant; and
- (b) re-advertise the position.

**68. RELEASE FROM SUBSTANTIVE APPOINTMENT UNDER EXCEPTIONAL CIRCUMSTANCES.**

(1) The Commission may, after consultation with the appointing authority concerned—

- (a) where a member of the Teaching Service, who has been appointed to fill a vacant position, requests a transfer from his substantive position to a vacant position on compassionate or other exceptional grounds; and
- (b) where it is satisfied that those compassionate or other exceptional grounds exist and the request is, in all the circumstances, reasonable; and
- (c) after giving consideration to the replacement of the member concerned,

authorize the transfer of the member from his substantive position to the vacant position.

(2) Where a member is transferred in accordance with an authorization under Subsection (1), the Commission may declare the position that was formerly filled by the transferred member to be vacant.

**69. REDUCTION IN CLASSIFICATION.**

(1)<sup>17</sup> <sup>18</sup>For the purpose of this section, “**professional reports**” means personal reports issued under Section 46 and inspection reports issued under Section 28(d) of the *Education Act 1983*.

(2) Where a member occupying a promotional position has received two professional reports which, in the opinion of the Departmental Head, indicate that the member is not carrying out his professional duties to the standard of competence required by the Duty Statement of the position, he may request the member to show cause why he should not be reduced to a lower classification.

(3)<sup>19</sup> <sup>20</sup>After consideration of any representations received under Subsection (2), the Departmental Head may, after consultation with the Commission, reduce the member to a lower classification.

(4)<sup>21</sup> <sup>22</sup>Where a member referred to in Subsection (2) is reduced in classification, the Commission shall, with the approval of the appointing authority, direct that the member be transferred to a position having the same classification as that given to him by the Departmental Head under Subsection (3).

***Subdivision E. – Miscellaneous.*****70. DATE OF EFFECT OF APPOINTMENTS AND PROMOTIONS.**

Unless the Commission approves otherwise, an appointment on promotion takes effect on 1 January next following the date of notification of the appointment or promotion under Section 61(7).

**71. ACTING APPOINTMENTS.**

(1) Where a member of the Teaching Service is absent from his position or unable to perform the duties of his position, or there is a vacancy in a teaching position, the appointing authority may appoint another member to act in the place of the member during his absence or inability, or may appoint a member to fill the vacancy until a permanent appointment is made.

(2) Where practicable, a member of the Teaching Service with eligibility status for the position shall be given preference in an appointment under this section over a member who has not.

(3) Where no suitable member is available for appointment under this section, a teacher who is not a member may be appointed under Section 72 to fill the vacancy.

(4) A person aggrieved by a decision of an appointing authority under this section may appeal to the Commission, whose decision is final.

<sup>17</sup> Section 69(1) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>18</sup> Section 69(1) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>19</sup> Section 69(3) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>20</sup> Section 69(3) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>21</sup> Section 69(4) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>22</sup> Section 69(4) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

**72. CASUAL EMPLOYMENT.**

(1) Subject to the determinations, where, in the opinion of the Assistant Secretary it is necessary for a vacant position in an educational institution (other than a national institution) in his province to be filled on a casual or part-time basis, he may appoint a teacher to fill the position.

(2) Subject to the determinations, where in the opinion of the Departmental Head it is necessary for a vacant position in a national institution to be filled on a casual or part-time basis, he may appoint a teacher to fill the position.

(3) The terms and conditions of appointment and of service of teachers appointed under this section are as determined by the Commission.

(4) Subject to the determinations, the services of a teacher employed under this section may be dispensed with at any time—

- (a) in the case of a teacher in an educational institution other than a national institution—by the Assistant Secretary; and
- (b) in the case of a teacher in a national institution—by the Departmental Head.

**73. SALARY ON APPOINTMENT.**

(1) Where a rate of salary is determined for a position, a person on appointment to the position is entitled to that salary.

(2) Subject to Subsection (3), where a scale of rates of salary is determined for a position, a person on appointment to the position is entitled to the lowest salary on the scale, unless the Commission approves the payment of some other salary on the scale.

(3) Where—

- (a) a person is appointed to a promotional position; and
- (b) the salary payable to that person in the position that he occupied immediately before that appointment was greater than the lowest of the scale of salaries determined for the promotional position,

the person is entitled to the salary in the scale that is the nearest to (but not less than) his previous salary, unless the Commission approves the payment of a higher salary in that scale.

(4) Unless the Commission otherwise directs, in the case of a promotion, increased salary is payable as from the commencement of the first pay period commencing after 31 December in the year in which the promotion was made.

**PART VI. – SALARIES AND ALLOWANCES.**

**74. SALARY CLASSIFICATIONS.**

(1) Positions shall be given such classifications as are determined by the Commission.

(2) Subject to the provisions of the *Salaries and Conditions Monitoring Committee Act 1988*, a classification under Subsection (1) may provide for a rate of annual salary or a scale of rates of annual salary.

**75. ALLOWANCES.**

(1) Members of the Teaching Service shall be paid such allowances in such cases as the Commission determines.

(2) Allowances or a determination under Subsection (1) may apply to all members or to a class or classes of members.

(3) This section does not affect the operation of Division XI.2.

**76. DEDUCTIONS.**

(1) Deductions may be made from the salary of members of the Teaching Service—

- (a) as determined by the Minister, in relation to a member or class of members, for any service provided by the State or an education authority; and
- (b) as prescribed, in respect of any debt due by a member in respect of any expense incurred by the State in relation to the member or his family; and
- (c) at the request of a member and with the agreement of the Commission, for the subscriptions due, and other moneys payable, for or in respect of membership in—
  - (i) registered teachers' associations; and
  - (ii) other organizations or bodies approved by the Commission.

(2) This section does not affect the operation of Division XI.2.

**77. INCREMENTS.**

(1) Where a scale of rates of salary determined under Section 74 is applicable in relation to a position, the member of the Teaching Service occupying the position may, subject to this section, be paid increments of salary in accordance with the scale.

(2)<sup>23</sup> <sup>24</sup>Subject to Subsection (5), a member is not entitled to receive an increment of salary until he has received salary without the increment for not less than 12 months.

(3) If, having regard to the conduct, diligence, efficiency and attendance for duty of a member during the period after which he is entitled to receive an increment of salary, the appointing authority is of the opinion that the member should not receive, or should not immediately receive the increment, the appointing authority may, by written order, direct that the increment—

- (a) be not paid; or
- (b) be not paid until the end of such period (not exceeding 12 months) as it thinks fit,

and in a case to which Paragraph (a) applies payment of the increment shall be deferred until the end of that period.

(4) A member in respect of whom an order is made under Subsection (3) may appeal to the Commission, which may confirm, annul or vary the order.

(5) Unless the appointing authority, with the approval of the Commission, otherwise directs, an order under Subsection (3) as to the payment of an increment does not affect the date on which the payment of the next increment is due.

(6) Before giving a decision under this section, the Commission shall—

- (a) serve on the member concerned, personally or by post, notice of its intention to do so; and
- (b) give him a reasonable opportunity of making representations on the matter; and
- (c) consider any such representations.

## **78. CONDITIONS OF ADVANCEMENT.**

(1) The Commission may—

- (a) determine that a member of the Teaching Service occupying a specified position or one of a specified class of positions shall, on compliance with the specified conditions, be paid salary at the specified rate, being a rate not exceeding the maximum salary of the position or class of positions; and
- (b) determine that a member shall not be paid salary at a rate exceeding the specified rate unless he has complied with the specified conditions.

(2) A determination under Subsection (1) has effect notwithstanding Section 77.

<sup>23</sup> Section 77(2) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>24</sup> Section 77(2) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.



**PART VII. – DISCIPLINE.**

***Division 1.***

***Disciplinary Committees.***

**79. PROVINCIAL DISCIPLINARY COMMITTEES.**

(1) In accordance with such instructions as are given by the Commission, each Provincial Education Board shall establish a Provincial Disciplinary Committee.

(2) A Provincial Disciplinary Committee shall consist of–

- (a) the Assistant Secretary who shall be the Chairman; and
- (b) two members appointed by the Provincial Education Board from a panel of names submitted to the Board by the Papua New Guinea Teachers' Association; and
- (c) if the Provincial Education Board so desires, not more than two other members appointed by the Board.

(3) The Chairman and members of a Provincial Disciplinary Committee, while acting as such, are not subject to direction by any person or authority.

**80. NATIONAL EDUCATION BOARD DISCIPLINARY COMMITTEE.**

(1) The National Education Board shall, from time to time, establish a National Education Board Disciplinary Committee.

(2)<sup>25</sup> <sup>26</sup>The National Education Board Disciplinary Committee shall consist of–

- (a) the Departmental Head or his nominee, who shall be the Chairman; and
- (b) two members appointed by the National Education Board from a panel of names submitted to the Board by the Papua New Guinea Teachers' Association; and
- (c) if the National Education Board so desires, not more than two other members appointed by the Board.

(3) The Chairman and members of the National Education Board Disciplinary Committee, while acting as such, are not subject to direction by any person or authority.

**81. TEACHING SERVICE COMMISSION DISCIPLINARY COMMITTEE.**

(1) The Commission shall, from time to time, establish a Teaching Service Commission Disciplinary Committee.

(2) The Teaching Service Commission Disciplinary Committee shall consist of–

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<sup>25</sup> Section 80(2) amended by *Teaching Service (Amendment) Act* 1995 (No. 20 of 1995), s6 and Schedule.

<sup>26</sup> Section 80(2) amended by *Teaching Service (Amendment) Act* 1995 (No. 20 of 1995), s6 and Schedule.

- (a) subject to Subsections (3) and (4), a Principal Magistrate, appointed by the Commission, who shall be the Chairman; and
- (b) one member appointed by the Commission from a panel of names submitted to the Commission by the Papua New Guinea Teachers' Association; and
- (c) one other member appointed by the Commission.

