

# Education (Miscellaneous Matters) Bill

No.

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# LEGISLATIVE COUNCIL

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Read 1° 18 March 1986

*(Brought from the Legislative Assembly)*

## A BILL

*for*

An Act to amend the *Education Act 1958* and the *Post-Secondary Education Act 1978*, to make consequential amendments to the *Local Government Act 1958* and the *Teaching Service Act 1981* and for other purposes.

### **Education (Miscellaneous Matters) Act 1985**

The Parliament of Victoria enacts as follows:

#### **Purpose.**

- 5 1. The purpose of this Act is to make various amendments to the *Education Act 1958* and the *Post-Secondary Education Act 1978* and consequential amendments to other Acts.

#### **Commencement.**

- 10 2. (1) Section 33 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Section 20 comes into operation on the same day as section 10 (9) of the *Teaching Service Act 1983*.

(3) Subject to sub-sections (1) and (2) this Act comes into operation on a day or days to be proclaimed.

**PART I.—AMENDMENTS TO THE EDUCATION ACT 1958**

**Principal Act in Part I.**

3. In this Part the *Education Act* 1958 is called the Principal Act.

Act No. 6240.  
Reprinted to  
No. 9248.  
Subsequently  
amended by  
Nos. 9351, 9424,  
9427, 9582,  
9595, 9699,  
9709, 9714,  
9902, 9993,  
10029, 10089  
and 10148.

**Clarification of “Teacher” in section 3 (1).**

4. In section 3 (1) of the Principal Act, in the interpretation of “Teacher” omit “rural school aide”. 5

**New section 4B inserted.**

5. After section 4A of the Principal Act, insert—

**Part III. of *Teaching Service Act* 1981 to apply to teachers aides etc.**

“4B. Notwithstanding anything to the contrary in this Act, the *Public Service Act* 1974, the *Teaching Service Act* 1981 or the *Teaching Service Act* 1983, Division 1 of Part III. of the *Teaching Service Act* 1981 shall apply to and in relation to the determination of salaries and allowances to be paid to and the terms and conditions of employment of— 10

(a) teachers aides employed by the Director-General to assist teachers; 15

(b) teacher assistants employed by the Director-General to assist teachers in special developmental schools; and

(c) rural school aides employed by the Director-General to assist teachers in rural primary schools— 20

as if those employees were officers and employees of the teaching service.”

**Groups of school councils may employ a person.**

6. After section 15B (1), insert—

“(2) Subject to this Act and the regulations, a school council which employs a person under sub-section (1) may do so on behalf of a group of school councils, and the group of councils shall decide from time to time in a manner determined by agreement amongst themselves the time which the person is to spend on each school.” 25

**New section 15CA inserted.** 30

7. After section 15C of the Principal Act, insert—

**School councils may form committees to manage joint facilities.**

“15CA. (1) Where a school council enters an agreement pursuant to its powers under this Act, section 16 of the *Youth Sport and Recreation Act* 1972 or section 800B of the *Local Government Act* 1958 for the use of any real or personal property by other persons or bodies, 35

the school council may agree with the other parties to the agreement to form a committee for the management of the property.

- 5 (2) A school council which agrees to form a committee to manage property under sub-section (1) may, with the approval of the Minister, delegate by instrument to the committee all or any of its powers and duties under this Act in relation to that property except its powers under this section.”.

