

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Price 20c Prys
Overseas 30c Oorsee
POST FREE—POSVRY

Vol. 167]

CAPE TOWN, 9 MAY 1979

[No. 6428

KAAPSTAD, 9 MEI 1979

DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1000.

9 May 1979.

No. 1000.

9 Mei 1979.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 39 of 1979: Indians Education Amendment Act, 1979.

No. 39 van 1979: Wysigingswet op Onderwys vir Indiërs, 1979.

Act No. 39, 1979

INDIANS EDUCATION AMENDMENT ACT, 1979.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Indians Education Act, 1965, so as to provide for the change of the names of certain schools and colleges; relating to the transfer of certain schools and colleges; the determination of the conditions of service, salaries, allowances and leave privileges of certain persons employed at certain schools; and the transfer and discharge of certain persons employed at certain schools; to provide that certain acts of certain persons employed at certain schools, in so far as those acts relate to the activities of unlawful organizations or political parties, constitute misconduct; relating to the procedure in terms of which certain persons may be charged with misconduct; to provide for a procedure in terms of which the fitness or efficiency of certain persons may be investigated and for the steps which may be taken if such persons are unfit or inefficient; that the Minister of Indian Affairs may allow certain persons to keep certain moneys; that certain persons in the service of the Department of Indian Affairs be allowed to be members and to serve on the managements of political parties and to attend public political meetings; and that certain persons nominated as candidates for an election of members of the South African Indian Council, be deemed to have relinquished their posts in the Department of Indian Affairs; relating to the classification of certain posts at certain schools; and the conducting of certain examinations; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 1 May 1979.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of
section 1 of
Act 61 of 1965.

1. Section 1 of the Indians Education Act, 1965 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion after the definition of "agricultural school" of the following definition:

"college of education" means an institution for the education and training of Indian students as teachers;" 10

(b) by the substitution for the definition of "education" of the following definition:

"education" means any education other than education provided by a university [or a university college] established by or in terms of any law or [a 'declared institution' referred to in section one of the Higher Education Act, 1923 (Act No. 30 of 1923)] an institution for advanced technical education established in terms of the Indians 15

Act No. 39, 1979

INDIANS EDUCATION AMENDMENT ACT, 1979.

- Advanced Technical Education Act, 1968 (Act No. 12 of 1968), and includes vocational education and special education not so provided;";
- (c) by the deletion of the definitions of "high school" and "nursery school";
- (d) by the insertion after the definition of "part-time class" of the following definition:
 "'pre-primary school' means a school for the education of Indians above the age of two years who have not yet attained the age at which they may be admitted to an ordinary school;";
- (e) by the substitution for the definition of "primary school" of the following definition:
 "'primary school' means a school for the education of Indians up to such standard [not exceeding the sixth standard] as the Secretary may in any particular case determine;";
- (f) by the insertion after the definition of "school of industries" of the following definition:
 "'secondary school' means a school for the education of Indians up to such standard, not exceeding the tenth standard, as the Secretary may in any particular case determine;";
- (g) by the substitution for the definition of "special education" of the following definition:
 "'special education' means education or training of a specialized nature provided to suit the needs of handicapped children, and includes general cultural education, vocational guidance, vocational education and medical, dental and mental examination and treatment, as well as care in a hostel, when provided for or taking place in respect of such children;";
- (h) by the deletion of the definition of "training college".

Amendment of section 3 of Act 61 of 1965.

2. Section 3 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- "(a) establish, erect and maintain [training colleges, high schools] colleges of education, secondary schools, primary schools, agricultural schools, vocational schools, special schools, pre-primary schools and homes;".

Substitution of section 4 of Act 61 of 1965.

3. The following section is hereby substituted for section 4 of the principal Act:

- "Award of grants-in-aid or subsidies and loans in respect of schools and hostels.
4. (1) Subject to the provisions of subsection (2) the Minister may out of moneys appropriated by Parliament for the purpose, award grants-in-aid or subsidies and loans to the governing body of any school, including any [nursery] pre-primary school, or of a hostel used in connection with such a school.
- (2) The award of grants-in-aid or subsidies and loans in terms of subsection (1) shall be effected on such basis and subject to such conditions as the Minister in consultation with the Minister of Finance may [in every particular case] determine [and subject to such other conditions as may be prescribed]."

Amendment of section 5 of Act 61 of 1965.

4. Section 5 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- "(1) The Minister may, in consultation with the Minister of Finance and after negotiation and agreement with the governing body of a State-aided school, by notice in [the Gazette] writing to such governing body transfer the

Act No. 39, 1979

INDIANS EDUCATION AMENDMENT ACT, 1979.

management and control of such school to the Department with effect from a date fixed in that notice."

Amendment of section 6 of Act 61 of 1965.

5. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Any school for the education of Indians which at the commencement of this Act is registered with a provincial administration or the Department of **Education, Arts and Science** National Education under any law, shall be deemed to have been registered with the Department under subsection (1)."

Amendment of section 11 of Act 61 of 1965.

6. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of subsections (2) and (3) of this section, the conditions of service, salary scales, allowances and leave privileges of persons (other than officers and employees) employed in any post included in the establishment of a State school, school of industries, reform school or a State-aided school, shall be determined or prescribed by the Minister in consultation with the Minister of Finance and on the recommendation of the Public Service Commission."

Amendment of section 14 of Act 61 of 1965.

7. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person (other than an officer or employee) occupying a post included in the establishment of a State school, school of industries or reform school, or a State-aided school other than a State-aided vocational school, may, subject to the provisions of subsection (2), be transferred from the post in which he is employed to any other post at the said school or any other such school, or at any other institution under the control of the Department, whether established under this Act or any other law, and whether or not it is a transfer to a post of a lower grade."

Substitution of section 15 of Act 61 of 1965.

8. The following section is hereby substituted for section 15 of the principal Act:

15. (1) Any person (other than an officer) occupying on a full-time basis in a permanent capacity a post included in the establishment of a State school, school of industries or reform school, or State-aided school other than a State-aided vocational school, shall, subject to the provisions of subsections (2) and (3), have the right to retire from the service of the Department on attaining the age of 65 years, and shall be so retired on reaching that age.

(2) Any person referred to in subsection (1) whose pensionable service, as defined in section 1 of the Government Service Pension Act, 1973 (Act No. 57 of 1973), commenced before 24 June 1955 in terms of a pension law referred to in section 13 (1) (b), shall have the right at any time before or after attaining, in the case of a male, the age of 60 years or, in the case of a female, the age of 55 years, to give notice in writing to the Secretary of his wish to retire on pension and, if he has so given notice—

- (a) at least three months before the date on which he attains that age, he shall be retired on pension as from the date on which he attains the said age; or
- (b) but not at least three months before the date on which he attains that age, he shall be retired on pension on the first day of the fourth month following the month during which such notice is received.

Act No. 39, 1979

INDIANS EDUCATION AMENDMENT ACT, 1979.

(3) Any person referred to in subsection (1) who has attained the age of 60 years and any person referred to in subsection (2) who has attained, in the case of a male, the age of 55 years or, in the case of a female, the age of 50 years, may with the approval of the Minister be retired from the service of the Department. 5

(4) Any person referred to in subsection (1) may be discharged from the Department by the Minister—

(a) on account of continued ill-health; 10
 (b) on account of the abolition of his post or a reduction, reorganization or rearrangement of the staff of the school in question;

(c) subject to the provisions of section 18, on account of unfitness for his duties or incapacity to perform them efficiently; 15

(d) if, for reasons other than those referred to in paragraph (c), his discharge will, in the opinion of the Minister, promote efficiency or economy at the school in question;

(e) subject to the provisions of section 17, on account of misconduct as defined in section 16. 20

(5) Any person referred to in subsection (1) who without the permission of the Secretary or the head of the governing body of the school in question—

(a) is absent from duty for a period exceeding 30 consecutive days; or 25

(b) is absent from duty and has accepted other employment,

shall, subject to the provisions of subsection (6), be deemed to have been discharged on account of misconduct in terms of subsection (4) with effect from the date immediately following the last day on which he was on duty. 30

(6) If any person referred to in paragraph (a) of subsection (5) at any time within 120 days after the expiry of the period of 30 days referred to in that paragraph, in writing applies for reinstatement in his former post, the Minister may, on such conditions as he may think fit, reinstate such person in his former post or appoint him to any other post referred to in subsection (1), and in such event the period of absence from duty shall be deemed to have been absence on vacation leave without pay or leave on such other conditions as the Minister may determine.” 45

Amendment of section 16 of Act 61 of 1965.

9. Section 16 of the principal Act is hereby amended by the substitution for paragraph (g) of the following paragraphs:

“(g) he is an office-bearer or officer or a member of any organization declared an unlawful organization in terms of any law; 50

(gA) he makes use of his position in the Department to promote or to prejudice the interests of any political party, or presides or speaks at any public political meeting, or draws up or publishes or causes to be published any writing or delivers a public speech to promote or to prejudice the interests of any political party.” 55

Amendment of section 17 of Act 61 of 1965.

10. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If any person referred to in section 15 (1) is accused of misconduct as defined in section 16, the Secretary may charge him in writing [under his hand] with that misconduct.”

Substitution of section 18 of Act 61 of 1965.

11. The following section is hereby substituted for section 18 of the principal Act: 65

Act No. 39, 1979

INDIANS EDUCATION AMENDMENT ACT, 1979.

“Procedure relating to unfitness and inefficiency of certain persons.

