

NORTHERN TERRITORY OF AUSTRALIA

TEACHING SERVICE ACT

No. 41 of 1981

TABLE OF PROVISIONS

Section

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART II - COMMISSIONER OF THE NORTHERN TERRITORY  
TEACHING SERVICE

4. Appointment of Commissioner
5. Leave of absence
6. Removal from office
7. Retirement
8. Resignation
9. Functions of Commissioner
10. Powers of Commissioner
11. Delegation by Commissioner
12. Commissioner is prescribed authority

PART III - THE NORTHERN TERRITORY TEACHING SERVICE

Division 1 - Establishment of Service

13. The Northern Territory Teaching Service

Division 2 - Officers and Employees

14. Appointment of officers
15. Deployment of officers and employees
16. Duties of officers
17. Invitation to apply for appointment
18. Appointments to be on probation
19. Employees
20. Appeals against directions
21. Appointment of officers and employees to positions

Division 3 - Classifications and Promotions

22. Creation and abolition of positions
23. Reclassification
24. Consultation with Secretary
25. Filling a vacant position
26. Selection of officers for promotion
27. Promotion of officers provisional
28. Appeals against promotion

29. Promotions Appeal Board
30. Recruitment and promotion procedures

#### Division 4 - Discipline of Officers

31. Suspension by Secretary
32. Appeal to Commissioner
33. Retirement, &c., on grounds of inefficiency, incapacity, &c.
34. Disciplinary action for misconduct
35. Effect of suspension
36. Meaning of misconduct
37. Appeals against disciplinary action by Commissioner

#### Division 5 - Tenure

38. Tenure
39. Excess officers

#### PART IV - DISCIPLINARY APPEAL BOARD

40. Definitions
41. Disciplinary Appeal Board
42. Hearing of appeals
43. Decision of Board final
44. Procedure of Board
45. Witnesses
46. Obstruction of members
47. Hearings
48. Parties may be represented
49. New member if member unable to hear appeal

#### PART V - TEACHER ADVISORY COUNCIL

50. Teacher Advisory Council
51. Functions of Teacher Advisory Council
52. Acting Chairman and procedure

#### PART VI - TRANSFER TO SERVICE

53. Arrangement for transfer
54. Transferred officers and employees appointed to Service
55. Conditions of appointment of transferred officers and employees
56. Deductions from salary

#### PART VII - MISCELLANEOUS

57. Arrangements for student teachers
58. Outside employment
59. Resignation for election
60. By-laws
61. Annual report
62. Regulations



# THE NORTHERN TERRITORY OF AUSTRALIA

No. 41 of 1981

## AN ACT

To establish a Teaching Service

[Assented to 8 April 1981]

**B**E 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:

### PART I - PRELIMINARY

#### 1. SHORT TITLE

This Act may be cited as the Teaching Service Act 1981.

#### 2. COMMENCEMENT

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

#### 3. INTERPRETATION

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

"Commissioner" means the Commissioner of the Northern Territory Teaching Service appointed under section 4(1);

"Council" means the Teacher Advisory Council established by section 50(1);

"educational duties" means -

(a) teaching duties; and

(b) such duties relating to the provision of educational support services and the administration of educational institutions as the Secretary determines to be educational duties;

"employee" means a person engaged under section 19(1) as a temporary employee and includes a transferred employee;

## Teaching Service

"officer" means a person appointed under section 14(1) as an officer and includes a transferred officer;

"position" means a position in the Service created under section 22;

"promotion" means the placing, under section 25(1)(b), of an officer in a level or a position that has a higher attainable maximum salary than the level or position that he was in immediately before he was placed in the first-mentioned level or position;

"Secretary" means the Secretary of the Department of Education referred to in section 8(1) of the Education Act;

"Service" means the Northern Territory Teaching Service established by section 13(1);

"transfer" means the placing, under section 25(1)(a), of an officer or employee in a level or a position that has the same attainable maximum salary as the level or position he was in immediately before he was placed in the first-mentioned level or position;

"transferred employee" means a temporary employee of the Commonwealth Teaching Service transferred to the Northern Territory Teaching Service pursuant to arrangements made under section 53(2);

"transferred officer" means an officer of the Commonwealth Teaching Service transferred to the Northern Territory Teaching Service pursuant to arrangements made under section 53(1).

(2) In this Act, a reference to an officer or temporary employee of the Commonwealth Teaching Service means a person appointed as an officer or engaged as a temporary employee, as the case may be, under Part III of the Commonwealth Teaching Service Act 1972 of the Commonwealth.

### PART II - COMMISSIONER OF THE NORTHERN TERRITORY TEACHING SERVICE

#### 4. APPOINTMENT OF COMMISSIONER

(1) The Administrator may, by notice in the Gazette, appoint a person who has not attained the age of 65 years to be the Commissioner of the Northern Territory Teaching Service.

(2) Subject to this Part, the Commissioner shall hold office for such period, not exceeding 7 years, as is specified in the notice of his appointment but is eligible for reappointment.

## Teaching Service

(3) Subject to this Part, the Commissioner shall-

(a) be paid such remuneration, expenses and allowances; and

(b) hold office on such terms and conditions,

as the Administrator from time to time determines.

### 5. LEAVE OF ABSENCE

The Minister may grant leave of absence to the Commissioner upon such terms and conditions as to remuneration or otherwise as the Minister determines.

### 6. REMOVAL FROM OFFICE

The Administrator may remove the Commissioner from office if the Commissioner is, in the opinion of the Administrator -

(a) guilty of incompetence or misbehaviour; or

(b) physically or mentally incapable of adequately discharging the duties of his office.

