



EDUCATION (TEACHING SERVICE) AMENDMENT ACT 1996

No. 25 of 1996

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ELIZABETHAE II REGINAE

A.D. 1996

No. 25 of 1996

An Act to amend the Education Act 1972.

[Assented to 2 May 1996]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Education (Teaching Service) Amendment Act 1996*.
- (2) The *Education Act 1972* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 5—Interpretation

3. Section 5 of the principal Act is amended—

- (a) by striking out the definition of "the Classification Board" in subsection (1) and substituting the following definition:

"classify" includes reclassify;;

- (b) by inserting after the definition of "pre-school education" in subsection (1) the following definitions:

"promotional level" in relation to a position in the teaching service means a classification level for a position declared by regulation to be a promotional level;

"reclassify" includes alter an officer's entitlement to an increment of remuneration;.

Insertion of Part 3 Division 1A

4. The following Division is inserted after Division 1 of Part 3 of the principal Act:

DIVISION 1A—CLASSIFICATION, PROMOTION AND TRANSFER**Classification of officers and positions**

15A. The Director-General may from time to time—

- (a) fix the duties and titles of officers and positions in the teaching service;
- (b) classify officers in the teaching service;
- (c) in classifying officers, impose conditions, which may include conditions—
 - (i) limiting the classifications to specified terms; and
 - (ii) fixing the classifications of officers at the end of such terms;
- (d) classify positions in the teaching service at promotional levels.

Appointment to promotional level positions

15B. (1) The Minister may, subject to this Act, appoint officers to positions in the teaching service classified at promotional levels.

(2) The Minister may, in making such appointments, impose conditions, which may include conditions—

- (a) limiting the appointments to specified terms; and
- (b) fixing their classifications at the end of such terms or fixing the processes to be followed for appointment of the officers at the end of such terms.

(3) The Director-General may appoint an officer to a position classified at a promotional level in an acting capacity for a term not exceeding 12 months.

Transfer

15C. The Director-General may transfer officers between positions in the teaching service but not so as to—

- (a) reduce an officer's salary without the officer's consent; or
- (b) effect promotion of an officer to a position at a higher classification level.

Amendment of s. 17—Incapacity of members of the teaching service

5. Section 17 of the principal Act is amended—

- (a) by striking out from subsection (1) "duties of the office occupied by the officer" and substituting "officer's duties";
- (b) by striking out from subsection (1)(a) "office in the teaching service" and substituting "position in the teaching service or vary the officer's duties and assign an appropriate classification to the officer";

(c) by striking out subsections (1a) and (1b) and substituting the following subsection:

(1A) The Director-General must, before taking action or making a recommendation under subsection (1) that would result in reduction of remuneration or retirement, be satisfied that a transfer or variation of duties without reduction of remuneration is not reasonably practicable in the circumstances.

Amendment of s. 20—Taking of long service leave

6. Section 20 of the principal Act is amended by striking out paragraph (a) of subsection (5) and substituting the following paragraph:

(a) where the effective service of an officer consists of full-time service—the salary applicable to the officer's position or classification level during that leave (disregarding any acting appointment).

Amendment of s. 26—Disciplinary action

7. Section 26 of the principal Act is amended by striking out subparagraph (iii) of subsection (2)(a) and substituting the following subparagraph:

- (iii) reduce the remuneration of the officer by—
- (A) transferring the officer to another position in the teaching service; or
 - (B) varying the officer's duties and classifying or reclassifying the officer; or
 - (C) removing an entitlement to an increment of remuneration; or.

Substitution of Part 3 Division 6

8. Division 6 of Part 3 of the principal Act is repealed and the following Division is substituted:

DIVISION 6—RECLASSIFICATION

Application to Director-General for reclassification

28. (1) Subject to the regulations, if an officer considers that the classification of the officer or a position occupied by the officer is not appropriate in view of the duties of the officer or on any other ground, the officer may lodge with the Director-General an application for reclassification.

(2) An application under subsection (1) must be made in a manner and form approved by the Director-General.

(3) The Director-General may, on the application of an officer, reclassify the officer or a position occupied by the officer.

(4) Nothing in this section limits the Director-General's general power to reclassify officers or positions in the teaching service.

Classification review panels

29. (1) The Minister may establish classification review panels for the purposes of this Division.

(2) A review panel is to consist of three persons appointed by the Minister, of whom—

- (a) one will be appointed to chair the panel; and
- (b) one will be an officer of the teaching service selected by the Minister from a panel of officers nominated by the Institute of Teachers; and
- (c) one will be an officer of the teaching service selected by the Minister from a panel of officers nominated by the Director-General.

