

Education Acts (Teachers) Act 1993

No. 44 of 1993

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Victoria

No. 44 of 1993

Education Acts (Teachers) Act 1993

[Assented to 1 June 1993]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The main purpose of this Act is to make further provision for the employment of members of the teaching service, to establish a Standards Council of the Teaching Profession and Merit Protection Boards.

2. *Commencement*

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.

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- (2) Section 5 is deemed to have come into operation immediately after the commencement of section 10 (9) of the **Teaching Service Act 1983**.
- (3) Section 6 is deemed to to have come into operation immediately after the commencement of section 14 of the **Teaching Service Act 1983**.
- (4) Subject to sub-section (5), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (5) If a provision referred to in sub-section (4) does not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

PART 2—ESTABLISHMENT OF NEW BODIES

3. *New Division 5 inserted in Part II of the Teaching Service Act*

After Division 4 of Part II of the **Teaching Service Act 1981** insert—

“Division 5—Standards Council of the Teaching Profession

10. *Establishment and functions of Council*

- (1) There shall be established a Standards Council of the Teaching Profession.
- (2) The function of the Council is to advise the Minister or the Director about all matters relating to professional standards for the employment of members of the teaching service.
- (3) Without limiting sub-section (2), the function of the Council includes advising the Minister or the Director about—

No. 9714.
Reprinted to
No. 94/1987.
Subsequently
amended by
Nos 12/1989,
45/1990,
72/1990,
73/1991,
47/1992,
68/1992 and
83/1992.

- (a) minimum standards of academic qualifications and teacher training for entry into the teaching service;
- (b) qualifications for members of the teaching service;
- (c) criteria for the initial appointment and probation of teachers;
- (d) criteria for the promotion or advancement through a class or grade of office of members of the teaching service;
- (e) the professional development needs of members of the teaching service;
- (f) the evaluation of teacher education courses.

10A. *Membership of Council*

- (1) The Council shall consist of—
 - (a) a chairperson, who shall be a full-time member; and
 - (b) no more than 8 other members, who shall be part-time members—

appointed by the Governor in Council on the recommendation of the Minister.
- (2) An appointment of a member is for the term, not exceeding 3 years, that is specified in the instrument of appointment, but a member is eligible for re-appointment.
- (3) A member may resign from office by sending to the Governor a signed letter of resignation.
- (4) The Governor in Council may at any time remove a member from office.

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10B. Terms and conditions of appointment

- (1) A member is appointed subject to any terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.
- (2) A member is entitled to the remuneration and allowances (if any) fixed in respect of him or her from time to time by the Minister.

10C. Meetings of Council

- (1) Meetings of the Council shall be held at the times and places determined by the Council or directed by the Chairperson.
- (2) The Chairperson must preside at any meeting of the Council at which he or she is present.
- (3) If the Chairperson is absent, a member elected by the members present must preside.
- (4) A majority of the members in office at the time constitutes a quorum for a meeting of the Council.”.

4. New section 64 substituted in Teaching Service Act

For section 64 of the **Teaching Service Act 1981** substitute—

“64. Merit Protection Boards

- (1) There shall be established one or more boards to be known as Merit Protection Boards.
- (2) The functions of the Boards are—
 - (a) to advise the Minister about principles of merit and equity to be applied in the teaching service;

- (b) to hear reviews and appeals in relation to decisions made under this or any other Act;
- (c) to advise the Minister or the Director about any matter referred to them by the Minister or the Director relating to merit and equity in the teaching service.

64AA. *Membership of Boards*

- (1) A Merit Protection Board shall consist of 3 members appointed by the Governor in Council of whom—
 - (a) one shall be the chairperson nominated by the Minister;
 - (b) one shall be a person nominated by the Director of School Education;
 - (c) one shall be a person representing teachers nominated by the Standards Council of the Teaching Profession after the Council has called for expressions of interest from teachers.
- (2) The Governor in Council shall appoint one of the chairpersons to be the senior chairperson of the Merit Protection Boards.
- (3) An appointment as member is for the term, not exceeding 3 years, specified in the instrument of appointment but a member is eligible for re-appointment.
- (4) A member may resign from office by sending to the Governor a signed letter of resignation.
- (5) The Governor in Council may at any time remove a member of the Board from office.