### 7. RETIREMENT

(1) When the Commissioner attains the age of 60 years, he may retire.

(2) When the Commissioner attains the age of 65 years, he shall cease to hold office.

(3) If the Commissioner, by reason of illness or other incapacity, is unable to discharge the duties of his office, he may, with the prior approval of the Administrator, retire.

### 8. RESIGNATION

(1) The Commissioner may resign his office by writing signed by him and delivered to the Administrator.

(2) A resignation under sub-section (1) shall not have effect until it is accepted by the Administrator.

### 9. FUNCTIONS OF COMMISSIONER

(1) The functions of the Commissioner are -

(a) to make officers and employees available to the Secretary for the performance of educational duties; and

## Teaching Service

(b) such other functions as are conferred on him by this Act.

(2) Subject to this Act, the Commissioner shall make available to the Secretary for the performance of educational duties such number of officers and employees, possessing such qualifications, as the Secretary requires.

### 10. POWERS OF COMMISSIONER

Subject to this Act, the Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of his functions and the exercising of his powers.

### 11. DELEGATION BY COMMISSIONER

(1) The Commissioner may, from time to time, by instrument in writing, delegate to a person such of his powers and functions, other than this power of delegation, as are specified in the instrument.

(2) A delegation under sub-section (1) may be made generally or for any particular case or class of cases specified in the instrument of delegation.

(3) A power or function delegated under this section may be exercised or performed, in accordance with the terms of the delegation, by the person to whom the delegation is made.

(4) A delegation under sub-section (1) is revocable at will and does not prevent the exercising of a power or the performance of a function by the Commissioner.

### 12. COMMISSIONER IS PRESCRIBED AUTHORITY

In respect of the employment of persons other than persons appointed under section 14 or engaged under section 19, the Commissioner is a prescribed authority within the meaning and for the purposes of the Public Service Act.

## PART III - THE NORTHERN TERRITORY TEACHING SERVICE

### Division 1 - Establishment of Service

#### 13. THE NORTHERN TERRITORY TEACHING SERVICE

(1) There is hereby established the Northern Territory Teaching Service.

(2) The Service consists of persons appointed as officers or engaged as employees.

## Teaching Service

### Division 2 - Officers and Employees

#### 14. APPOINTMENT OF OFFICERS

(1) Subject to this section, the Commissioner may appoint to the Service as officers to perform educational duties such number of persons as the Administrator, after receiving a report from the Commissioner, determines.

(2) Before making a report to the Administrator under subsection (1), the Commissioner shall consult with and obtain a report from the Secretary.

(3) A person shall not be appointed as an officer unless -

(a) he has such qualifications as are determined by the Commissioner;

(b) he is, in the opinion of the Commissioner, healthy and physically fit; and

(c) he is, in the opinion of the Commissioner, a fit and proper person to be an officer.

(4) Subject to this Act, officers hold office on such terms and conditions as the Commissioner, with the approval of the Administrator, from time to time determines.

(5) The Commissioner shall not determine terms and conditions of employment in respect of transferred officers that are less favourable than the terms and conditions of employment under which officers of the Commonwealth Teaching Service were employed on 1 January 1980.

#### 15. DEPLOYMENT OF OFFICERS AND EMPLOYEES

Where the Commissioner makes an officer or employee available to the Secretary for the performance of educational duties, the Secretary may, notwithstanding the position occupied by the officer or employee, make use of the officer or employee in whichever school or educational unit he thinks fit.

#### 16. DUTIES OF OFFICERS

Notwithstanding the position occupied by an officer, he shall perform duties as directed by the Secretary.

#### 17. INVITATION TO APPLY FOR APPOINTMENT

(1) Where the Secretary so requests, the Commissioner may, by advertisement in such manner as the Secretary requires, invite persons to apply for appointment as officers.

## Teaching Service

- (2) An advertisement under sub-section (1) shall specify -
- (a) the classes of positions in respect of which applications for appointment are invited;
  - (b) the salaries, or limits of salaries, of those classes of positions;
  - (c) where applicable -
    - (i) the age limits for appointment; and
    - (ii) the qualifications required or relevant for those classes of positions; and
  - (d) such other matters, if any, as the Secretary requires.

(3) Nothing in this section prevents the appointment as an officer of a person who has applied for appointment otherwise than in answer to an advertisement under this section.

### 18. APPOINTMENTS TO BE ON PROBATION

(1) Subject to section 28(4)(b) or unless the Commissioner, in a particular case or class of cases, otherwise directs, the appointment of every officer shall be on probation for a period not exceeding one year commencing from the date on which the officer commences duty.

(2) A person appointed as an officer on probation remains on probation until his appointment is confirmed or terminated in accordance with this section.

(3) The Commissioner may, at any time during the period of probation of an officer, terminate the appointment of the officer.

(4) As soon as practicable after the expiration of the period of probation of an officer, the Commissioner shall -

- (a) confirm the appointment of the officer;
- (b) terminate the appointment of the officer; or
- (c) direct that the officer continue on probation for such further period, not exceeding one year, as the Commissioner thinks fit.

(5) Where, under sub-section (4)(c), the Commissioner directs that an officer continue on probation for a further period, he may confirm or terminate the appointment of the officer at any time during that further period and, if he has not confirmed or terminated the appointment before the expiration of that period, shall do so as soon as practicable after the expiration of that period.



## Teaching Service

(6) Where the appointment of an officer is terminated under this section, the Commissioner shall, as soon as practicable, notify the officer in writing of the reasons for the termination.

