

Commonwealth Teaching Service

No. 13 of 1972

An Act to establish a Commonwealth Teaching Service.

[Assented to 17 April 1972]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Commonwealth Teaching Service Act 1972*.

Commence-
ment.

2.—(1.) Sections 1 and 2 of this Act shall come into operation on the day on which this Act receives the Royal Assent.

(2.) The remaining sections of this Act shall come into operation on such date as is, or on such dates as respectively are, fixed by Proclamation.

3. This Act is divided into Parts, as follows:—

Parts.

Part 1.—Preliminary (Sections 1–5).

Part II.—The Commonwealth Teaching Service Commissioner (Sections 6–18).

Part III.—The Commonwealth Teaching Service.

Division 1.—Establishment of the Service (Section 19).

Division 2.—Officers and Employees (Sections 20–24).

Division 3.—Classifications and Promotions (Sections 25–30).

Division 4.—Tenure of Office (Sections 31–32).

Division 5.—Special Provisions relating to Female Officers (Section 33).

Division 6.—Dismissals and Punishments (Sections 34–37).

Division 7.—Powers and Functions of the Commonwealth Conciliation and Arbitration Commission in respect of the Service (Sections 38–43).

Part IV.—Commonwealth Teaching Service Scholarships (Sections 44–49).

Part V.—Miscellaneous (Sections 50–53).

4. In this Act, unless the contrary intention appears—

Definitions.

“advanced education institution” means an institution in Australia that, under an approval of the Commissioner, is to be treated as an advanced education institution for the purposes of Part IV.;

“Commonwealth school” means a school conducted by the Commonwealth, by an authority of the Commonwealth or by the Administration of a Territory and includes a school conducted in Papua New Guinea by a prescribed institution;

“full-time student” means a student included in a class of students that, under an approval of the Commissioner, is to be treated as a class of students engaged in full-time study for the purposes of Part IV.;

“member of the Service” means a person appointed as an officer, or engaged as a temporary employee, in accordance with Part III.;

“part-time student” means a student other than a full-time student;

“scholarship” means a Commonwealth Teaching Service Scholarship provided for by Part IV.;

“teaching duties” includes the administration of a school and the inspection or supervision of persons engaged in teaching;

“Territory” means a Territory of the Commonwealth;

“ the Commissioner ” means the Commonwealth Teaching Service Commissioner;

“ the Service ” means the Commonwealth Teaching Service;

“ University ” means a University in Australia, and includes—

(a) a University College in Australia; or

(b) an institution that, under an approval of the Commissioner, is to be treated as a University for the purposes of Part IV.

Application of Act.

5. This Act applies both within and outside Australia and extends to all the Territories.

PART II.—THE COMMONWEALTH TEACHING SERVICE COMMISSIONER.

Commonwealth Teaching Service Commissioner.

6. There shall be a Commonwealth Teaching Service Commissioner, who shall be appointed by the Governor-General.

Tenure of office.

7.—(1.) Subject to this Act, the Commissioner holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment and on such terms and conditions as the Governor-General determines, but is eligible for re-appointment.

(2.) A person who has attained the age of sixty-five years shall not be appointed or re-appointed as the Commissioner, and a person shall not be appointed or re-appointed as the Commissioner for a period that extends beyond the date on which he will attain the age of sixty-five years.

Remuneration and allowances.

8.—(1.) The Commissioner shall be paid salary at such rate as the Parliament fixes but, until the first day of July, One thousand nine hundred and seventy-three, the rate of that salary shall be such rate as is prescribed.

(2.) The Commissioner shall be paid such allowances (other than annual allowances) as are prescribed.

Leave of absence.

9. The Minister may grant leave of absence to the Commissioner upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation.

10. The Commissioner may resign his office by writing under his hand delivered to the Governor-General but the resignation does not have effect until it is accepted by the Governor-General.

Commissioner not to undertake other work.

11.—(1.) The Commissioner shall not engage in paid employment outside the duties of his office except with the approval of the Minister.

(2.) The Minister shall not give an approval for the purposes of the last preceding sub-section unless he is satisfied that the paid employment will not interfere with the performance of the duties of the Commissioner under this Act.

12.—(1.) The Governor-General may retire the Commissioner on the ground of invalidity. Termination of employment.

(2.) The Governor-General shall terminate the appointment of the Commissioner if the Commissioner—

- (a)** absents himself from duty for fourteen consecutive days, or for twenty-eight days in any twelve months, except on leave granted by the Minister;
- (b)** is guilty of misbehaviour; or
- (c)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.

13. For the purposes of sub-sections (3A.) and (4.) of section 4 of the *Superannuation Act 1922–1971*, the Commissioner shall be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office. Application of Superannuation Act.

14. The Commissioner shall not perform the duties of his office unless he has made and subscribed, before a justice of the peace or a commissioner for taking affidavits, an oath or affirmation in accordance with the form of oath or affirmation in the First Schedule to this Act. Oath or affirmation.

