

NORTHERN TERRITORY OF AUSTRALIA

EDUCATION AMENDMENT ACT 1994

No. 24 of 1994

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NORTHERN TERRITORY OF AUSTRALIA

No. 24 of 1994

AN ACT

to amend the *Education Act*

[Assented to 18 May 1994]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Education Amendment Act 1994*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. DEFINITIONS

Section 4 of the *Education Act* is amended -

(a) by omitting the definition of "college" and substituting the following:

"'college' means an institution or body declared to be a college under section 41(1);";

(b) by omitting the definition of "Commonwealth Teaching Service";

(c) by omitting the definition of "Government school" and substituting the following:

"'Government school' means a school declared to be a Government school under subsection (2);";

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- (d) by omitting the definition of "post-school";
- (e) by omitting from the definition of "school" all words after "instruction" and substituting "substantially in pre-school, primary or secondary education"; and
- (f) by adding at the end the following:

"(2) Subject to subsection (3), the Minister may, by notice in the *Gazette*, declare a school to be a Government school.

"(3) The Minister shall not declare a school that is wholly maintained otherwise than by Territory or Commonwealth funding to be a Government school."

4. MINISTER TO PROVIDE EDUCATION SERVICES

Section 6 of the *Education Act* is amended -

- (a) by omitting from subsection (4) (a) (iii) "post-school institutions" and substituting "colleges";
- (b) by omitting from subsection (4), paragraphs (j) and (k); and
- (c) by omitting subsections (5), (6) and (7).

5. ARRANGEMENTS FOR PROVISION OF EDUCATION SERVICES

Section 7(1) of the *Education Act* is amended by omitting all words after "education services".

6. SECRETARY OF DEPARTMENT OF EDUCATION

Section 8 of the *Education Act* is amended -

- (a) by omitting from subsection (2) "and the *Teaching Service Act*"; and
- (b) by adding at the end of subsection (3) ", other than a power or function of the Minister in respect of a college that is an Agency within the meaning of the *Public Sector Employment and Management Act*".

7. DELEGATED POWER

Section 9 of the *Education Act* is amended -

- (a) by omitting, from subsection (2), paragraph (b); and
- (b) by omitting subsection (2A).

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8. DELEGATION BY MINISTER

Section 9A(1) of the *Education Act* is amended by inserting after "other than" the words "a power or function of the Minister in respect of a college that is an Agency within the meaning of the *Public Sector Employment and Management Act* and".

9. COMPOSITION OF BOARD AND APPOINTMENT OF MEMBERS

Section 10C(2)(c)(v) of the *Education Act* is amended by omitting "Teachers" and substituting "Education".

10. ESTABLISHMENT AND COMPOSITION

Section 11(3) of the *Education Act* is amended -

- (a) by omitting "14 members" and substituting "15 members";
- (b) by omitting from paragraph (a)(i) "Teachers" and substituting "Education";
- (c) by omitting from paragraph (a)(vii) "post-school institutions" and substituting "persons with expertise in higher education"; and
- (d) by inserting after paragraph (a) the following:
"(ab) one member nominated by the Commonwealth Minister for Employment, Education and Training;"

11. NEW SECTIONS

The *Education Act* is amended by inserting after section 11 the following:

"11A. DEPUTY MEMBERS

"(1) Subject to subsection (2), the Administrator may appoint a person (in this Part referred to as a "deputy member") to act in the place of a member of the Education Advisory Council during the absence or inability to act of the member.

"(2) The Administrator shall not appoint a person to be a deputy member under subsection (1) unless the person is nominated by the same interest group or body referred to in section 11(3) as the person in whose place he or she is to act.

"11B. RESIGNATION AND REMOVAL FROM OFFICE

"(1) A member or a deputy member of the Education Advisory Council may resign office by writing signed by him and delivered to the Minister.

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"(2) The Minister may terminate the appointment of a member or deputy member of the Education Advisory Council for inability, inefficiency, misbehaviour or physical or mental incapacity.

"(3) If -

- (a) a member of the Education Advisory Council is absent, except by leave of the Chairman of the Council, from 3 consecutive meetings of the Council;
- (b) a deputy member of the Education Advisory Council is absent, except by leave of the Chairman of the Council, from 3 consecutive meetings of the Council which the member in whose stead he was appointed to act requested him to attend in the member's place; or
- (c) a member or deputy member of the Education Advisory Council becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Minister shall terminate the appointment of the member or deputy member, as the case may be.

"11C. MEETING OF COUNCIL

"(1) The Chairman of the Education Advisory Council shall call such meetings of the Council as are necessary for the exercise of its powers and the performance of its functions, but so that the interval between one meeting and the next does not exceed 5 months.