### 19. EMPLOYEES

(1) Where the Secretary so requests, the Commissioner may engage temporary employees to perform educational duties.

(2) Subject to this Act, persons engaged as employees are employed on such terms and conditions as the Commissioner, with the approval of the Administrator, from time to time determines.

(3) Notwithstanding the position occupied by an employee, he shall perform duties as directed by the Secretary.

### 20. APPEALS AGAINST DIRECTIONS

(1) If an officer or employee considers that he has grounds for complaint arising out of a direction as to duties given by the Secretary under section 16 or 19(3), the officer or employee may appeal to the Commissioner.

(2) An appeal shall be in writing delivered to the Commissioner and set out the grounds of appeal.

(3) Where the Commissioner so directs, an officer or employee who appeals under sub-section (1) shall carry out the direction appealed against until the appeal is determined under sub-section (4).

(4) The Commissioner shall, after receiving a report from the Secretary, consider an appeal and shall determine the appeal -

(a) by allowing the appeal; or

(b) by refusing the appeal.

(5) The Commissioner shall, in writing, give to the Secretary and the officer or employee who has appealed his reasons for allowing or refusing an appeal.

(6) Where an appeal is allowed by the Commissioner, he may, after consultation with the Secretary, give such directions in relation to the officer or employee who has appealed, including directions in substitution for any direction appealed against, as he thinks fit, and any person to whom they are given shall carry them out accordingly.

(7) Where an appeal under this section is refused by the Commissioner, the officer or employee who has appealed shall carry out or continue to carry out, as the case may be, the direction appealed against.

## Teaching Service

### 21. APPOINTMENT OF OFFICERS AND EMPLOYEES TO POSITIONS

Where an officer is appointed or an employee is engaged, the Secretary shall allocate the officer or the employee to a position.

#### Division 3 - Classifications and Promotions

### 22. CREATION AND ABOLITION OF POSITIONS

The Administrator may, after receiving a report from the Commissioner -

- (a) create and abolish positions in the Service; and
- (b) classify a position by determining the salary, or the range of salary, applicable to a position in the Service.

### 23. RECLASSIFICATION

(1) The Administrator may, after receiving a report from the Commissioner, alter the classification of a position by raising or lowering the salary, or the range of salary, applicable to the position.

(2) Subject to sub-sections (3) and (4), whenever the classification of a position is altered, the position shall be deemed to be vacant.

(3) Where the Commissioner makes the same alteration of the classification of all positions having the same classification, the Commissioner may direct in writing that sub-section (2) shall not apply and, accordingly, that sub-section does not apply.

(4) Where -

- (a) the Commissioner makes an alteration of the classification of a position in a case where there is no other position having the same classification as the first-mentioned position; and
- (b) the Commissioner declares in writing that that alteration is related to an alteration in respect of which a direction is or has been given under sub-section (3),

the Commissioner may direct in writing that sub-section (2) shall not apply in relation to the first-mentioned alteration and, accordingly, that sub-section does not apply.

(5) A direction given by the Commissioner under sub-section (3) or (4) shall be made known as prescribed.

### 24. CONSULTATION WITH SECRETARY

Before making a report referred to in section 22 or 23 to the Administrator, the Commissioner shall consult with and obtain a report from the Secretary.

## Teaching Service

### 25. FILLING A VACANT POSITION

(1) The Secretary may fill a vacant position by -

- (a) allocating an officer or employee under section 21;
- (b) transferring an officer or employee; or
- (c) promoting an officer,

to the vacant position.

(2) Except where the Commissioner otherwise directs -

- (a) all vacant positions which the Secretary wishes to fill; and
- (b) all allocations, appointments, transfers, promotions and confirmations of promotions,

shall be notified in the Gazette by the Secretary or in such other publication as the Commissioner directs.

(3) The Commissioner may determine that a position or class of positions is to be filled by an officer or officers who possesses or possess qualifications specified in the determination and, where the Commissioner has so determined, an officer shall not be allocated, transferred or promoted to the position or a position in the class of positions, as the case may be, unless he possesses those qualifications.

(4) The Regulations may make provision for the temporary promotion or transfer of an officer or employee to fill a vacant position.

### 26. SELECTION OF OFFICERS FOR PROMOTION

(1) In the selection of an officer for promotion under section 25(1), consideration shall be given only to the relative efficiency of the officers available for promotion.

(2) For the purposes of this section, "efficiency" means suitability for the discharge of the duties of the kind to be performed by the person selected, having regard to -

- (a) aptitude for the discharge of those duties;
- (b) relevant experience and qualifications;
- (c) training, including formal training;
- (d) capacity for development; and
- (e) relevant personal qualities.

## Teaching Service

### 27. PROMOTION OF OFFICERS PROVISIONAL

(1) Subject to the Regulations, if any, made in pursuance of section 25(4), the promotion of an officer, under section 25(1)(c), to a vacant position is provisional and is subject to appeal as provided by section 28.

(2) Unless the Commissioner otherwise directs, the promotion of a person shall, while it is provisional, be without an increase in salary.

(3) Where a provisional promotion is confirmed, salary at the rate applicable to the position to which the promotion was made is payable to the person promoted from the date of the provisional promotion.

(4) Where an appeal against a provisional promotion is allowed, salary at the rate applicable to the position to which the promotion was made is payable to the successful applicant from the date of the provisional promotion.

