

Teaching Service (Amendment) Act 1987

No. 94 of 1987

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Victoria

No. 94 of 1987

Teaching Service (Amendment) Act 1987

[Assented to 1 December 1987]

The Parliament of Victoria enacts as follows:

Purposes.

1. The main purposes of this Act are—
 - (a) to abolish the Victorian Teaching Service Conciliation and Arbitration Commission and to allow the Industrial Relations Commission of Victoria to deal with the matters dealt with by the abolished Commission; and
 - (b) to make consequential and other amendments to the *Teaching Service Act 1981*, *Post-Secondary Education Act 1978*, the *Teaching Service Act 1983*, the *Teaching Service (Amendment) Act 1984* and the *Industrial Relations Act 1979*.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Principal Act.

3. In this Act the *Teaching Service Act 1981* is called the Principal Act.

No. 8714.
Reprinted to
No. 13/1986
Subsequently
amended by
No. 21/1987.

Abolition of the Victorian Teaching Service Conciliation and Arbitration Commission.

4. (1) The Victorian Teaching Service Conciliation and Arbitration Commission is abolished and its members go out of office.

(2) Any settlement or determination of the Victorian Teaching Service Conciliation and Arbitration Commission is void and of no effect.

(3) Sub-section (2) does not apply to any settlement or determination of the Victorian Conciliation and Arbitration Commission to the extent that it affects the appointment of any member of a Teaching Service Appeals Board under the Principal Act.

(4) Sections 15 to 33Q and the headings appearing before sections 15, 30, 32, 33A, 33K and 33O of the Principal Act are repealed.

Consequential amendments and transitional provisions.

5. (1) The Principal Act is amended as follows:

(a) Section 1 (3) is repealed; and

(b) In section 2—

(i) for the definitions of "Approved agent" and "Approved unit" substitute—

"Award" means an award of the Industrial Relations Commission or a Conciliation and Arbitration Board under the *Industrial Relations Act 1979*;

(ii) the definitions of "Commission", "Commissioner" and "Determination", "Industrial dispute", "Industrial matter", "President" and "TAFE Gazette" are repealed;

(iii) after the definition of "Government office" insert—

"Industrial association of employees" means an association of employees or a group of associations of employees recognised under Part V. of the *Industrial Relations Act 1979*;

"Industrial Relations Commission" means the Industrial Relations Commission of Victoria established under the *Industrial Relations Act 1979*.

- (iv) after the definition of "Minister" insert—
 "Ministerial order" means an order made or deemed to be made by the Minister under section 11.
- (c) Sections 2A and 10 are repealed; and
- (d) In section 11—
- (i) for sub-section (1) substitute—
 "(1) The Minister may make an order for or in respect of any matter relating to employment in the teaching service in respect of which an award is not in force.";
- (ii) in sub-sections (3) (b) and (4) for "a determination" substitute "an award";
- (iii) in sub-section (4) for "the determination" (where twice occurring) substitute "the award";
- (iv) in sub-section (4) omit "industrial";
- (v) in sub-section (7) omit "(or, where appropriate, the TAFE Gazette)";
- (vi) after sub-section (7) insert—
 "(8) An order may apply adopt or incorporate (whether with or without modification) any matter contained in any document issued or adopted by any specified person or body as issued or adopted at the time the order is made or at any time before then."; and
- (e) In section 14 after "determination" (where secondly occurring) insert "or any award"; and
- (f) In sections 34 (1),(2) and (3), 35 (1), 36 (1), 37 (1),(3) and (9), 38, 39 (1),(2) and (2A) and 58 (1), for "the determinations" (wherever occurring) substitute "an award or ministerial order"; and
- (g) In section 48—
- (i) omit "the Commission";
- (ii) omit "Commission"; and
- (h) In section 53 after "provisions of" insert "an award or Ministerial order"; and
- (i) In section 58A (3) for "and the appropriate approved agent or agents for the list in question" substitute "after consultation with the relevant industrial association of employees or industrial associations of employees for the list in question"; and
- (j) For section 58A (4) substitute—
 "(4) If any dispute arises as to whether an industrial association of employees is a relevant industrial association or employees for a list, the Industrial Relations Commission

constituted by a member of the Commission sitting alone shall decide that matter.”; and

