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GOVERNMENT GAZETTE

STAATSKOERANT

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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1411.

29 June 1979.

No. 1411.

29 June 1979.

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

No. 90 of 1979: Education and Training Act, 1979.

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

No. 90 van 1979: Wet op Onderwys en Opleiding, 1979.

ACT

To provide for the control of education for Blacks by the Department of Education and Training; and to provide for matters incidental thereto.

*(English text signed by the State President.)
(Assented to 20 June 1979.)*

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

Definitions.

1. In this Act, unless the context otherwise indicates—
- (i) "advanced technical education" means technical education and training of a standard which is higher than the standard ordinarily required for an examination for standard ten or any equivalent examination and which the Minister declares to be advanced technical education for the purposes of this Act; (viii) 5
 - (ii) "Black" or "Black person" means a Black as defined in section 1 of the Population Registration Act, 1950 (Act No. 30 of 1950); (xxviii) 10
 - (iii) "Black state" means any area for which a legislative assembly has been established in terms of section 1 of the Black States Constitution Act, 1971 (Act No. 21 of 1971); (xxvii) 15
 - (iv) "community school" means a school referred to in section 6; (vi)
 - (v) "Council" means the Council for Education and Training referred to in section 4; (xviii) 20
 - (vi) "Department" means the Department of Education and Training; (iv)
 - (vii) "education" means any education or training, including— 25
 - (a) special education;
 - (b) advanced technical education;
 - (c) technical and trade training;
 - (d) adult education; and
 - (e) education provided in any nursery school, 30
 but does not include—
 - (i) education provided by a university or university college established by or under any law; and
 - (ii) "training" as defined in the Black Employees' In-Service Training Act, 1976 (Act No. 86 of 1976); (xiii)
 - (viii) "governing body", in relation to any state-aided school or private school, means the owner or the person managing such school in terms of section 8 (8); (ii)
 - (ix) "handicapped child" means a person between the ages of 3 and 23 years who in the opinion of the Secretary is capable of deriving benefit from a suitable course of education, but deviates to such an extent from the majority of persons of his age in body, mind or behaviour that he— 40 45

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- (a) cannot derive sufficient benefit from the instruction normally provided in the ordinary course of education;
- (b) requires special education to facilitate his adaptation to the community; and 5
- (c) should not attend an ordinary class in an ordinary school because such attendance may be harmful to him or to other pupils in that class, but is nevertheless educable and will derive sufficient benefit from education referred to in paragraph (b); (vii) 10
- (x) "independent state" means a territory which formed part of the Republic and which became an independent state in terms of an Act of Parliament; (xii)
- (xi) "mentally retarded child" means a person between the ages of 3 and 23 years who in the opinion of the 15 Secretary is not capable of deriving benefit from a course of education, but who is nevertheless capable of being trained and is capable of deriving benefit from a suitable training program; (v)
- (xii) "Minister" means the Minister of Education and 20 Training; (xi)
- (xiii) "nursery school" means a school for the education of children of the age of 3 years and above but below the age at which they may be admitted to a primary school; (x) 25
- (xiv) "officer" means an officer or employee as defined in section 1 of the Public Service Act, 1957 (Act No. 54 of 1957); (i)
- (xv) "prescribe" means prescribe by regulation; (xxix)
- (xvi) "primary school" means a school for education up to a 30 standard not higher than the fifth standard; (xvi)
- (xvii) "private school" means a school other than a State school, a community school or a State-aided school; (xvii)
- (xviii) "regulation" means a regulation made under this Act; 35 (xix)
- (xix) "school" means any school, special school, nursery school, class, part-time class, night school, college, centre, institute or any other institution for the education of Black persons; (xxii) 40
- (xx) "school attendance officer" means an officer charged with the duty to ensure that children who are in terms of section 37 (1) required to attend a school, attend a school regularly; (xxiii)
- (xxi) "secondary school" means a school for education up to 45 a standard higher than the fifth standard but not higher than the tenth standard; (xx)
- (xxii) "Secretary" means the Secretary for Education and Training; (xxi)
- (xxiii) "special education" means education or training of a 50 specialized nature, including—
- (a) such psychological, medical, dental, paramedical and therapeutic treatment (including the performance of operations);
- (b) such provision of artificial medical aids and 55 apparatus;
- (c) such care and maintenance in a school hostel, hospital or other institution; and
- (d) such transport and escort and other services, as are provided to meet the needs of a handicapped or 60 mentally retarded child; (iii)
- (xxiv) "special school" means a school in which handicapped or mentally retarded children receive special education, either on a full-time or on a part-time basis, and includes a class which is attached to an ordinary school and in 65 which such children receive special education; (xxiv)
- (xxv) "State-aided school" means a school in respect of which grants-in-aid or subsidies are made in terms of

section 9 or in respect of which a loan was granted in terms of that section; (xxv)

