

LEGISLATIVE ASSEMBLY

Read 1^o 21 October 1982

(Brought in by Mr Fordham and Mr Roper)

A BILL

To amend the *Education Service Act 1981*, the *Constitution Act 1975*, *The Constitution Act Amendment Act 1958* and the *Teaching Service Act 1958* and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Education Service (Amendment) Act 1982*. Short title.

(2) Except where otherwise expressly provided the several provisions of this Act shall come into operation on the day on which this Act receives the Royal Assent. Commencement.

(3) This Act is divided into Parts as follows:

Part I.—Amendments to the *Education Service Act 1981* and other Acts ss. 2–5.

Part II.—Transitional Provisions ss. 6–15.

Division into Parts.

PART I.—AMENDMENTS TO THE EDUCATION SERVICE ACT
1981 AND OTHER ACTS

Amendment of
No. 9714.

2. The *Education Service Act* 1981 is amended as follows:

- (a) In section 64 (8) after the words “Education Service Appeals Board” (where first occurring) there shall be inserted the words “in relation to an appeal under this Act or any other Act”; and 5
- (b) In section 78 (2) (d) after the word “Appeals” there shall be inserted the expression “(including appeals made under the *Teaching Service Act* 1958)”. 10

Amendment of
No. 8750.

3. (1) The *Constitution Act* 1975 is amended as follows:

- (a) In section 61 for the expression “*Teaching Service Act* 1958” there shall be substituted the expression “*Education Service Act* 1981”; 15
- (b) In section 95—
- (i) in sub-section (2) for the words “Teachers Tribunal” there shall be substituted the words “Director-General of Education”; and
- (ii) in sub-section (3) (a) for the expression “*Teaching Service Act* 1958” there shall be substituted the expression “*Education Service Act* 1981”. 20

(2) This section shall be deemed to have come into operation on 24 March 1982.

Amendment of
No. 6224.

4. (1) *The Constitution Act Amendment Act* 1958 is amended as follows: 25

- (a) In section 30 (1)—
- (i) before the interpretation of “Parliament” there shall be inserted the following interpretation:
“Education service” includes as well as officers and employés in the education service any person who is certified by the Director-General of Education to be employed in whole-time duties on the permanent staff of any school or schools for technical education receiving aid from the Consolidated Fund”; 30
- (ii) in paragraph (c) of the interpretation of “Public service” for the words “teaching service” there shall be substituted the words “education service”; and 35
- (iii) the interpretation of “Teaching service” shall be repealed; 40
- (b) In section 30 (2) for the words “teaching service” (wherever occurring) there shall be substituted the words “education service”;

(c) After

- (c) After section 30 (2) there shall be inserted the following sub-section:

“(3) The provisions of sub-section (2) shall apply to and in relation to any person who before the commencement of section 4 of the *Education Service Act 1981*—

(a) was a member of the teaching service within the meaning of section 3 of the *Teaching Service Act 1958*; or

(b) was certified by the Director-General of Education to be employed in whole-time duties on the permanent staff of any school or schools for technical education receiving aid from the Consolidated Fund—

as if that person was a member of the education service.”; and

- (d) In section 49—

(i) for the words “teaching service” (wherever occurring) there shall be substituted the words “education service”; and

(ii) for the expression “*Teaching Service Act 1958*” there shall be substituted the expression “*Education Service Act 1981*”.

(2) This section shall be deemed to have come into operation on 24 March 1982.

5. (1) The *Teaching Service Act 1958* is amended as follows: Amendment of No. 6391.

- (a) In section 3 (1) after the interpretation of “Director-General” there shall be inserted the following interpretation:

““Education Service Appeals Board” means an Education Service Appeals Board constituted under the *Education Service Act 1981*.”;

- (b) In section 35 (1)—

(i) for the words “the Tribunal” (where first occurring) there shall be substituted the words “an Education Service Appeals Board”;

(ii) the words “as prescribed” shall be repealed;

(iii) for the word “Tribunal” (where secondly occurring) there shall be substituted the word “Board”;

- (c) In section 35 (2) for the words “the Tribunal” there shall be substituted the words “an Education Service Appeals Board”;