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64AB. Terms and conditions of appointment

- (1) A member is appointed subject to any terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.
- (2) A member is entitled to the remuneration and allowances (if any) fixed in respect of him or her from time to time by the Minister.

64AC. Acting appointments

- (1) The Minister may appoint a person to act in the place of a member who is absent or who is, for any other reason, unable to perform the duties of the office.
- (2) A person appointed under sub-section (1)—
 - (a) has all the powers and may perform all the functions and duties of the member for whom he or she is acting;
 - (b) is entitled to the remuneration and allowances (if any) to which the member for whom he or she is acting would have been entitled for performing those duties;
 - (c) subject to this section, is subject to the same terms and conditions of appointment as the member for whom he or she is acting.

64AD. Allocation of work amongst the Boards

The senior chairperson is to determine—

- (a) the allocation of business to the Boards; and
- (b) which Board is to hear a review or appeal.

64AE. Oath of office

A member of a Merit Protection Board must take an oath in or to the effect of the oath in the Schedule before serving as a member of the Board.

64AF. Decisions of Board

- (1) A decision of the majority of members of a Merit Protection Board in relation to an appeal or review is to be treated as the decision of the Board.
- (2) A Merit Protection Board must not refuse to hear an appellant or applicant except by a unanimous decision.”.

PART 3—EFFICIENCY AND DISCIPLINE

5. Incapacitated officers

In section 45 of the **Teaching Service Act 1981**—

- (a) in sub-section (1) for “and capacity” substitute “capacity and efficiency”;
- (b) in sub-section (2) for “the Government Medical Officer” substitute “a medical officer approved by the Director”;
- (c) in sub-section (3) for “his office,” substitute “the office, is not discharging the duties of office efficiently or satisfactorily, is not qualified temperamentally or otherwise for the efficient and satisfactory performance of the duties of office or is inefficient in the prompt and effective discharge of the duties of the office.”;
- (d) in sub-section (3) before paragraph (b) insert—
“(a) reduce the officer to a lower class or grade;”;
- (e) in sub-section (3) after paragraph (d) insert—
“(e) dispense with the services of the officer.”.

6. *New Part V substituted in Teaching Service Act*

For Part V of the Teaching Service Act 1981 substitute—

“PART V—DISCIPLINE

66. *Offences*

- (1) An officer who—
 - (a) contravenes any provision of this Act or the regulations; or
 - (b) commits any act of misconduct; or
 - (c) conducts himself or herself in a disgraceful, improper or unbecoming manner in an official capacity or otherwise; or
 - (d) fails to fulfil his or her duties—
is guilty of an offence.
- (2) An officer who is guilty of an offence under sub-section (1) is liable to one or more of the following penalties:
 - (a) reprimand;
 - (b) a fine not exceeding \$2000;
 - (c) reduction in classification or grade;
 - (d) removal from office and appointment to another office;
 - (e) dismissal.

67. *Forfeiture of office*

- (1) If any officer during his or her period of service is convicted of a criminal offence which is punishable by imprisonment or by a fine the Director may do one or more of the following—
 - (a) dismiss the officer from the teaching service;

- (b) reduce the officer's classification;
 - (c) transfer the officer to another office;
 - (d) reprimand the officer.
- (2) If any action has been taken by the Director under sub-section (1) and the order or finding of the court has been subsequently quashed or the officer receives a pardon or the finding or order is otherwise nullified then—
- (a) the action taken by the Director shall be set aside; and
 - (b) the officer shall be re-instated in the teaching service at the same classification the officer held before the action of the Director; and
 - (c) the officer shall be treated as having had continuous service in the teaching service; and
 - (d) any period during which the officer was not performing the duties of his or her office due to having been dismissed shall be treated as having been on leave without pay.
- (3) If the Director proposes to take any action referred to in this section the Director may permit the officer concerned to appear before the Director personally or by the officer's legal or other representative.