**Sub-committees of school councils—amendment of Principal Act and validation of regulations.**

- 10 8. (1) In section 15B (1) of the Principal Act—  
 (a) omit “and” between paragraphs (c) and (d); and  
 (b) after paragraph (d) insert—  
 “(e) form a sub-committee, consisting of at least one  
 15 member of the council and any other persons, to assist the council; and  
 (f) by instrument delegate to a sub-committee which consists entirely of members of the council, all or any of the powers and duties of the council under this Act, except this power of delegation.”.
- 20 (2) In section 15H of the Principal Act—  
 (a) omit “and” between paragraphs (h) and (i); and  
 (b) insert—  
 “(ha) regulating—  
 25 (i) the formation and the activities of sub-committees of school councils;  
 (ii) delegations under section 15B (1) (f) and the exercise of delegated powers and carrying out of delegated duties by sub-committees; and  
 30 (iii) the ratification of acts of sub-committees by a school council where the acts are within the powers or duties of the school council under this Act; and”.
- 35 (3) Notwithstanding that certain provisions of clauses 21 and 22 of Regulation L111 of the Education Department Regulations 1962 as amended by the Education Department (Amendment) Regulations 1984 (Amendment No.60) may have been beyond the power to make regulations contained in the Principal Act at the time at which the Education Department (Amendment) Regulations 1984 (Amendment No.60) were made or purport to have been made, clauses 21 and 22 of  
 40 Regulation L111 of the Education Department Regulations 1962 shall be deemed upon the commencement of this section, to have and to have always had the same force and effect as if none of the provisions of those clauses had been beyond the power to make regulations contained in the Principal Act at the time at which the Education

Department (Amendment) Regulations 1984 (Amendment No. 60) were made or purport to have been made.

**Audits.**

9. (1) In section 15F of the Principal Act, for sub-section (2) substitute—

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“(2) Within three months after 31 December in each year (or within a longer period allowed by the Minister) a school council shall—

(a) cause an audit of its accounts concerning money it has received to be made by a person with appropriate accounting qualifications or (if no such person is available) by a person approved by the Auditor-General; and

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(b) cause a statement of receipts and expenditure certified by that person to be sent to the Director-General.”.

(2) In section 14 (2) for “Auditor-General” substitute “Director-General”.

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**Amendment of s. 82.**

10. In section 82 of the Principal Act, for paragraph (na) substitute—

“(na) the employment by the Director-General of teacher aides to assist teachers, teacher assistants to assist teachers in special developmental schools and rural school aides to assist teachers in rural primary schools.”.

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**Amendment of *Local Government Act 1958*.**

No. 6299.

11. In section 800B of the *Local Government Act 1958*, after sub-section (1A) insert—

“(1B) Where the council of a municipality enters an agreement under sub-section (1) for the use of any real or personal property referred to in paragraph (b) of that sub-section, the council may join with the other parties to the agreement to appoint a committee for the management of the property under section 15CA of the *Education Act 1958*.”.

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**PART II.—AMENDMENTS TO THE *POST-SECONDARY EDUCATION ACT 1978***

**Principal Act in Part II.**

12. In this Part, the *Post-Secondary Education Act 1978* is called the Principal Act.

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**Rights of certain persons saved.**

13. In section 18 (3) of the Principal Act—

5 (a) for the expression “was immediately before his appointment an officer in the public service or a member of the education service or technical and further education teaching service” substitute—

“immediately before his appointment—

10 (a) was an officer in the public service or a member of the education service or technical and further education teaching service; or

(b) occupied an office which since his appointment has become an office in the technical and further education teaching service; or

15 (c) occupied an office which since his appointment has become an office which under section 66 (3) is at some future time to be an office in the technical and further education teaching service—”; and

20 (b) after “which he held in the public service or the education service or the technical and further education teaching service” insert “or in that office”.

**Amendments and validation relating to the *TAFE Gazette*.**

14. (1) In section 40 of the Principal Act, for the interpretation of “*Education Gazette*” substitute—

25 ‘“*TAFE Gazette*” means the newspaper published under the style of the *TAFE Gazette* or a supplement to it.’

(2) In section 97 (1) of the Principal Act, for “*Education Gazette* and in the *Victorian Public Service Notices*” substitute “*TAFE Gazette*”.

(3) In section 103 (3) of the Principal Act, for “*Education Gazette*” substitute “*TAFE Gazette*”.

30 (4) In section 112 (1) of the Principal Act, for “*Education Gazette* and *Victorian Public Service Notices*” substitute “*TAFE Gazette*”.

35 (5) Where section 97 (1), 103 (3) or 112 (1) of the Principal Act, as in operation before the date of commencement of this section, required or permitted any matter to be published or advertised in the *Education Gazette* or the *Victorian Public Service Notices*, publication or advertisement of that matter in the *TAFE Gazette* before that date is deemed to be of the same force and effect.

