

AUSTRALIAN CAPITAL TERRITORY

Teaching Service (Consequential Modifications) Ordinance 1989

No. 32 of 1989

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 9 May 1989.

BILL HAYDEN
Governor-General

By His Excellency's Command,

CLYDE HOLDING
Minister of State for the Arts
and Territories

An Ordinance to modify the *Commonwealth Teaching Service Act 1972* being modifications made under section 8 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*

(Ord. 41/89)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Short title

1. This Ordinance may be cited as the *Teaching Service (Consequential Modifications) Ordinance 1989*.¹

Commencement

2. (1) Sections 1 and 2 commence on the date on which this Ordinance is notified in the *Gazette*.

(2) Subsection 4 (2) commences on such date as is fixed by the Minister by notice in the *Gazette*.

(3) The remaining provisions of this Ordinance commence on the date of commencement of section 22 of the *Australian Capital Territory (Self-Government) Act 1988*.

Interpretation

3. In this Ordinance—

“Principal Act” means the *Commonwealth Teaching Service Act 1972* in force immediately before the commencement of this Ordinance;

“Principal Regulations” means the regulations made under the Principal Act in force immediately before the commencement of this Ordinance.

Establishment of Australian Capital Territory Teaching Service

4. (1) Section 19 of the Principal Act is modified by omitting subsections (1) and (2) and substituting the following subsection:

“(1) The Commonwealth Teaching Service that was in existence under the *Commonwealth Teaching Service Act 1972* of the Commonwealth in force immediately before self-government day continues in existence under the name of the Australian Capital Territory Teaching Service.”.

(2) Section 19 of the Principal Act as modified by this Ordinance is modified by omitting paragraphs (3) (b) and (5) (b).

Right to re-enter the Service by way of transfer or promotion

5. Section 43U of the Principal Act is modified by omitting from paragraphs (1) (a) and (b) “Commonwealth Teaching”.

Service Scholarships

6. Section 44 of the Principal Act is modified by omitting “Commonwealth” and substituting “Australian Capital Territory”.

Transfer of persons where functions to be performed by Territory authority

7. Section 50A of the Principal Act is modified by omitting from subsection (1) “Commonwealth” (wherever occurring) and substituting “Territory”.

Insertion

8. After section 53 of the Principal Act the following section is inserted:

References

“54. (1) On and after self-government day, in the regulations in force immediately before that day under the *Commonwealth Teaching Service Act 1972* of the Commonwealth—

- (a) a reference to the Commonwealth Teaching Service Regulations shall be read as a reference to the Teaching Service Regulations;
- (b) a reference to the Commonwealth Teaching Service (Prescribed Authorities) Regulations shall be read as a reference to the Teaching Service (Prescribed Authorities) Regulations;
- (c) a reference to the *Commonwealth Teaching Service Act 1972* shall be read as a reference to the *Teaching Service Act 1972*;
- (d) a reference to the *Conciliation and Arbitration Act 1904* shall be read as a reference to the *Industrial Relations Act 1988* of the Commonwealth; and
- (e) a reference to the Public Works Committee Regulations shall be read as a reference to the Public Works Committee Regulations as in force from time to time under the *Public Works Committee Act 1969* of the Commonwealth.

“(2) On and after self-government day, in a determination in force immediately before that day under the *Commonwealth Teaching Service Act 1972* of the Commonwealth—

- (a) a reference to the *Commonwealth Teaching Service Act 1972* shall be read as a reference to the *Teaching Service Act 1972*;

- (b) a reference to Commonwealth schools shall be read as a reference to ACT schools; and
- (c) a reference to the Commonwealth Teaching Service shall be read as a reference to the Australian Capital Territory Teaching Service.”.

Further modifications

9. The provisions of the Principal Act specified in the Schedule are modified as set out in that Schedule.

Savings

10. (1) An instrument made, granted, issued or given, or anything done, under the Principal Act or Principal Regulations having effect immediately before the commencement of this Ordinance shall, on and after that commencement, have effect as if made, granted, issued, given or done under the Principal Act or Principal Regulations as modified by this Ordinance.

(2) On and after the commencement of this Ordinance, the Principal Act and Principal Regulations as modified by this Ordinance apply in relation to any relevant conduct occurring before that commencement as if the modifications had been made at the time the conduct occurred.

(3) In subsection (2), “conduct” means anything done or omitted to be done.

SCHEDULE

Section 9

FURTHER MODIFICATIONS OF THE *COMMONWEALTH TEACHING SERVICE ACT 1972*

Long title—

Omit “Commonwealth”, substitute “Territory”.

Section 1—

Omit “*Commonwealth*”.