(3) Where, in any matter before the Teaching Service Commission Disciplinary Committee, the member of the Teaching Service concerned is a member of the Papua New Guinea Teachers' Association, the Commission and the Association may agree that some person other than a Principal Magistrate shall be the Chairman of the Committee, and in that case the Commission shall appoint that person to be the Chairman.

(4) Where, in any matter before the Teaching Service Commission Disciplinary Committee, the member of the Teaching Service concerned is not a member of the Papua New Guinea Teachers' Association, the Commission may, if it thinks fit, appoint some person other than a Principal Magistrate to be the Chairman.

## **82. OATH, AFFIRMATION AND DECLARATION.**

(1) Before proceeding to perform the duties or exercise the powers of a member of a Disciplinary Committee, such member shall take the prescribed oath or make the prescribed affirmation, and make the prescribed declaration of secrecy.

(2) The oath or affirmation shall be taken or made, and the declaration of secrecy shall be made, before a person authorized by the Commission for the purpose.

### ***Division 2.***

#### ***Disciplinary Offences.***

## **83. DISCIPLINARY OFFENCES.**

A member of the Teaching Service who—

- (a) commits a breach of this Act; or
- (b) wilfully disobeys or disregards a lawful order made or given by a person having authority to make or give it; or
- (c) is negligent or careless in the discharge of his duties; or
- (d) is inefficient or incompetent from causes within his own control; or
- (e) uses intoxicating liquor or drugs to excess, so as to impair his professional competence; or
- (f) solicits or accepts a fee, reward, gratuity or gift in connection with the discharge of his duties (other than his authorized remuneration), except in a case or in circumstances in which gifts of a customary or traditional nature are freely exchanged; or

- (g) is guilty of disgraceful or improper conduct in his official capacity or otherwise, so as to reflect on the teaching profession; or
- (h) having taken an oath or made an affirmation or declaration under this Act, does or says anything in violation of that oath, affirmation or declaration; or
- (i) abuses his authority or his relationship with subordinates,

is guilty of a disciplinary offence and is liable to be dealt with and punished under this Part.

### *Division 3.*

### *Minor Offences.*

#### **84. DEALING WITH MINOR OFFENCES.**

(1A)<sup>27</sup> <sup>28</sup>For the purposes of this section, the Provincial Administrator in a province is the Departmental Head in relation to members of the Teaching Service employed in the province.

(1) If a person authorized by the Commission to deal with minor disciplinary offences has reason to believe that a member of the Teaching Service has committed a disciplinary offence that, in his opinion, would be properly dealt with under this section, he may charge the member with the offence in the prescribed manner.

(2) A member charged under Subsection (1) shall, in the prescribed manner and within the prescribed time, state whether he admits or denies the truth of the charge, and may give any explanation that he desires to give in regard to it, and, if a statement is not given by the member within the prescribed time, the member shall be taken to have denied the truth of the charge.

(3) A person who laid the charge shall send—

- (a) a copy of the charge; and
- (b) any statement or explanation given by the member charged; and
- (c) his report on the matter,

to the Departmental Head, in the case of a charge against a member occupying a position in a national institution, and in any other case to the Assistant Secretary.

(4) If the Departmental Head or the Assistant Secretary as the case may be, after considering the matters forwarded to him under Subsection (3) and any further reports that he thinks relevant, is of opinion that the charge has been sustained, he may—

- (a) caution or reprimand the member concerned; or
- (b) fine him a sum not exceeding K10.00.

<sup>27</sup> Section 84(1A) inserted by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s1.

<sup>28</sup> Section 84(1A) inserted by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s1.

(5) The member may appeal, in the prescribed manner and within the prescribed time—

- (a) in the case of a charge against a member occupying a position in a national institution—to the National Education Board; and
- (b) in any other case—to the Provincial Education Board,

against the finding or the penalty, or against both the finding and the penalty, and the Board may confirm, annul or vary the finding or penalty, or both, but not so as to impose a fine exceeding K10.00.

(6) When the National Education Board or the Provincial Education Board is dealing with an appeal under Subsection (5), the Departmental Head or the Assistant Secretary, as the case may be, shall not sit as a member of the Board.

(7) The Commission may request the Departmental Head, the National Education Board, the Assistant Secretary or the Provincial Education Board to provide any details of action taken under this section, and the Departmental Head, the Provincial Head, the Assistant Secretary or the Board, as the case may be, shall promptly provide the information.

#### *Division 4.*

#### *Serious Offences.*

### **85. DEALING WITH SERIOUS OFFENCES.**

(1A)<sup>29</sup> <sup>30</sup>For the purposes of this section, the Provincial Administrator in a province is the Departmental Head in relation to members of the Teaching Service employed in the province.

(1) If a person authorized by the Commission to deal with serious disciplinary offences has reason to believe that a member of the Teaching Service has committed a disciplinary offence that, in his opinion, could not be properly dealt with under Section 84, he may charge the member with the offence in the prescribed manner.

(2) On a charge being laid against a member, he shall—

- (a) promptly be given a copy of the charge; and
- (b) be directed—
  - (i) to reply promptly in writing, stating whether he admits or denies the truth of the charge; and
  - (ii) to give any explanation that he desires to give in regard to it,

and if a reply is not given by the member within the prescribed time he shall be deemed to have denied the truth of the charge.

(3) The person who laid the charge shall send—

<sup>29</sup> Section 85(1A) inserted by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s2.

<sup>30</sup> Section 85(1A) inserted by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s2.

- (a) a copy of the charge; and
- (b) any statement or explanation given by the member charged; and
- (c) his report on the matter,

to the National Education Board Disciplinary Committee in the case of a charge against a member occupying a position in a national institution, and in any other case to the Provincial Disciplinary Committee.

(4)<sup>31</sup> <sup>32</sup>If, after considering the matters sent to it under Subsection (3) and any further reports that it thinks relevant, the National Education Board Disciplinary Committee or Provincial Disciplinary Committee, as the case may be, is of the opinion that the charge has been sustained, it may recommend to the National Education Board or the Provincial Education Board, as the case may be, that it—

- (a) caution or reprimand the member; or
- (b) fine him a sum not exceeding K100.00; or
- (c) defer an increment for a period not exceeding 12 months; or
- (d) reduce his salary by one or more increments; or
- (e) reduce him to a lower classification; or
- (f) recommend to the Commission his dismissal from the Teaching Service.

(5) Where it is in the interests of a member who has been found guilty of a disciplinary offence under this section to do so, the National Education Board, in the case of a member occupying a position in a national institution, and in any other case the Provincial Education Board, may, after considering the representations (if any) of the member, transfer him to a vacant position in some other educational institution.

(6) A member transferred in accordance with Subsection (5) shall be deemed to hold an acting appointment to the new position, made under Section 71.

(7) A transfer under Subsection (5) shall not be deemed to be a penalty for the offence.

(8) The National Education Board shall consider any finding and recommendation of the National Education Board Disciplinary Committee, and the Provincial Education Board shall consider any finding and recommendation of the Provincial Disciplinary Committee, and may—

- (a) accept or reject them; or
- (b) impose any other penalty specified in Subsection (4).

(9) The Board shall, in the prescribed manner, promptly inform the member of its decision under Subsection (8).

(10) The decision of the Board under Subsection (8) is subject to appeal and confirmation in accordance with the succeeding provisions of this section.

<sup>31</sup> Section 85(4) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>32</sup> Section 85(4) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

(11) The member may, within the prescribed time and in the prescribed manner, appeal to the Teaching Service Commission Disciplinary Committee on the ground of innocence of the offence or the excessive severity of the punishment.

(12) The Teaching Service Commission Disciplinary Committee may—

- (a) confirm or reject the decision; or
- (b) impose any other penalty specified in Subsection (4),

and its decision is final.

(13) Where a Board imposes a penalty specified in Subsection (4)(a), (b), (c), (d) or (e), the Commission shall confirm the decision of the Board unless the member concerned appeals in accordance with Subsection (11).

(14) Where a Board makes a recommendation under Subsection (4)(f) the Commission may, subject to any appeal under Subsection (11), reduce the classification or dismiss the member or impose any other penalty specified in Subsection (4).

(15) Where a Board reduces the classification of a member, the Board shall, subject to an appeal under Subsection (11), and after consultation with the Commission, transfer the member to a position of the same classification to which he has been reduced.

(16) A decision of the Commission under this section is final.

(17) Unless the Commission otherwise directs, the deferment of an increment under this section does not affect the date on which payment of the next increment is due.

### *Division 5.*

#### *Proceedings, etc., of Disciplinary Committees.*

#### **86. POWERS OF CHAIRMAN OF COMMITTEE.**

(1) The Chairman of a Disciplinary Committee may—

- (a) summon any person whose evidence is likely to be material to the consideration of any question that the Committee has to determine under this Act; and
- (b) administer an oath or affirmation to any person summoned by him or appearing voluntarily before the Committee; and
- (c)<sup>33</sup> require any person to produce documents in his possession or control.

(2) A person who knowingly makes a false or misleading statement in any evidence before a Disciplinary Committee is guilty of an offence.

Penalty: A fine not exceeding K100.00.

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<sup>33</sup> Section 86(1)(c) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

(3) A member of the Teaching Service who neglects or fails, without reasonable excuse (proof of which is on him), to attend in obedience to a summons under Subsection (1), or to be sworn or affirmed or to answer questions or produce a document, when required to do so under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(4) A person other than a member of the Teaching Service who, after payment or tender of reasonable expenses, neglects or fails, without reasonable excuse (proof of which is on him), to attend in obedience to a summons under Subsection (1), or to be sworn or affirmed or to answer questions or produce a document, when required to do so under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(5) It is a defence to a charge under Subsections (3) or (4) for failing to answer a question or to produce a document if the accused person proves that the question or document was not relevant to the matter before the Disciplinary Committee.

## **87. PROCEEDINGS BEFORE COMMITTEES.**

(1) The Chairman of a Disciplinary Committee shall fix a date and place for the hearing of any matter, and shall notify the member of the Teaching Service concerned, personally or by post, of them.

(2) The Chairman of the Disciplinary Committee and the charging authority shall, where practicable, give to the member a copy of all documents intended to be used at the hearing at least seven days before the date fixed under Subsection (1).