- (xxvi) "State school" means a school referred to in section 5; (xxvi)
- (xxvii) "teacher" means the principal or any member of the 5 teaching staff of a school; (xiv)
- (xxviii) "Teachers' Council" means the Teachers' Council for Education and Training referred to in section 31; (xv)
- (xxix) "this Act" includes any regulation. (ix)

Control and administration of education, and organizing of and report on activities of Department.

2. (1) It shall be the function of the Department under the 10 direction and control of the Minister to perform all the work necessary for or incidental to the general administration of education for Blacks.

(2) The Department may organize its activities or any part thereof in regions and inspection circuits determined by the Minister from 15 time to time.

(3) The Secretary shall after the end of each year submit a report on the activities of the Department to the Minister, and the Minister shall lay such report on the Table in the Senate and in the 20 House of Assembly.

Determination of education policy.

3. The Minister may after consultation with, or consideration of proposals made by, the Council, from time to time determine the general policy to be pursued in regard to education in schools within the framework of the following principles, namely—

- (a) that education in schools maintained, managed and 25 controlled or subsidized by the Department shall have a Christian character, but that the religious conviction of the parents and the pupils shall be respected in regard to religious instruction and religious ceremonies;
- (b) that the universally accepted educational principle of the 30 use of the mother-tongue as the medium of instruction be observed: Provided that this principle shall be applied at least up to and including standard two: Provided further that the wishes of the parents shall be taken into consideration in the application of this principle after 35 standard two, and also in the choice of one of the official languages as the medium of instruction where the mother-tongue cannot be used as the medium of instruction after standard two;
- (c) that it shall be the aim and objective with the 40 co-operation of the parents to introduce compulsory school attendance and free tuition (including free school books) in all areas;
- (d) that in the provision of education the ability, aptitude and interest of the pupil as well as the training needs of 45 the country shall be taken into account, and that appropriate guidance shall be given to pupils in this regard;
- (e) that there shall be co-ordination with the other departments of education with regard to syllabuses, courses 50 and examination standards, and that the matriculation or senior certificate or an equivalent examination of either the Department of National Education or the Joint Matriculation Board shall be conducted;
- (f) that recognition be given to the active involvement of 55 the parents and the communities in the education system through parent-teachers' associations, local or domestic committees or councils or in any similar authoritative manner; and
- (g) that school health services be introduced in conjunction 60 with the Department of Health.

Council for Education and Training.

4. (1) There shall be a Council for Education and Training consisting of not fewer than 20 members to be appointed by the Minister.

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(2) The Council shall advise the Minister in regard to the general policy that should be pursued in connection with education in schools and teacher training, in so far as the professional aspects and guiding principles of such education and training are concerned. 5

(3) The constitution, duties, powers, privileges and functions of and the quorum for and procedure at meetings of the Council, the executive committee and other committees of the Council and the period of office of the chairman, vice-chairman and other members of the said Council and the constitution of committees of the Council shall be as prescribed. 10

(4) The Department shall place a full-time secretary at the disposal of the Council with such remuneration and allowances, if any, as may be determined by the Minister with the concurrence of the Minister of Finance and on the recommendation of the Public Service Commission. 15

(5) The fees and allowances, if any, payable to a member of the Council who is not in the full-time service of the State, shall be determined by the Minister with the concurrence of the Minister of Finance. 20

(6) The Advisory Council for Black Education established in terms of the Black Education Act, 1953 (Act No. 47 of 1953), shall continue to function until the term of office of its members expires and shall, during such period, be deemed for the purposes of this Act to be the Council established under this section. 25

Establishment,
erection and
maintenance of
State schools.

5. (1) The Minister may out of moneys appropriated by Parliament for this purpose establish, erect and maintain—

- (a) primary and secondary schools;
- (b) schools where education or training is provided in any trade, technical, commercial, agricultural, domestic science, homecraft or any other vocational direction; 30
- (c) colleges providing advanced technical training;
- (d) teacher training schools and colleges;
- (e) special schools;
- (f) centres for adult education; 35
- (g) hostels, quarters for teachers and caretakers of school buildings, school clinics and any other appurtenances of schools; and
- (h) any other type of school which he deems necessary for education. 40

(2) State schools may be classified by the Minister in such categories or sections of schools as may be determined by him, and he may combine two or more such categories or sections in one school.

