

Chapter 72.

Teaching Service (Auxiliary Members) Act 1973.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 72.

Teaching Service (Auxiliary Members) Act 1973.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

Teaching Service (Auxiliary Members) Act 1973,

Being an Act to provide for the appointment of overseas persons as auxiliary members of the Teaching Service and their terms and conditions of employment, and for related purposes.

1. Interpretation.

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

“associate auxiliary member” means a person who—

- (a) has been admitted to associate auxiliary membership of the Teaching Service under Section 2; or
- (b) has elected to be an associate auxiliary member under Section 11(1) and who has not been recognized again under Section 11(2) as an auxiliary member;

“auxiliary member” means a person who has been admitted to auxiliary membership of the Teaching Service under Section 2;

“the commencement date” means 31 January 1974, being the date of commencement of the pre-Independence *Teaching Service (Auxiliary Members) Act 1973*;

“General Orders” means the General Orders provided for by Section 18;

“member of the Teaching Service” includes an auxiliary member and an associate auxiliary member;

“the regulations” means any regulations made under this Act;

“the Temporary Provisions Act” means the pre-Independence *Teaching Service (Temporary Provisions) Act 1970*;

“this Act” includes the regulations and the General Orders.

(2) Unless the contrary intention appears, expressions used in this Act that are also used in the *Teaching Service Act 1988* have the same respective meanings as in that Act.

(3) [*Repealed.*]

2. Admission of auxiliary members and associate auxiliary members.

(1) The Commission may admit overseas persons to auxiliary membership or associate auxiliary membership of the Teaching Service.

(2) An overseas person shall not be admitted to auxiliary membership or associate auxiliary membership of the Teaching Service unless—

- (a) he is registered as a teacher under the *Education Act 1983*; and
- (b) he provides evidence to the satisfaction of the Commission as to—
 - (i) his health and physical fitness; and
 - (ii) his age; and
 - (iii) his good character; and
- (c) he makes and subscribes an oath or affirmation in the prescribed form; and
- (d) he satisfies the Commission that he has secured an appointment to a vacant position as a teacher in an educational institution.

3. Transfer out of the Public Service.

(1) An exempt employee of the Public Service who is an overseas person may apply for admission to auxiliary membership or associate auxiliary membership of the Teaching Service in accordance with Section 2, and on admission he ceases to be an employee of the Public Service.

(2) All service in the Public Service of an overseas person who ceased to be an employee in the Public Service by virtue of Subsection (1), being service that is continuous with service under this Act, shall be deemed, for the purposes of this Act, to be service under this Act, but no such person is entitled, in respect of any such service, to the same or to equivalent benefits under the *Public Services (Management) Act 1995* and under this Act.

4. Terms and conditions of employment.

(1) The terms and conditions of employment of auxiliary members and associate auxiliary members are as prescribed in the regulations or as fixed by the Commission in the General Orders.

(2) Subject to this Act, until full provision is made under Subsection (1) the terms and conditions of employment of auxiliary members and associate auxiliary members are—

- (a) in the case of persons who were members of the Teaching Service under the Temporary Provisions Act immediately before the commencement date—the terms and conditions of employment that were applicable to him, immediately before that date; and
- (b) in the case of a person who was not a member of the Teaching Service immediately before the commencement date—the terms and conditions of employment that would have been applicable to him if he had been admitted to membership of the Teaching Service under the Temporary Provisions Act on the day immediately preceding the commencement date,

as varied by the Minister after consultation with the Commission.

(3) All periods that were counted as service of an auxiliary member or an associate auxiliary member while he was a member of the Teaching Service under the Temporary Provisions Act shall be counted as service for the equivalent purpose under this Act.

(4) The reference in Subsection (2) to conditions under the Temporary Provisions Act

includes a reference to overseas conditions of service within the meaning of that Act which shall be deemed to be special conditions applicable in accordance with Section 8 to auxiliary members and associate auxiliary members to whom they applied before the commencement date.