(3) The member shall inform the Chairman of the Disciplinary Committee of the names and addresses of any witnesses whom he wishes to attend the hearing and shall, where practicable, make arrangements for their attendance.

(4) The member and the charging authority are entitled to appear, and to examine witnesses and address the Disciplinary Committee, personally or by a lawyer or agent.

(5) The Disciplinary Committee shall make a thorough investigation without regard to legal forms or solemnities or the rules of evidence, and may inform itself on any matter in such manner as it thinks proper.

(6) The Disciplinary Committee shall determine whether the hearing shall be in public or in private.

(7) Where the Teaching Service Commission Disciplinary Committee upholds an appeal, it may recommend that the amount of all or any specified part of the reasonable expenses incurred by a member of the Teaching Service in prosecuting the appeal be paid, and if approved by the Commission the amount may be paid to the member.

**88. PROCEEDINGS WHERE MEMBER CHARGED OR WITNESS IN REMOTE LOCALITY.**

(1) Where it appears to a Disciplinary Committee that it is undesirable, by reason of—

- (a) the member charged or a witness being stationed in a remote locality; or
- (b) expense, inconvenience or delay,

to require a member of the Teaching Service charged under this Part, or a witness, to attend before it to give evidence, the Committee may, by written order under the hand of the Chairman, appoint a fit and proper person to take the evidence of the member or witness.

(2) A person appointed under Subsection (1) shall take the evidence of the member or witness on oath or affirmation, and for that purpose has all the powers, immunities and privileges of the Chairman of the Disciplinary Committee.

(3) A person who is entitled to be represented before the Disciplinary Committee is entitled to be represented before a person taking evidence under this section.

(4) Evidence taken under this section shall be certified under the hand of the person taking it and forwarded to the Disciplinary Committee, and shall be considered by it in connection with the matter before the Committee.

***Division 6.***

***Miscellaneous.***

**89. INSTRUCTIONS AS TO DISCIPLINARY MATTERS.**

The Commission may issue instructions regarding disciplinary procedures and guidelines as to the imposition of penalties.

**90. SUSPENSION.**

(1) If it is considered that an alleged disciplinary offence is of such a nature that the member of the Teaching Service concerned should not continue in the performance of his duty, the Commission or a person authorized by the Commission for the purpose, or in case of emergency any person authorized to lay charges under this Part, may suspend the member from duty.

(2) Suspension may be effected before, at the time of or after the laying of the charge, and may be removed at any time by the Commission or, with the consent of the Commission, by the person who suspended the member.

(3) The suspension ceases—

- (a) at the end of 14 days after it was imposed, unless—



- (i)<sup>34</sup> within that period a charge is laid against the member under Section 85; or
  - (ii) the Commission approves otherwise; and
- (b) in any event, when the matter of the offence is finally disposed of.

(4) While a member is suspended from duty under this section, he is entitled to receive his pay during the period of suspension unless he absconds or the Commission orders otherwise.

(5) While a member of the Teaching Service is suspended without pay under this Act—

- (a) he may take other employment (otherwise than with the State) and shall not be deemed, by reason of suspension, to have broken the continuity of his service in the Teaching Service; and
- (b) the period of the suspension shall be counted as part of the member's service in the Teaching Service unless the Commission directs otherwise.

#### **91. DEDUCTION OF FINE, ETC., FROM SALARY.**

(1) Where a fine or pecuniary penalty is imposed on a member of the Teaching Service under this Part, the amount of the fine or penalty shall be deducted from any pay due to the member by the State.

(2) A deduction under Subsection (1) shall be made by instalments each not exceeding 25% of the net pay payable from time to time to the member.

(3) All fines and penalties imposed and recovered under this Part shall be paid into the Consolidated Revenue Fund.

#### **92. PROCEDURE WHERE ADDRESS OF MEMBER UNKNOWN.**

(1) In the event of the address of a member of the Teaching Service being unknown to an authority wishing to give to him any notice, order or communication under or for the purposes of this Part, any such notice, order or communication may be posted to the last-known address of the member, and compliance with this subsection is sufficient service on the member of the notice, order or communication.

(2) Where—

- (a) a notice, order or communication posted to a member in accordance with Subsection (1)—
  - (i) relates to a charge made against him; and
  - (ii) asks whether he admits the truth of the charge; and
- (b) no answer is received by the authority giving the notice, order or communication within a reasonable time specified in it,

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<sup>34</sup> Section 90(3)(a)(i) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

the member shall be deemed to have denied the truth of the charge, and it may be dealt with in his absence.

**93. MEMBER CHARGED WITH CRIMINAL OFFENCE.**

(1) In this section, “**criminal offence**” means an offence for which the maximum punishment is not less than two years’ imprisonment whether on indictment or on summary conviction.

(2) Where a member of the Teaching Service is charged with having committed a criminal offence, he shall be suspended by the Commission, or by a person authorized by the Commission to lay charges under this Part.

(3) If the member is convicted of the offence, the Commission may—

- (a) dismiss the member; or
- (b) reduce him to a position of a lower classification; or
- (c) reduce his salary; or
- (d) transfer the member to any other position at the same school or in any other school.

(4) Unless the Commission otherwise directs, a member who is suspended or dismissed under this section shall not receive any pay from the date on which, or for the period during which, he ceased to perform the duties of his position.

(5) This section does not prevent a member being dealt with under some other provision of this Act, but a member shall not be punished under this Act twice in respect of the same offence or matter.

**94. RE-ADMISSION, ETC., OF CERTAIN CONVICTED PERSONS.**

(1) This section applies where—

- (a) a person has been dismissed from the Teaching Service or reduced to a position of a lower classification or to a lower salary under Section 93; and
- (b) subsequently—
  - (i) the conviction is quashed; or
  - (ii) he receives a pardon; or
  - (iii) the conviction is otherwise nullified; or
  - (iv) he is released from prison as a result of an inquiry into the conviction.

(2) A person to whom this section applies may be re-admitted to the Teaching Service or re-instated in the Teaching Service by the Commission—

- (a) in a position not lower in classification than the position that he occupied immediately before his dismissal or reduction in position; or

(b) in the case of a person who has been reduced in salary alone and subject to Subsection (7)—at the rate of salary to which he was entitled immediately before his reduction in salary.

(3) A person may be re-admitted under this section without being required to undergo any medical examination.

(4) A person re-admitted under this section shall be deemed to have continued in the Teaching Service as if he had not been dismissed but had been on leave of absence without pay during the period from the day on which his dismissal became effective to and including the day on which he was re-admitted.

(5) The period referred to in Subsection (4) forms part of the member's period of service in the Teaching Service for all purposes.

(6) A person re-instated in a position under this section is entitled to the same salary as if he had not been reduced to a lower position.

(7) A person re-instated in salary under this section is entitled to the same salary as if he had not been reduced in salary.

## **95. STRIKES.**

(1) A member of the Teaching Service who has aided, abetted, fomented or taken part in a strike that interferes with, prevents, or is intended or calculated to interfere with or prevent—

- (a) the working of the Education System, or any part of it; or
- (b) the conduct of an institution; or
- (c) the giving of some or all instruction in an educational institution,

or to have attempted to do so, shall be immediately suspended without pay by a person authorized by the Commission to lay charges under this Part and shall be required in the prescribed form to show cause to the Commission within seven days of receipt of the notice of suspension why he should not be dismissed from the Teaching Service.

(2) The Teaching Service Commission, after investigation and hearing and without regard to the disciplinary procedures laid down under this Part may—

- (a) dismiss the member; or
- (b) reduce him to a position of lower classification; or
- (c) reduce his salary; or
- (d) transfer the member to any other position at the same school or in any other school.

**PART VIII. – LEAVE.****96. VACATION LEAVE.**

(1) For the purposes of this section–

“**first working day**”, in relation to an institution, means, unless the Departmental Head otherwise approves, the second last day (excluding Saturdays and Sundays) before the first day on which pupils are required to attend the institution after the vacation;

“**last working day**”, in relation to an institution, means, unless the Departmental Head otherwise approves, the last day on which pupils are required to attend the institution before the vacation.

(2) The Departmental Head may specify periods totalling not less than nine weeks in a calendar year to be school vacations for the purposes of this Act.

(3) Subject to Subsection (4), unless the Commission or the National Education Board directs otherwise, a member of the Teaching Service who occupies an institutional position is entitled to vacation leave on full pay throughout all school vacations applicable to the educational institution to which he is appointed.

(4) Except with the consent of the Commission, a member is not entitled to vacation leave on full pay unless he–

- (a) was on duty on the last working day before the commencement of the leave; and
- (b) is on duty on the first working day after the leave,

and where a member who was granted leave on full pay is absent from duty, except with the consent of the Commission, on the first working day after the leave, he shall repay to the State the whole or part, as determined by the Commission, of that pay for the vacation.

(5) A member who is directed to remain on duty under Subsection (3) is entitled to–

- (a) an equivalent period of leave at a time determined by the Commission with the approval of the Departmental Head; or
- (b) pay in lieu; or
- (c) a combination of leave and pay in lieu equivalent to the period of leave lost,

the question of which entitlement he is to receive being a question for decision by the Commission.

(6) Teachers in non-institutional positions are entitled to such leave as is determined by the Commission from time to time.

(7) The Commission may advise the National Education Board that, for reasons specified by the Commission, a member should not be directed to remain on duty during a period of vacation leave.

**97. COMPASSIONATE LEAVE.**

The Commission may grant to a member of the Teaching Service leave of absence on full pay, for a period not exceeding 10 days in any period of 12 months, for urgent personal reasons.

**98. SICK LEAVE.**

(1) In this section, “**medical certificate**” includes any evidence as to the illness of a member that is acceptable to the Commission.

(2) In case of illness, the Commission may grant to a member leave of absence to be designated sick-leave.

(3) A member shall not be granted sick leave with pay on account of illness caused by his own misconduct, or in a case of absence from duty without sufficient cause.