- (k) In sections 64 (1) and (2) and 64A (1) (b) and (2) and 65 (1) for “the determinations” substitute “any Ministerial order”; and
- (l) In section 64 (3) (a) for “approved agents” substitute “relevant industrial associations of employees”; and
- (m) In section 64 (3) for paragraph (c) substitute—
 - “(c) a person nominated by the relevant industrial association of employees for the appeal or review in question.”; and
- (n) For section 64 (5) substitute—
 - “(5) If two or more industrial associations of employees claim to be the relevant industrial association of employees for the appeal or review the Industrial Relations Commission constituted by a member of the Commission sitting alone shall decide which industrial association of employees is the relevant industrial association of employees for the appeal or review in question.”.

(2) Notwithstanding anything to the contrary in section 58A (3) of the Principal Act as amended by section 5 (1) (i), section 58A (3) shall until the appointed day apply as if a reference to a relevant industrial association or associations were a reference to a union or unions or association or associations which in the Minister’s opinion represent or represents officers and employees in the teaching service and is the relevant industrial association or associations for the list in question.

(3) A person who was a Chairperson of Teaching Service Appeals Boards immediately before the commencement of section 5 (1) (j) shall despite the Principal Act as amended by section 5 (1) (j), continue to be the Chairperson of Teaching Service Appeals Boards for the remainder of the term for which that person was appointed Chairperson.

(4) If there is a vacancy in the office of Chairperson before the appointed day fixed for the purposes of sub-section (5) the Minister may, despite anything in the Principal Act appoint a person to be Chairperson of Teaching Service Appeals Boards until that appointed day.

(5) Despite anything to the contrary in section 64 (3) (c) of the Principal Act as amended by section 5 (1) (m), section 64 (3) (c) shall, until the appointed day apply as if a reference to a relevant industrial association were a reference to a union or association which in the Minister’s opinion represents officers and employees in the teaching service and is the relevant industrial association for the appeal or review in question.

(6) If on the appointed day fixed for the purposes of sub-section (5) an appeal or application for review under the Principal Act or the

Education Act 1958 had been made to or made to but not heard or determined by a Teaching Service Appeals Board, that Teaching Service Appeals Board may, despite the Principal Act as amended by the *Teaching Service Act 1983* and this Act continue to hear and determine that appeal or review in all respects as if those Acts had not been enacted.

(7) If—

- (a) on the appointed day fixed for the purposes of sub-section (5) a right to an appeal or application for review had accrued but the appeal or application for review had not been made to a Teaching Service Appeals Board under the Principal Act; or
- (b) after the appointed day a right of appeal to which section 9 (12), 45 (6) or 74 of the Principal Act applied had accrued—
the appeal or application for review may be heard and determined by—
- (c) in the case of an appeal to which section 9 (12), 45 (6) or 74 of the Principal Act applies, a Teaching Service Disciplinary Board under the Principal Act as amended by the *Teaching Service Act 1983*; and
- (d) in any other case a Teaching Service Appeals Board under the Principal Act as in force immediately after the appointed day.

(8) In sub-sections (2) and (5) “appointed day” means the day or days fixed by proclamation of the Governor in Council published in the *Government Gazette* as the appointed day or days for the purposes of those sub-sections.

New section 15 inserted in Principal Act.

6. After section 14 of the Principal Act insert—

No appeals under Industrial Relations Act for dismissal, etc.

“15. Despite anything to the contrary in the *Industrial Relations Act 1979*, the Industrial Relations Commission and a Conciliation and Arbitration Board established under that Act do not have power to hear or determine any question in an industrial dispute concerning the dismissal or dispensing with services or threatened dismissal or dispensing with services of an officer or employee under this Act.”

New section 83A inserted in *Post-Secondary Education Act 1978* and transitional.

7. (1) Before section 83 of the *Post-Secondary Education Act 1978* insert—

No. 9145.
Reprinted to
No. 10258.
Subsequently
amended
by Act
Nos. 13/1986,
20/1986,
S.R. No.
241/1986,
Act Nos.
116/1986.

Ministerial orders.

"83A. (1) The Minister may make an order for or in respect of any matter relating to employment in the technical and further education teaching service in respect of which an award is not in force.

(2) The Minister may by order amend or revoke any order under sub-section (1).

(3) An order under this section remains in force until—

(a) the Minister by order revokes it; or

(b) an award is made which declares that the order of the Minister no longer applies.