(5) The responsibility for providing conditions in respect of an auxiliary member or associate auxiliary member to which Subsection (4) applies is on the authority that was responsible for the equivalent provisions immediately before the commencement date.

5. Application of *Teaching Service Act 1988*.

Subject to anything to the contrary in the regulations or the General Orders, the *Teaching Service Act 1988* does not apply to or in relation to an auxiliary member or an associate auxiliary member.

6. Appointment to positions in the Teaching Service.

(1) The Commission may, at the request of the appropriate appointing authority within the meaning of the *Teaching Service Act 1988*, appoint an auxiliary member to perform the duties of a position in the Teaching Service.

(2) For the purposes of Subsection (1), the National Education Board is the appropriate appointing authority in relation to non-institutional positions.

7. Effect of appointment.

(1) An auxiliary member or associate auxiliary member shall, subject to Subsection (2), be deemed for the purposes of all laws to be, and to have the powers, functions, duties and responsibilities of, a member of the Teaching Service appointed to the position concerned.

(2) Subsection (1) does not prevent the appointment, promotion or transfer of a member of the Teaching Service to replace an auxiliary member or associate auxiliary member, and in that event the appointment of the latter under Section 2 is terminated unless other arrangements for his continued service have been made.

(3) Where—

(a) an education agency other than the Government has agreed to meet the fares or the removal or repatriation expenses of a person who is or who becomes an auxiliary member or associate auxiliary member; and

(b) the appointment of the person is terminated under Subsection (2),

the Commission shall contribute to his removal or repatriation expenses unless other arrangements for his continued service have been made.

8. Additional benefits and allowances and special conditions of service.

(1) This Act does not prevent an education agency or a governing body (including the governing body of a State school) from providing for any auxiliary member or associate auxiliary member—

(a) overseas or attraction allowances; and

(b) other allowances; and

- (c) other benefits; and
- (d) special conditions of service,

in addition to those provided by this Act, but the financial and other responsibility for such additional allowances, benefits and conditions of service is on the education agency or governing body concerned.

(2) In the case of—

- (a) an education agency other than the State; or
- (b) a governing body of a school including a State school,

any—

- (c) allowances or other benefits; or
- (d) special conditions of service,

of a kind referred to in Subsection (1) to be paid or applied to an auxiliary or associate auxiliary member of the Teaching Service are as agreed upon between the agency or governing body, as the case may be, and the member.

(3) In the case of the State as an education agency—

- (a) any allowances or other benefits; or
- (b) any specified conditions of service,

of a kind referred to in Subsection (1) to be paid or applied to an auxiliary or associate auxiliary member of the Teaching Service are as determined by the Minister.

(4) Subject to any determination under Subsection (3), the Minister may, on behalf of the State, enter into an agreement with an auxiliary or associate auxiliary member of the Teaching Service in respect of overseas, attraction or other allowances or other benefits or special conditions of service.

9. Tenure of office.

Subject to anything to the contrary in the General Orders, a person who is admitted to auxiliary membership or associate auxiliary membership of the Teaching Service is employed as an auxiliary member or associate auxiliary member, as the case may be, on condition that his services may be dispensed with at any time by the Commission.

10. Limitation on number of auxiliary members.

(1) Subject to Subsection (2), the Commission may, by notice in the *Education Gazette*, declare the maximum number of persons who may be admitted to auxiliary membership and associate auxiliary membership of the Teaching Service.

(2) The number declared under Subsection (1) shall be not less than the number of auxiliary members and associate auxiliary members at the date of the notice.

(3) A person shall not be admitted to auxiliary membership or associate auxiliary membership of the Teaching Service unless the number of auxiliary members or associate auxiliary members, as the case may be, immediately before the time of his proposed admission is less than the number declared under Subsection (2).

11. Election to become an associate auxiliary member.

(1) A person who is an auxiliary member, or a person who has applied for admission to auxiliary membership of the Teaching Service, may, by written notice to the Commission, elect to become an associate auxiliary member.

(2) An auxiliary member who has made an election under Subsection (1) and who is otherwise entitled to be an auxiliary member may request that the Commission recognize him again as an auxiliary member and the Commission may, in its discretion, so recognize him.