(4) Sick leave shall not be granted or continue after the date on which a member ceases to be a member of the Teaching Service or attains the maximum retiring benefits age.

(5) Where a member has been absent on sick leave for a continuous period of three months or more, the Commission may require him to undergo a medical examination before any further sick leave is granted or before he resumes duty.

(6) Where the Commission desires to be satisfied as to the cause of any illness of a member, it may require him to undergo a medical examination.

(7) The Commission may require a medical examination for the purposes of Subsections (5) or (6) to be performed by a medical practitioner approved by the Commission at a time and place arranged by the Commission, and the member shall present to the Commission the medical report on an examination under either of those subsections.

(8) Sick leave may be granted in respect of a period of illness occurring during leave with pay if the member produces a medical certificate to the effect that he has been unfit for duty for a period of at least five days, in which case the Commission may grant to him, at a time approved by the Departmental Head, leave of absence (which shall be counted as sick leave) equal to the period of illness falling within that other leave.

(9) Where—

(a) a member has been absent on sick leave for a period of 12 months; or

(b) a medical practitioner approved by the Commission certifies that the period of a member’s absence from duty on account of illness will exceed 12 months,

the Commission may retire the member from the Teaching Service, as from a date fixed by the Commission, not being earlier than the date on which the member has exhausted his sick leave credits, on a rate of pay not less than the rate of pension to which he would be entitled if he were retired under Section 120.

(10) Subject to this section, sick leave shall be granted on full pay until the member's sick leave credits on full pay are exhausted, then on half pay until his sick leave credits on half pay are exhausted, and then without pay.

(11) Sick leave may be granted, subject to any determination by the Commission—

- (a) on production of a medical certificate—~~for any period not exceeding 12 months; and~~
- (b) without such a certificate—~~for not more than five school days in any period of 12 months.~~

(12) The paid sick leave credits of a member shall be calculated by crediting him with the following cumulative periods of leave:—

	<b>Leave on full pay</b> <b>School days</b>	<b>Leave on half pay</b> <b>School days</b>
On date of appointment to the Teaching Service	10	10
On completion of 12 months' service	10	10
On completion of each additional 12 months' service	10	10
and by debiting any periods of sick leave on full pay or half pay.		

#### **99. HEALTH OF MEMBER MAKING HIM A DANGER TO OTHERS.**

(1) If the Commission has reason to believe that a member of the Teaching Service is in such a state of health as to make him a danger to his fellow teachers, to pupils or to the public, it may require the member—

- (a) to obtain and give to it a report as to his condition from a medical practitioner; or
- (b) to submit himself for examination by a medical practitioner approved by the Commission, at a time and place arranged by the Commission, and to present the medical report on the examination to the Commission.

(2) On receipt of a medical report under Subsection (1), the Commission may direct the member to absent himself from his duties for a specified period or, if he is already on leave, to continue on leave for a specified period, and that period shall be counted as sick leave.

#### **100. LEAVE: INFECTIOUS DISEASE CONTACTS.**

(1) On a report by a medical practitioner that, by reason of contact with a person suffering from an infectious disease and through the operation of restrictions imposed by or under any law whether of Papua New Guinea or elsewhere in respect

of the disease, a member of the Teaching Service is unable to attend for duty, the Commission may grant to the member leave of absence.

(2) Leave of absence under Subsection (1) shall be counted as sick leave.

(3) Where, by reason of the presence of an infectious disease, the Departmental Head of the Department responsible for health matters recommends to the Departmental Head that all or any educational institutions be closed for a specified period, the Departmental Head may order that the institutions be closed, and members in the institutions shall be deemed to be on leave of absence on full pay for so long as the institutions remain closed.

(4) Leave of absence shall not be granted under Subsections (1) or (3) beyond the period during which the restriction or the closure, as the case may be, applies.

#### **101. ACCIDENTS ON DUTY.**

(1) Notwithstanding this Act, where a member of the Teaching Service sustains physical injury in the execution of his duty and the Commission is satisfied that the injury is not attributable to his wilful misconduct—

- (a) the Commission may grant leave of absence on full pay to the member for a period not exceeding three months; and
- (b) if, at the end of that period, it is shown to the satisfaction of the Commission that the injured member is unable to resume duty, the Commission may grant further leave of absence on such conditions as it thinks justified in the circumstances.

(2) The Commission may authorize the payment of such transport, medical and hospital expenses *bona fide* incurred in consequence of the injury as it thinks reasonable.

(3) Leave granted under this section shall not be counted as sick leave.

(4) This section does not derogate any rights that a member has under any law relating to workers compensation, but a member is not entitled to receive benefits under this section and equivalent or similar benefits under that law at the same time.

#### **102. LEAVE WITHOUT PAY.**

(1) The Commission shall grant leave of absence without pay to a member of the Teaching Service—

- (a) who has agreed to serve as an education secretary of an education agency; or
- (b) who wishes to take up fulltime employment as an employee of the Papua New Guinea Teachers' Association; or
- (c) who wishes to be employed fulltime outside the Teaching Service in an activity, which in the opinion of the Commission is to the educational advantage of Papua New Guinea and its citizens.

(2) The period of leave granted under Subsection (1) shall not exceed two years, but shall on application by the member be extended from time to time by the Commission for periods each not exceeding 12 months.

(3) A member who is granted leave of absence under this section for a period in excess of 12 months shall be transferred to a non-institutional position with the same classification which he held substantively immediately prior to such leave being granted, and the position which he previously occupied shall be deemed to be vacant.

(4)<sup>35</sup> <sup>36</sup>The period during which a member is absent on leave granted under this section shall be counted as part of his period of service in the Teaching Service and shall not affect the continuity of his service in the Teaching Service.

### **103. LEAVE WITHOUT PAY FOR REASONS NOT INCLUDED IN SECTION 102.**

(1) The Commission may grant to a member of the Teaching Service leave of absence without pay for any purposes approved by the Commission other than those purposes set out in Section 102.

(2) The period of leave granted under Subsection (1) shall not exceed 12 months but may be renewed for a further period of 12 months but there shall be no further renewals beyond a total period of two years.

(3) The period during which a member is absent on leave granted under this section shall not be deemed to affect the continuity of his service in the Teaching Service, but unless otherwise determined by the Commission, shall not be counted for any purpose as part of his period of service.

(4) Except as provided for in Section 102, a member of the Teaching Service shall not be granted leave of absence to take up employment other than in accordance with the provisions of Section 105, 106 or 107.

### **104. LEAVE TO ATTEND ARBITRATION PROCEEDINGS.**

(1) The Commission may grant leave of absence with pay to not more than two representatives of the Papua New Guinea Teachers' Association for the purposes of attending proceedings under the *Public Services Conciliation and Arbitration Act 1969*, the *Teaching Service Conciliation and Arbitration Act 1971* or the *Industrial Relations Act 1962*, or for purposes relating to any such proceedings or any possible such proceedings.

(2) The Commission may grant leave of absence with pay, for such periods as it determines, to representatives of the Papua New Guinea Teachers' Association for the purposes of the preparation of evidence for submission on behalf of the Association in any proceedings referred to in that subsection.

<sup>35</sup> Section 102(4) repealed and replaced by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s3.

<sup>36</sup> Section 102(4) repealed and replaced by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s3.



(3) The periods during which a member of the Teaching Service is absent on leave granted under this section shall be counted as part of his period of service in the Teaching Service.

**105. LEAVE FOR NATIONAL PURPOSES.**

(1) The Commission may grant leave of absence to a member of the Teaching Service to allow him to engage in such civil or military service in the interests of Papua New Guinea as is prescribed.

(2) Leave granted under this section is subject to such terms and conditions as are prescribed.

(3) The period during which a member is absent on leave granted under this section shall be counted as part of his period of service in the Teaching Service.

**106. LEAVE TO SERVE UNDER OTHER ACTS.**

(1) If a member of the Teaching Service is appointed—

(a) to an office provided by or under an Act, other than this Act; or

(b) to be a member of the Commission,

the Commission may, on application by the member, grant leave of absence without pay for a period not exceeding the period for which he is necessarily unavailable for employment in the Teaching Service in consequence of the appointment.

(2) The period during which a member is absent on leave under Subsection (1) shall be counted as part of his period of service in the Teaching Service.

(3) When a member is granted leave under this section, his position becomes vacant on the commencement of the period of the leave, and he shall be appointed to a non-institutional position during that period.

(4) At the end of the period of leave under this section, a member is, unless he has ceased to be a member of the Teaching Service or has attained the maximum retiring benefits age, entitled to be appointed to a position not lower in pay than his former position, after taking into account any variation in the pay of that position during the period of the member's leave under this section.

(5) When there is no vacant position to which a member may suitably be appointed in accordance with Subsection (4), he shall be appointed to a non-institutional position at a rate of pay determined in accordance with that subsection until a suitable position becomes available.

**107. LEAVE TO SERVE WITH OTHER GOVERNMENTS, ETC.**

(1) On request by a prescribed organization, government or authority that the services of a member of the Teaching Service be made available to it, the Commission may, on application by the member, grant to him leave of absence without pay for that purpose for a period not exceeding three years.

(2) Unless the Commission directs otherwise, the period during which a member is absent on leave granted under this section shall not be counted as part of his period of service in the Teaching Service, but does not affect the continuity of his service.

(3) Where a member is granted leave under this section, his position becomes vacant on the commencement of the period of the leave and he shall be appointed to a non-institutional position during that period.

(4) At the end of a period of leave under this section, a member is entitled, unless he has ceased to be a member of the Teaching Service or has attained the maximum retiring benefits age, to be appointed to a position not lower in pay than his former position, after taking into account any variation in the pay of that position during the period of the member's leave under this section.

(5) Where there is no vacant position to which a member may suitably be appointed in accordance with Subsection (4), he shall be appointed to a non-institutional position at a rate of pay determined in accordance with the subject until a suitable position becomes available.

#### **108. STUDY LEAVE.**

(1) The Commission may grant to a member of the Teaching Service leave of absence for the purpose of study or professional experience.