### 28. APPEALS AGAINST PROMOTION

(1) An officer of the Service or an officer of the Commonwealth Teaching Service who claims that he should have been promoted in preference to an officer provisionally promoted may appeal, to a Promotions Appeal Board, on the grounds of superior efficiency, against the provisional promotion.

(2) An appeal under sub-section (1) shall be in writing delivered to the Commissioner within 21 days after notification under section 25(2) of the provisional promotion appealed against.

(3) Upon an appeal or appeals, a Promotions Appeal Board shall make full inquiry into the claims of the appellant or appellants and those of the person provisionally promoted and determine the appeal or appeals.

(4) Where an appeal is allowed, the Secretary shall cancel the provisional promotion and -

- (a) if the appellant or the appellant with the best established claim is an officer of the Service - the Secretary shall promote that appellant; or
- (b) if the appellant or the appellant with the best established claim is an officer of the Commonwealth Teaching Service - the Commissioner shall appoint that appellant to the Service, without probation, and the Secretary shall appoint that appellant to the vacant position.

### Teaching Service

(5) Where, in respect of a provisional promotion, no appeal is made within the time allowed under sub-section (2) or an appeal has, or appeals have, been duly made but the appeal has, or each of the appeals have, been disallowed or has or have become inoperative, the Secretary shall confirm the provisional promotion.

(6) If, after notification under section 25(2) has been made of a provisional promotion to a vacant position but, before the promotion has been confirmed, the Secretary is satisfied that the position is unnecessary or can be filled by the transfer of an excess officer, or that the notification or further notification of the vacancy in the position is desirable, the Secretary may cancel the provisional promotion.

(7) The Secretary may cancel a provisional promotion in accordance with sub-section (6) whether or not there has been an appeal under this section, but, upon the cancellation, any appeals in respect of the promotion shall be discontinued.

(8) For the purposes of this section, an appeal shall be taken to become inoperative if -

- (a) the appeal is withdrawn by the appellant; or
- (b) the appellant ceases to be eligible for the particular promotion.

#### 29. PROMOTIONS APPEAL BOARD

(1) There is hereby established a Promotions Appeal Board for the purposes of hearing appeals under section 28 which shall consist of such boards as the Commissioner, from time to time, appoints.

(2) A board appointed under sub-section (1) shall, in respect of an appeal made under section 28, be constituted by -

- (a) the Chairman of the Promotions Appeal Board;
- (b) one officer nominated by the Northern Territory Teachers Federation; and
- (c) one officer nominated by the Secretary.

(3) The Chairman of the Promotions Appeal Board shall be appointed by the Commissioner on such terms and conditions as the Administrator determines.

#### 30. RECRUITMENT AND PROMOTION PROCEDURES

The Commissioner shall, after consultation with the Secretary, develop recruitment and promotion procedures not inconsistent with this Act, being procedures for the careful assessment of personal qualifications and capabilities that are likely to contribute to the efficient working of the Service and that preclude patronage, favouritism and unjustified discrimination.

Teaching Service

Division 4 - Discipline of Officers

31. SUSPENSION BY SECRETARY

- (1) If, in the opinion of the Secretary, an officer -
  - (a) is inefficient, incompetent or unfit or unable to perform his duties; or
  - (b) is guilty of misconduct,

the Secretary may, by notice given to the officer specifying the grounds for suspension, suspend him from duty for a period not exceeding one month.

- (2) Where the Secretary suspends an officer -
  - (a) the Secretary shall, in writing, immediately inform the Commissioner of the suspension and the grounds for suspension;
  - (b) the Secretary may, at any time, remove the suspension; and
  - (c) the officer shall be paid his salary in respect of the period of the suspension.

32. APPEAL TO COMMISSIONER

(1) An officer who has been suspended under section 31(1) may appeal to the Commissioner against the suspension by writing delivered to the Commissioner.

(2) Where an officer appeals to the Commissioner under sub-section (1), the Commissioner shall determine the appeal by -

- (a) revoking the suspension; or
- (b) dealing with the matter under section 33 or 34,

and the Commissioner's decision shall be final.

(3) Where the Commissioner determines an appeal in the manner provided under sub-section (2)(b), the suspension appealed against continues in force -

- (a) until the matter is determined under section 33 or 34(1), as the case may be; or
- (b) until the Commissioner suspends the officer under section 34(3),

whichever is the earlier.

### Teaching Service

#### 33. RETIREMENT, &c., ON GROUNDS OF INEFFICIENCY, INCAPACITY, &c.

If, in the opinion of the Commissioner, an officer is inefficient, incompetent or unfit or unable to perform his duties, the Commissioner may -

- (a) if the officer occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the minimum salary of that range - reduce his salary to a lower salary within that range;
- (b) if the officer occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the maximum salary of that range - determine that he be not granted, or be not granted until the expiration of a specified period, the whole or such part as the Commissioner specifies, of a specified increase in salary within that range that would otherwise be granted to him;
- (c) reduce him to a lower position and salary; or
- (d) retire him from the Service.

#### 34. DISCIPLINARY ACTION FOR MISCONDUCT

(1) Where, after inquiry as directed by the Commissioner, it is found that an officer has been guilty of misconduct, the Commissioner may -

- (a) caution or reprimand him;
- (b) withhold from the officer's salary a sum not exceeding \$100;
- (c) if the officer occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the minimum salary of that range - reduce his salary to a lower salary within that range;
- (d) if the officer occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the maximum salary of that range - determine that he be not granted, or be not granted until the expiration of a specified period, the whole or such part as the Commissioner specifies, of a specified increase in salary within that range that would otherwise be granted to him;
- (e) reduce him to a lower position and salary; or
- (f) dismiss him from the Service.