Subsection 4 (1) (definitions of “Commonwealth authority”, “Commonwealth school”, “Secretary” and “the Service”)—

Omit the definitions.

Subsection 4 (1) (paragraph (a) of the definition of “prescribed authority”)—

Omit all the words after “provisions”, substitute “of an enactment; and”.

SCHEDULE—continued

Subsection 4 (1) (paragraph (a) of the definition of “relevant staff organisation”)—

Omit the paragraph, substitute the following paragraph:

“(a) within the meaning of the *Industrial Relations Act 1988* of the Commonwealth; and”.

Subsection 4 (1) (definition of “scholarship”)—

Omit “Commonwealth Teaching Service Scholarship”, substitute “scholarship”.

Subsection 4 (1) (definition of “State”)—

Omit the definition, substitute the following definition:

“ ‘State’ includes an internal Territory or external Territory (other than the Australian Capital Territory);”.

Subsection 4 (1)—

Insert the following definitions:

“ ‘ACT school’ means a school conducted by the Territory or by a prescribed authority;

‘Service’ means the Australian Capital Territory Teaching Service;”.

Section 5—

Repeal the section.

Section 6—

Omit “Commonwealth”, substitute “ACT”.

Subsection 7 (2)—

Omit all the words after “component” (last occurring), substitute the following:

“available to—

- (a) the Commonwealth, a State or an authority of the Commonwealth or a State for the performance of teaching duties in a school conducted by the Commonwealth or that State or authority; or
- (b) the Government of a foreign country or an authority of that Government for the performance of teaching duties in a school conducted in that country—
 - (i) by that Government or an authority of that Government, as the case may be; and
 - (ii) in the case of Papua New Guinea—by a body other than the Government of Papua New Guinea or an authority of that Government.”.

Subsection 7 (3)—

Omit the subsection, substitute the following subsection:

SCHEDULE—continued

“(3) Where the Commonwealth or a State or an authority of the Commonwealth or a State has made, or proposes to make, a person available to an authority conducting an ACT school for the performance of teaching duties in that school, a relevant authority in relation to a component of the Service may, and if so directed by the Minister shall, make an officer of, or a temporary employee engaged to perform services in relation to, that component available to the Commonwealth or that State or authority for the performance of teaching duties in a school conducted by the Commonwealth or that State or authority.”.

Subsection 7 (4)—

Omit “or (3)”.

Section 8—

Repeal the section, substitute the following section:

Delegation by relevant authorities

“8. A relevant authority may, by instrument, delegate to a person any of its powers under—

- (a) an Ordinance;
- (b) an instrument of a legislative or an administrative character made under an Ordinance; or
- (c) an award within the meaning of the *Industrial Relations Act 1988* of the Commonwealth.”.

Heading to Part III—

Omit “COMMONWEALTH”, substitute “AUSTRALIAN CAPITAL TERRITORY”.

Subsection 19 (3)—

Omit “Commonwealth Teaching Service as continued in existence by sub-section (1)”, substitute “the Service”.

Paragraph 19 (3) (c)—

Omit the paragraph, substitute the following paragraph:

“(c) a Commonwealth component; and”.

Paragraph 19 (5) (a)—

Omit all the words after “designated”, substitute “, in writing, for the purposes of that component by the Head of Administration;”.

Paragraph 19 (5) (b)—

Omit all the words after “the duties of;”, substitute “the office for the time being designated, in writing, for the purposes of that component by the Head of Administration; and”.

SCHEDULE—continued

Paragraph 19 (5) (c)—

Omit the paragraph.

Subparagraphs 19 (5) (d) (i), (ii) and (iii)—

Omit the subparagraphs, substitute the following subparagraphs:

- (i) the Head of Administration; or
- (ii) the person for the time being holding, or performing the duties of, the office for the time being designated, in writing, for the purposes of that component by the Head of Administration.”.

Subsection 20 (4)—

Omit “Public Service Board”, substitute “Head of Administration”.

Subsections 20 (5) and (6)—

Omit the subsections.

Subsection 23 (4)—

Omit “Public Service Board”, substitute “Head of Administration”.

Paragraph 35 (3) (b)—

Omit “Commonwealth, of a State or of a Territory”, substitute “Territory, the Commonwealth, a State or another Territory”.

Paragraph 35 (10) (g)—

Omit all the words from and including “the Commonwealth” (first occurring) to and including “the Service.”, substitute “an officer of the Service, a relevant authority or a person acting on behalf of the Service or a relevant authority”.

Paragraphs 37 (2) (a) and (b)—

Insert “in writing” after “appointed”.

Subsections 37 (3), (3A), (3B) and (3C)—

Omit the subsections, substitute the following subsections:

“(3) The Chairman shall be paid such remuneration and allowances as are prescribed.