15.—(1.) Where the person holding the office of Commonwealth Teaching Service Commissioner is, or is expected to be, absent from duty or there is a vacancy in that office, the Governor-General may appoint a person to act in that office during the absence or until the filling of the vacancy, as the case may be, but a person so appointed by reason of a vacancy in the office of Commissioner shall not act in that office for a continuous period of more than six months. Acting appointments.

(2.) Where a person has been appointed under this section to act in the office of Commissioner otherwise than during a vacancy in that office and the person who holds that office ceases to hold office during the period of appointment, the appointment shall be deemed to continue until it is terminated by the Governor-General or until the expiration of six months from the date on which the Commissioner ceases to hold office, whichever first happens.

(3.) The Governor-General may at any time terminate an appointment under this section.

(4.) Sections 9, 10 and 14 of this Act apply in relation to a person appointed under this section to act in the office of Commissioner in like manner as they apply in relation to the Commissioner.

(5.) Subject to this section, a person appointed under this section to act in the office of Commissioner holds office on such terms and conditions as the Governor-General determines.

(6.) A person appointed under this section to act in the office of Commissioner has all the functions, powers and duties of the Commissioner under this Act.

Function,
duties and
powers of
Commissioner.

16.—(1.) The function of the Commissioner is to make persons available for the performance of teaching duties in Commonwealth schools and other schools in accordance with this section.

(2.) The Commissioner shall make available to each authority conducting a Commonwealth school or Commonwealth schools in the Northern Territory of Australia, for the performance of teaching duties in that school or those schools, persons in such number, and having such qualifications, as will, in the opinion of the authority, ensure the efficient operation of that school or those schools.

(3.) The Commissioner may, and, if so directed by the Minister, shall—

(a) make a person or persons available to an authority conducting a Commonwealth school or Commonwealth schools in a Territory other than the Northern Territory of Australia for the performance of teaching duties in that school or those schools; and

(b) make a person or persons available to the Government of a country other than Australia or to an authority of such a Government for the performance of teaching duties in a school or schools conducted in that country by that Government or authority.

(4.) Where a State or an authority of a State has made, or proposes to make, a person or persons available to an authority or authorities conducting a Commonwealth school or Commonwealth schools for the performance of teaching duties in that school or those schools, the Commissioner may, and, if so directed by the Minister, shall, make a person or persons available to that State or to that authority of that State for the performance of teaching duties in a school or schools conducted by that State or by that authority of that State.

(5.) Before making a person or persons available in accordance with the preceding provisions of this section to an authority or authorities conducting a school or schools in a Territory, the Commissioner shall consult that authority or those authorities as to the persons required for the efficient operation of the school or schools.

(6.) The Commissioner shall not direct an officer to perform duties in a place outside Australia and the Territories unless the officer consents to perform duties in that place.

(7.) Where the Commissioner makes a person available to an authority that conducts two or more schools, the authority may make use of the services of the person in whichever of those schools the authority thinks fit.

(8.) The Commissioner has power to do all things necessary or convenient to be done for or in connexion with the performance of his function under this section.

(9.) In this section, a reference to the authority conducting a school or schools shall—

- (a) in relation to a school or schools conducted by the Commonwealth—be read as a reference to the Department of State responsible for the conduct of the school or schools; and
- (b) in relation to a school or schools conducted by the Administration of a Territory or conducted in a Territory by a prescribed institution—be read as a reference to the Administration of that Territory.

17.—(1.) The Commissioner may, by instrument in writing under his hand, delegate to an officer of, or a person employed by, the Commonwealth, an authority of the Commonwealth or the Administration of a Territory, either generally or otherwise as provided by the instrument of delegation, all or any of his powers under this Act except this power of delegation. Delegation.

(2.) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation and this Act has effect in relation to the exercise of the power by the delegate as if a reference in this Act to the Commissioner were a reference to the delegate.

(3.) A delegation under this section is revocable in writing at will and does not prevent the exercise of a power by the Commissioner.

18. The administrative staff necessary to assist the Commissioner shall be persons employed under the *Public Service Act 1922–1968*. Administrative staff.

PART III.—THE COMMONWEALTH TEACHING SERVICE.

Division 1.—Establishment of the Service.

19.—(1.) For the purpose of enabling the Commissioner to perform his function under section 16 of this Act, there is hereby established a Commonwealth Teaching Service. Establishment of Commonwealth Teaching Service.

(2.) The Service shall consist of the persons appointed as officers or engaged as temporary employees in accordance with this Part.

Division 2.—Officers and Employees.

20.—(1.) The Commissioner shall, on behalf of the Commonwealth, appoint as officers such number of persons as he thinks necessary for the purposes of this Act. Officers.

(2.) Subject to the next succeeding sub-section, a person shall not be appointed as an officer unless—

- (a) he is a British subject;
- (b) he possesses such educational qualifications, and such other qualifications (if any), as are determined by the Commissioner;
- (c) the Commissioner is satisfied as to his health and physical fitness;

- (d) the Commissioner is satisfied that he is a fit and proper person to be an officer; and
- (e) he makes and subscribes, before the Commissioner, a person appointed by the Commissioner or a justice of the peace, an oath or affirmation of allegiance in accordance with the form of oath or affirmation in the Second Schedule to this Act.