(d) In

- (d) In section 48 (6)—
- (i) for the words “may appeal to the Tribunal” (wherever occurring) there shall be substituted the words “may appeal as prescribed to an Education Service Appeals Board”; and 5
 - (ii) the words “and the regulations thereunder” shall be repealed;
- (e) After section 48 (6) there shall be inserted the following sub-sections:
- ‘(6A) The appropriate Education Service Appeals Board shall hear and determine an appeal under sub-section (6) and may allow or dismiss the appeal and the Director-General and the committee of classifiers shall give effect to the determination. 10
 - (6B) In this section “prescribed” means “prescribed by regulations under the *Education Service Act 1981*.”; 15
- (f) After section 48 (7) there shall be inserted the following sub-section:
- “(8) Section 65 of the *Education Service Act 1981* shall not apply to any appointment promotion or appeal made under this section.”; 20
- (g) In section 53—
- (i) for the expression “53. In” there shall be substituted the expression “53. (1) In”;
 - (ii) for paragraph (d) there shall be substituted the following paragraph: 25
 - “(d) Any teacher who is not placed in an annual promotion list may appeal as prescribed to an Education Service Appeals Board to place his name in that list and the provisions of this Part with respect to an appeal by a teacher against a decision of the classifiers shall as nearly as possible apply to the appeal.”; and 30
 - (iii) after paragraph (f) there shall be inserted the following sub-sections: 35
 - ‘(2) The appropriate Education Service Appeals Board shall hear and determine an appeal under sub-section (1) (d) and may allow or dismiss the appeal and the Director-General and the committee of classifiers shall give effect to the determination. 40
 - (3) For the purposes of sub-section (1) (d) “prescribed” means prescribed by regulations under the *Education Service Act 1981*.’; and

(h) In

(h) In section 55D for sub-section (3) there shall be substituted the following sub-sections:

5 ‘(3) Any applicant for appointment to a permanent position as teacher in a special developmental school who feels aggrieved by the failure of the Director-General to appoint him to that position under the *Education Service Act* 1981 may appeal as prescribed to an Education Service Appeals Board.

10 (4) The appropriate Education Service Appeals Board shall hear and determine an appeal under sub-section (3) and may allow or dismiss the appeal and the Director-General shall give effect to the determination.

15 (5) For the purposes of this section “prescribed” means prescribed by regulations under the *Education Service Act* 1981.’

20 (2) Notwithstanding anything to the contrary in the *Education Service Act* 1981, where any person has a right of appeal to an Education Service Appeals Board under section 48 (6) or 55D (3) of the *Teaching Service Act* 1958 in respect of any matter, that person shall not be entitled to appeal under section 64 (1) of the *Education Service Act* 1981 in respect of that matter.

25 (3) Notwithstanding anything to the contrary in the *Education Service Act* 1981 there shall be no right of appeal under section 64 (1) of that Act in respect of an appointment by the committee of classifiers under section 48 (7) of the *Teaching Service Act* 1958.

 (4) Section 64 (2) of the *Education Service Act* 1981 shall not apply to an appeal to an Education Service Appeals Board made under section 48 (6) or 55D (3) of the *Teaching Service Act* 1958.

PART II.—TRANSITIONAL PROVISIONS

30 6. In this Part the *Education Service Act* 1981 is referred to as the Principal Act. Principal Act
No. 9714.

 7. In this Part unless inconsistent with the context or subject-matter— Inter-
pretation.

35 “Chairman” means the independent chairman of Education Service Appeals Boards appointed under the Principal Act. “Chairman.”

 “Director-General” means the Director-General of Education. “Director-
General.”

8. (1) Notwithstanding

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Constitution of
Education
Service
Appeals Board
for purpose of
hearing appeals
under s. 35,
48 (6), 53 (1) (d)
and 55D (3) of
the *Teaching
Service Act*
1958.

8. (1) Notwithstanding anything to the contrary in section 64 (3) of the Principal Act, the provisions of the Principal Act and the regulations thereunder shall up to and including the appointed day apply to and in relation to any appeal under section 35, 48 (6), 53 (1) (d) or 55D (3) of the *Teaching Service Act* 1958 as if a reference in section 64 (3) of the Principal Act to a person nominated by an approved agent that is the appropriate approved agent for the appeal in question were a reference to a person selected by the chairman in accordance with sub-section (2) of this section as the appropriate person to hear the appeal in question. 5 10

(2) The chairman shall select as a member of an Education Service Appeals Board for the purpose of hearing an appeal referred to in sub-section (1)—

(a) a person—

(i) who immediately before 18 August 1982 was a 15 member of the Teachers Tribunal under the *Teaching Service Act* 1958 as the representative of primary, secondary or technical school teachers or the teaching service generally; and

(ii) who, if the appeal in question had been made to the 20 Teachers Tribunal during the period that that person was a member of the Tribunal, would have been a member of the Tribunal hearing the appeal; or

(b) where the person referred to in paragraph (a) is unable to act as a member of the Board, a person nominated by 25 the Minister for that purpose.