40 (6) In sub-section (5), a reference to the *TAFE Gazette* includes a reference to the newspaper published under the style of the *TAFE Teaching Service Gazette* or any supplement to it.

**Additional function of the TAFE Board.**

15. In section 43 of the Principal Act—

(a) omit “and” between paragraphs (f) and (g); and

(b) after paragraph (g) insert—

“; and

(h) to arrange for or conduct evaluations, assessments or examinations of students undertaking courses of study at technical and further education institutions and in conjunction with those institutions to distribute information about the results of those evaluations, assessments or examinations.”.

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**Amendment of section 62.**

16. In section 62 (e) of the Principal Act for “Board” (where secondly occurring) substitute “regional board”.

**Positions in the TAFE teaching service.**

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17. (1) In section 65 (3) of the Principal Act after paragraph (b), insert—

“; or

(c) at any time a technical and further education college amalgamates with or takes over all or part of a technical and further education institution or other school, centre or college at which persons are or are to be employed in teaching positions, the Governor in Council may at any time after that amalgamation or take-over—”.

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(2) In section 67 (1) of the Principal Act, for paragraph (c) substitute—

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“(c) is a teaching position—

(i) at a technical and further education college the name of which was added to Schedule 3 after the appointed day; or

(ii) at or at a part of a technical and further education institution or other school centre or college which amalgamates with or is taken over by a technical and further education college—

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and in relation to which no declaration has been made under section 65 (3)”.

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**Exempt positions to be created in accordance with determinations.**

18. (1) In section 67 (1) of the Principal Act for paragraph (a) substitute—

“(a) is created as an exempt position at that college after the appointed day in accordance with the determinations.”.

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(2) Section 83A of the Principal Act is repealed.

(3) In section 40 of the Principal Act, after the interpretation of “Board” insert—

5       ‘ “Determination” has the same meaning as it has in the *Teaching Service Act 1981*.’

**Deputies of members of TAFE Registration Board.**

19. In section 74 of the Principal Act—

(a) for sub-sections (2) and (3) substitute—

10       “(2) In the case of the illness or absence of a member of the Registration Board or in the case of an extraordinary vacancy in the office of a member of the Registration Board, a deputy appointed under sub-section (2A) or appointed under sub-section (2B) or elected under sub-section (3) (as the case requires) may, after a request by the chairman of the Technical and Further Education Board, exercise the powers and perform the functions of that member.

15       (2A) The Minister shall appoint from amongst the list of names approved under sub-section (1) (a) a person to be he the deputy of the chairman of the Registration Board.

20       (2B) The chairman of the Technical and Further Education Board shall appoint two persons to be deputies of the persons appointed under sub-section (1) (b).

25       (3) An election of three deputies shall be held in conjunction with every election held under sub-section (1) (c).”; and

(b) sub-section (4) is repealed; and

(c) in sub-section (1) (a), for “chairman of the Board” substitute “chairman of the Technical and Further Education Board”.

30 **Powers of the chairman of the TAFE Board concerning capacity of officers.**

20. In section 91 of the Principal Act—

(a) in sub-section (1) for “capacity and efficiency” substitute “and capacity”; and

35       (b) in sub-section (3) omit “is not discharging the duties of his office efficiently or satisfactorily, is not qualified temperamentally or otherwise for the efficient and satisfactory performance of the duties of his office or is inefficient in the prompt and effective discharge of his duties.”; and

40       (c) in sub-section (3) omit paragraph (a) and paragraph (e); and

(d) in sub-section (6) for “under sub-section (3)” substitute “under this section”; and



- (e) in sub-section (6) for “Technical and Further Education Teaching Service Appeals Board” substitute “Technical and Further Education Discipline Appeals Board”; and
- (f) in sub-section (7) for “Technical and Further Education Teaching Service Appeals Board” substitute “Technical and Further Education Discipline Appeals Board”. 5

**Qualifications for transfer and promotion in TAFE teaching service.**

21. In section 103 of the Principal Act, for sub-sections (1) and (2) substitute—

“(1) The qualifications for transfer or promotion to any office or class or grade of office are those prescribed under section 68 (2) (c) (if any) and any further qualifications or experience specified in the determinations.”. 10