“(4) Subsection (3) does not apply in relation to—

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Chairman; or
- (b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the Chairman.

SCHEDULE—continued

“(5) In subsection (4), ‘determination’ means a determination of the Remuneration Tribunal.

“(6) The Chairman holds office on such terms and conditions (if any), in respect of matters not provided for by this Ordinance, as are determined in writing by the Minister.”.

Insertion

After Division 6 of Part III insert the following Division:

“Division 7—Equal Employment Opportunity Programs

Interpretation

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

‘appropriate staff organisation’, in relation to an office, or to employment in a particular capacity, in a component of the Service, means an organisation—

- (a) that is an organisation within the meaning of the *Industrial Relations Act 1988* of the Commonwealth;
- (b) for membership of which the person holding that office or employed in that capacity would be eligible; and
- (c) that is a party to an industrial award that applies in relation to the salary payable in respect of the office, or in respect of employment in that capacity, being an industrial award to which the Minister is also a party;

‘employment matters’, in relation to a component of the Service, means—

- (a) the selection of persons for appointment as officers in, or for engagement as temporary employees in relation to, that component;
- (b) the promotion and transfer of officers to offices in that component;
- (c) the transfer of temporary employees to positions in that component;
- (d) training and staff development for officers and temporary employees in that component;
- (e) conditions of service of officers and temporary employees in that component; and
- (f) any other matter related to the employment of officers and temporary employees in that component;

‘equal employment opportunity program’, in relation to a component of the Service, means a program designed to ensure that—

- (a) appropriate action is taken to eliminate unjustified discrimination against women and persons in designated groups in relation to employment matters in that component; and
- (b) measures are taken to enable women and persons in designated groups to—

SCHEDULE—continued

- (i) compete, if they are officers, for promotion and transfer in that component;
 - (ii) compete, if they are temporary employees, for transfer in that component; and
 - (iii) pursue careers in that component;
- as effectively as other persons;

‘program’ includes—

- (a) the particular objectives to be achieved by the program;
- (b) the policies to be adopted, and the procedures to be followed, to achieve those objectives;
- (c) the quantitative or other indicators against which the effectiveness of the program is to be assessed; and
- (d) the allocation of staff and other resources to the task of giving effect to the program;

‘unjustified discrimination’ includes discrimination that is unlawful under the *Racial Discrimination Act 1975* of the Commonwealth or the *Sex Discrimination Act 1984* of the Commonwealth.

“(2) Without limiting the generality of the definition of ‘equal employment opportunity program’, the equal employment opportunity program for a component of the Service shall include provision for action to be taken to—

- (a) examine practices in relation to employment matters in that component to identify—
 - (i) any practices that unjustifiably discriminate against women or persons in designated groups; and
 - (ii) any patterns (whether ascertained statistically or otherwise) of inequality of opportunity in respect of women or persons in designated groups;
- (b) eliminate any practices, and eliminate or ameliorate any patterns, identified in pursuance of paragraph (a);
- (c) inform members of the Service in that component, and appropriate staff organisations in relation to offices and employment in particular capacities in that component, of the contents of the program and of the result of any review of the program under subsection 40 (1);
- (d) collect and record information, including statistical information, relevant to the operation of the program;
- (e) assess the effectiveness of the program by comparing information collected in relation to the results of the program with the indicators against which the effectiveness of the program is to be assessed; and

SCHEDULE—continued

- (f) give effect to any guidelines in force under subsection 40 (7).

Application

“39. This Division applies in relation to the equal employment opportunity program for a component of the Commonwealth Teaching Service in force immediately before self-government day as reviewed from time to time under subsection 40 (1).

Development, implementation and review of programs

“40. (1) The relevant authority shall—

- (a) from time to time, after giving appropriate staff organisations in relation to offices and employment in particular capacities in a component of the Service and such other persons as the relevant authority considers appropriate an opportunity to put their views, cause the equal employment opportunity program for that component to be reviewed;
- (b) cause to be prepared a written statement setting out the results of any review (including particulars of any alteration to be made to the program); and
- (c) give a copy of the statement to the Head of Administration.

“(2) The relevant authority shall take any action necessary to give effect to the equal employment opportunity program for a component of the Service and any person who exercises powers in relation to employment matters in that component shall have regard to the program in exercising those powers.

“(3) The Head of Administration may, by notice in writing to the relevant authority, require the relevant authority to give the Head of Administration, within the time specified in the notice, a written report in relation to the development, implementation or review of the equal employment opportunity program for a component of the Service.

“(4) A notice under subsection (3) may specify the particular aspects of the equal employment opportunity program for a component of the Service that are to be dealt with in the report.

“(5) Where the Head of Administration receives a statement under subsection (1) or a report under subsection (3), the Head of Administration, after considering the statement or report, may make recommendations to the relevant authority on the action that should or could be taken to improve the effectiveness of the equal employment opportunity program for a component of the Service.

“(6) If the relevant authority does not concur in or adopt a recommendation made by the Head of Administration under subsection (5) on the action that should be taken to improve the effectiveness of the equal employment opportunity program for a component of the Service, the relevant authority shall, within a reasonable time, inform the Minister, in writing, of the relevant authority’s reasons for not concurring in or adopting the recommendation and give a copy of a statement of those reasons to the Head of Administration.

“(7) The Head of Administration may from time to time, by notice in writing to the relevant authority, issue guidelines on the provisions to be made by, and the development,

SCHEDULE—continued

implementation and review of, equal employment opportunity programs for a component of the Service.

“(8) The Head of Administration shall, at least once in each year, prepare and furnish to the Chief Minister for presentation to the Legislative Assembly, a report concerning the operation of this section in relation to members of the Service.”.

Heading to Division 10 of Part III—

Omit the heading, substitute the following heading:

“Division 10—Re-entry of certain officers to the Service from the Teaching Service of the Northern Territory”.

Sections 43R to 43T (inclusive)—

Repeal the sections, substitute the following section:

Transferred officer

“43R. In this Division, ‘transferred officer’ means an officer who was transferred to the Teaching Service of the Northern Territory under section 43T of the *Commonwealth Teaching Service Act 1972* of the Commonwealth in force immediately before self-government day.”.

Subsection 43U (2)—

Omit “Commonwealth Teaching” (first occurring).

Subparagraph 43U (6) (d) (ii)—

Omit “and of the *Long Service Leave (Commonwealth Employees) Act 1976*”.

Subsection 43W (4)—

Omit “the Secretary allows”, substitute “the Head of Administration allows”.

Subsection 43W (6)—

Omit “and the *Long Service Leave (Commonwealth Employees) Act 1976*”.

Subsection 43X (2)—

Omit “, with the approval of the Public Service Board,”.

Paragraph 43Y (1) (a)—

Omit “Secretary”, substitute “Head of Administration”.

Heading to Part IV—

Omit “COMMONWEALTH TEACHING”.

Sections 44 and 46—

Omit “Commissioner” (wherever occurring), substitute “Head of Administration”.

Section 48—

SCHEDULE—continued

Omit “Parliament”, substitute “Legislative Assembly”.

Subsection 50A (1)—

Omit “Secretary to the Department of Industrial Relations”, substitute “Head of Administration”.

Subsection 52 (3)—

- (a) Omit “each House of the Parliament”, substitute “the Legislative Assembly”.
- (b) Omit “that House”, substitute “the Assembly”.

Section 53—

Omit “Governor-General”, substitute “Executive”.

Further amendments

1. The following provisions are amended by omitting “Commonwealth Teaching” (wherever occurring):

Paragraphs 43U (2) (a) and (b), subsections 43U (3) and (4), paragraph 43U (5) (a), subparagraphs 43U (6) (a) (i) and (6) (d) (i), subsection 43V (1), paragraph 43V (5) (d), subparagraphs 43V (5) (e) (i) and 43V (7) (a) (i), (ii) and (iii), paragraph 43V (7) (b), subsections 43V (8), (9), (11) and (13) and 43W (1), paragraph 43W (2) (b), subsection 43W (3), paragraphs 43W (4) (b), (c) and (e), subsections 43W (5), (6) and (7) and 43X (1), paragraphs 43Y (1) (b) and (c) and subsection 43Y (6).

2. The following provisions are amended by omitting “Commonwealth” (wherever occurring) and substituting “Territory”:

Subsections 20 (1), 23 (1) and 34D (5), paragraphs 34D (7) (a) and (b) and 34D (8) (a), subsection 34D (17) (definition of “net salary”), subsection 45 (1), paragraphs 45 (2) (a), (aa), (ab), (b) and (c) and 50A (2) (b) and subsection 50A (3).

3. The following provisions are amended by omitting “Secretary” (wherever occurring) and substituting “Head of Administration”:

Subsection 4 (1) (definitions of “advanced education institution” and “full-time student” and paragraph (b) of the definition of “University”), paragraphs 43U (2) (b) and (3) (b), subsection 43U (4), paragraph 43U (5) (c), subsection 43V (1), subparagraphs 43V (5) (b) (i) and (ii), subsections 43V (6), (12) and (13) and 43W (1) and (2), paragraph 43W (4) (b), subsections 43W (7) and 43X (2), paragraphs 43Y (1) (b) and (c) and 43Y (2) (a) and subsections 50 (1), (2) and (3) and 52 (1).

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 10 May 1989.