"(2) The Minister may at any time direct the Chairman of the Education Advisory Council to convene a meeting of the Council and the Chairman shall convene a meeting accordingly.

"(3) At a meeting of the Council -

- (a) 8 members of the Education Advisory Council shall constitute a quorum;
- (b) questions arising shall be determined by a majority of the votes of the members of the Council (and, where a deputy member is acting in place of a member, the deputy member) present and voting, and, in the event of an equality of votes, the member presiding at that meeting shall have a casting vote; and

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- (c) subject to this Act, the Council shall determine the procedure to be followed at or in connection with the meeting.

"(4) The Council shall keep records of its meetings."

12. CHAIRMAN AND DEPUTY CHAIRMAN

Section 12 of the *Education Act* is amended by adding at the end the following:

"(3) Where, in respect of a meeting of the Education Advisory Council -

- (a) the Chairman is present, he shall preside; or
- (b) the Chairman is absent and the Deputy Chairman is present, he shall preside, notwithstanding that a deputy member may be acting in the place of the Chairman."

13. NEW SECTION

The *Education Act* is amended by inserting after section 13 the following:

"13A. CONFIDENTIALITY

"A member or deputy member of the Education Advisory Council shall not disclose information obtained in the course of the member's duties as a member unless the disclosure is -

- (a) made in the course of the member or deputy member's duties as a member; and
- (b) authorised by the Education Advisory Council."

14. SUSPENSION BY HEAD TEACHER

Section 27 of the *Education Act* is amended -

- (a) by omitting subsection (1) and substituting the following:

"(1) Where the head teacher of a Government school at which a person is enrolled is of the opinion that the person should be suspended from attendance at the school because the presence of the person at school would, in the head teacher's opinion, be injurious to the health or moral welfare of other persons enrolled at the school, by reason of the person's insolence, repeated disobedience, immoral conduct or serious breach of discipline, the head teacher may suspend the person from attendance at the school.";

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(b) by inserting after subsection (3) the following:

"(3A) Where the head teacher of a Government school has suspended a person, other than a child, under subsection (1), the head teacher shall immediately furnish notice, in a form approved by the Secretary, of the suspension and a full report of the circumstances to the person and to the Minister."; and

(c) by omitting from subsection (4) "subsection (3) or until the Minister decides whether" and substituting "subsection (3) or (3A), as the case may be, or until the Minister decides whether, in the case of a child,".

15. NEW SECTION

The *Education Act* is amended by inserting after section 29 the following:

"29A. RE-ENROLMENT AFTER EXPULSION

"Where a child has been expelled from a Government school, a parent of the child shall not, without the permission of the Minister, enrol the child at a Government school, except at the educational institution known as the Northern Territory Secondary Correspondence School or at a school of the air."

16. DEFINITIONS

Section 40 of the *Education Act* is amended -

(a) by adding at the end of the definition of "chairman" the words "or (2) (a)";

(b) by inserting after the definition of "council" the following:

"'Director' means the Director of a college appointed under section 51;"; and

(c) by omitting from the definition of "vice-chairman" the words "section 45(2)" and substituting "section 45(3)".

17. ESTABLISHMENT OF COLLEGES

Section 41 of the *Education Act* is amended by omitting subsections (1) and (2) and substituting the following:

"(1) The Minister -

(a) may, by notice in the *Gazette*, declare an institution established for the provision of educational services in an academic, vocational or practical discipline or of a recreational

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nature to persons who have attained the age of 15 years, to be a college; and

- (b) shall, in a notice under paragraph (a), specify the name by which the college is to be known.

"(2) The Minister shall not declare an institution to be a college if it is wholly maintained otherwise than by Territory or Commonwealth funding."

18. COLLEGE AFFAIRS TO BE CONDUCTED BY COUNCIL

Section 44(3)(a) of the *Education Act* is amended by inserting after "Department of Education" the words "and, where a college is an Agency within the meaning of the *Public Sector Employment and Management Act*, the Public Sector as defined in that Act".

19. COMPOSITION OF COUNCIL

Section 45 of the *Education Act* is amended -

- (a) by omitting, from subsection (1), paragraph (c);
- (b) by omitting from subsection (1)(d) "principal" and substituting "Director";
- (c) by omitting subsection (1)(g) and substituting the following:

"(g) a person with expertise in the field of higher education appointed by the Minister;"; and

- (d) by omitting subsection (2) and substituting the following:

"(2) Notwithstanding subsection (1), where a college is an Agency within the meaning of the *Public Sector Employment and Management Act*, the council shall consist of -

- (a) a chairman appointed by the Minister;
- (b) the Director of the college;
- (c) a member of the teaching staff of the college elected by the staff;
- (d) a student of the college elected by the students of the college;
- (e) a person nominated by the Secretary;
- (f) a person with expertise in the field of higher education appointed by the Minister; and

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(g) such members, if any, appointed under the Regulations.

"(3) A council shall from time to time elect from amongst its members a vice-chairman to act in the place of the chairman from time to time during the absence or inability to act of the chairman.

"(4) The students of a college may elect a person to act in the office of the person elected under subsection (1)(f) or (2)(d), and a person so elected may act in that office, during the absence or inability to act of the person elected under that subsection."

20. TERMS OF OFFICE OF APPOINTED AND ELECTED MEMBERS

Section 46 of the *Education Act* is amended -

- (a) by inserting in subsection (1) after "section 45(1)(a), (g) or (h)" the words "or (2)(a), (e), (f), (g)"; and
- (b) by inserting in subsection (2) after "section 45(1)(e) or (f)" the words " or 45(2)(c) or (d)".

21. VACATION OF OFFICE AND FILLING OF CASUAL VACANCIES

Section 47 of the *Education Act* is amended -

- (a) by inserting in subsection (1), after ", (c) and (d)", the words "or section 45(2)(b)";
- (b) by omitting subsection (2)(e) and inserting in its stead the following:
 - "(e) ceases to hold the qualification, if any, necessary under section 45 for his or her appointment or election as the case may be;"; and
- (c) by inserting in subsection (5) after "section 45(1)(e) or (f)" the words "or section 45(2)(c) or (d)".

22. COMMITTEES

Section 49(1) of the *Education Act* is amended by adding at the end ", but shall appoint a member of the council to each committee".

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23. REPEAL AND SUBSTITUTION

Section 51 of the *Education Act* is repealed and the following substituted:

"51. APPOINTMENT OF DIRECTOR

"(1) The Minister may appoint a person nominated by a council to be the Director of the college.

"(2) The Administrator shall not appoint a Chief Executive Officer under section 19 of the *Public Sector Employment and Management Act* in respect of a college that is an Agency within the meaning of that Act, unless the person has been nominated by the council of the college to be the Director of the college.

"(3) The functions of a Director are -

- (a) to represent the council by which the Director was nominated;
- (b) to execute the policy decisions of the council by which the Director was nominated; and
- (c) such other functions as are conferred on the Director by this Act or any other Act.

"(4) Subject to this Act, the Director has power to do all things that are necessary or convenient to be done for or in connection with, or incidental to, the performance of the Director's functions."

24. OTHER STAFF, &c.

Section 52 of the *Education Act* is amended -

- (a) by omitting from subsection (1) "Subject to subsection (2)" and substituting "Subject to subsections (2) and (3)";
- (b) by omitting from subsection (2) "of the Minister" and substituting "of the Commissioner within the meaning of the *Public Sector Employment and Management Act*"; and
- (c) by adding at the end the following:

"(3) Subsections (1) and (2) do not apply to a college that is an Agency within the meaning of the *Public Sector Employment and Management Act*."

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25. REPEAL AND SUBSTITUTION

Section 53 of the *Education Act* is repealed and the following substituted:

"53. EXCLUSION OR PRESCRIPTION UNDER *FINANCIAL ADMINISTRATION AND AUDIT ACT*

"(1) A college, other than a college prescribed under the *Financial Administration and Audit Act* in pursuance of subsection (3), is not a statutory corporation within the meaning of or for the purposes of that Act.

"(2) Notwithstanding subsection (1), sections 17 and 27 of the *Financial Administration and Audit Act* apply in relation to a college, other than a college prescribed under the *Financial Administration and Audit Act* in pursuance of subsection (3), as if it were a department within the meaning of that Act, and, for the purposes of those sections as so applying, the Secretary is the accountable officer.

"(3) Notwithstanding anything to the contrary in the *Financial Administration and Audit Act*, a college that is an Agency under the *Public Sector Employment and Management Act* may be prescribed under the *Financial Administration and Audit Act* to be a prescribed statutory corporation for the purposes of Part IV of the *Financial Administration and Audit Act*.

"(4) Where a college is prescribed under the *Financial Administration and Audit Act* in pursuance of subsection (3)

- (a) the financial year for the purposes of that Act in relation to the college shall be the period of 12 months beginning on 1 January; and
- (b) sections 57, 58, 60, 60A and 60B of this Act do not apply to the college.

"(5) The Minister may direct a college to comply with such Treasurer's directions as are specified by the Minister."

26. DELEGATION

Section 60D(1) of the *Education Act* is amended by omitting "the principal of the college" and substituting "the Director of the college, a Chief Executive Officer within the meaning of the *Public Sector Employment and Management Act* or a person".

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27. VALIDITY OF PROCEEDINGS

Section 60G of the *Education Act* is amended by omitting "principal" and substituting "Director".