(3) Where any dispute arises under this section as to which person is the appropriate person to hear an appeal the chairman shall decide which person is the appropriate person to hear the appeal and his decision shall be final. 30

(4) Immediately on the expiration of the appointed day any person who holds office as a member of an Education Service Appeals Board by virtue of this section shall cease to be a member of that Board.

(5) For the purposes of this section the appointed day is the 35 day fixed by proclamation of the Governor in Council published in the *Government Gazette* as the appointed day for the purposes of this section.

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Constitution of
Education
Service
Appeals Board
for purpose of
hearing some
appeals under
section 64 (1)
of the
*Education
Service Act*
1981.

9. (1) Notwithstanding anything to the contrary in section 64 (3) of the Principal Act, the provisions of the Principal Act and the regulations thereunder shall up to and including the appointed day apply to and in relation to any appeal under section 64 (1) of the Principal Act in respect of an office for which educational experience is a prerequisite for appointment as if a reference 40

in

in section 64 (3) of that Act to a person nominated by an approved agent that is the appropriate approved agent for the appeal in question were a reference to—

- 5 (a) the person who was last appointed to the Teachers Tribunal under the *Teaching Service Act* 1958 to represent the teaching service generally; or
 (b) where the person referred to in paragraph (a) is unable to act as a member of the Board, a person nominated by the Minister for that purpose.

10 (2) For the purposes of this section and any proceedings arising thereunder, a certificate signed by the Director-General stating whether or not educational experience is a prerequisite for appointment to an office shall be conclusive proof of the facts stated therein.

15 (3) Immediately on the expiration of the appointed day any person who holds office as a member of an Education Service Appeals Board by virtue of this section shall cease to be a member of that Board.

20 (4) For the purposes of this section the appointed day is the day fixed by proclamation of the Governor in Council published in the *Government Gazette* as the appointed day for the purposes of this section.

25 10. (1) Notwithstanding anything to the contrary in section 64 (3) of the Principal Act, the provisions of the Principal Act and any regulations thereunder shall up to and including the appointed day apply to and in relation to any appeal—

- (a) under section 9 (12), 11 (2), 45 (6) or 74 of the Principal Act by a teacher or principal; or
 30 (b) under section 62 (8) of the Principal Act in respect of the cancellation of a promotion or transfer to an office of teacher or principal or to an office for which educational experience is a prerequisite for appointment—

35 as if a reference in section 64 (3) of the Principal Act to a person nominated by an approved agent that is the appropriate approved agent for the appeal in question were a reference to a person selected by the chairman in accordance with sub-section (2) of this section as the appropriate person to hear the appeal in question.

40 (2) The chairman shall select as a member of an Education Service Appeals Board for the purpose of hearing an appeal referred to in sub-section (1)—

- (a) a person—
 45 (i) who immediately before 18 August 1982 was a member of the Teachers Tribunal under the *Teaching Service Act* 1958 as the representative of primary, secondary or technical school teachers or the teaching service generally; and

(ii) who

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 Constitution of
 Education
 Service Appeals
 Board to hear
 appeals under
 various
 provisions of
 the *Education
 Service Act*
 1981.

(ii) who, if the appeal in question had been made to the Teachers Tribunal during the period that that person was a member of the Tribunal, would have been a member of the Tribunal hearing the appeal; or

(b) where the person referred to in paragraph (a) is unable to act as a member of the Board, a person nominated by the Minister for that purpose. 5

(3) Where any dispute arises under this section as to which person is the appropriate person to hear an appeal the chairman shall decide which person is the appropriate person to hear the appeal and his decision shall be final. 10

(4) For the purposes of this section and any proceedings arising thereunder, a certificate signed by the Director-General stating whether or not educational experience is a prerequisite for appointment to an office shall be conclusive proof of the facts stated therein. 15

(5) Immediately on the expiration of the appointed day any person who holds office as a member of an Education Service Appeals Board by virtue of this section shall cease to be a member of that Board. 20

(6) For the purposes of this section the appointed day is the day fixed by proclamation of the Governor in Council published in the *Government Gazette* as the appointed day for the purposes of this section.