**Provisional transfer and promotion in TAFE teaching service.**

22. In section 104 of the Principal Act— 15

- (a) in sub-section (1), for “transfer of provisional promotion” substitute “provisional transfer or provisional promotion”; and
- (b) in sub-sections (2), (3) and (4) for “promotion” (wherever occurring) substitute “transfer or promotion”; and 20
- (c) in sub-section (5) after “promotion” insert “or provisional transfer”; and
- (d) in sub-section (8) for “chairman” substitute “chairman of the Technical and Further Education Board”. 25

**Clarification of meaning of “transfer” in section 106.** 25

23. In section 106 omit “from one place of work to another”.

**Deputies for TAFE Teaching Service Appeals Board and other amendments to s. 107.**

24. (1) After section 107 (3) of the Principal Act insert—

“(3A) In the case of the illness or absence of a member of the Technical and Further Education Teaching Service Appeals Board, or in the case of an extraordinary vacancy in the office of a member of that Board, a deputy nominated under sub-section (3B), elected under sub-section (3C) or appointed under sub-section (3D) (as the case requires) may, after a request by the chairman of the Technical and Further Education Board, exercise the powers and perform the functions of that member. 30  
35

(3B) The chairman of the Technical and Further Education Board shall nominate a person to be the deputy of the person nominated under sub-section (1) (b). 40

(3C) An election of two deputies shall be held in conjunction with every election held under sub-section (1) (c).

5 (3D) The Minister shall appoint from amongst the persons nominated under sub-section (3) (a) a person to be the deputy of the chairman of the Technical and Further Education Teaching Service Appeals Board.”

(2) In section 107 of the Principal Act, sub-section 10 is repealed.

(3) In section 107 (12) and (13) of the Principal Act after “promotion” (wherever occurring) insert “or transfer”.

### 10 **TAFE Teaching Service Appeals Board may report on appeal.**

25. (1) After section 107 (6) of the Principal Act insert—

15 “(6A) If the Technical and Further Education Teaching Service Appeals Board decides that a provisional promotion or provisional transfer on appeal before it was not made in accordance with this Act and the determinations and the regulations, it may report its decision to the Chairman of the Technical and Further Education Board.

20 (6B) Within 14 days after receiving a report under sub-section (6A) the chairman of the Technical and Further Education Board may cancel the provisional promotion or provisional transfer in respect of which the report was made and direct that a new provisional promotion or provisional transfer or an appointment to the office be made under sub-division (1) of Division 3.

25 (6C) If the chairman of the Board does not take any action under sub-section (6B) within the time provided in that sub-section, the Technical and Further Education Teaching Service Appeals Board shall proceed to determine the claims of the appellant and the officer provisionally promoted or provisionally transferred.”

(2) In section 107 (5) after “determine” insert “subject to sub-sections (6A) (6B) and (6C)”.

### 30 **Deputies for TAFE Discipline Appeals Board.**

26. In section 118 of the Principal Act—

(a) after “118.” insert “(1)”; and

(b) at the end of the section insert—

35 “(2) In the case of the illness or absence of a member of the Technical and Further Education Discipline Appeals Board or in the case of an extraordinary vacancy in the office of a member of that Board, a deputy nominated under sub-section (3) or elected under sub-section (4) (as the case requires) may, after a request by the Chairman of the  
40 Technical and Further Education Board, exercise the powers and perform the functions of that member.

(3) The deputy of the chairman of the Technical and Further Education Discipline Appeals Board shall be the person nominated under section 107 (3B).

(4) An election of two deputies shall be held in conjunction with every election under sub-section (1) (b).” 5

**Statewide courses.**

27. (1) In section 120 (1) of the Principal Act, for the expression beginning “or which leads” and ending at the end of the section, substitute “or which is a statewide course”.

(2) After section 120 (1) of the Principal Act, insert— 10

‘(1A) In this Division, “**Statewide course**” means a study programme in technical and further education which leads to a qualification which the Technical and Further Education Accreditation Board recognizes as a statewide qualification in a written notice to the Technical and Further Education Board.’ 15

**Authority to conduct statewide courses.**

28. (1) In section 121 (4) of the Principal Act after “discretion” insert “but subject to sub-section (4A)”.