(3) An election under Subsection (1), or recognition under Subsection (2), takes effect from such date as the Commission, by written notice to the person concerned, appoints.

12. Rates of salary of associate auxiliary members.

The rates or scales of salary of associate auxiliary members occupying associate positions are two-thirds of the rates or scales of salary applicable to full members of the Teaching Service occupying base-level positions in educational institutions.

13. Associate auxiliary members in non-associate schools, etc.

(1) An associate auxiliary member may be appointed to a position in a member school (other than a reserved teaching position) only—

(a) if the Commission certifies that the appointment is not against the best interests of members of the Teaching Service; and

(b) on such conditions as the Commission determines.

(2) The appointing authority shall publish in the *Education Gazette* notice of its intention to appoint an associate auxiliary member to a position (other than a reserved teaching position) in a member school.

14. Financial responsibilities of education agencies and authorities.

(1) Subject to Subsection (3), the education agency conducting an educational institution is responsible for the cost of any allowances, benefits or special conditions of service under Section 8 to or in respect of auxiliary members of associate auxiliary members of the Teaching Service appointed to teaching positions in the institution.

(2) Where an auxiliary or associate auxiliary member of the Teaching Service who is entitled to allowances, benefits or special conditions of service from an education agency or governing body under Section 8, is appointed to perform the duties of a position in an educational institution conducted by another agency or governing body, the first-mentioned education agency or governing body, as the case may be, subject to the terms of any binding contract which it has entered into with the member in relation to such allowances, benefits or conditions of service, may, in its discretion, continue to provide or may terminate the provision of some or all of those allowances, benefits or conditions, and this Act does not require the agency or governing body conducting the other educational institution to provide any allowances, benefits or special conditions of service for the auxiliary or associate auxiliary member.

(3) Where an education authority undertakes in the prescribed manner to accept all or any of the responsibilities of an education agency (including the State) in relation to an auxiliary

member or associate auxiliary member, the authority is responsible and the agency (including, where the State is the agency, the State) is relieved accordingly.

15. Financial responsibility of the State.

In addition to the responsibilities of the Government as an education agency (including its responsibilities under any agreement entered into by it or any determination made under Section 8) the State is responsible for—

- (a) the payment of salaries and allowances of auxiliary members and associate auxiliary members; and
- (b) except where the contrary intention appears in this Act, all other amounts payable in respect of auxiliary members and associate auxiliary members (other than the cost of any overseas or attraction or other allowances or benefits or special conditions of service provided by any other education authority, including a governing body of a State school under Section 8 or 15(3)).

16. Payment of salaries, etc.

All amounts payable by the State under this Act are payable out of moneys lawfully available for the purpose.

17. Recovery of amounts due.

Where any amount is payable under this Act, or under an agreement or determination of a kind referred to in Section 8, to or in respect of an auxiliary member or associate auxiliary member, the member may recover the amount from the education authority responsible as a debt.

18. The General Orders.

The Commission may give to auxiliary members and associate auxiliary members directions (to be known as “General Orders”), not inconsistent with this Act or the regulations, as to any matter prescribed by this Act to be so provided for, or that is necessary or desirable for the efficient control of the Teaching Service.

19. Additional powers of the Commission.

Where there is no provision, or no sufficient provision, in this Act in respect of any matter or thing necessary or desirable to give effect to this Act, the Commission may, with the approval of the Head of State, acting on advice, specify in the General Orders in what manner and form the want of provision or insufficient provision shall be supplied.

20. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the more efficient control and management of the Teaching Service, and in particular for—

- (a) prescribing the terms and conditions of appointment of auxiliary members and

associate auxiliary members; and

- (b) prescribing all matters relating to the discipline of auxiliary members and associate auxiliary members; and
- (c) prescribing penalties of fines not exceeding K40.00 for offences against the regulations; and
- (d) providing for the insurance of an auxiliary member or associate auxiliary member or his goods.

Office of Legislative Counsel, PNG