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Constitution of
Education
Service Appeals
Board for the
purpose of
hearing various
appeals under
the *Education
Service Act
1981*.

11. (1) Notwithstanding anything to the contrary in section 64 (3) of the Principal Act, the provisions of the Principal Act and any regulations thereunder shall up to and including the appointed day apply to and in relation to any appeal— 25

(a) under section 64 (1) of the Principal Act (other than an appeal to which section 9 applies); or 30

(b) under sections 9 (12), 11 (2), 45 (6), 62 (8) or 74 of the Principal Act (other than an appeal to which section 10 applies)—

as if a reference in section 64 (3) of the Principal Act to a person nominated by an approved agent that is the appropriate approved agent for the appeal in question were a reference to a person selected by the chairman of the Promotions Appeals Board under the *Public Service Act 1974* as the appropriate person to hear the appeal in question from persons nominated by the approved associations of officers under section 38 (3) of the *Public Service Act 1974*. 35 40

(2) Immediately on the expiration of the appointed day any person who holds office as a member of an Education Service Appeals Board by virtue of this section shall cease to be a member of that Board.

(3) For

(3) For the purposes of this section the appointed day is the day fixed by proclamation of the Governor in Council published in the *Government Gazette* as the appointed day for the purposes of this section.

5 **12.** (1) Notwithstanding anything to the contrary in the Principal Act or the *Teaching Service Act* 1958, the appropriate Education Service Appeals Board may hear and determine any appeal to which this section applies notwithstanding that the appeal was lodged or purported to have been lodged with an Education Service Appeals Board prior to the commencement of this section. Transitional.

10 (2) This section applies to any appeal—

(a) which was lodged or is purported to have been lodged under the Principal Act or the *Teaching Service Act* 1958 with an Education Service Appeals Board within the prescribed time; and

15 (b) which had not been determined by an Education Service Appeals Board before the commencement of this section.

(3) In this section the prescribed time means the time prescribed under the Principal Act for the lodging of the appeal in question with an Education Service Appeals Board.

25 **13.** (1) Notwithstanding anything to the contrary in the Principal Act, the Director-General may appoint to an office in the education service, any person who immediately before the commencement of section 4 of the Principal Act was eligible for first appointment to the teaching service under section 46 of the *Teaching Service Act* 1958. Transitional
Appointments
to Education
Service.

(2) Sections 6 (2) and 7 of the Principal Act shall not apply to an appointment made by the Director-General under sub-section (1).

30 (3) An appointment made by the Director-General under sub-section (1) may be made to take effect from such date not being a date earlier than the date the person appointed—

- (a) became eligible for appointment; or
- (b) had applied for appointment—

(whichever last occurs) as the Director-General thinks fit.

35 (4) An appointment made by the Director-General under this section shall be deemed to have been made under the Principal Act.

(5) This section shall be deemed to have come into operation on 24 March 1982.

40 **14.** (1) Notwithstanding anything to the contrary in the Principal Act, all appeals heard and determined or purported to have been heard and determined by an Education Service Appeals Board (however constituted) prior to the commencement of this section shall be deemed to have been validly heard and determined. Validation.

(2) Notwithstanding

(2) Notwithstanding anything to the contrary in the Principal Act or the *Teaching Service Act 1958*, all appeals heard and determined or purported to have been heard and determined by the Teachers Tribunal under the Principal Act or the *Teaching Service Act 1958* during the period commencing on 24 March 1982 and ending on 18 August 1982 shall be deemed to have been validly heard and determined. 5

Transitional.

15. (1) On and from the commencement of this section any reference to the teaching service in any Act, proclamation, Order in Council, rule, regulation, by-law, order, legal proceedings, instrument, document or writing of any kind whatsoever shall, so far as relates to any period after the commencement of this section and is not inconsistent with the context or subject-matter, be deemed and take to refer to the education service. 10

(2) Where by or under a provision of any Act a person was on or before the commencement of this section entitled to be appointed or re-appointed to a position in the teaching service, that person shall after that commencement be entitled to the same extent to be appointed to a position in the education service. 15

(3) This section shall be deemed to have come into operation on 24 March 1982. 20