(4) If an order under this section and an award make provision for or in respect of the same matter, the award shall prevail over the order to the extent of any inconsistency between the award and the order.

(5) An order under this section takes effect—

(a) on and from the day specified in the order; or

(b) if no day is specified, on and from the day on which the order is made.

(6) An order under this section may provide that it shall take effect on and from a day earlier than the day on which it is made.

(7) The Minister shall cause an order under this section to be published in the TAFE Gazette as soon as practicable after it is made.

(8) An order may apply adopt or incorporate (with or without modification) any matter contained in any document issued or adopted by any specified person or body as issued or adopted at the time the order is made or at any time before then."

(2) On and from the commencement of section 7 any orders made or deemed to be made by the Minister under section 11 of the Principal Act that relates to an industrial matter in the technical and further education teaching service is deemed to be made under section 83A of the *Post-Secondary Education Act 1978*.

New section 119A inserted in *Post-Secondary Education Act 1978*.

8. After section 119 of the *Post-Secondary Education Act 1978* insert—

No appeals under Industrial Relations Act for dismissal, etc.

"119A. Despite anything to the contrary in the *Industrial Relations Act 1979*, the Industrial Relations Commission and a Conciliation and Arbitration Board established under that Act do not have power to hear or determine any question in an industrial dispute concerning the dismissal or dispensing with the services or threatened dismissal or

dispensing with the services of an officer or employee under Part III of this Act.”.

Consequential amendments to *Post-Secondary Education Act 1978*.

9. The *Post-Secondary Education Act 1978* is amended as follows:

(a) In section 40—

(i) before the definition of “Board” insert —

“Award” means an award of the Industrial Relations Commission or a Conciliation and Arbitration Board under the *Industrial Relations Act 1979*;

(ii) for the definition of “Determination” substitute—

“Industrial association of employees” means an association of employees or a group of associations of employees recognised under Part V. of the *Industrial Relations Act 1979*.

“Industrial Relations Commission” means the Industrial Relations Commission of Victoria established under the *Industrial Relations Act 1979*.

“Ministerial order” means an order made or deemed to be made by the Minister under section 83A.;

(b) In sections 67 (1) (a), 83 (1) (2) and (3), 84 (1), 85 (1), 86 (1) and (7), 89 (1), 103 (1), and 106 for “the determinations” (wherever occurring) substitute “an award or ministerial order”; and

(c) In section 74 (1) (a) for “the major trade union of which technical and further education service officers are members” substitute “the relevant industrial association of employees”;

(d) In section 87—

(i) for “the determinations” (where first occurring) substitute “an award or ministerial order”;

(ii) for “the determinations do” substitute “an award or ministerial order does”.

(e) In section 107 (1) for “the determinations” substitute “a ministerial order”; and

(f) In section 107 (2) for “specified by the determinations” substitute “prescribed”; and

(g) In section 107 (3) (a) for “major trade union of which technical and further education teaching service officers are members” substitute “relevant industrial association of employees”; and

- (h) In section 107 (6A) for “and the determinations and the regulations” substitute “or an award or ministerial order or the regulations”.

Consequential amendments to *Teaching Service Act 1983*.

10. The *Teaching Service Act 1983* is amended as follows:

- (a) In section 12 (3) (b) for the proposed paragraph (c) of section 60 (3) to be inserted in the *Teaching Service Act 1981* substitute—

“(c) one shall be a person nominated by the industrial association of employees that is the relevant industrial association of employees for the appointment in question.”; and

- (b) In section 12 (3) (c) for the proposed section 60 (3A) to be inserted in the *Teaching Service Act 1981* substitute—

“(3A) If two or more industrial associations of employees claim to be the relevant industrial association of employees for the appointment the Industrial Relations Commission constituted by a member of the Commission sitting alone shall decide which industrial association of employees is the relevant industrial association of employees for the appointment in question.”; and

- (c) In section 12 (7) for “, the determinations” substitute “any ministerial order”; and

- (d) In section 14 in the proposed section 66 to be inserted in the *Teaching Service Act 1981*—

(i) in sub-section (2) (a) for “Chairman” substitute “Chairperson”;

(ii) in sub-section (2) (a) for “approved agents” substitute “relevant industrial associations of employees”;

(iii) in sub-section 2 for paragraph (c) substitute—

“(c) one member shall be nominated by the industrial association of employees that is the relevant industrial association of employees for the disciplinary matter in question.”;

(iv) after sub-section (2) insert—

“(3) The Chairperson of the Teaching Service Disciplinary Boards holds office until the Chairperson attains the age of 65 years.

(4) The office of the Chairperson becomes vacant—

(a) if the Chairperson—

(i) dies; or

(ii) gives to the Governor in Council a resignation signed by the Chairperson; or

(iii) is removed from office; or

(b) if the Chairperson—

(i) except on leave granted by the Minister, absents himself or herself from duty for fourteen consecutive days or for twenty-eight days in any twelve months; or

(ii) becomes an undischarged bankrupt; or

(iii) becomes incapable of performing his or her duties; or

(iv) is convicted of an indictable offence—

and the Governor in Council declares, by notice in the *Government Gazette*, that the office has become vacant.

(5) The Governor in Council may suspend the Chairperson from office but the Chairperson may only be removed from office in accordance with this section.

(6) The Minister must cause to be laid before both Houses of Parliament a full statement of the grounds of suspension of the Chairperson within seven sitting days after the suspension if Parliament is then sitting or if Parliament is not then sitting then within seven sitting days after the next meeting of Parliament.

(7) The Governor in Council must remove the suspended Chairperson from office if each House of Parliament by resolution declares within seven sitting days after the statement is laid before it that the Chairperson ought to be removed from office and unless each House within that time so declares the Governor in Council must remove the suspension and restore the Chairperson to office.”;

(v) In sub-section (3) for “(3)” substitute “(8)”;

(vi) In sub-section (3) (a) omit “or Chairman”;

(vii) In sub-section (4) for “(4)” substitute “(9)”;

(viii) for sub-section (5) substitute—

“(10) For the purpose of sub-section (2) if two or more industrial associations of employees claim to be the relevant industrial association of employees for the disciplinary matter in question the Industrial Relations Commission constituted by a member of the Commission sitting alone shall decide which industrial association of employees is the relevant industrial association for that disciplinary matter.”.

New section 18 inserted in *Teaching Service (Amendment) Act 1984.*

No. 10085.

11. For section 18 of the *Teaching Service (Amendment) Act 1984* substitute—

Repeal of this Part.

“18. (1) This Part shall be repealed on the same day as section 5 (1) (m) of the *Teaching Service (Amendment) Act 1987* comes into operation.

(2) If before the day on which this Part is repealed, an appeal or any application for review has been made to or made to and heard but not determined by—

- (a) a Teaching Service Appeals Board under this Part, that Teaching Service Appeals Board may, notwithstanding the repeal of this Part continue to hear and determine that appeal or review in all respects as if this Part had not been repealed; or
- (b) a Teaching Service Appeals Board under the Principal Act, the Teaching Service Appeals Board may continue to hear and determine that appeal or review.”

New section 55C inserted into *Industrial Relations Act 1979* and amendment as to long service leave.

No. 9366.
Reprinted to
No. 10200.
Subsequently
amended by
Nos. 16/1986,
21/1986,
54/1986,
74/1986,
10/1987
and 28/1987.

12. (1) In section 66 (3) of the *Industrial Relations Act 1979* after “teaching service” insert “technical and further education teaching service”.

(2) After section 55B of the *Industrial Relations Act 1979* insert—

Groups of associations of teacher employees may be recognised.

“55C. A group of associations of employees in which the majority of the employees in each association are members of the teaching service under the *Teaching Service Act 1981* or the technical and further education teaching service under the *Post-Secondary Education Act 1978* may, subject to approval of an application under this Part, be recognised as an association for the purposes of this Act with respect to any trade or trades and, if so recognised has the rights duties and status of a recognised association of employees with respect to the trade or trades concerned.”

Amendment of *Post-Secondary Education Act 1978*—change of names of institutions and colleges.

13. (1) The *Post-Secondary Education Act 1978* is amended as follows:

(a) After section 39 (4) insert—

“(5) The regulations may amend Schedule 2 by changing the name of an institution.

(6) A regulation made under sub-section (5) shall not be made except on the recommendation of the Commission.