28. BY-LAWS

Section 60H of the *Education Act* is amended by adding at the end the following:

"(7) Notwithstanding section 63(11) of the *Interpretation Act*, section 63 of that Act does not apply to or in relation to by-laws under this section."

29. RULES

Section 60J of the *Education Act* is amended by adding at the end the following:

"(6) Rules under this section are not regulations for the purposes of section 57 of the *Interpretation Act*."

30. DEFINITIONS

The definition of "educational institution" in section 61 of the *Education Act* is amended -

- (a) by omitting from paragraph (a) "school;" and substituting "school; or";
- (b) by omitting from paragraph (b) "the Minister; or" and substituting "the Minister."; and
- (c) by omitting paragraph (c).

31. GENERAL POWERS OF SECRETARY

Section 69(1) of the *Education Act* is amended -

- (a) by omitting from paragraph (a) "and post-school institutions wholly established and wholly maintained by the Minister" and substituting "or in accordance with which secondary education is provided by a college"; and
- (b) by omitting from paragraph (b) "and post-school institutions" and substituting "and the standard of secondary education provided by those colleges".

32. INTERPRETATION AND SCOPE

Section 70(1) of the *Education Act* is amended by omitting the definitions of "Government school", "head teacher" and "post-school institution".

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33. NEW SECTIONS

The *Education Act* is amended by inserting after section 71M the following:

"71N. BY-LAWS

"(1) A school council may make by-laws, not inconsistent with this Part or the Regulations, prescribing matters -

- (a) required or permitted by this Part to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

"(2) Without limiting the generality of subsection (1), a school council's by-laws may in particular make provision relating to -

- (a) the protection of school property from trespass, damage or misuse;
- (b) the regulation or prohibition of access to and use of school property; and
- (c) the regulation of the conduct of persons or the use of vehicles on school property.

"(3) By-laws shall be signed by a person authorised by the school council to sign them.

"(4) By-laws under this section are not regulations for the purposes of section 57 of the *Interpretation Act*."

"(5) Notwithstanding section 63(11) of the *Interpretation Act*, section 63 of that Act does not apply to or in relation to by-laws under this section.

"71P. RULES

"(1) A school council may make rules (not inconsistent with this Part, the Regulations or any by-law) for carrying into effect any of the provisions of this Part or of by-laws.

"(2) Rules shall be signed by a person authorised by the school council to sign them.

"(3) Rules shall be published in such manner as is provided for in by-laws, and shall take effect from the date of publication or, where a later date is provided for in the rules, from that later date.

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"(4) It is sufficient compliance with the requirements of subsection (3) if notice of the making of the rules and the place where copies of them may be obtained is published on a board nominated in by-laws as the main notice board of the school council.

"(5) Rules under this section are not regulations for the purposes of section 57 of the *Interpretation Act*."

"(6) Notwithstanding section 63(11) of the *Interpretation Act*, section 63 of that Act does not apply to or in relation to rules under this section.

"71Q. PENALTIES UNDER BY-LAWS AND RULES

"(1) A by-law or rule may impose, or empower the school council or an officer of the school council to impose, a penalty not exceeding -

- (a) in the case of a by-law - \$1,000; and
- (b) in the case of a rule - \$20,

for a contravention of or failure to comply with a by-law or rule.

"(2) A penalty imposed under a power conferred by a by-law or rule is a debt due and payable by the person on whom it is imposed to the school council, and in proceedings for its recovery from that person, a certificate signed by an officer of the school council and specifying the person or body by whom it was imposed, the date on which it was imposed and the amount of the debt, shall be prima facie evidence of the matters specified."

34. NEW SECTION

The *Education Act* is amended by inserting after section 73 the following:

"73A. HIGHER EDUCATION

"(1) In this section, "higher education award" means a qualification described as a degree, associate degree, graduate diploma, graduate certificate, post-graduate certificate or associate diploma.

- "(2) A person shall not -
- (a) conduct or offer to conduct in the Territory a course of study in respect of which a higher education award may be conferred; or
 - (b) confer or offer to confer a higher education award in the Territory,

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unless the educational institution at which the course of study is offered or conducted or which confers or offers to confer such an award is -

- (c) a university established, continued or recognised as a university under a law of the Commonwealth, the Territory or a State or another Territory of the Commonwealth;
- (d) a college; or
- (e) approved by the Minister, by notice in the *Gazette*, and is operated under and in accordance with such terms and conditions, if any, as the Minister specifies in the notice.

"(3) A person may apply in writing to the Minister for approval to -

- (a) conduct a course of study in respect of which a higher education award may be conferred; and
- (b) to confer or offer to confer a higher education award,

in the Territory."

35. REGULATIONS

Section 75(2)(b) of the *Education Act* is amended by omitting "\$200" and substituting "\$1000".