(2) Unless the Commission for some special reason otherwise determines in a particular case, the period of leave granted under Subsection (1) shall not exceed three years.

(3) Leave of absence under Subsection (1) shall be granted on such conditions as the Commission determines, generally or in a particular case.

#### **109. FURLOUGH.**

(1) When a member has served in the Teaching Service for at least 15 years without breaking continuity of service, the Commission may, at a time approved by the Departmental Head, grant him leave of absence as furlough, calculated at the rate of three-tenths of a month on full pay, or in the discretion of the Commission, six-tenths of a month on half pay, in respect of each completed year of continuous service in respect of which he has not been granted furlough.

(2) Where a member, who is eligible for furlough in accordance with this section, ceases to be a member of the Teaching Service otherwise than by death, the Commission may authorize payment to him of a sum equivalent to his pay for a period of furlough not exceeding that which he could have been granted on full pay under this section.

(3) On the death of a member who was eligible at the time of his death for furlough in accordance with this section, or if the Commission, after consideration of all the circumstances, directs that the death of a member so eligible be presumed, the Commission may authorize payment to his dependants of a sum equivalent to his pay

for a period not exceeding the period of furlough that he could have been granted on full pay under this section had he retired immediately before the date of his death, or, where the Commission has directed that his death be presumed, immediately before a date determined by the Commission.

(4) Notwithstanding this section, the official conduct record of a member shall be taken into consideration in determining whether the whole or any portion of the furlough or pay provided for in this section may be granted.

#### **110. LEAVE TO MEMBERS NOT ELIGIBLE FOR FURLOUGH.**

(1) In this Section, “**retirement**” means retirement at the minimum retiring benefits age or more.

(2)<sup>37</sup> <sup>38</sup>The Commission may grant to a member of the Teaching Service whose period of continuous service in the Teaching Service is less than 20 years, leave of absence on full pay before his retirement, as follows:–

- (a) Service of 16 years and under 20 years–five months.
- (b) Service of 12 years and under 16 years–four months.
- (c) Service of eight years and under 12 years–three months.
- (d) Service of four years and under eight years–two months.
- (e) Service of one year and under four years–one month.

(3) If the Commission, in its discretion, thinks fit, it may grant to a member leave on half pay for double the period provided for in Subsection (2) in place of the leave provided for in that subsection.

(4) Where a member who is eligible for leave under this section retires or is retired or is retrenched from the Teaching Service, the Commission may authorize payment to him on retirement of a sum equivalent to his pay for a period of leave not exceeding that which he could have been granted under this section.

(5) Where a member who has not attained the minimum retiring benefits age, and has completed less than 15 years service, retires or is retired from the Teaching Service, and satisfies the Commission that the retirement is caused by–

- (a) physical injury sustained in the execution of duty; or
- (b) ill-health that is permanent and is not due to misconduct or to causes within his control,

the Commission may, notwithstanding this section, authorize payment to him of a sum equivalent to his pay for a period of leave not exceeding that for which he would have been eligible under Subsection (2) if at the date of retirement he had attained the minimum retiring benefits age.

<sup>37</sup> Section 110(2) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>38</sup> Section 110(2) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

(6) Where, before a member has completed 15 years continuous service in the Teaching Service—

- (a) he dies; or
- (b) the Commission, after consideration of all the circumstances, directs that his death be presumed,

the Commission may authorize payment to his dependants of a sum equivalent to his pay for the period of leave that he would have received if he had been eligible under Subsection (2) for, and been granted, leave of absence immediately before the date of his death, or, where the Commission has directed that his death be presumed, immediately before a date determined by the Commission.

(7) The official record of a member shall be taken into consideration in determining whether the whole or any portion of the leave or pay provided for in this section may be granted.

#### **111. MEMBERSHIP OF BOARDS, ETC.**

<sup>39</sup>Where a member of the Teaching Service is appointed to be a member of a Board, Committee or Council established by or under this Act, the *Teaching Service Conciliation and Arbitration Act 1971* or the *Education Act 1983*, the Commission may grant to him leave of absence with pay for the purpose of the performance of his functions and duties as such a member, and the leave shall be counted as part of his period of service in the Teaching Service for all purposes.

#### **112. ATTENDANCE AS WITNESS BEFORE A COURT.**

(1) A member of the Teaching Service summoned as a witness before a court or tribunal, whether of a judicial nature or not (otherwise than in proceedings to which Section 113 applies) shall immediately advise the Assistant Secretary.

(2) A member required as a witness on behalf of the State, the Commission or an education agency—

- (a) is not entitled to receive any witness's fee; and
- (b) shall be granted leave with pay for the period during which he is necessarily absent from duty.

(3) Where a member is obliged to incur expense, by reason of his attendance as a witness on behalf of the State, the Commission or an education agency, the State or the agency, as the case may be, shall reimburse him the expenses to such extent as the Commission approves.

(4) A member required as a witness otherwise than on behalf of the State, the Commission or an education agency shall be granted leave but, unless otherwise determined by the Commission, the leave shall be without pay and the member may retain any fees and allowances received by him as a witness.

<sup>39</sup> Section 111: headnote amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

(5) Leave under this section shall be counted as part of the member's period of service in the Teaching Service for all purposes.

**113. ATTENDANCE AS WITNESS IN ARBITRATION PROCEEDINGS, ETC.**

(1) A member of the Teaching Service summoned as a witness in proceedings under this Act, the *Public Services Conciliation and Arbitration Act 1969*, the *Teaching Service Conciliation and Arbitration Act 1971* or the *Industrial Relations Act 1962* shall immediately advise the Assistant Secretary.

(2) The member shall be granted leave of absence with pay for the period during which he was necessarily absent from duty.

**114. MATERNITY LEAVE.**

The Commission may grant to a female member of the Teaching Service maternity leave, or direct that she take maternity leave, for such period and on such terms and conditions as are determined by the Commission.

**115. ABSENCE FROM DUTY FOR PURPOSE OF BREAST-FEEDING.**

(1) The Commission, or a person authorized by the Commission, shall allow a female member of the Teaching Service who is breast-feeding her child of the prescribed age, periods of absence from duty to breast-feed the child.

(2) Periods of absence under Subsection (1) shall be—

- (a) not more than one half hour twice daily during normal working hours; and
- (b) counted as working hours for the purpose of this Act and any other law.

**116. LEAVE TO CARE FOR AN ADOPTED INFANT.**

(1) The Commission may grant to a female member of the Teaching Service leave, for such period and on such terms and conditions as are determined by the Commission, for the purpose of caring for an infant adopted by her, provided that—

- (a) the adopted infant is certified by a medical practitioner to be a newly born infant; and
- (b) the member completes a statutory declaration certifying that she has adopted the infant in accordance with the law.

(2) Where leave has been granted under Subsection (1), the member shall, within six months of the date of completion of the leave, exhibit to the Commission a certificate from a local court or from the National Court certifying that the infant has been adopted by her in accordance with the law.

**117. RESIGNATION OR RETIREMENT ON LEAVE.**

(1) Where a member gives notice of resignation effective from the end of a period of leave of absence to which he is entitled or which he has been granted, the Commission may, in its discretion, direct that the resignation be effective from an earlier date, and in that case shall give approval for the payment of pay in lieu of the leave of absence or the period of leave or the residue of the period, as the case may be.

(2) Where a member gives notice of his intention to retire at the end of a period of leave of absence, the Commission may, in its discretion, at any time during that period declare the position occupied by him to be vacant, and appoint him to a non-institutional position.

(3) Nothing in Subsection (1) or (2) affects the effective date of retirement or resignation of a member otherwise than for the purposes of the section.

**118. PRORATA LEAVE, ETC.**

(1) Where during a period of vacation leave a member of the Teaching Service ceases, otherwise than by death, to be a member, the Commission may revoke the grant as from the date on which he ceases to be a member and authorize the payment of pay in lieu of the vacation leave for the residue of the period for which it was granted.

(2)<sup>40 41</sup>Where—

- (a) a member dies; or
- (b) the Commission, after consideration of all the circumstances, directs that the death of a member be presumed,

the Commission may authorize payment to his dependents of pay in lieu of—

- (c) any period of vacation leave; and
- (d) any pro-rata furlough leave under Subsection (3),

to which he was entitled immediately before his death.

(3)<sup>42 43</sup>A member who has qualified for leave of absence as furlough under Section 109 shall, in respect of service over 15 years, be eligible for pro-rata leave of absence as furlough.

<sup>40</sup> Section 118(2) repealed and replaced by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s4(a).

<sup>41</sup> Section 118(2) repealed and replaced by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s4(a).

<sup>42</sup> Section 118(3) added by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s4(b).

<sup>43</sup> Section 118(3) added by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s4(b).

**PART IX. – RETIREMENT.**

**119. AGE OF RETIREMENT.**

(1) A member of the Teaching Service who has attained the minimum retiring benefits age is entitled to retire from the Teaching Service if he desires to do so.

(2) In the case of a member of the Teaching Service who has reached the maximum retiring benefits age, the Commission may–

- (a) retire him at any time; or
- (b) advertise the position that he occupies with a view to retiring him and filling it with another member.

(3) A member of the Teaching Service is not entitled to remain within the Service after he has attained the age of 60 years.

**120. RETIREMENT ON ACCOUNT OF INFIRMITY OR INCAPACITY.**

(1) If a member of the Teaching Service appears to the Commission, after full investigation of the circumstances (including any medical evidence submitted by the member), to be, by reason of mental or bodily infirmity or for any other reason, unfit to discharge or incapable of discharging the duties of his position efficiently, the Commission may retire the member from the Teaching Service or direct that he be transferred to some other position of equal or lower classification.

(2) The retirement of a member under this section shall not be deemed to be on account of mental or bodily infirmity unless it is so stated in the instrument effecting the retirement.

(3) Within one month after his receipt of the decision of the Commission to retire him or to direct his transfer under this section, a member retired or transferred under this section may appeal to the Minister against–

- (a) his retirement or transfer; and
- (b) in the case of retirement, any failure by the Commission to state that the retirement was on account of mental or bodily infirmity,

and the Minister may, after full inquiry, confirm, annul or vary the decision of the Commission or direct the Commission to state that the retirement was on account of mental or bodily infirmity, as the case requires.