(2) In an inquiry for the purposes of sub-section (1), a formal hearing is not required but the officer shall be informed of the nature of the alleged misconduct and be given an opportunity of furnishing a statement in relation to the matters alleged to constitute the misconduct.

### Teaching Service

(3) Where -

- (a) an inquiry is being held into the alleged misconduct of an officer; or
- (b) an officer has been charged with having committed an offence against a law of the Commonwealth, the Territory, a State or another Territory, and it appears to the Commissioner that the act or omission alleged to constitute the offence is such as to constitute misconduct by the officer,

the Commissioner may suspend the officer from duty.

(4) Subject to sub-sections (5) and (8), where the Commissioner suspends an officer from duty under sub-section (3), the officer shall be paid his salary in respect of the period of the suspension.

(5) The Commissioner may, in his discretion, determine that the officer suspended under sub-section (3) -

- (a) not be paid his salary in respect of the period of the suspension;
- (b) not be paid his salary in respect of such part of the period of the suspension as the Commissioner determines; or
- (c) not be paid such part of his salary as the Commissioner determines in respect of the period of the suspension or in respect of such part of that period as the Commissioner determines.

(6) Where the Commissioner has suspended an officer from duty under sub-section (3), the Commissioner may, at any time, remove the suspension.

(7) Where -

- (a) after an inquiry has been held into alleged misconduct by an officer who has been suspended from duty under sub-section (3), the Commissioner is not satisfied that the officer has been guilty of misconduct; or
- (b) upon the hearing by a court of a charge referred to in sub-section (3)(b) against an officer who has been suspended from duty under that sub-section, the officer does not plead guilty and is not found guilty of the offence with which he was charged or of another offence that appears to the Commissioner to be such as to constitute misconduct by the officer, or the charge against the officer is not proceeded with,

the Commissioner shall, if he has not already done so, remove the suspension.



## Teaching Service

(8) Where -

- (a) an officer has been suspended from duty under sub-section (3);
- (b) an amount of salary that would otherwise have been paid to the officer in respect of the period of the suspension was not paid to him; and
- (c) the Commissioner removes the suspension,

the officer shall, subject to sub-section (9), be paid that amount of salary.

(9) Where the Commissioner is satisfied that an officer to whom sub-section (8) applies has engaged in paid employment or work during the period of his suspension, the amount payable to him under that sub-section shall be reduced by an amount equal to the total of the amounts of the earnings that the Commissioner is satisfied were received or are receivable by the officer in respect of that employment or work.

### 35. EFFECT OF SUSPENSION

Where an officer is suspended under section 31(1) or 34(3) -

- (a) the period of suspension shall count as service for all purposes except where the officer is dismissed from the Service because of the same matter for which he was suspended; and
- (b) he is entitled to engage in paid employment during any period of suspension without salary.

### 36. MEANING OF MISCONDUCT

For the purposes of sections 31 and 34, an officer is guilty of misconduct if, and only if -

- (a) he wilfully disobeyed or disregarded a direction applicable to him as an officer and given by a person having authority to give the direction;
- (b) he was negligent or careless in the discharge of his duties;
- (c) he was inefficient or incompetent by reason of causes within his own control;
- (d) he used intoxicating liquor to excess or drugs to excess;
- (e) he was guilty of disgraceful or improper conduct, whether as an officer or otherwise;

### Teaching Service

- (f) he failed to comply with a provision of this Act or the Regulations applicable to him;
- (g) he committed a breach of the terms and conditions under which he holds office; or
- (h) whether before or after becoming an officer, he wilfully supplied to the Commissioner, the Secretary, to an officer of the Service or to some other person acting on behalf of the Commissioner or Secretary, incorrect or misleading information in connection with his appointment to the Service.

#### 37. APPEALS AGAINST DISCIPLINARY ACTION BY COMMISSIONER

- (1) Where, under section 33 or 34 -
  - (a) an officer has a sum of more than \$50 withheld from his salary, has his salary or position reduced or is retired or dismissed; or
  - (b) a determination is made that an officer be not granted, or be not granted until the expiration of a specified period, the whole or a part of an increase in salary,

the officer may appeal under Part IV.

(2) Where an officer appeals in accordance with sub-section (1), no action shall be taken to enforce the decision of the Commissioner appealed against until the appeal is determined under section 42(3).

### Division 5 - Tenure

#### 38. TENURE

(1) The employment of an officer in the Service shall not be terminated except by resignation or retirement as provided by this section or by retirement or dismissal as provided by Division 4 of this Part or section 42(3).

(2) An officer may resign from the Service at any time by writing signed by him and delivered to the Commissioner.

(3) An officer who attains the minimum prescribed age may retire from the Service.

(4) Subject to sub-section (5), an officer who attains the maximum prescribed age shall be retired by the Commissioner from the Service.

(5) The Commissioner may, if he is satisfied that, in the interests of the efficient working of the Service, an officer should continue to be employed after he has attained the maximum prescribed age, permit the officer to be employed for such further period as the Commissioner, in the particular case, determines.

## Teaching Service

(6) The Regulations may require a particular period of notice to be given by an officer or an officer included in a specified class of officers or by an officer resigning in prescribed circumstances.

### 39. EXCESS OFFICERS

(1) If, at any time, in the opinion of the Secretary a greater number of officers are occupying positions of a particular classification than is necessary for the efficient working of the Service, an officer whom the Secretary finds to be in excess may be transferred by the Secretary to such other position of equal classification as the officer is competent to fill and, if no such position is available, the officer may be transferred to a position of lower classification.