(7) If the regulations change the name of an institution pursuant to sub-section (5) then—

(a) the institution continues in existence under the new name so that its identity is not affected; and

(b) in an Act, in a subordinate instrument made under an Act or in any other document a reference to the institution under the former name shall, except in relation to matters that occurred before the change of name, be construed as a reference to the institution under the new name.”

(b) after section 130 (4) insert—

“(5) The regulations may amend Schedule 3 by amending the name of technical and further education college.

(6) A regulation made under sub-section (5) shall not be made except on the recommendation of the Board.

(7) If the regulations change the name of a college pursuant to sub-section (5) then—

(a) the college continues in existence under the new name so that its identity is not affected; and

(b) in an Act, in a subordinate instrument made under an Act or in any other document a reference to the college under the former name shall, except in relation to matters that occurred before the change of name, be construed as a reference to the college under the new name; and

(c) sections 65 (3) (b) and 67 (1) (c) (i) do not apply with respect to that college.”

(c) For Schedules 2 and 3 substitute—

“SCHEDULE 2

Ballarat College of Advanced Education.

Bendigo College of Advanced Education.

Chisholm Institute of Technology.

Footscray Institute of Technology.

Gippsland Institute of Advanced Education.

Hawthorn Institute of Education.
Institute of Catholic Education.
Lincoln Institute of Health Sciences.
Melbourne College of Advanced Education.
Phillip Institute of Technology.
Royal Melbourne Institute of Technology Limited.
Swinburne Limited.
Victoria College.
Victorian College of the Arts.
Victorian College of Pharmacy Limited.
Warnambool Institute of Advanced Education.

SCHEDULE 3

Batman Automative College of Technical and Further Education.
Box Hill College of Technical and Further Education.
Broadmeadows College of Technical and Further Education.
Collingwood College of Technical and Further Education.
Dandenong College of Technical and Further Education.
East Gippsland Community College of Technical and Further Education.
Flagstaff College of Technical and Further Education.
Footscray College of Technical and Further Education.
Frankston College of Technical and Further Education.
Gordon Technical College.
Goulburn Valley College of Technical and Further Education.
Holmesglen College of Technical and Further Education.
Loddon-Campaspe College of Technical and Further Education.
Melbourne College of Decoration.
Melbourne College of Printing and Graphic Arts.
Melbourne College of Textiles.
Moorabin College of Technical and Further Education.
Newport College of Technical and Further Education.
Outer Eastern College of Technical and Further Education.
Pahran College of Technical and Further Education.
Preston College of Technical and Further Education.
Richmond College of Technical and Further Education.
Royal Melbourne Institute of Technology Limited.

South West College of Technical and Further Education.
 Sunraysia College of Technical and Further Education.
 Swinburne Limited.
 The School of Mines and Industries Ballarat Limited.
 Wangaratta College of Technical and Further Education.
 William Angliss College.
 Wimmera Community College of Technical and Further Education.
 Wodonga College of Technical and Further Education.
 Yallourn College of Technical and Further Education.”.

(2) The change of name of a college or institution by sub-section (1) (c) does not affect the identity of the institution or college and the institution or college continues in existence under its new name.

(3) If the name of an institution or college is changed by sub-section (1) (c) in an Act or subordinate instrument made under an Act or in any other document a reference to the institution or college under the former name, shall except in relation to matters that occurred before the change of name, be construed as a reference to the institution or college under the new name.

(4) If the name of a college is changed by sub-section (1) (c) sections 65 (3) (b) and 67 (1) (c) (i) of the Principal Act do not apply with respect to that college.

Miscellaneous amendments to *Post-Secondary Education Act 1978*.

14. In section 107 of the *Post-Secondary Education Act 1978*—
- (a) in sub-section (3B) for “(1) (b)” substitute “(3) (b)”;
 - (b) in sub-section (3C) for “(1) (c)” substitute “(3) (c)”.

NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 16 September 1987

Legislative Council: 13 November 1987

2. The long title for the Bill for this Act was “A Bill to give the Industrial Relations Commission jurisdiction over the terms and conditions of staff employed in the teaching service and the technical and further education teaching service, to amend the *Teaching Service Act 1981*, the *Post-Secondary Education Act 1978*, the *Teaching Service Act 1983*, the *Teaching Service (Amendment) Act 1984*, and the *Industrial Relations Act 1979* and for other purposes.”.