(3.) The Commissioner may, with the approval of the Minister, appoint as an officer a person who is not a British subject, or is a British subject but is not a citizen of a country forming part of the Queen's dominions, and has not made and subscribed the oath or affirmation referred to in paragraph (e) of the last preceding sub-section but is otherwise eligible for appointment as an officer.

(4.) Subject to this Part, officers hold office on such terms and conditions as the Commissioner, with the approval of the Public Service Board, determines.

(5.) Officers shall perform duties as directed by the Commissioner.

Recruitment of officers.

21.—(1.) The Commissioner may, from time to time, by advertisement in the daily newspapers or elsewhere, invite persons to apply for appointment as officers.

(2.) The Commissioner shall specify in any such advertisement—

- (a) the classes of positions in respect of which applications for appointment are invited;
- (b) the salaries, or limits of salaries, that will be applicable upon appointment;
- (c) where applicable—
 - (i) the age limits for appointment;
 - (ii) the qualifications required to be possessed before appointment and the period, if any, within which the qualifications or any of them must have been obtained; and
 - (iii) the date on which persons who obtained or obtain the required qualifications during a period specified for the purposes of the last preceding sub-paragraph will cease to be qualified for appointment by virtue of those qualifications;
- (d) the manner of ascertaining the order in which offers of appointment will be made;
- (e) the date by which applications for appointment are required to be received; and
- (f) such other matters, if any, as the Commissioner considers desirable.

(3.) Offers of appointment to qualified persons who have applied for appointment in pursuance of an advertisement under this section shall be made in the order ascertained in accordance with the terms of the advertisement.

(4.) Nothing in this section prevents the appointment as an officer of a qualified person who has applied for appointment otherwise than in pursuance of an advertisement under this section.

22.—(1.) Unless the Commissioner, in a particular case, otherwise directs, the appointment of every officer shall be on probation for a period of six months commencing on the date on which the officer commences duties in pursuance of his appointment. Appointments to be on probation.

(2.) A person appointed as an officer on probation remains a probationer until his appointment is confirmed or terminated in accordance with this section.

(3.) The Commissioner may, at any time during the period of six months, terminate the appointment.

(4.) As soon as practicable after the expiration of the period of six months, the Commissioner shall—

(a) confirm the appointment;

(b) terminate the appointment; or

(c) direct that the probationer continue on probation for such further period (not being a period exceeding six months) as the Commissioner thinks fit.

(5.) Where the Commissioner directs that a probationer continue on probation for a further period, he may confirm or terminate the appointment of the probationer at any time during that further period and, if he has not confirmed or terminated the appointment before the expiration of that period, shall do so as soon as practicable after the expiration of that period.

(6.) Where the appointment of a probationer is terminated, the Commissioner shall notify the probationer in writing of the reasons for the termination.

23.—(1.) The Commissioner may, on behalf of the Commonwealth, engage persons as temporary employees. Employees.

(2.) Subject to the next succeeding sub-section, a person shall not be engaged as a temporary employee unless he makes and subscribes, before the Commissioner, a person appointed by the Commissioner or a justice of the peace, an oath or affirmation of allegiance in accordance with the form of oath or affirmation in the Second Schedule to this Act.

(3.) The Commissioner may, with the approval of the Minister, engage as a temporary employee a person who is not a British subject, or is a British subject but is not a citizen of a country forming part of the Queen's dominions, and has not made and subscribed the oath or affirmation referred to in the last preceding sub-section.

(4.) Persons engaged as temporary employees shall be employed on such terms and conditions as the Commissioner, with the approval of the Public Service Board, determines.

(5.) Persons engaged as temporary employees shall perform duties as directed by the Commissioner.

Leave of absence for service with a State or outside Australia.

24.—(1.) Where the Commissioner makes a member of the Service available to a State, an authority of a State, the Administration of a Territory not forming part of the Commonwealth, the Government of a country other than Australia or an authority of such a Government, the Commissioner may grant to him leave of absence without pay for the period for which he is so made available.

(2.) A period during which a member of the Service is absent on leave without pay granted under the last preceding sub-section forms part of his period of service as a member of the Service.

Division 3.—Classifications and Promotions.

Creation and abolition of positions.

25.—(1.) The Commissioner may create positions in the Service and may abolish positions in the Service.

(2.) The Commissioner may, with the approval of the Public Service Board, determine the salary, or the range of salary, applicable to a position in the Service.

Reclassification.

26.—(1.) The Commissioner may, with the approval of the Public Service Board, from time to time, alter the classification of a position in the Service by raising or lowering the salary, or the range of salary, applicable to the position.

(2.) Whenever the classification of a position is altered, the position shall be deemed to be vacant.

(3.) Where the Commissioner makes the same alteration of the classification of all positions having the same classification, the Commissioner may direct in writing that the last preceding sub-section shall not apply and, in that case, that sub-section does not apply.