68. *Alternative procedures*

If it appears to the Director that an officer has committed an offence under section 66, the Director may—

- (a) begin an investigation of the matter; or

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- (b) after giving the officer the opportunity of submitting an explanation, charge the officer with the offence.

69. *Preliminary investigation*

- (1) If the Director begins an investigation under section 68, the Director may—
 - (a) transfer the officer to other duties;
 - (b) direct the officer to take any leave which has accrued to him or her;
 - (c) suspend the officer with pay.
- (2) If the Director has not charged an officer within 3 months of taking action under sub-section (1), the Director must withdraw the transfer, direction or suspension.
- (3) The Director may apply to the Senior Chairperson of the Merit Protection Boards for an extension of the time specified in sub-section (2).
- (4) The Senior Chairperson may grant the extension if he or she reasonably believes it is necessary for the investigation.

70. *Suspension from duty*

- (1) The Director may suspend from duty—
 - (a) any officer charged with an offence under section 66; or
 - (b) an officer charged under any law of the State with an indictable offence or under any law of the Commonwealth or a State or Territory with an offence which would, if committed in Victoria, be an indictable offence.

- (2) A suspension under this section may be with or without pay.
- (3) A suspension under this section continues at the Director's discretion until a determination of all or any of the charges against the officer.
- (4) If an appeal to a Merit Protection Board is lodged after a charge is heard, the Director may suspend the officer until final determination of the charge whether before a Board or any other Tribunal or Court.
- (5) An officer who is under suspension without pay may engage in other employment if the officer first advises the Director of his or her intention to do so.
- (6) If an officer is suspended from duty under this Part and is subsequently dismissed from the teaching service, the officer, unless the Director determines otherwise, forfeits all salary except any salary that was due to him or her before the suspension.

71. Procedure for laying charges

- (1) A charge must be in writing and contain particulars of the alleged offence and must require the person charged to state in writing whether he or she admits or denies the truth of the charge within the time that is specified in the charge.
- (2) If, within the time specified, the officer does not admit the truth of the charge in writing he or she must be treated as having denied the truth of the charge.

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72. Determinations of charges against officers

- (1) If an officer is charged with an offence the Director must hear and determine the charge and the penalty to be imposed.
- (2) If a charge against an officer is proved or the officer has admitted the truth of the charge and a penalty has been imposed he or she may, in accordance with the regulations, appeal to a Merit Protection Board.
- (3) An appeal must set out the reasons for the appeal and must state in respect of the penalty appealed from whether the appeal is against the penalty alone or the finding and the penalty.
- (4) An officer who has admitted the truth of a charge may appeal only in respect of the penalty.
- (5) A Merit Protection Board must hear and determine the appeal and may allow or dismiss the appeal or may dismiss the appeal and vary the penalty imposed.

73. Conduct of proceedings

- (1) The Director or a Merit Protection Board may allow an officer to appear before the Director or Board personally or by the officer's legal or other representative.
- (2) All proceedings under this Part shall be conducted without regard to legal formalities and shall be directed by the best evidence available whether it is the best evidence that the law in other cases admits, requires or demands or not.

74. *If charge not proved*

- (1) If any charge is not proved, the Director must ensure that any suspension imposed in respect of that charge is removed immediately and that the officer is paid any salary due to him or her during the suspension, together with any allowances that the Director thinks fit.
- (2) The Director must not pay any allowances under sub-section (1) unless the officer has applied to the Director for the payment of those allowances.

75. *Forfeiture of salary by charged officer*

- (1) If—
 - (a) a charge is proven against an officer; or
 - (b) an officer resigns from the teaching service before any charge is finalised—

and the officer has been suspended, the officer forfeits all salary that accrued to him or her during the officer's suspension.

- (2) The Director may, on application to him or her in writing, determine that sub-section (1) does not apply to an officer.

75A. *Address for service*

If the current address of an officer is not known, the Director must ensure that all notices, orders or communications relating to a charge against the officer are sent to the last known address of the officer and that notice of that posting is published.”