(3) The Minister may from time to time invite the Institute of Teachers to nominate officers to constitute the panel referred to in subsection (2)(b).

(4) If the Institute of Teachers fails to make a nomination in response to an invitation under subsection (3) within the time allowed in the invitation (which must be at least 30 days), the Minister may choose officers instead of nominees of the Institute and any officers so chosen are to be taken to have been nominated to the relevant panel.

(5) A person ceases to be a member of a panel if the person—

- (a) was selected from a panel of officers of the teaching service and ceases to be an officer of the teaching service; or
- (b) resigns by notice in writing addressed to the Minister; or
- (c) is removed from the panel by the Minister on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties; or
- (d) has completed a period of two years as a member of the panel since being appointed to the panel, and is not reappointed to the panel.

(6) If proceedings before a panel are part-heard when a member of the panel ceases to be an officer of the teaching service, resigns under this section or completes a period of two years' service on the panel, the member may continue on the panel for the purpose of completing the hearing and determination of the proceedings.

Review of Director-General's decision

30. (1) An officer who—

- (a) has made an application for reclassification under this Division to the Director-General; and
- (b) is dissatisfied with the decision on the application,

may, within 30 days after receiving notice of the decision, lodge with the Director-General an application for a review of the classification of the officer or a position occupied by the officer.

(2) The Director-General must, within 14 days after receiving an application for review, refer the application to a review panel.

(3) A review panel to which an application for review is referred must afford—

(a) the applicant; and

(b) the Director-General, or a nominee of the Director-General,

a reasonable opportunity to make submissions orally or in writing to the panel on the questions raised by the application.

(4) If an applicant wishes to make oral submissions, the applicant may appear before the panel personally or by a representative (who may not be a legal practitioner).

(5) On completion of a review, the review panel may—

(a) confirm the existing classification of the applicant or the applicant's position; or

(b) decide that the applicant or the applicant's position should be reclassified with effect from a date determined by the panel (which may not be earlier than the date of the application for review nor later than three months from the date of that application).

(6) A decision in which any two or more members of a review panel concur is a decision of the panel.

(7) If a review panel decides that an officer or a position should be reclassified, the Director-General must reclassify the officer or position in accordance with the decision.

Exclusion of other appeal rights

31. (1) No appeal lies against a decision of the Director-General on an application under this Division (but without affecting the right to apply for a review by a review panel under this Division).

(2) No appeal lies against a decision of a review panel under this Division or a reclassification of an officer or a position in accordance with a decision of a review panel.

Amendment of s. 53—Appeals in respect of appointments to promotional level positions

9. Section 53 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(2) This section applies to a position in the teaching service classified at a promotional level.

(2a) This section does not apply to—

(a) appointment of an officer to a position in an acting capacity for a period not exceeding 12 months; or

(b) transfer of an officer between positions in the teaching service.

Transition and ratification

10. (1) Each position recorded in the records of the Department from time to time before the commencement of this Act as a position in the teaching service classified at a promotional level will be taken to have been duly established as a position in the teaching service and classified at that level by the Director-General under the principal Act as amended by this Act (and for that purpose it is to be assumed that this Act had been enacted and was in force at the relevant time).

(2) Each appointment made to a position referred to in subsection (1) from time to time before the commencement of this Act will be taken to have been duly made by the Minister under the principal Act as amended by this Act (and for that purpose it is to be assumed that this Act had been enacted and was in force at the relevant time).

(3) If an appointment referred to in subsection (2) was made on the basis that it was to continue only for a period specified in the instrument notifying the officer of his or her appointment, the Minister will be taken to have duly imposed, under the principal Act as amended by this Act, a condition limiting the term of the appointment to the period so specified (and for that purpose it is to be assumed that this Act has been enacted and was in force at the relevant time).

(4) Each officer recorded in the records of the Department as being classified at the Advanced Skills Teacher Level 1 or a lower level immediately before the commencement of this Act will be taken to have been duly classified at that level by the Director-General under the principal Act as amended by this Act (and for that purpose it is to be assumed that this Act had been enacted and was in force at the relevant time).

(5) If an officer's classification referred to in subsection (4) was on the basis that it was to continue only for a period specified in the instrument notifying the officer of his or her classification, the Director-General will be taken to have duly imposed, under the principal Act as amended by this Act, a condition limiting the term of the classification to the period so specified (and for that purpose it is to be assumed that this Act had been enacted and was in force at the relevant time).

(6) In this section—

"promotional level" in relation to a position in the teaching service means a classification level other than Teacher or Advanced Skills Teacher Level 1.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor