

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

TEACHING SERVICE (CONSEQUENTIAL MODIFICATIONS) ORDINANCE 1989

ORDINANCE NO. 32 OF 1989

The Teaching Service (Consequential Modifications) Ordinance 1989 (the Ordinance), which commences on Self-Government Day, modifies the Commonwealth Teaching Service Act 1972 (the Act). The Act is a Commonwealth Act which was converted into an enactment of the Territory by virtue of subsection 34(2) of the Australian Capital Territory (Self-Government) Act 1988.

The modifications to the Act arise from and are consequential upon the establishment of the ACT as a body politic under the Crown. Few of the modifications affect the substantive law: most are formal amendments to convert the Commonwealth Teaching Service into the Australian Capital Territory Teaching Service and to accommodate the change in legislative and administrative responsibility for the Act.

The most substantial amendment is to insert new Division 7 of Part III which deals with equal employment opportunity programs in the Teaching Service. These provisions reproduce existing Schedule 1A of the Commonwealth Public Service Regulations.

The Attachment contains details of the individual provisions of the Ordinance.

ISSUED WITH THE AUTHORITY OF THE
MINISTER FOR THE ARTS AND
TERRITORIES

ATTACHMENT

TEACHING SERVICE (CONSEQUENTIAL MODIFICATIONS) ORDINANCE 1989

Section 1 cites the short title of the proposed Ordinance as being the Teaching Service (Consequential Modifications) Ordinance 1989.

Section 2 provides that the Ordinance commences as follows:

- . sections 1 and 2 - on the day the Ordinance is gazetted;
- . subsection 4(2) - on a day to be fixed by the Minister by a notice in the Gazette; and
- . the rest of the Ordinance - on the day section 22 of the Australian Capital Territory (Self-Government) Act 1988 comes into operation (referred to as Self-Government Day).

Section 3 defines the 'Principal Act' and the 'Principal Regulations' to mean, respectively, the Commonwealth Teaching Service Act 1972 and its Regulations, as they were in force immediately before Self-Government Day.

Subsection 4(1) modifies section 19 of the Principal Act to save and convert the Commonwealth Teaching Service into the Australian Capital Territory Teaching Service (the Service).

Subsection 4(2) deletes reference in paragraphs 19(3)(b) and 19(5)(b) of the Principal Act (as modified) to the Australian Capital Territory Technical and Further Education component of the Service. However, this modification will not come into operation until all staff employed under that component have transferred to employment under the ACT Institute of Technical and Further Education Ordinance 1987.

Section 5 modifies paragraphs 43U(1)(a) and (b) of the Principal Act by deleting the words "Commonwealth Teaching", which will have the effect of substituting a reference to the Service as redefined in modified subsection 4(1).

Section 6 substitutes 'Australian Capital Territory' for 'Commonwealth' in section 44 of the Principal Act. That section, which has not been proclaimed, deals with Service scholarships.

Section 7 substitutes 'Territory' for 'Commonwealth' wherever it occurs in subsection 50A(1) of the Principal Act. That subsection deals with the transfer of staff of the Commonwealth Teaching Service to a Commonwealth Authority which has taken over the responsibilities of a particular component of the Commonwealth Service.

Section 8 inserts new section 54 in the Principal Act. The new provisions:

- (i) continue the existing Regulations in force after Self-Government Day, subject to modifications which amend references to laws to the style in which they exist after Self-Government Day; and
- (ii) continue existing Determinations in force after Self-Government Day, subject to similar modifications to amend references within them.

Section 9 modifies the Principal Act and Principal Regulations in the manner set out in the Schedule.

Subsection 10(1) provides that any instrument made or anything done under the Principal Act or the Principal Regulations will continue in force as if made or done under the Act as modified by the Ordinance.

Subsection 10(2) ensures that the Principal Act and Principal Regulations, as modified by the Ordinance, applies to any relevant conduct which occurred before the Ordinance commenced.

The Schedule further modifies the Principal Act. Few of the modifications affect the substantive law: most are formal changes to reflect the change in the government responsible for the Service. The modifications which do affect the substantive law are described below. The references are to sections of the Principal Act.

Section 5 is omitted. This limits the operation of the Act to the ACT and it no longer applies to all Territories.