(3) Any State school established or deemed to have been established as such in terms of any law repealed by section 45 and in existence at the commencement of this Act shall be deemed to have been established under subsection (1). 45

(4) The Minister may at any time close or disestablish a State school but, if a council, committee, board or other body has been established for such school in terms of section 7, only after consultation with such council, committee, board or other body. 50

(5) The Minister may, if he deems it to be in the interests of education and after consultation with or at the request of the council, committee, board or other body concerned, convert a State school into a community school. 55

Establishment,
erection and
maintenance of
community schools.

6. (1) With a view to providing for the educational needs of a particular community the Minister may out of moneys appropriated by Parliament for the purpose establish, erect and maintain— 60

- (a) nursery, primary and secondary schools;
- (b) hostels, quarters for teachers and caretakers of school buildings, school clinics and other appurtenances of schools; and
- (c) any other type of school which he deems necessary for the education of a particular community. 65

(2) Community schools may be classified by the Minister into such categories or sections of schools as may be determined by

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him, and he may combine two or more such categories or sections in one school.

(3) Any community school or other school registered or deemed to have been registered in terms of the Black Education Act, 1953 (Act No. 47 of 1953), controlled in terms of that Act by a school board and in existence immediately before the commencement of this Act, shall be deemed to have been established in terms of subsection (1). 5

(4) The Minister may at any time close or disestablish any community school but, if a council, committee, board or other body has been established for such school in terms of section 7, only after consultation with such council, committee, board or other body. 10

(5) The Minister may at any time, if he deems it to be in the interests of education and after consultation with or at the request of the council, committee, board or other body concerned, convert a community school into a State school. 15

Establishment of councils, committees, boards and other bodies for State schools and community schools, and conferring of certain powers in regard to community schools upon certain other bodies.

7. (1) With a view to providing for the active involvement by parents and the community in education and in order to make provision that the Secretary shall be advised regarding prescribed matters in connection with the control and management of State schools and community schools, the Minister may for any such school or schools establish such local or domestic councils, committees, boards or other bodies as he may deem expedient, and he may accord representation on such council, committee, board or other body to any person. 20

(2) The constitution, qualifications for membership, duties, powers, functions and term of office of, and the allowances, if any, payable to, members of councils, committees, boards or other bodies established in terms of subsection (1) shall be as prescribed. 25

(3) The Minister may at any time disestablish any council, committee, board or other body established in terms of subsection (1), or withdraw such duties, powers or functions determined by him in a particular case from such council, committee, board or other body: Provided that before exercising his discretion in terms of this subsection the Minister shall afford to the council, committee, board or other body concerned an opportunity of making representations in such manner as the Minister may determine relating to the proposed disestablishment or withdrawal. 30

(4) The Minister may in regard to the management of a community school impose or confer upon or assign to any body established by or in terms of any Act of Parliament any duty, power or function referred to in subsection (2), as well as such other duty, power or function as he may determine in a particular case: Provided that such imposition, conferment or assignment shall only take place after consultation with the Minister or authority under whose jurisdiction such other body is functioning and that such body shall carry out, exercise or perform such duty, power or function subject to the provisions of this Act and in so far as such carrying out, exercise or performance is not contrary to the provisions of the Act by or in terms of which such body was established. 35

Registration and management of private and State-aided schools.

8. (1) Any person who wishes to provide education to a Black person, except at a State school or a community school, shall apply to the Department for the registration of a school, and he shall not provide such education before the school has been registered in terms of this section. 55

(2) The Minister may after consideration of an application referred to in subsection (1) in his discretion register a school as a State-aided or private school and he may classify such school at such registration in such categories or sections of schools as he may determine, and he may combine two or more categories or sections in one school. 60

(3) The provisions of subsection (1) shall not apply to— 65

(a) a correspondence college registered in terms of the Correspondence Colleges Act, 1965 (Act No. 59 of 1965), and providing a course exclusively by means of correspondence;