(4.) Where—

(a) the Commissioner makes an alteration of the classification of a position in a case where there is no other position having the same classification as that position; and

(b) the Commissioner declares in writing that that alteration is related to an alteration in respect of which a direction is or has been given under the last preceding sub-section,

the Commissioner may direct in writing that sub-section (2.) of this section shall not apply in relation to that first-mentioned alteration and, in that case, that sub-section does not apply.

(5.) A direction given by the Commissioner under either of the last two preceding sub-sections shall be made known to the officers as prescribed.

27.—(1.) The Commissioner may appoint a person as an officer, or transfer or promote an officer, to fill a vacant position in the Service.

Filling of
vacant
positions.

(2.) Where the Commissioner has determined that a position, or every position included in a class of positions, in the Service is to be filled only by an officer who possesses qualifications specified in the determination, a person shall not be appointed as an officer, or an officer shall not be transferred or promoted, to fill that position, or a position included in that class of positions, as the case may be, unless he possesses those qualifications.

28.—(1.) In the selection of an officer for promotion to a vacant position, consideration shall be given first to the relative efficiency of the officers available for promotion and, in the event of equality of efficiency of two or more officers, then to the relative seniority of those officers.

Selection of
officers for
promotion.

(2.) For the purposes of this section—

- (a) “efficiency” means special qualifications and aptitude for the discharge of duties of the kinds required to be performed by the officer filling the position concerned, together with merit, diligence and good conduct, and, in the case of an officer who has at any time been engaged on war service, includes such efficiency as, in the opinion of the Commissioner, the officer would have attained but for his absence on war service;
- (b) “war service” includes “Defence service” as defined by subsection (1.) of section 6 of the *Defence (Re-establishment) Act 1965–1968*; and
- (c) the seniority of officers shall be determined as prescribed.

29.—(1.) The promotion of an officer to a vacant position—

- (a) is provisional and without increased salary pending confirmation of the promotion;
- (b) shall be made known to the officers as prescribed; and
- (c) is subject to appeal as provided by this section.

Appeals against
promotions.

(2.) An officer who considers that he should have been promoted to a vacant position in preference to the officer provisionally promoted may appeal, as prescribed, against the provisional promotion on the ground of superior efficiency or of equal efficiency and seniority.

(3.) Upon an appeal or appeals being made against a provisional promotion, a Promotions Appeal Board specified by the Commissioner shall make full inquiry into the claims of the appellant or appellants and the claims of the officer provisionally promoted and determine the appeal or appeals.

(4.) Where an appeal is allowed, the Commissioner shall cancel the provisional promotion and promote the appellant to the vacant position.

(5.) Where, in respect of a provisional promotion, no appeal is duly made or an appeal has, or appeals have, been duly made but the appeal, or each of the appeals, has been disallowed or has become inoperative, the Commissioner shall confirm the provisional promotion.

(6.) If, after notification has been made of a provisional promotion to a vacant position but before the promotion has been confirmed, the Commissioner is satisfied that the position is unnecessary or can be filled by the transfer of an excess officer, or that the notification or further notification of the vacancy in the position is desirable, the Commissioner may cancel the provisional promotion.

(7.) The Commissioner may cancel a provisional promotion in accordance with the last preceding sub-section whether or not there has been an appeal against the provisional promotion, and, where the Commissioner so cancels a provisional promotion, any appeal proceedings in respect of the promotion shall be discontinued.

(8.) For the purposes of this section, an appeal shall be taken to become inoperative if—

- (a) the appeal is withdrawn;
- (b) the appellant ceases to be an officer; or
- (c) the appellant ceases, by reason of the confirmation of his promotion to another position or for any other reason, to be eligible for promotion to the position concerned.

**Promotions
Appeal Boards.**

30.—(1.) For the purposes of this Division, the Commissioner shall, from time to time, arrange for the constitution of such Promotions Appeal Boards as are required.

(2.) A Promotions Appeal Board shall consist of—

- (a) a Chairman appointed by the Minister;
- (b) an officer appointed by the Commissioner; and
- (c) an officer elected, as prescribed, by the officers of the Service.

(3.) The Chairman of a Promotions Appeal Board shall be paid such remuneration and such allowances (other than annual allowances) as are prescribed and holds office on such other terms and conditions as the Minister determines.

(4.) The officers' representative on a Promotions Appeal Board holds office for such period as is prescribed, but is eligible for re-election.

(5.) The officers of the Service may, as prescribed, elect an officer of the Service as a deputy of the officers' representative on a Promotions Appeal Board and the deputy so elected holds office for such period as is prescribed, but is eligible for re-election.

(6.) A deputy so elected may, in the event of there being a vacancy in the office of officers' representative or of the officers' representative being absent (whether through illness or otherwise), attend and vote at meetings of the Promotions Appeal Board and, when so attending and voting at a meeting, shall, for the purposes of sub-section (9.) of this section, be deemed to be a member of the Promotions Appeal Board in lieu of the officers' representative.

(7.) A member of a Promotions Appeal Board shall, before commencing to perform his duties as a member of that Board, make and subscribe an oath or affirmation in accordance with the form of oath or affirmation in the Third Schedule to this Act.

(8.) An oath or affirmation under the last preceding sub-section shall be made and subscribed—

(a) in the case of an oath or affirmation by the Chairman—before the Commissioner, a person appointed by the Commissioner or a justice of the peace; and

(b) in any other case—before the Chairman.

(9.) Where, at a meeting of a Promotions Appeal Board, the members are divided in opinion on a question, that question shall be decided according to the decision of the majority.

(10.) In this section, "officers' representative" means the elected officer referred to in paragraph (c) of sub-section (2.) of this section.

Division 4.—Tenure of Office.

31.—(1.) An officer who has attained the age of sixty years is entitled to retire from the Service if the officer desires to do so, but may, subject to this Part, continue in the Service until he attains the age of sixty-five years. Tenure of office.

(2.) If an officer continues in the Service after he has attained the age of sixty years, the officer may at any time before attaining the age of sixty-five years be retired by the Commissioner from the Service.

(3.) An officer who attains the age of sixty-five years ceases to be an officer.

32.—(1.) If, at any time, the Commissioner finds that a greater number of officers occupying positions of a particular classification is employed than is necessary for efficient working of the Service, an officer whom the Commissioner finds to be in excess may be transferred to such other position of equal classification as the officer is competent to fill, and, if no such position is available, the officer may be transferred to a position of lower classification. Excess officers.

(2.) If no position is available for the officer, the Commissioner may retire him from the Service.

(3.) If the Commissioner is not able to employ an officer in the performance of teaching duties of a kind that, having regard to the position occupied by the officer, are appropriate to be performed by him, the Commissioner shall not make an appointment or promotion of another officer under section 27 of this Act by virtue of which it would be appropriate for that other officer to perform duties of that kind.

Division 5.—Special Provisions relating to Female Officers.

Absence from
duty in
relation to
childbirth.

33.—(1.) A female officer who has (whether before or after becoming an officer) become pregnant—

(a) shall, on application, be granted by the Commissioner permission to be absent from duty for a period not exceeding twenty-six weeks, being a period commencing not earlier than twenty weeks before the expected date of her confinement and not later than the commencement of the period referred to in the next succeeding paragraph and ending not earlier than six weeks, and not later than twenty weeks, after the expected date of her confinement; and

(b) shall, whether or not she has been granted any permission under the last preceding paragraph, absent herself from duty during a period commencing six weeks before the expected date of her confinement and ending at the expiration of six weeks from the day on which her pregnancy terminates.

(2.) An officer who has made an application under paragraph (a) of the last preceding sub-section may, at any time while she is absent from duty in accordance with this section, amend the application so as to extend or reduce the period referred to in the application, but so that the amended period complies with the requirements of that paragraph, and the Commissioner shall vary his permission in accordance with the amended application.

(3.) In relation to an application under paragraph (a) of sub-section (1.) of this section, or an amendment of such an application, that is made or dealt with after the pregnancy of the officer has terminated, the second reference in that paragraph to the expected date of her confinement shall be read as a reference to the day on which her pregnancy terminated.

(4.) Nothing contained in, or done under, this section prevents the grant of leave of absence of any kind to an officer in respect of the whole or any part of a period referred to in sub-section (1.) of this section.

(5.) Except by reason of a grant of leave of absence of any kind with pay, an officer is not entitled to salary in respect of a period of absence from duty in accordance with this section.

(6.) For the purposes of the terms and conditions of appointment of officers or of an award or order in force at any time under the *Conciliation and Arbitration Act 1904–1970* relating to sick leave, absence of a female

officer from duty at any time at which she is required or permitted to be absent by or under sub-section (1.) of this section shall be deemed to be absence by reason of illness.

Division 6.—Dismissals and Punishments.

34. If an officer appears to the Commissioner to be inefficient or incompetent, or unfit to discharge or incapable of discharging his duties, the Commissioner may— Retirement, &c., on grounds of inefficiency, incapacity, &c.

- (a) if he occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the minimum salary of that range—reduce his salary to a lower salary within that range;
- (b) if he occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the maximum salary of that range—determine that he be not granted, or be not granted until the expiration of a specified period, the whole, or such part as the Commissioner specifies, of a specified increase in salary within that range that would otherwise be granted to him;
- (c) reduce him to a lower position and salary; or
- (d) retire him from the Service.

35.—(1.) Where, after inquiry as directed by the Commissioner, it is found that an officer has been guilty of misconduct, the Commissioner may— Disciplinary action for misconduct.

- (a) caution or reprimand him;
- (b) fine him a sum not exceeding Forty dollars;
- (c) if he occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the minimum salary of that range—reduce his salary to a lower salary within that range;
- (d) if he occupies a position to which a range of salary is applicable and he is in receipt of a salary other than the maximum salary of that range—determine that he be not granted, or be not granted until the expiration of a specified period, the whole, or such part as the Commissioner specifies, of a specified increase in salary within that range that would otherwise be granted to him;
- (e) reduce him to a lower position and salary; or
- (f) dismiss him from the Service.