18. (1) If the Secretary has reason to presume that any person referred to in section 15 (1) is unfit for or incapable of efficiently performing the duties attached to his post, the Secretary may in writing direct any person to investigate such presumption, and such person, having carried out such investigation, shall notify the Secretary by means of a written report of the result thereof.

(2) If the Secretary on account of a report referred to in subsection (1) is satisfied that there is sufficient proof that the person to whom such report relates, is unfit for or incapable of efficiently performing the duties attached to his post, he shall deliver or send by post to such person a notice—

- (a) to which a copy of such report is attached;
- (b) in which he is notified that action in terms of subsection (3) is being considered against him;
- (c) in which he is invited to lodge, within 21 days from the date of such notice, with the Secretary in writing any comments which he may wish to make in respect of such report.

(3) When the Minister, having considered any report referred to in subsection (1) and any comments lodged in respect thereof in terms of subsection (2) (c), is satisfied that the person concerned is unfit for or incapable of efficiently performing the duties attached to his post, the Secretary shall by notice in writing, delivered or sent by post, notify such person accordingly and further notify him that a further investigation in regard to such duties—

- (a) shall be instituted after expiry of a period of at least 90 days and not more than one year from the date of such notice; or
- (b) if such person within a period of 30 days from the date of such notice in writing requests the Secretary to cause such further investigation to be instituted by a person other than the person who lodged the said report, will be instituted as soon as may be practicable after expiry of such period of 30 days.

(4) If on account of a report resulting from a further investigation referred to in subsection (3), it appears in the opinion of the Minister—

- (a) that the person concerned is still unfit for or incapable of efficiently performing the duties attached to his post, the Minister may—
 - (i) on a date to be determined by the Minister, summarily discharge him from service;
 - (ii) transfer him to another post in the Department;
 - (iii) reduce his salary and his grade or the one or the other thereof;
 - (iv) decide that no further action be taken in the matter;
- (b) that since the investigation referred to in subsection (1) there has been an improvement in the fitness or efficiency of the person concerned to perform the duties attached to his post, but that he has not yet achieved the required standard of fitness or efficiency, he may be dealt with in accordance with paragraph (a) (ii), (iii) or (iv).”

Act No. 39, 1979

INDIANS EDUCATION AMENDMENT ACT, 1979.

Amendment of
section 19 of
Act 61 of 1965.

12. Section 19 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“(1) Any person referred to in subsection (1) of section 15 and any person appointed on a full-time basis in a temporary capacity at any school referred to in that subsection—”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) If any person referred to in subsection (1) receives any remuneration or allowance otherwise than in terms or by virtue of the provisions of this Act or any other law or in so far as the Minister may determine otherwise, he shall pay it into the [Consolidated] State Revenue Fund, and if he fails to do so, the Minister of Finance may recover it from him by legal proceedings or in such other manner as the said Minister may deem fit, and pay it into that fund.”;

- (c) by the insertion after subsection (2) of the following subsections:

“(3) The provisions of this Act shall not be so construed as to prohibit any person referred to in subsection (1) from being a member or serving on the management of a lawful political party or from attending any public political meeting.

(4) Any person referred to in subsection (1) who in terms of the provisions of the Electoral Act for Indians, 1977 (Act No. 122 of 1977), is nominated as a candidate for the election of members of the South African Indian Council, shall be deemed to have relinquished his post on the date on which he is so nominated.”.

Substitution of
section 20 of
Act 61 of 1965.

13. The following section is hereby substituted for section 20 of the principal Act:

“Classification of certain posts at State schools, schools of industries, reform schools and certain State-aided schools as posts in the public service.

20. The Minister may, on the recommendation of the Public Service Commission, designate any non-teaching post included in the establishment of a State school, school of industries or reform school, or a State-aided school (except a special school subsidized by the State), as a post which is to be classified in terms of the provisions of the Public Service Act, 1957 (Act No. 54 of 1957), under the fixed establishment as defined in section 1 of the said Act, and in respect of which the provisions of the said Act shall apply.”.

Amendment of
section 21 of
Act 61 of 1965.

14. Section 21 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection :

“(4) Until the Minister otherwise determines the Department of [Education, Arts and Science] National Education shall institute the courses for the education and training of persons in special schools, homes, vocational schools, schools of industries and reform schools and conduct examinations in respect thereof, and a provincial administration shall institute courses for the education and training of persons in other State schools and State-aided schools and conduct examinations in respect thereof, in the same manner in which it would have been done if the control of such education were still vested in that Department or, as the case may be, in the provincial administration.”.

Act No. 39, 1979

INDIANS EDUCATION AMENDMENT ACT, 1979.

Amendment of
section 32 of
Act 61 of 1965.

15. Section 32 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Secretary may **with the approval of the Minister** assign, either generally or in any particular case, any power or duty conferred or imposed upon him by or in terms of this Act, to any other officer in the Department.”. 5

Short title.

16. This Act shall be called the Indians Education Amendment Act, 1979.