(4) Unless otherwise determined by the Commission, until the time for appeal has expired and pending the determination of any appeal, the member shall be deemed to be on leave without pay, unless he advises the Commission that he does not intend to appeal, in which case his retirement or transfer takes effect on the date on which he so advises the Commission.

(5) Where the Commission refuses to retire a member under this section, the member may appeal to the Minister against the refusal and the Minister may, after full inquiry, confirm, reverse or vary the decision of the Commission.

**121. RETRENCHMENT.**

- (1) Where a member of the Teaching Service in the opinion of the Commission—
- (a) has proved to be unable to secure a teaching position (including an acting appointment under Section 71) because of—
    - (i) the unavailability or insufficiency of positions; or
    - (ii) the operation of some other law; or
  - (b) is incapable of adequately performing the duties of his position or any similar position due to bodily infirmity or lack of suitable professional skills,

the Minister, on the recommendation of the Commission, may retire him from the Teaching Service.

(2) A member retired under this provision is entitled to receive the pension benefits prescribed under the *Public Officers Superannuation Fund Act 1990*, and if he has not attained the minimum age at which such benefits can be obtained he shall, notwithstanding, receive the minimum pension benefits applicable.

**122. RESIGNATION.**

(1) Subject to this section, a member of the Teaching Service may resign from the Service by instrument under his hand addressed to the Commission.

(2) A resignation is not effective until it is accepted by the Commission.

(3) The Commission may accept a resignation—

- (a) subject to compliance by the member with a condition specified by the Commission; or
- (b) effective as from the end of a period specified by the Commission,

in which case the resignation does not become effective until the condition has been complied with or the period has expired, as the case may be.

**123. CANCELLATION OF REGISTRATION.**

Where the registration of a member of the Teaching Service as a teacher is cancelled under Section 106 of the *Education Act 1983*, he shall be deemed to have resigned from the Service.

**124. RESIGNATION, ETC., TO CONTEST ELECTION.**

(1A)<sup>44</sup> <sup>45</sup>A member shall not contest an election to—

- (a) the National Parliament; or
- (b) a Provincial Government or Local-level Government.

<sup>44</sup> Section 124(1A) inserted by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s5.

<sup>45</sup> Section 124(1A) inserted by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s5.



(1)<sup>46</sup> <sup>47</sup>A member—

- (a) who resigned or retired from the Teaching Service in order to become a candidate for election to—
  - (i) the National Parliament; or
  - (ii) a Local-level Government; and
- (b) whose resignation or retiral was effected—
  - (i) in the case of a general election to be held at the Parliament or Local-level Government—at least six months before and not more than 12 months before the issue of writs for the election; or
  - (ii) in the case of a general election other than one referred to in Subparagraph (i)—within two weeks of the vote occasioning the election; or
  - (iii) in the case of a by-election—within two weeks of the event occasioning the by-election; and
- (c) who was a candidate at the election; and
- (d) who failed to be elected,

shall, upon application by him within two months after the declaration of the results of the election, and subject to the results of any medical examination under Subsection (4), be re-appointed to the Teaching Service subject to availability of teaching positions.

(2) A member—

- (a) who resigned from the Teaching Service in order to become a candidate for election to—
  - (i) the National Parliament; or
  - (ii) a Local-level Government; and
- (b)<sup>48</sup> whose resignation or retiral was affected other than in accordance with Subsection (1)(b),

shall not be re-appointed to the Teaching Service.

(3) A person to be re-appointed under Subsection (1) may, at the discretion of the Commission, be required to undergo medical examination.

(4) A person re-appointed under Subsection (1) shall be deemed to have continued in the Teaching Service as if he had not resigned or retired but had been on leave without pay during the period from the day on which his resignation became effective to and including the day immediately preceding the day on which he was re-appointed.

<sup>46</sup> Section 124(1) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6.

<sup>47</sup> Section 124(1) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6.

<sup>48</sup> Section 124(2)(b) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

(5) The period referred to in Subsection (4), shall not be deemed to affect the continuity of the member's service but, unless otherwise determined by the Commission, shall not, for any purpose, form part of any member's service.

(6) The provisions of Part V.2 do not apply in respect of the re-appointment of a person under Subsection (1).

**PART X. – FARES AND REMOVAL EXPENSES.**

**125. INTERPRETATION OF PART X.**

(1) In this Part, unless the contrary intention appears—

**“family”**, in relation to a member of the Teaching Service, means—

- (a) a wife; and
- (b) children under the age of 16 years who are wholly dependent on and maintained by the member; and
- (c) subject to Subsection (4), relatives who are wholly dependent on and maintained by the member in such circumstances that, in the opinion of the Commission, they should be regarded as forming part of the member’s family;

**“furniture and effects”** includes—

- (a) all items of normal household furniture and effects, including the usual contents of outhouses; and
- (b) a reasonable number, in each case, of bicycles, garden tools, sewing machines and radios, and other such items; and
- (c) a reasonable number of domestic pets;

**“home District”**—

- (a) in relation to a member of the Teaching Service means—
  - (i) the District in which, in the opinion of the Commission, his principal home or family ties are established; or
  - (ii) at his option, the home District of his wife; and
- (b) in relation to the wife or widow of a member means—
  - (i) the District in which, in the opinion of the Commission, her principal home or family ties are established; or
  - (ii) at her option—the home District of the member;

**“removal expenses”**, in relation to a member of the Teaching Service, means the cost of the removal of his furniture and effects or, if the weight of the furniture and effects exceeds 2.00t the cost of the removal of 2.00t of the furniture and effects;

**“wife”**, in relation to a member, does not include a wife of a polygamous marriage by custom entered into after the date of his admission to the Teaching Service.

(2) In the case of a dispute as to what are furniture and effects within the meaning of Subsection (1), the decision of the Commission is final.

(3) Notwithstanding Subsections (1) and (2), the Commission may determine that, in certain circumstances or for the purposes of certain provisions of this Part, or

both, or in a particular case, certain items are, or are not, furniture and effects within the meaning of this section.

(4) Where the Commission determines, for the purposes of Subsection (1), that the relative of a member, other than a wife or child of a member under the age of 16 years, who is wholly dependent on and maintained by the member should not be regarded as being part of the member's family, the member may appeal against the determination to a Board constituted by—

- (a) a person appointed by the Commission; and
- (b) a member of the Teaching Service appointed by the education agency conducting the educational institution in which the appellant currently holds a position or, if the appellant is not currently holding any such position, by the Departmental Head; and
- (c) a person appointed by the Assistant Secretary,

and the decision of the Board is final.

#### **126. LIMITS OF AUTHORITY OF PROVINCIAL EDUCATION BOARDS.**

The powers of Provincial Education Boards under this Part may be exercised only within such limits and subject to such conditions as are laid down from time to time by the Commission.

#### **127. INITIAL APPOINTMENT.**

(1) This section applies in relation to the first appointment of a member of the Teaching Service to a position in an educational institution.

(2) Where a member of the Teaching Service is appointed, at his specific request, to a position in a particular educational institution in the province in which he resides, he is responsible, subject to any arrangement between him and the education agency conducting the institution or the appointing authority, for the fares and removal expenses of himself and his wife and family (if any) to take up the appointment.

(3) Where a member of the Teaching Service is appointed to a position in an institution within the province in which he resides, otherwise than in circumstances to which Subsection (2) applies, the Provincial Education Board shall authorize payment of the fares and removal expenses of the appointee and his wife and family (if any) to take up the appointment.

(4) Where a member of the Teaching Service is appointed to a position outside the province in which he resides, the Commission shall authorize payment of the fares and removal expenses of the appointee and his wife and family (if any) to take up the appointment.

**128. SUBSEQUENT APPOINTMENTS.**

(1) Where a member is transferred from one position to another on medical or compassionate grounds, the Commission shall authorize payment of some or all of the fares and removal expenses of the member and his wife and family (if any) to take up the new appointment.

(2) Where a member of the Teaching Service is transferred or promoted from one position to another, the appointing authority shall authorize the payment of the fares and removal expenses of the member and his wife and family (if any) to take up the new appointment.

**129. AGENCY MAY UNDERTAKE RESPONSIBILITY FOR FARES, ETC.**

This Act does not prevent an education agency from agreeing to meet any fares or removal expenses under Sections 127 or 128.

**130. LEAVE FARES.**

(1) Subject to this section, the Commission shall authorize payment of the cost of fares of a member and his wife and family (if any) travelling on leave in the country.

(2) A member shall be granted return fares for himself and his wife and family (if any) between the location at which he was employed immediately before commencing leave and the administrative headquarters of his home District, or, at his option, his wife's home District.

(3) Fares under this section shall be authorized, subject to this section, only—

(a) after a member has served for a continuous period of two school years outside his home District; and

(b) for the express purpose of enabling him to spend leave in his home District or his wife's home District; and

(c) in relation to the vacation at the end of the school year,

unless otherwise determined by the Commission.

(4) If the Commission agrees, leave fares may be deferred for a period not exceeding two years after the date on which they become due, without affecting the date on which the next leave fares become due.

(5) Notwithstanding the period of two years prescribed in Subsection (3)(a) for entitlement to fares, the Commission may, in its discretion, on application by a member, authorize the payment of fares after a member has served for a continuous period of one school year outside his home District.

(6) Where the granting of fares after one year's service is authorized under Subsection (5)—

(a) the Commission shall authorize payment of half the total cost of the return fares of the member and his wife and family (if any); and

- (b) the member shall contribute half the appropriate amount payable under Subsection (5).

(7)<sup>49</sup> <sup>50</sup>Where special circumstances exist that, in the opinion of the Commission, make it proper to do so, the Commission may remit payment of the whole or part of any amount payable under Subsection (6).

(8) The cost of fares under this section shall not exceed the net amount that would necessarily be incurred by a member in travelling by the most direct route and by the most economical means of public transport.