(2.) In an inquiry for the purposes of the last preceding sub-section, a formal hearing is not required but the officer shall be informed of the nature of the alleged misconduct and given an opportunity of furnishing a statement in relation to the matters alleged to constitute the misconduct.

(3.) Where—

- (a) an inquiry is being held into alleged misconduct by an officer; or
- (b) an officer has been charged with having committed an offence against the law of the Commonwealth, of a State or of a Territory, punishable either on indictment or on summary conviction, and it appears to the Commissioner that the act or omission alleged to constitute the offence is such as to constitute misconduct by the officer,

the Commissioner may suspend the officer from duty.

(4.) Subject to the next succeeding sub-section and to sub-section (8.) of this section, where the Commissioner suspends an officer from duty under the last preceding sub-section, the officer shall not be paid his salary in respect of the period of the suspension.

(5.) The Commissioner may, in his discretion, determine that the officer—

- (a) be paid his salary in respect of the period of the suspension;
- (b) be paid his salary in respect of such part of the period of the suspension as the Commissioner specifies; or
- (c) be paid such part of his salary as the Commissioner specifies in respect of the period of the suspension or in respect of such part of that period as the Commissioner specifies.

(6.) Where the Commissioner has suspended an officer from duty under sub-section (3.) of this section, the Commissioner may at any time remove the suspension.

(7.) Where—

- (a) after an inquiry has been held into alleged misconduct by an officer who has been suspended from duty under sub-section (3.) of this section, the Commissioner is not satisfied that the officer has been guilty of misconduct; or
- (b) upon the hearing by a court of the charge against an officer referred to in paragraph (b) of sub-section (3.) of this section who has been suspended from duty under that sub-section the officer does not plead guilty, and is not found guilty, of the offence with which he was charged or of another offence that appears to the Commissioner to be such as to constitute misconduct by the officer, or the charge against such an officer is not proceeded with,

the Commissioner shall, if he has not already done so, remove the suspension.

(8.) Where—

- (a) an officer has been suspended from duty under sub-section (3.) of this section;
- (b) an amount of salary that would otherwise have been paid to the officer in respect of the period of the suspension was not paid to him; and

(c) the Commissioner removes the suspension, the officer shall, subject to the next succeeding sub-section, be paid that amount of salary.

(9.) Where the Commissioner is satisfied that an officer to whom the last preceding sub-section applies has engaged in paid employment or work during the period of his suspension, the amount payable to him under that sub-section shall be reduced by an amount equal to the total of the amounts of the earnings that the Commissioner is satisfied were received or are receivable by him in respect of that employment or work.

(10.) For the purposes of this section, an officer shall be taken to have been guilty of misconduct if, and only if—

- (a) he wilfully disobeyed or disregarded a direction applicable to him as an officer and given by a person having authority to give the direction;
- (b) he was negligent or careless in the discharge of his duties;
- (c) he was inefficient or incompetent by reason of causes within his own control;
- (d) he used intoxicating liquor or drugs to excess;
- (e) he was guilty of any disgraceful or improper conduct, whether as an officer or otherwise;
- (f) he committed a breach of the terms and conditions upon which he holds office;
- (g) having made and subscribed an oath or affirmation under sub-section (2.) of section 20 of this Act, he did or said something in violation of that oath or affirmation; or
- (h) whether before or after becoming an officer, he wilfully supplied to the Commissioner, to an officer of the Service or to some other person acting on behalf of the Commissioner incorrect or misleading information in connexion with his appointment to the Service.

36.—(1.) Where, under section 34 or sub-section (1.) of section 35 of this Act— Appeals.

- (a) an officer is fined a sum exceeding Four dollars, has his salary or position reduced or is retired or dismissed; or
- (b) a determination is made that an officer be not granted, or be not granted until the expiration of a specified period, the whole or a part of an increase in salary,

the officer may appeal to the Disciplinary Appeal Board.

(2.) On the hearing of an appeal under this section, the Disciplinary Appeal Board may take evidence on oath or affirmation.

(3.) The regulations may prescribe the manner in which, and the time within which, appeals may be made under this section and the manner in which the hearing of appeals so made shall be conducted and may include

provision for or in relation to the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation and the administering of oaths or affirmations.

(4.) The Disciplinary Appeal Board shall hear each appeal submitted to it under this section and may confirm, vary or set aside the decision against which the appeal is made.

(5.) The decision of the Disciplinary Appeal Board is final and the Commissioner shall take such action as is necessary to give effect to the decision.

**Disciplinary
Appeal Board.**

37.—(1.) For the purposes of this Division, there shall be a Disciplinary Appeal Board.

(2.) The Disciplinary Appeal Board shall consist of—

- (a) a Chairman appointed by the Minister;
- (b) an officer appointed by the Commissioner; and
- (c) an officer elected, as prescribed, by the officers of the Service.

(3.) The Chairman of the Disciplinary Appeal Board shall be paid such remuneration and such allowances (other than annual allowance) as are prescribed and holds office on such other terms and conditions as the Minister determines.

(4.) The officers' representative holds office for such period as is prescribed, but is eligible for re-election.

(5.) The officers of the Service may, as prescribed, elect an officer as a deputy of the officers' representative and the deputy so elected holds office for such period as is prescribed, but is eligible for re-election.

(6.) A deputy so elected may, in the event of there being a vacancy in the office of officers' representative or of the officers' representative being absent (whether through illness or otherwise), attend and vote at meetings of the Disciplinary Appeal Board, and, when so attending and voting at a meeting, shall, for the purposes of sub-section (9.) of this section, be deemed to be a member of the Disciplinary Appeal Board in lieu of the officers' representative.

(7.) A member of a Disciplinary Appeal Board shall, before commencing to perform his duties as a member of that Board, make and subscribe an oath or affirmation in accordance with the form of oath or affirmation in the Third Schedule to this Act.

(8.) An oath or affirmation under the last preceding sub-section shall be made and subscribed—

- (a) in the case of an oath or affirmation by the Chairman—before the Commissioner, a person appointed by the Commissioner or a justice of the peace; and
- (b) in any other case—before the Chairman.

(9.) Where, at a meeting of the Disciplinary Appeal Board, the members are divided in opinion on a question, that question shall be decided according to the decision of the majority.

(10.) In this section, "officers' representative" means the elected officer referred to in paragraph (c) of sub-section (2.) of this section.

Division 7.—Powers and Functions of the Commonwealth Conciliation and Arbitration Commission in respect of the Service.

38.—(1.) In this Division, unless the contrary intention appears— Interpretation.

"industrial dispute in respect of the Service" means a dispute (including a threatened, impending or probable dispute) as to industrial matters in respect of the Service, and includes—

- (a) a part of an industrial dispute in respect of the Service;
- (b) an industrial dispute in respect of the Service so far as it relates to a matter in dispute; or
- (c) a question arising in relation to an industrial dispute in respect of the Service;

"industrial matter in respect of the Service" means any matter in relation to the salaries, wages, rates of pay or other terms or conditions of service or employment of members of the Service, and includes a question arising in relation to such a matter;

"industrial question in respect of the Service" means—

- (a) an industrial dispute in respect of the Service; and
- (b) an industrial matter in respect of the Service.

(2.) Subject to the last preceding sub-section, expressions used in this Division that are defined by section 4 of the *Conciliation and Arbitration Act 1904–1970* have in this Division the same respective meanings as they have in that Act.

(3.) Members of the Service shall be deemed to be employees in an industry within the meaning of the *Conciliation and Arbitration Act 1904–1970*.

39.—(1.) The Commission is empowered—

- (a) to prevent or settle, by conciliation or arbitration, industrial disputes in respect of the Service; and
- (b) to hear and determine industrial matters in respect of the Service submitted to it.

Settlement of industrial disputes and determination of industrial matters in respect of the Service.

(2.) In relation to an industrial question in respect of the Service, the Commission may, where it thinks it proper to do so, make an award that, in the opinion of the Commission, is not, or may not be, in accord with this Part or with any other law of the Commonwealth relating to salaries,

wages, rates of pay or terms or conditions of service or employment of members of the Service, not being—

- (a) the *Compensation (Commonwealth Employees) Acts 1971*, the *Commonwealth Employees' Furlough Act 1943–1968* or the *Superannuation Act 1922–1971*; or
- (b) any other prescribed Act or the prescribed provisions of any other Act.

(3.) The provisions of section 21, and of sub-sections (2A.) to (7.), inclusive, of section 22, of the *Public Service Arbitration Act 1920–1969* (including those provisions as applied by virtue of section 15E of that Act) apply in respect of an award made by the Commission in relation to an industrial question in respect of the Service as if—

- (a) in the case of an award made by the Commission otherwise than in accordance with section 34 or section 35 of the *Conciliation and Arbitration Act 1904–1970*—
 - (i) the award were a determination of the Public Service Arbitrator; and
 - (ii) any reference in those provisions to the Public Service Arbitrator were a reference to the Commission; and
- (b) in the case of an award made in accordance with either of those sections—the award were a determination of the Commission.

(4.) Where an award referred to in sub-section (2.) of this section applies also to persons other than members of the Service, the provisions of the last preceding sub-section do not affect the operation of the award in so far as it applies to those other persons.

(5.) Sub-section (2A.) of section 22 of the *Public Service Arbitration Act 1920–1969* applies in accordance with sub-section (3.) of this section in a case where the Commission has made an award referred to in sub-section (2.) of this section.

Limitation of powers of Public Service Arbitrator.

40. The Public Service Arbitrator is not empowered to make a determination in relation to the salaries, wages, rates of pay or other terms or conditions of service or employment of members of the Service.

Application of provisions of Conciliation and Arbitration Act.

41.—(1.) Subject to this Division, Division 1 of Part III. of the *Conciliation and Arbitration Act 1904–1970* extends to and in relation to the powers and functions of the Commission under this Division, to and in relation to proceedings under this Division and to and in relation to awards made under this Division.