(2) After section 121 (4) of the Principal Act insert—

“(4A) The Board shall not grant authority to conduct a statewide course which is not registered in the Technical and Further Education Register of Accredited Courses kept under section 128.”. 20

**Duration of office of members of TAFE Accreditation Board.**

29. After section 122 (1) of the Principal Act insert—

“(1A) A member of the Technical and Further Education Accreditation Board shall hold office for not more than three years and shall be eligible for re-appointment.”. 25

**Recommended accreditation not to apply to statewide courses.**

30. (1) In section 124 (1) of the Principal Act after “any course of study” (where twice occurring) insert “which is not a statewide course”. 30

(2) In section 127 (1) of the Principal Act—

(a) in paragraph (a) after institution insert “which is not a statewide course”; and

(b) in paragraph (b) after “class” (where secondly occurring) insert “and which is not a statewide course”. 35

**New relationship between TAFE Board and TAFE Accreditation Board.**

31. (1) For section 127 (2) of the Principal Act substitute—

5 “(2) The Technical and Further Education Accreditation Board shall advise the Technical and Further Education Board whenever a course of study is entered upon or struck off the Technical and Further Education Register of Accredited Courses.”.

10 (2) In section 128 (1) of the Principal Act, for “Technical and Further Education Board” substitute “Technical and Further Education Accreditation Board”.

(3) For section 128 (2) of the Principal Act, substitute—

“(2) The Technical and Further Education Accreditation Board—

- 15 (a) whether or not it has conducted an investigation under section 125 in relation to a course of study, may; and  
 (b) where it receives advice under section 127 (1) in relation to a course of study, shall—

register the course of study as accredited on, or strike it from the Technical and Further Education Register of Accredited Courses.”.

(4) In section 128 of the Principal Act, sub-section (3) is repealed.

20 (5) The register kept under section 128 of the Principal Act as amended by this section shall be the same register as that kept under section 128 before the commencement of this section.

**Annual report of TAFE Accreditation Board to Minister.**

25 32. In section 129 of the Principal Act, for sub-section (1) substitute—

“(1) The Technical and Further Education Accreditation Board shall on or before 30 September in each year prepare and submit to the Minister a report of its operations for the year ending on the preceding 30 June.”.

30 **Validation of creation of offices and exempt positions.**

35 33. (1) Where on the day on which this section comes into operation a person occupies a teaching position at a technical and further education college and the position is neither an exempt position nor an office in the technical and further education teaching service, the Governor in Council, on the recommendation of the chairman of the Board, may declare by proclamation published in the *Government Gazette* that the position is an office in the technical and further education teaching service or an exempt position, whichever the chairman recommends.

40 (2) A recommendation under sub-section (1) in relation to a teaching position shall only be made after the chairman of the Board

has consulted the governing body of the technical and further education college at which a person is occupying the position.

(3) Where under sub-section (1) a teaching position is declared to be an exempt position, the position is deemed to have become an exempt position on the day on which the person who is occupying the position on the day when this section comes into operation was appointed to the position. 5

(4) Where under sub-section (1) a teaching position is declared by proclamation published in the *Government Gazette* to be an office in the further education teaching service, the proclamation shall fix a date from which section 66 of the Principal Act applies to the position as if that date were the appointed day and as if that position were a relevant position. 10

(5) Where a proclamation is made under sub-section (1) in relation to a teaching position, the person occupying the position on the date of commencement of this section is deemed for the purposes of section 67 (2) of the Principal Act to have been validly appointed to and teaching in that position. 15

(6) The terms used in this section have the same meanings as they have in the Principal Act. 20

#### **Amendments to *Teaching Service Act 1981*.**

34. (1) In section 2 of the *Teaching Service Act 1981* after the interpretation of “**Regulations**” insert—

“**TAFE Gazette**” means the newspaper published under the style of the *TAFE Gazette* or any supplement to it. 25

(2) In section 11 (7) of the *Teaching Service Act 1981* after “*Education Gazette*” insert “(or, where appropriate, the *TAFE Gazette*)”.