(9) Where the fares are authorized to the home District of a member's wife, the value of the fares authorized shall not exceed the cost of the fares from the location at which the member was employed immediately before commencing leave and the administrative headquarters of his home District.

(10) For the purposes of this section, the continuous period of a member's service outside his home District is not affected by any period of service, not exceeding six weeks, in that District.

### **131. REMOVAL EXPENSES ON RETIREMENT OR DEATH.**

(1) Subject to Subsections (3) and (4), where a member retires or is retired, the Commission shall authorize, subject to such conditions as it determines—

- (a) payment of the fares of the member and his wife and family (if any); and  
 (b) at his request, payment of removal expenses, from the place where he was employed immediately before his retirement to the administrative headquarters of his home District.

(2) Subject to Subsections (3) and (4), where a member dies, or the Commission after consideration of all the circumstances directs that the death of a member be presumed, the Commission shall authorize, subject to such conditions as it determines—

- (a) payment of the fares of his widow and family (if any); and  
 (b) on request, payment of removal expenses,

from the place where he was employed immediately before his death to the administrative headquarters of his or his widow's home District.

(3) Where under Subsections (1) and (2), fares are paid or furniture and effects are removed to the home District of the wife or widow of a member, the authorization shall not exceed the cost of the fares or of the removal of the furniture and effects to the home District of the member or deceased member.

(4)<sup>51</sup> <sup>52</sup>The right to payment under Subsections (1) or (2) is forfeited unless exercised within six months, or such further time as the Commission allows, after the retirement or death.

<sup>49</sup> Section 130(7) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>50</sup> Section 130(7) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

**PART XI. – SPECIAL PROVISIONS FOR CERTAIN CASES.**

***Division 1.***

***Associate Positions.***

**132. ELECTION TO BECOME ASSOCIATE MEMBER.**

(1) A person who—

- (a) is a full or provisional member of the Teaching Service; or
- (b) has applied for admission to membership of the Service,

may, by written notice to the Commission, elect to become an associate member of the Teaching Service.

(2) A member, who has made an election under Subsection (1) and who is otherwise entitled to be a full member or a provisional member of the Teaching Service, may request the Commission to recognize him again as a full member or a provisional member, as the case may be, and the Commission may, in its discretion, so recognize him.

(3) An election under Subsection (1), or recognition under Subsection (2), takes effect from such date as the Commission, by written notice to the person concerned, appoints.

**133. APPLICATION OF ACT TO ASSOCIATE POSITIONS.**

This Act applies to and in relation to associate positions in the same way that it applies to and in relation to other positions, subject to this Division.

***Division 2.***

***Negotiated Benefits.***

**134. ADDITIONAL BENEFITS AND ALLOWANCES AND SPECIAL CONDITIONS OF SERVICE.**

(1) This Act does not prevent an education agency or a government body, including the government body of a State school, from providing for any member of the Teaching Service—

- (a) attraction or other allowances; and
- (b) other benefits; and
- (c) special conditions of service,

in addition to those provided by this Act, but the financial and other responsibilities for such additional allowances, benefits and special conditions of service is on the education agency or governing body concerned.

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<sup>51</sup> Section 131(4) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

<sup>52</sup> Section 131(4) amended by *Teaching Service (Amendment) Act 1995* (No. 20 of 1995), s6 and Schedule.

(2) In the case of—

- (a) an education agency other than the State; or
- (b) a governing body of a school including a State school,

any—

- (c) allowances or other benefits; or
- (d) special conditions of service,

of a kind referred to in Subsection (1) to be paid or applied to a member of the Teaching Service are as agreed on between the agency or governing body, as the case may be, and the member.

(3) In the case of the State as an education agency—

- (a) any allowances or other benefits; or
- (b) any special conditions of service,

of a kind referred to in Subsection (1) to be paid or applied to a member of the Teaching Service are as determined by the Departmental Head.

(4) Subject to any determination under Subsection (3), the Minister may, on behalf of the State, enter into an agreement with a member of the Teaching Service in respect of attraction or other allowances and other benefits or special conditions of service.

(5) Without limiting the generality of this section, an agreement under this section may, with the consent of the Commission, provide for periods of leave in excess of those provided for by this Act, but any expense arising in consequence of any such leave is the responsibility of the education agency or governing body, as the case may be, concerned.

### *Division 3.*

#### *Married Women.*

#### **135. MEMBERSHIP OF MARRIED WOMEN.**

(1) Nothing in this Act prevents—

- (a) a married woman from being admitted to membership of the Teaching Service; or
- (b) a female member from continuing to be a member after her marriage.

(2) The rights of a married woman to and in respect of superannuation or retirement benefits are as determined by law.

#### **136. DECLARATION OF HEADS OF FAMILIES.**

Where the Commission is satisfied that a married female member of the Teaching Service is supporting a husband or family (or both) in such circumstances



that she should be regarded as being the head of the family, the Commission shall declare her to be the head of a family for the purposes of this Division.

**137. FARES AND REMOVAL EXPENSES FOR FEMALE MEMBERS.**

(1) For the purpose of this section, “family” means—

- (a) a spouse of a member; and
- (b) children under the age of 16 years who are wholly dependent on and maintained by the member and are the member’s natural or formally adopted children; and
- (c) relatives who are wholly dependent on and maintained by the member in such circumstances that, in the opinion of the Commission, they should be regarded as forming part of the member’s family.

(2) Where a female member—

- (a) is single and with or without dependent children; or
- (b) is divorced, with or without legal custody of the children; or
- (c) has a medically confined spouse; or
- (d) has a student spouse on NATSCHOL or other similar schemes; or
- (e) has a spouse certified as unemployed; or
- (f) has a spouse gainfully employed in a non-governmental body,

the female member will be eligible for the following entitlements:—

- (g) biannual recreation leave air fares in respect of herself and her family;
- (h) fares and removal expenses on transfer as specified in Part X.

(3) Where a female officer has a spouse who is also an officer of the Public Service or a member of the Teaching Service, the husband will claim the entitlements in accordance with Section 130.

(4) Airfares granted under Section 130 will be a biannual return airfare to the husband’s or wife’s home District on an alternating basis.

(5) A member qualifies for an airfare for him/herself and his/her family only after residing outside of his/her home District continuously for two years from—

- (a) the date of his/her appointment to the Teaching Service; or
- (b) the date on which he/she was first posted to a location outside his/her home District; or
- (c) the date on which he/she last returned from recreation leave with fares.

**PART XII. – HOUSING.**

**138. HOUSING.**

(1) The supply of housing is not a general condition of service for members of the Teaching Service.

(2) Notwithstanding the provisions of Subsection (1), it is the responsibility of governing bodies and educational agencies to ensure that within the resources available to them there is adequate provision made for the supply and maintenance of Teacher housing.

(3) Where, in the opinion of an appointing authority, the housing provided by an education authority to a teacher is of a suitable standard, the appointing authority may instruct the teacher to enter into a rental agreement with the education authority to pay rental and other charges applicable to the occupancy of the house (other than land rates).

(4) A rental agreement referred to in Subsection (3)–

(a) may provide for deductions from the member's salary on a fortnightly basis to cover the rental or other charges, and such deductions are to be paid to the education authority providing the housing; and

(b) is enforceable in the District Court.

**139. ACTION WHERE HOUSING NOT AVAILABLE.**

(1) Where, immediately before the occurrence of a vacancy in a position, housing was made available to the occupant of the position by an education authority and the same or equivalent housing is not to be made available to any new appointee, the appointing authority may, at the request of an applicant or intended applicant for the position, ask the education authority for an explanation as to the non-availability of housing.

(2) Notwithstanding this Act, if the appointing authority is not satisfied with the explanation under Subsection (1), it may direct that the vacancy be not filled until adequate housing is available.

(3) An education authority or a person, which or who is aggrieved by a direction, or the failure to give a direction, under Subsection (2) may appeal to the Commission.

**140. HOUSING CLASSIFICATION.**

(1) Every Provincial Education Board shall, with the approval of the Commission, classify all housing provided by education authorities for members of the Teaching Service in the province for which the Board is established.

(2) The Commission shall, from time to time, recommend to education authorities fair rents for the various types of housing classified by the Provincial Education Boards.

**141. DISPUTES AS TO HOUSING.**

In the event of a dispute between an education authority and any other education authority or a member of the Teaching Service in relation to any matter concerning housing, the Commission may mediate between the parties with a view to a just and amicable settlement of the matter.

**PART XIII. – FINANCIAL ARRANGEMENTS.****142. FINANCIAL RESPONSIBILITIES OF EDUCATION AGENCIES AND AUTHORITIES.**

(1) Subject to Subsection (3), the education agency conducting an educational institution is responsible for the cost of any allowance, benefits or special conditions of service under Division XI.2, to or in respect of a member of the Teaching Service appointed to teaching positions in the institution.

(2) Where a member of the Teaching Service who is entitled to allowance, benefits or special conditions of service from an education agency or governing body under Division XI.2, is appointed to perform the duties of a position in an educational institution conducted by another education agency or governing body, the first-mentioned education agency or governing body, as the case may be, subject to the terms of any binding contract which it has entered into with the member in relation to such allowances, benefits or conditions of service, may, in its discretion, continue to provide or may terminate the provision of some or all of those allowances, benefits or special conditions and this Act does not require the agency or governing body conducting the other educational institution to provide any allowances, benefits or special conditions of service for the member.

(3) Where an education authority, including governing bodies and including the governing body of a State School, undertakes in the prescribed manner to accept all or any of the responsibilities of an education agency, including the State, in relation to a member of the Teaching Service, the authority is responsible and the agency, including, where the State is the agency, the State, is relieved accordingly.