(2.) In the application of Division 1 of Part III. of the *Conciliation and Arbitration Act 1904–1970* under the last preceding sub-section, references to industrial disputes shall be read as references to industrial questions in respect of the Service.

42. An award made under this Division shall, for the purposes of the *Conciliation and Arbitration Act* 1904–1970, be deemed to have been made under that Act.

Awards deemed to be made under Conciliation and Arbitration Act.

43.—(1.) For the purposes of proceedings under the *Conciliation and Arbitration Act* 1904–1970, the Commissioner shall be deemed to be the employer of the members of the Service, but any award made in relation to those members is binding on the Commonwealth in like manner as it is binding on the Commissioner.

Commissioner deemed to be employer.

(2.) In proceedings under the *Conciliation and Arbitration Act* 1904–1970, the Commissioner may be represented by an officer of the Public Service of the Commonwealth.

PART IV.—COMMONWEALTH TEACHING SERVICE SCHOLARSHIPS.

44. Scholarships, to be known as Commonwealth Teaching Service Scholarships, may, subject to and in accordance with the regulations, be granted by the Commissioner to persons who are undertaking or propose to undertake, as full-time students or part-time students at Universities or advanced education institutions, any course of study or instruction approved by the Commissioner for the purposes of this Part.

Commonwealth Teaching Service Scholarships.

45.—(1.) Benefits under a scholarship shall be by way of the provision by the Commonwealth, in accordance with the last preceding section, of financial assistance to, or for the benefit of, the holder of the scholarship.

Benefits to be by way of financial assistance.

(2.) The financial assistance to be provided shall consist of—

- (a) the payment by the Commonwealth of amounts equal to fees of a prescribed kind paid or payable by or in respect of the holder of the scholarship;
- (b) where a living allowance is payable to the holder of the scholarship under the regulations—the payment by the Commonwealth of such an allowance at such rate as is determined in accordance with the regulations; and
- (c) the payment by the Commonwealth in respect of fares payable by or in respect of the holder of the scholarship of such amounts as are determined in accordance with the regulations.

46. Benefits under a scholarship shall be paid at such times, in such manner and to such person, or to a person included in such class of persons, as the Commissioner determines.

Payment of benefits under scholarships.

47. The regulations may make provision for and in relation to the suspension and termination of scholarships.

Tenure of scholarship.

48. Benefits under a scholarship shall be paid out of moneys appropriated by the Parliament for the purpose.

Benefits to be paid out of moneys appropriated by Parliament.

Information to be furnished in relation to scholarships.

49. The regulations may make provision for and in relation to the furnishing of information by applicants for scholarships and the holders of scholarships.

PART V.—MISCELLANEOUS.

Rights of public servant appointed under Act.

50. If a person appointed to the office of the Commissioner or a person appointed as an officer under section 20 of this Act was, immediately before his appointment, an officer of the Public Service of the Commonwealth—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Public Service of the Commonwealth; and
- (c) the *Officers' Rights Declaration Act 1928–1969* applies as if this Act and this section had been specified in the Schedule to that Act.

Approvals.

51.—(1.) An approval of the Commissioner under this Act may be varied or revoked by the Commissioner.

(2.) The Commissioner shall make such arrangements as he thinks proper for giving public notice of the giving by him under this Act of any approval or of any variation or revocation by him of an approval.

Annual report.

52.—(1.) The Commissioner shall, as soon as practicable after each thirty-first day of December, prepare and furnish to the Minister a report on the operation of this Act during the year that ended on that thirty-first day of December.

(2.) The first report under the last preceding sub-section shall relate to the period commencing on the date on which the first appointment of the Commissioner under this Act takes effect and ending on the thirty-first day of December, One thousand nine hundred and seventy-two.

(3.) The Minister shall cause a copy of each report furnished to him under this section to be laid before each House of the Parliament within fifteen sitting days of that House after the receipt of the report by the Minister.

Regulations.

53. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular—

- (a) providing for and in relation to the appointment of committees of persons to advise the Commissioner in connexion with the performance of his function under this Act; and
- (b) providing for penalties, not exceeding a fine of One hundred dollars, for offences against the regulations.

THE SCHEDULES

FIRST SCHEDULE

Sections 14 and 15.

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of Commonwealth Teaching Service Commissioner.

So HELP ME GOD!**AFFIRMATION**

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of Commonwealth Teaching Service Commissioner.

SECOND SCHEDULE

Sections 20 and 23.

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.

So HELP ME GOD!**AFFIRMATION**

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.

THIRD SCHEDULE

Sections 30 and 37.

OATH

I, A.B., do swear that I will faithfully and impartially perform the duties of the office of Chairman [*or member*] of a Promotions Appeal Board [*or Disciplinary Appeal Board*].

So HELP ME GOD!**AFFIRMATION**

I, A.B., do solemnly and sincerely promise and declare that I will faithfully and impartially perform the duties of the office of Chairman [*or member*] of a Promotions Appeal Board [*or Disciplinary Appeal Board*].