Subsection 7(2) is amended to allow the Service to make teachers available to the Commonwealth, a State or an authority of the Commonwealth or to the government or a governmental authority of a foreign country.

Subsection 7(3) is amended to allow for the exchange of teachers between the Service and the Commonwealth or a State (or a Commonwealth or State authority).

Section 8 is amended to specify more precisely the powers which a relevant authority of the Service may delegate.

Paragraph 19(3)(c) is amended to add a new component to the Service: viz, the Commonwealth component for the purposes of teaching in schools which remain under the control of the Commonwealth. [A component is an administrative unit of the Service.]

Subsection 19(5) is amended in several particulars to specify that the relevant authority of a component of the Service is either the Head of Administration or the holder of an office which the Head of Administration designates in writing. [The relevant authority exercises the various powers and functions

which the Act confers in relation to particular components of the Service.]

Subsections 20(5) and 20(6) are omitted. This means that the Head of Administration is not able to determine the terms and conditions of appointment to the Service by the simple expedient of adopting a determination made under the Commonwealth Public Service Act 1922. Rather, consistent with the functions conferred by section 50 of the Australian Capital Territory (Self Government) Act 1988, the Head of Administration must actually make the determination(s).

Paragraphs 37(2)(a) and (b) are amended to require appointments to the Disciplinary Appeal Board to be in writing.

Subsections 37(3), (3A), (3B) and (3C) are omitted and replaced by new subsections 37(3) to (6). The new subsections, which are standard provisions, provide that the Chairperson of the Disciplinary Appeal Board:

- (i) holds office on such terms and conditions as the Ordinance provides or the Minister determines; and
- (ii) is paid remuneration and allowances as specified in a relevant Remuneration Tribunal determination or, failing that, as prescribed.

There is a new Division 7 of Part III which comprises sections 38 to 40 and deals with equal employment opportunity programs. The new sections reproduce Schedule 1A of the Commonwealth Public Service Regulations, subject to necessary modifications to reflect the change of government and authorities and officers responsible for the Principal Act.

Subsection 38(1) is an interpretation provision for Division 7.

Subsection 38(2) specifies that an equal opportunity program provide for action to:

- (i) examine employment practices to identify practices which unjustifiably discriminate and patterns of inequality;
- (ii) eliminate those practices or patterns;
- (iii) keep relevant people and organisations informed of the program and of any review under subsection 40(1);
- (iv) collect and record relevant information;
- (v) assess the effectiveness of the program; and
- (vi) give effect to any guidelines under subsection 40(7).

Section 39 ensures that Division 7 applies to existing equal employment opportunity programs in force in the Commonwealth Teaching Service immediately before Self-Government Day.

Subsection 40(1) requires a relevant authority to review a component's equal employment opportunity program from time to time and, in doing so, to give staff and other appropriate people an opportunity to put their views. The results of the review are to be put into a written statement and given to the Head of Administration.

Subsection 40(2) obliges a relevant authority to give effect to an equal employment opportunity program and any person who exercises powers relating to employment matters to have regard to the program when exercising that power.

Subsections 40(3) and (4) empower the Head of Administration to require a relevant authority to report on the development, implementation or review of the equal employment opportunity program in his/her component.

Subsection 40(5) allows the Head of Administration to make recommendations to a relevant authority to improve the effectiveness of an equal opportunity program.

Subsection 40(6) requires a relevant authority to notify the Minister in writing if he or she does not agree with or adopt a recommendation from the Head of Administration. The notification must set out the reasons for the relevant authority's view.

Subsection 40(7) permits the Head of Administration to issue from time to time guidelines on equal opportunity programs.

Subsection 40(8) requires the Head of Administration to report annually to the Chief Minister on the operation of section 40. The annual report is to be tabled in the Legislative Assembly.

Sections 43R to 43T, which deal with transfer of members of the Commonwealth Teaching Service to the Teaching Service of the Northern Territory, are repealed and replaced by new section 43R. The new section defines 'transferred officer' for the purposes of Division 10 to mean an officer who was transferred to the Teaching Service of the Northern Territory under section 43T of the Principal Act as it existed immediately before Self-Government Day.