**143. FINANCIAL RESPONSIBILITIES OF THE STATE.**

In addition to the responsibilities of the State as an education agency (including its responsibilities under any agreement entered into by it under Division XI.2 or any determination made under that Division) the State is responsible for–

- (a) the payment of salaries and allowances of members of the Teaching Service and, except where the contrary intention appears in this Act, for all other amounts payable to or in respect of such members (other than the cost of any attraction or other allowances or benefits or special conditions of service provided by any other education authority, including a government body of a State School) under Division XI.2 or Section 142(3); and
- (b) the administrative costs of the Commission (including the salaries and allowances and the cost of other conditions of service of the members of the Commission) and the costs of the administration of this Act generally.

**144. RECOVERY OF AMOUNTS DUE.**

Where any amount is payable under this Act, or under an agreement or determination of a kind referred to in Division XI.2, to or in respect of a member of the Teaching Service, the member may recover that amount from the education authority responsible as a debt.

**PART XIV. – MISCELLANEOUS.**

**145. EMPLOYMENT STATUS.**

(1) Subject to this section, the State is, for the purposes of all laws, the employer of all members of the Teaching Service.

(2) Subsection (1) does not derogate the powers, rights, duties, managerial functions or responsibilities conferred or imposed by this Act or any other law on any person or authority other than the State.

(3) The education agency at whose educational institution a member of the Teaching Service is employed, shall be deemed to be the employer of the member for the purposes of any law in relation to the institution and its buildings and premises or any other matter or thing that under this Act or otherwise is within the control or responsibility of the agency.

(4) Where, in the opinion of the Head of State, acting on advice, it would be unjust or unreasonable to hold an education authority, other than the State, responsible for any matter or thing by virtue only of Subsection (2) or (3), the Head of State, acting on advice, may order that the State be responsible, on such conditions as he thinks proper, for it.

**146. SETTLEMENT OF DISPUTES.**

(1) In the event of a dispute between a member of the Teaching Service and an education agency as to any matter relating to his employment, the member of the education agency may refer the matter to the Assistant Secretary who shall mediate between the parties with a view to the just and amicable settlement of the dispute.

(2) If a settlement is not arrived at under Subsection (1), either party, or the Assistant Secretary, may refer the matter to the Commission, which shall similarly mediate between the parties.

(3) This section is in addition to and not in derogation of any other provision of this Act or any other law relating to the settlement or determination of disputes.

**147. AIR INSURANCE COVER.**

(1) Subject to Subsection (9), where a member of the Teaching Service travels by air on official duty and suffers death or permanent and total incapacity as a result, the State is liable in accordance with this section.

(2) The amount of the liability of the State under this section is an amount, not being less than K4,000.00 nor more than K30,000.00, determined by the Minister on receipt of a report by a Committee of Inquiry appointed by the Commission.

(3) The amount of the liability of the State under Subsection (2) is reduced by any ticket insurance entitlement or by any payment in the nature of insurance due or received from the airline concerned, or by arrangement with it.

(4) In the case of the death of a member, the State is not liable under this section where—

- (a) there are no dependants of the member surviving him; or
- (b) the member and all his dependants have died at the same time or in circumstances that give rise to reasonable doubt as to which of them survived the other or others.

(5) In the case of the death of a member leaving dependants, the amount payable under this section shall be apportioned between the dependants of the member in such manner as is fixed by the Commission.

(6) Any payment made under this section is in addition to and not in substitution for or reduction of any liability of the State or the Commission under the *Workers' Compensation Act 1978* or otherwise.

(7) Where an injury to a member, in respect of which the State is liable under this section, is caused in circumstances that appear to create a legal liability in some person other than State to pay damages in respect of the injury—

- (a) the member may take proceedings against that person to recover damages and may also make a claim against the State under this section; and
- (b) the Commission may request the member to take proceedings of a kind referred to in Paragraph (a), and where the member does so at the request of the Commission the proceedings shall be conducted on the member's behalf at the expense of the State; and
- (c) where the member receives both payment under this section and damages from the other person—he shall repay to the State such amount of the payment as does not exceed the amount of damages received from the other person; and
- (d) on notice to the other person—the State has a first charge on any damages payable by him to the member to the extent of any payment that the State has made to the member under this section; and
- (e) where the member has received a payment under this section but no damages, or less than the full amount of damages, to which he is entitled—the person liable to pay the damages shall indemnify the State against so much of the payment made to the member under this section as does not exceed the damages for which that person is liable; and
- (f) a payment by a person to the State under Paragraph (e) is, to the extent of the amount paid, a satisfaction of his liability to the member.

(8) In Subsection (7)(a) to (f), a reference to a member includes, in the case of a deceased member, a reference to his legal personal representatives, his dependants or other persons by whom or for whose benefit an action may be brought under Part IV. of the *Wrongs (Miscellaneous Provisions) Act 1962*.

(9) This section does not apply to a member of the Teaching Service travelling in his own aircraft.

#### **148. RETURN OF BODY OF DECEASED MEMBER.**

(1) In this section, “**home District**”, in relation to a deceased member of the Teaching Service, means—

- (a) subject to Paragraph (b), the District in which, in the opinion of the Commission, his principal home or family ties were established; or
- (b) if his widow so chooses, the District in which, in the opinion of the Commission, her principal home or family ties were established.

(2) Where a member of the Teaching Service dies, the Commission may, at the request of his widow or family, authorize the payment of the whole or part of the reasonable expenses of the removal of his body to his home District.

#### **149. SCHOOL HOLIDAYS.**

(1) All days that are holidays in the Public Service are school holidays.

(2) An education agency, after giving notice—

- (a) in the case of a national institution—to the National Education Board; and
- (b) in any other case—to the Provincial Education Board,

may declare a day or part of a day to be a school holiday in all or any of the educational institutions conducted by it, but such holidays shall not exceed in total three full school days in any school year.

(3) For the purposes of Subsection (2), a half-holiday (whether in the morning or in the afternoon) shall be counted as half a school day.

(4) The Departmental Head may declare a day or part of a day to be a school holiday in all or any educational institutions.

(5) The Commission may require a member of the Teaching Service to work in the public interest for the whole or part of a school holiday.

#### **150. ATTACHMENT OF SALARIES, ETC.**

An order for the attachment of the pay of a member of the Teaching Service may be made by any court of competent jurisdiction.

#### **151. DIRECTIONS BY THE COMMISSION.**

(1) The Commission may give to education authorities and members of the Teaching Service directions, not inconsistent with this Act or the *Education Act 1983*, as to any matter that it is necessary or desirable to regulate for the administration of this Act and the efficient control of the Teaching Service.



(2) Education authorities and members of the Teaching Service shall comply with any direction given under Subsection (1).

**152. DETERMINATIONS.**

All determinations made under this Act that apply to all members, or to a class or classes of members, of the Teaching Service shall be published in the *Education Gazette* and in such other manner as the Commission directs.

**153. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the more efficient management and control of the Teaching Service, and in particular for prescribing penalties of fines not exceeding K100.00 for offences against the regulations.

s. 154.

*Teaching Service 1988*

**PART XV. – REPEAL.**

**154. REPEAL.**

The *Teaching Services Act* (Chapter 71) is repealed.

**PART XVI. – TRANSITIONAL.**

**155. INTERPRETATION.**

In this Part–

“**the repealed Act**” means the *Teaching Service Act* (Chapter 71) (repealed), repealed by Section 154.

**156. TRANSFER OF POSITIONS.**

(1) All positions established under the repealed Act and in existence immediately before the coming into operation of this Act shall, on that coming into operation, be deemed to be positions created under this Act with–

- (a) the same designation; and
- (b) the same salary or scale of salaries; and
- (c) the same duties; and
- (d) a requirement of the same qualifications; and
- (e) the same classification,

that they had under the repealed Act immediately before the coming into operation of this Act.

(2) The number of positions in a class of positions fixed under the repealed Act and existing immediately before the coming into operation of this Act, shall, on that coming into operation be deemed to be the number of positions in a class of positions fixed under this Act.

**157. TRANSFER OF MEMBERS.**

(1) A person who, immediately before the coming into operation of this Act, was a member of the Teaching Service under the repealed Act, shall be deemed, on that coming into operation, to be a member of the Teaching Service under this Act.

(2) A person who, immediately before the coming into operation of this Act, was a provisional member of the Teaching Service under the repealed Act, shall be deemed, on that coming into operation, to be a provisional member of the Teaching Service under this Act.

(3) A person appointed as a casual teacher under the provisions of Section 67 of the repealed act shall on the coming into operation of this Act be deemed to have been appointed as a provisional member under Section 23 of this Act provided he has served for a minimum period of six months as a casual teacher immediately prior to the coming into operation of this Act.

**158. DISCIPLINARY OFFENCES.**

Where, prior to the coming into operation of this Act, a member of the Teaching Service has been charged with committing a disciplinary offence under the

repealed Act, and on that coming into operation the procedure set out for dealing with that disciplinary offence under the repealed Act had not been completed—

- (a) that disciplinary offence shall be deemed to be the equivalent disciplinary offence under this Act; and
- (b) so much of the procedure as has been dealt with under the repealed Act shall be deemed to have been dealt with under this Act; and
- (c) so much of the procedure as has not been dealt with under the repealed Act shall be dealt with under this Act.

#### **159. PROCEDURE IN RESPECT OF APPOINTMENTS, ETC.**

Where procedure in respect of an appointment, promotion or transfer commenced under the repealed Act prior to the coming into operation of this Act has not been finalised at that coming into operation, the Chairman may order that the matter be finalised under the procedure provided for in this Act and that so much of the procedure as was carried out under the repealed Acts be considered, in so far as appropriate, as procedure provided for under this Act.

#### **160. ACTS, ETC., DONE UNDER REPEALED ACTS.**

(1) All acts, matters and things done or suffered under or for the purposes of the repealed Act or the Regulations or Determinations or Directions made under the repealed Act shall be deemed to have been done or suffered under the equivalent provisions of this Act or the Regulations.

(2) Without limiting the generality of Subsection (1), but subject to Sections 158 and 159 that subsection applies to any act, matter or thing relating to appointment, promotion, transfer or discipline.

#### **161. SERVICE.**

All periods that were counted as service of a member of the Teaching Service under the repealed Act shall be counted as service for the equivalent purposes of this Act.

Office of Legislative Counsel, PNG