(2) If no position is available for an officer referred to in sub-section (1), the Commissioner may retire the officer from the Service.

(3) If the Secretary is not able to employ an officer in the performance of educational duties of a kind that, having regard to the position occupied by the officer, are appropriate to be performed by him, the Secretary shall not promote or transfer another officer under section 25(1) to a position in which that other officer would be performing duties of that kind.

## PART IV - DISCIPLINARY APPEAL BOARD

### 40. DEFINITIONS

In this Part -

"appeal" means an appeal in accordance with section 37;

"Board", in relation to an appeal, means the Disciplinary Appeal Board established by section 41(1) as constituted in respect of that appeal;

"Chairman" means the Chairman of the Board appointed under section 41(3);

"member", in relation to an appeal, means a member appointed under section 41(2) in respect of that appeal and includes the Chairman.

### 41. DISCIPLINARY APPEAL BOARD

(1) There is hereby established a Disciplinary Appeal Board for the purpose of hearing appeals which shall consist of such boards as the Commissioner, from time to time, appoints.

(2) A Board appointed under sub-section (1) shall, in respect of an appeal, be constituted by -

(a) the Chairman;

## Teaching Service

(b) one officer nominated by the Commissioner; and

(c) one person nominated by the Secretary.

(3) The Chairman shall be appointed by the Commissioner on such terms and conditions as the Administrator determines.

### 42. HEARING OF APPEALS

(1) An appeal shall be by notice in writing, signed by the appellant and delivered to the Commissioner within 21 days after the decision of the Commissioner under section 33 or 34, as the case may be.

(2) Immediately upon receipt of a notice of appeal, the Commissioner shall -

(a) appoint a Board;

(b) set a date and place for the Board to hear the appeal; and

(c) inform the appellant, the Secretary and such other persons, if any, as the Commissioner thinks fit, of the date and place of the hearing of the appeal.

(3) A Board appointed under sub-section (2) shall hear each appeal submitted to it by the Commissioner and shall determine the appeal by confirming, varying or setting aside the decision against which the appeal is made.

(4) Where, under sub-section (3), the Board varies a decision, it shall have all the powers of the Commissioner under sections 33 and 34.

(5) Where the Board does not, within 6 months after the date set under sub-section (2), determine an appeal submitted to it under this section, the decision against which the appeal is made is set aside.

(6) The Board may, when only 2 of the 3 members are present, if the appellant and the Commissioner consent, exercise all the powers of the Board in respect of an appeal.

### 43. DECISION OF BOARD FINAL

A decision of the Board under section 42(3) is final and the Commissioner shall take such action as is necessary to give effect to the decision.

### 44. PROCEDURE OF BOARD

(1) Subject to this Act and the Regulations, in an appeal before the Board, the procedure of the Board shall be as the Board determines.

### Teaching Service

- (2) The Board shall be presided over by the Chairman.
- (3) The Board may -
  - (a) proceed in the absence of a person entitled to be present if the person has had reasonable notice of the appeal;
  - (b) adjourn from time to time an appeal before it;
  - (c) summon a person to appear before it to give evidence and to produce such documents, if any, as are referred to in the summons;
  - (d) require a person appearing before it to give evidence either to take an oath or make an affirmation; and
  - (e) administer an oath or affirmation to a person appearing before it.

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he will give to questions asked of him will be true.

(5) A summons to a witness under this section may be served personally or by sending it by prepaid post to the person to whom it is directed at his last-known place of residence or business.

(6) When, at a hearing of an appeal by the Board, the members are divided in opinion on a question, that question shall be decided according to a decision of the majority but, if 2 members only are present and those members are divided on a question, the appeal shall be adjourned until all members are present.

#### 45. WITNESSES

A person summoned to attend as a witness before the Board shall not, without reasonable excuse -

- (a) refuse or fail to attend, or to produce documents, books or writings, in accordance with the summons; or
- (b) refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings before the Board.

Penalty: \$200.

#### 46. OBSTRUCTION OF MEMBERS

A person shall not obstruct a member of the Board in the exercise of the powers conferred under this Act on the member.

Penalty: \$200.

## Teaching Service

### 47. HEARINGS

(1) Subject to this section, the hearing of an appeal before the Board shall be in private.

(2) A person who -

- (a) has been informed by the Commissioner of an appeal; or
- (b) the Board considers should be in attendance,

is entitled to be present at a hearing.

(3) The Board may, by order -

- (a) direct that a hearing, or part of a hearing, of an appeal shall not be in private and give directions as to the persons who may be present;
- (b) give directions restricting or prohibiting the publication of evidence given before the Board, whether in public or in private, or of any matters contained in documents lodged with the Board or received in evidence by the Board; and
- (c) give directions prohibiting or restricting the disclosure of evidence given before the Board, of the contents of a document lodged with the Board in relation to a proceeding or of any finding or decision of the Board in relation to a proceeding.

(4) A person shall not contravene or fail to comply with an order of the Board made under sub-section (3).

Penalty: \$500.

### 48. PARTIES MAY BE REPRESENTED

At the hearing of an appeal before the Board, a party to the proceeding may appear in person or may be represented, by leave of the Board, by some other person.

### 49. NEW MEMBER IF MEMBER UNABLE TO HEAR APPEAL

If a member is unable, for any reason, to hear or continue to hear an appeal, the Commissioner may -

- (a) appoint a person in place of the member; or
- (b) dismiss the Board hearing the appeal and appoint a new Board.

Teaching Service

PART V - TEACHER ADVISORY COUNCIL

50. TEACHER ADVISORY COUNCIL

- (1) There is hereby established a Teacher Advisory Council.
- (2) The members of the Council shall be -
  - (a) the Commissioner;
  - (b) 3 persons nominated by the Northern Territory Teachers Federation; and
  - (c) 3 persons nominated by the Secretary.
- (3) The members of the Council, other than the Chairman, shall be appointed by the Minister by notice in the Gazette for such period, not exceeding 2 years, as is specified in the notice of appointment.
- (4) The Commissioner shall be the Chairman of the Council.

51. FUNCTIONS OF TEACHER ADVISORY COUNCIL

- (1) The Teacher Advisory Council -
  - (a) shall consider such matters relating to the provision of a teaching service in the Territory as the Council determines or as the Commissioner refers to it for consideration or advice;
  - (b) may make to the Commissioner, from time to time, such recommendations as it thinks fit in relation to any matter considered by the Council; and
  - (c) shall report to the Commissioner from time to time or as required by the Commissioner on any matter considered by the Council.
- (2) Without limiting the generality of sub-section (1), the Council may advise the Commissioner on -
  - (a) qualifications and experience necessary for entry into the Service;
  - (b) guidelines for eligibility for promotion and methods of assessing eligibility for entry into the Service;
  - (c) determination of levels of new classes of positions in the Service; and
  - (d) terms and conditions of employment in the Service.

## Teaching Service

### 52. ACTING CHAIRMAN AND PROCEDURE

(1) In the absence of the Chairman, the Council shall elect a member of the Council to act as Chairman.

(2) The procedure at meetings of the Council shall be as the Council determines.

### PART VI - TRANSFER TO SERVICE

### 53. ARRANGEMENT FOR TRANSFER

(1) The Minister may make arrangements with any person authorized by the Commonwealth on that behalf for the transfer on a specified day to the Northern Territory Teaching Service of a specified officer or of a specified class of officers of the Commonwealth Teaching Service.

(2) The Minister may make arrangements with any person authorized by the Commonwealth on that behalf for the transfer on a specified day to the Northern Territory Teaching Service of a specified temporary employee or of a specified class of temporary employees of the Commonwealth Teaching Service.

(3) The Minister may do such things as are necessary to carry out an arrangement made under this section.

### 54. TRANSFERRED OFFICERS AND EMPLOYEES APPOINTED TO SERVICE

(1) A transferred officer shall be deemed, by virtue of his transfer, to be duly appointed, on the date of his transfer, as an officer of the Northern Territory Teaching Service.

(2) A transferred employee shall be deemed, by virtue of his transfer, to be duly engaged, on the date of his transfer, as an employee of the Northern Territory Teaching Service.

### 55. CONDITIONS OF APPOINTMENT OF TRANSFERRED OFFICERS AND EMPLOYEES

(1) A transferred officer shall be deemed to have been appointed under this Part -

(a) subject to paragraph (b) - without probation; or

(b) if his appointment as an officer of the Commonwealth Teaching Service has not been confirmed before the date of his transfer - upon probation for a period not exceeding the period of probation required under the Commonwealth Teaching Service Act 1972 of the Commonwealth.

(2) For the purposes of sub-section (1)(b) -



### Teaching Service

- (a) the probationary service in the Commonwealth Teaching Service of a transferred officer shall be treated as probationary service in the Northern Territory Teaching Service;
- (b) a transferred officer shall be subject to section 18(2), (3), (4), (5) and (6); and
- (c) if a direction in relation to a transferred officer had been given before his transfer that he continue on probation in the Commonwealth Teaching Service for a period in excess of 6 months, that direction has effect as if it were made under section 18(4).

(3) A transferred officer shall be entitled, upon his transfer, to be paid at a rate equal to the rate at which salary was payable to him in respect of the substantive office occupied by him in the Commonwealth Teaching Service immediately before the date of his transfer.

(4) For the purpose of ensuring that conditions of employment of a transferred officer are, as far as possible, as favourable as those that, in the opinion of the Commissioner, he enjoyed immediately before his transfer, the Commissioner may, with the approval of the Administrator, notwithstanding anything in any other provision of this Act -

- (a) determine any conditions of employment (including conditions relating to salary, pay or allowances) that are to apply to him; or
- (b) determine that an allowance is payable to him as compensation.

(5) A transferred employee shall be deemed, by virtue of his transfer, to have been engaged on terms entitling him to continue to be employed in the Northern Territory Teaching Service -

- (a) at such a salary as the Commissioner determines to be the appropriate salary for the employee having regard to the work performed by the employee during the period of his temporary employment in the Commonwealth Teaching Service or, if that period is in excess of 3 months, during the period of 3 months immediately preceding the date of his transfer; and
- (b) for such period as the Secretary determines having regard to the work performed, or last performed, by the employee in the Commonwealth Teaching Service and to the period during which the employee was likely to continue as a temporary employee in the Commonwealth Teaching Service.

(6) Where, but for his transfer, the salary payable to a transferred officer or transferred employee would or might have been increased by reason of an increment of salary in respect of the

## Teaching Service

office held by him immediately before his transfer, the entitlement to salary on his transfer by virtue of this section includes an entitlement to increments of salary on the same terms as applied to him immediately before his transfer.

(7) A transferred officer or transferred employee shall retain such rights (including rights as to recreation leave and leave on the grounds of illness), if any, and under the same conditions as had accrued to him as an officer or temporary employee of the Commonwealth Teaching Service, immediately before the date of his transfer.

(8) A transferred officer or transferred employee to whom leave of absence had been granted before the date of his transfer from the Commonwealth Teaching Service, for a period commencing on or before the date of his transfer and ending after that date, shall be deemed to have been granted leave of absence for the purpose of which that leave was granted for the period commencing on the day of his transfer and ending on the last day of the first-mentioned period.

(9) The entitlement of a transferred officer or transferred employee to long service leave in respect of his service in the Northern Territory Teaching Service shall be determined -

- (a) in accordance with a rate of accrual of long service leave that is not less than the rate of accrual of long service leave that was applicable to him, immediately before his transfer, in respect of his service in the Commonwealth Teaching Service; and
- (b) in respect of a period of service that is not less than the period ascertained by aggregating the period of his service in the Northern Territory Teaching Service after his transfer and the period that was, immediately before his transfer, the period of his service for the purposes of long service leave under the conditions of his employment in the Commonwealth Teaching Service,

and the amount of pay in lieu of long service leave payable to or in relation to him shall be calculated in a like manner.

(10) A transferred officer who is, on the date of his transfer, performing duty for an authority, body or person by reason of his having been authorized to do so under the Commonwealth Teaching Service Act 1972 of the Commonwealth -

- (a) may continue, on and after that date, to perform duty for that authority, body or person for the remainder of the period for which he has been authorized to do so as if he had been authorized to do so in accordance with the terms and conditions of his service in the Northern Territory Teaching Service and upon terms and conditions similar to the terms and conditions upon which he was authorized to do so under the Commonwealth Teaching Service Act 1972 of the Commonwealth;

## Teaching Service

- (b) shall be deemed to have been granted, on the date of his transfer, leave of absence without pay from the Northern Territory Teaching Service for the period commencing on that date and ending on the last day of the period for which he is to be treated as authorized to perform duty for that authority, body or person; and
- (c) shall be entitled, upon the termination of the leave of absence referred to in paragraph (b), to be paid salary at the rate that the Commissioner, with the approval of the Administrator, determines to be the appropriate rate having regard to the rate at which salary was payable to him in respect of the position held by him in the Commonwealth Teaching Service immediately before he commenced to perform duty for that authority, body or person and the period during which he performed that duty.

### 56. DEDUCTIONS FROM SALARY

An authority, given by a transferred officer or transferred employee and in force immediately before his transfer, for the deduction of an amount from each payment of his salary for the payment of that amount on his behalf to a specified body or person continues in force as such an authority on and after his transfer until cancelled by him.

## PART VII - MISCELLANEOUS

### 57. ARRANGEMENTS FOR STUDENT TEACHERS

The Minister may make arrangements for the training of student teachers in Territory schools.

### 58. OUTSIDE EMPLOYMENT

(1) An officer shall not engage in paid employment outside his duties as an officer except with the approval of the Commissioner.

(2) The Commissioner shall not give an approval for the purposes of sub-section (1) unless he is satisfied that the paid employment will not interfere with the performance by the officer of his duties.

(3) In this section, "paid employment" means employment, work or service for which payment is made by way of pay, salary, honorarium, commission, fee, allowance or other reward.

### 59. RESIGNATION FOR ELECTION

- (1) Where the Commissioner is satisfied that -
  - (a) a person who was an officer in the Service -

### Teaching Service

- (i) resigned from the Service in order to become a candidate for election as a member of either House of the Parliament of the Commonwealth or as a member of the Legislative Assembly;
  - (ii) was a candidate at the election; and
  - (iii) was not duly elected; and
- (b) the resignation took effect not earlier than one month before the date on which nominations for the election closed,

the Commissioner shall, subject to this Act, upon application by that person within 2 months after the declaration of the result of the election, reappoint him to the Service, without probation, and the Secretary shall reappoint him to a position and a salary equivalent, or as nearly as possible equivalent, to the position and salary that he had immediately before the date upon which his resignation took effect.

(2) Where -

- (a) proceedings in respect of an offence against a law of the Commonwealth or of a State, the Territory or another Territory are pending against a person who has made an application under sub-section (1); or
- (b) proceedings in respect of an offence against a law of a foreign country, being an offence which, if committed in the Territory, would have constituted an offence against a law of the Commonwealth or of the Territory, are pending against a person who has made such an application,

the person is not eligible for reappointment until the proceedings have been determined and unless he has been acquitted of the offence or the Commissioner is of the opinion that the nature and circumstances of the offence are such that, if the offence had been committed by an officer, it is unlikely that the officer would be dismissed from the Service.

(3) A person shall be reappointed under this section without being required to undergo any medical examination and whether or not he possesses the appropriate educational qualifications or meets the appropriate requirements.

(4) A person reappointed under this section shall be deemed to have continued in the Service as if he had been on leave without salary during the period from the day of his resignation to and including the day immediately preceding the day on which he was reappointed, and that period shall, for all purposes, be deemed to form part of his service in the Service.

## Teaching Service

### 60. BY-LAWS

(1) The Commissioner may make By-laws, not inconsistent with this Act, determining all matters (other than a matter in relation to a specified individual employee) that are required or permitted to be determined by the Commissioner.

(2) A By-law made under sub-section (1) may apply generally to all officers and employees, to officers and employees included in a specified class of officers and employees or to an officer or employee specified by reference to his designation.

(3) Section 57 of the Interpretation Act does not apply to By-laws made under sub-section (1).

### 61. ANNUAL REPORT

The Commissioner shall forward to the Minister, as soon as practicable after 30 June in each year, a report on the operation of the Service for the year preceding that date.

### 62. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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