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No. 6240.
Reprinted to
No. 45/1990.
Subsequently
amended by
Nos 16/1992,
47/1992 and
83/1992.

PART 4—ABOLITION OF BODIES

7. *Abolition of Teachers Registration Board*

- (1) Part IIIA of the **Education Act 1958** is repealed.
- (2) The Teachers Registration Board established under section 52A of the **Education Act 1958** is abolished and its members go out of office.

8. *Abolition of appointments boards*

- (1) Section 60 of the **Teaching Service Act 1981** is repealed.
- (2) The appointments boards established under section 60 of the **Teaching Service Act 1981** are abolished and the members of those boards go out of office.

9. *Abolition of Teaching Service Appeal Boards*

The Teaching Service Appeal Boards are abolished and the Chairperson and members of those Boards go out of office.

10. *Abolition of Teaching Service Disciplinary Boards*

The Teaching Service Disciplinary Boards are abolished and the Chairperson and members (if any) of those Boards go out of office.

11. *No compensation for loss of office*

No compensation or other amount is payable because a person goes out of office by force of section 7, 8, 9 or 10.

PART 5—CONSEQUENTIAL AND OTHER AMENDMENTS

12. *School council employment*

In section 15B of the **Education Act 1958**—

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- (a) in sub-section (1) (a) for “any staff other than teaching staff or non-teaching staff referred to in section 5” substitute—

“—

- (i) any teaching staff on a part-time or sessional basis; or
(ii) any other staff—”.

13. *New section 78 inserted in Education Act*

Before section 79 of the **Education Act 1958** insert—

“78. *Publication requirements*

If there is a requirement under this Act to advertise or publish a notice or other matter, that requirement is to be construed, in the absence of a contrary intention, as a requirement to advertise or publish the notice or other matter in a publication circulating generally throughout State schools and offices of the Directorate of School Education in Victoria.”.

14. *New section 77A inserted in Teaching Service Act*

After section 77 of the **Teaching Service Act 1981** insert—

“77A. *Publication requirements*

If there is a requirement under this Act to advertise or publish a notice or other matter, that requirement is to be construed, in the absence of a contrary intention, as a requirement to advertise or publish the notice or other matter in a publication circulating generally throughout State schools and offices of the Directorate of School Education in Victoria.”.

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15. Definitions

In section 2 of the **Teaching Service Act 1981**—

- (a) the definitions of “**Education Gazette**,” “**Teaching Service Appeals Board**” and “**Teaching Service Disciplinary Board**” are repealed.
- (b) after the definition of “**Chief General Manager**” insert—
“**Director**” means the Director of School Education;’;
- (c) after the definition of “**Regulations**” insert—
“**State school**” means any school conducted under the **Education Act 1958**;’.

16. New Division 2A inserted in Teaching Service Act

After section 4 of the **Teaching Service Act 1981** insert—

“Division 2A—Method of Appointment

4A. Method of Appointment

An appointment (whether by way of transfer or promotion or otherwise) to a position in the teaching service shall be made by the Director.”.

17. Appointments

In section 5 of the **Teaching Service Act 1981**—

- (a) in sub-section (2) (c), omit “and registration”;
- (b) after sub-section (2) insert—
“(3) A person is not eligible for appointment to an office in the teaching service unless he or she is—
 - (a) an Australian citizen; or

- (b) a permanent resident in Australia under any law of the Commonwealth; or
 - (c) entitled to permanent residency in Australia under any law of the Commonwealth.
- (4) The Director may waive the requirement in sub-section (3) if he or she considers that it is the interests of Victoria that a person who does not satisfy the requirements should be appointed to an office in the teaching service.
- (5) A ministerial order may specify the qualifications or experience necessary for appointment to any office or class or grade of office.
- (6) A person may apply to a Merit Protection Board for a review of the Director's decision if the Director has refused to appoint the person to the teaching service on the grounds that he or she does not possess the qualifications or experience required by a ministerial order necessary for appointment to the teaching service."

18. Consequential amendments to Teaching Service Act

In the Teaching Service Act 1981—

- (a) in section 11 (7) omit "in the *Education Gazette*";
- (b) in section 13 (2) for "the Teaching Service Appeals Board" substitute "a Merit Protection Board";
- (c) in section 45—
 - (i) in sub-section (6) for "Teaching Service Disciplinary Board" substitute "Merit Protection Board"; and
 - (ii) in sub-section (7) for "Teaching Service Disciplinary Board" substitute "Merit Protection Board";
- (d) in section 48—

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- (i) for "a Teaching Service Appeals Board or a Teaching Service Disciplinary Board" substitute "or a Merit Protection Board";
- (ii) for "Education Service Appeals Board" substitute "Merit Protection Board";
- (e) in section 51 (1) and (2) omit "published in the *Education Gazette* and Victorian Public Service Notices";
- (f) in section 52 (1) (e), (2), (3) and (4) (a) and (b) for "*Education Gazette*" substitute "*Government Gazette*";
- (g) in section 58 (1) after "necessary for" insert "appointment,";
- (h) in section 59 omit "in the *Education Gazette*";
- (i) in sections 61 (1) and 61A (1) for "the relevant appointments board" substitute "the Director";
- (j) in section 62 (8) for "Teaching Service Appeals Board" substitute "Merit Protection Board";
- (k) in section 62 (9) for "Teaching Service Appeals Board" substitute "Merit Protection Board".

19. Transfers of teaching service staff

Section 63 of the Teaching Service Act 1981 is repealed.

20. New sections 64AG to 64AJ inserted in Teaching Service Act and exception for primary teachers

- (1) After section 64AF of the Teaching Service Act 1981 insert—

"64AG. Reviews

- (1) An officer who considers that in accordance with this Division or any ministerial order that he or she has a better claim to be transferred or promoted to a vacant office in the teaching service, other than an office to

which section 64A applies, than the officer provisionally transferred or promoted to that office, may, subject to and in accordance with the regulations, apply for a review of that provisional transfer or promotion.

- (2) Subject to any ministerial order, the only grounds of review are that the procedures followed by the person or body in making a recommendation to the Director of School Education in relation to whom to appoint to fill the vacant office were not in accordance with the procedures decided by the Minister.
- (3) A Merit Protection Board must review the provisional transfer or promotion and may—
 - (a) if it is satisfied that the grounds for review have been established, make an order requiring the person or body which made the recommendation to the Director to reconsider the provisional transfer or promotion; or
 - (b) make an order that the provisional transfer or promotion may be confirmed.
- (4) If, after an order under sub-section (3) (a) has been complied with, the Director makes the same decision as to whom to appoint to the vacant office, a Merit Protection Board must further review the provisional transfer or promotion and may—
 - (a) if it is satisfied that the same or similar grounds for review continue to apply in respect of the provisional transfer or promotion, make an order requiring that the

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vacant office be advertised again under section 59; or

- (b) make an order that the provisional transfer or promotion may be confirmed.

64AH. Determination of Board

- (1) A Merit Protection Board must, subject to and in accordance with the regulations, inquire into and determine the claims of an applicant under section 64AG or 64A and those of the officer provisionally transferred or promoted.
- (2) If a Merit Protection Board makes an order under section 64AG or 64A that a provisional transfer or promotion may be confirmed the Director must confirm the provisional transfer or promotion.
- (3) If no application for review is lodged within 14 days after the publication of the provisional appointment the Director must confirm the provisional transfer or promotion.
- (4) An officer is not entitled to apply for a review of any provisional transfer or promotion to an office if he or she is not qualified for the office.
- (5) An officer is not entitled to apply for a review in respect of any provisional transfer or promotion to an office if—
 - (a) in the case where notice of the vacancy was given, he or she did not apply to be transferred or promoted to the vacant office; or
 - (b) he or she did not lodge a notice of application for review in the prescribed manner or within the time specified in sub-section (3)—

unless a Merit Protection Board determines that the failure should be excused in respect of that officer.

64A1. Review of Director's decision not to appoint

- (1) If a Merit Protection Board receives an application under section 5 (6), it must subject to and in accordance with the regulations inquire into and determine the claim of the applicant.
 - (2) If the Board is satisfied that the grounds for review are established, it may make an order requiring the Director to reconsider the decision not to appoint the applicant.”.
- (2) There shall be no right of review under section 64AG of the Principal Act in respect of the appointment of a teacher or head teacher in the primary teacher class until the day fixed by proclamation of the Governor in Council published in the Government Gazette for the purposes of this sub-section.

21. Appointments of principals etc.

In section 64A of the Teaching Service Act 1981—

- (a) in sub-section (1) for “made under this Division apply to a Teaching Service Appeals Board” substitute “apply to a Merit Protection Board”;
- (b) in sub-section (1A) for “made under this Division, apply to a Teaching Service Appeals Board” substitute “apply to a Merit Protection Board”;
- (c) in sub-sections (2) (a), (3) (a) and (4) for “relevant appointments board” substitute “the Director”;
- (d) in sub-section (3) for “The Teaching Service Appeals Board” substitute “A Merit Protection Board”.

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(e) in sub-section (4) for “the Teaching Service Appeals Board” substitute “a Merit Protection Board.”.

22. Regulations

In section 78 (1) of the **Teaching Service Act 1981**, after paragraph (d) insert—

“(e) the procedures to be followed by a Merit Protection Board in disposing of appeals or reviews;”.

23. Schedule

In the Schedule to the **Teaching Service Act 1981**, for “the Teaching Service Appeals Board or the Teaching Service Disciplinary Board (as the case requires)” substitute “a Merit Protection Board”.

24. Consequential amendment to Education Act

In section 82 of the **Education Act 1958**, paragraph (pa) is repealed.

PART 6—TRANSITIONAL AND SAVINGS

25. Transfer of proceedings

Any proceedings which were commenced but not completed or which could have been commenced before a Teaching Service Appeals Board or any appeals which could have been commenced before a Teaching Service Disciplinary Board at the commencement of this section may be continued and completed before a Merit Protection Board in accordance with the **Teaching Service Act 1981** as in force at the time the circumstances giving rise to those proceedings arose.

26. *Registered teachers deemed to be qualified*

A person who was, immediately before the commencement of this section, registered as a teacher or in a category of teachers under Part IIIA of the **Education Act 1958**—

- (a) is deemed to have fulfilled the qualification requirements for appointment to the teaching service;
- (b) in the case of a member of the teaching service, is deemed to be qualified for the office that the member held immediately before that commencement; and
- (c) in the case of an unattached officer, is deemed to be qualified to hold the office that the member was performing the duties of immediately before that commencement; and
- (d) in the case of an unattached officer who is not performing the duties of an office in the teaching service, is deemed to be qualified for the office that the person last held in the teaching service immediately before that commencement.

27. *Transfer of proceedings of appointments boards*

Any proceedings commenced by or before an appointments board established under section 60 of the **Teaching Service Act 1981** that were not completed at the commencement of this section may be continued and completed by or before the Director of School Education.

PART 7—LIMITATION OF JURISDICTION OF SUPREME COURT

28. *Supreme Court—limitation of jurisdiction*

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from entertaining actions for compensation or other amount

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in relation to matters in respect of which this Act provides that no compensation or other amount is payable.

NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 29 April 1993

Legislative Council: 18 May 1993

2. The long title for the Bill for this Act was "A Bill to make further provision for the employment of members of the teaching service, to establish a Standards Council of the Teaching Profession and Merit Protection Boards, to amend the **Education Act 1958** and the **Teaching Service Act 1981** and for other purposes."

3. **Constitution Act 1975:**

Section 85 (5) statement:

Legislative Assembly: 29 April 1993

Legislative Council: 18 May 1993

Absolute majorities:

Legislative Assembly: 14 May 1993

Legislative Council: 25 May 1993

4. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**.)