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- (b) a school established, maintained or controlled by a church solely for the purpose of providing purely theological training to prospective ministers of religion or evangelists, and any school providing exclusively religious tuition; 5
- (c) any person providing without reward informal education which does not lead to the acquisition of any diploma, certificate or statement; or
- (d) a school registered or approved by another education department and providing education to a Black person whose enrolment at such school has been approved by such department. 10
- (4) Any registration under subsection (2) may be made subject to such conditions as the Minister may deem fit, and the Minister may at any time— 15
- (a) withdraw or amend any such condition or impose further conditions as he may deem fit;
- (b) withdraw any registration under subsection (2) if he is of the opinion that any condition imposed in respect thereof has not been complied with or that other good and sufficient reasons for such withdrawal exist. 20

Provided that the Minister shall not act under paragraph (a) or (b) unless he has first afforded the governing body concerned a reasonable opportunity of submitting in such manner as the Minister may determine, representations to him in regard to the proposed action. 25

(5) Any person who contravenes the provisions of subsection (1), whether as a member of the governing body or owner of such school or as a teacher thereat, or any person who admits any Black person to a school which is not registered or exempted from registration in terms of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment. 30

(6) Any person who has been convicted of an offence referred to in subsection (5) and who at any time after such conviction carries on the activities in respect of which he was so convicted may again be charged and punished in respect of such activities. 35

(7) Any State-aided or private school which is in existence at the commencement of this Act and registered or approved or deemed to have been registered or approved as such in terms of any law repealed by section 45, shall be deemed to have been registered in terms of the provisions of subsection (2), and any condition to which the registration or approval of such school is subject at such commencement shall be deemed to have been imposed under this Act. 40 45

(8) The owner of any State-aided or private school registered or deemed to have been registered in terms of this section, may manage such school himself or he may, subject to the approval of the Secretary, appoint or authorize any person to manage such school on his behalf and subject to the provisions of this Act, and such person shall for the purposes of this Act be known as a governing body. 50

Making of grants-in-aid or subsidies and loans in respect of State-aided schools.

9. (1) The Minister may out of moneys appropriated by Parliament for the purpose make grants-in-aid or subsidies and loans to the owner or governing body of any school (including any hostel attached thereto) registered or deemed to have been registered in terms of section 8. 55

(2) The making 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 with the concurrence of the Minister of Finance may in every particular case determine, and subject to such other conditions as may be prescribed.

(3) Any grant-in-aid, subsidy or loan in existence immediately before the commencement of this Act and made in respect of any State-aided school or hostel under any law repealed by section 45, shall be deemed to have been made in respect of such school in terms of subsection (1) with effect from such commencement, and 65

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any condition to which such grant-in-aid, subsidy or loan is subject immediately before such commencement shall be deemed to have been imposed under subsection (2).

(4) The Minister may at any time in his discretion terminate, reduce or withdraw any grant-in-aid, subsidy or loan made in respect of a State-aided school or hostel in terms of this section if the Minister is satisfied that the conditions of such grant-in-aid, subsidy or loan are not complied with or if there are other good and sufficient reasons for such termination, reduction or withdrawal: Provided that before exercising his discretion under this subsection, the Minister shall afford to the governing body or owner in question an opportunity of making representations relating to the proposed action in such manner as the Minister may determine.

Taking over of management and control of State-aided or private school by Minister.

10. (1) The Minister may with the concurrence of the Minister of Finance and with effect from a date determined by the Minister take over the management and control of a State-aided or a private school, or any part thereof, as a State school or a community school, if—

- (a) the owner or governing body of the school in question has agreed thereto; or
- (b) the registration of such school is withdrawn in terms of section 8 (4) (b).

(2) The taking over of the management and control of any such school shall be on such conditions concerning the take-over of the property of such school as may be agreed upon between the Minister and the owner or governing body concerned.

(3) As from the date of any such taking over the school concerned shall be deemed to be a State school established under section 5 or a community school established under section 6, as the Minister may determine, and the owner or governing body concerned shall cease to have any rights, powers or duties in regard to such school.

(4) If any property which by virtue of a trust, donation or bequest was vested in or would have accrued to any owner or governing body, devolves upon the Department, the Secretary shall deal with such property in accordance with the conditions of such trust, donation or bequest.

(5) As from the date referred to in subsection (1) the rights and liabilities acquired or incurred by the owner or governing body in question for the purposes of or in connection with the school concerned shall pass to the Department.

Establishment of, and appointment, promotion and discharge of teachers in, State schools.

11. (1) The teaching establishment at any State school shall be determined by the Minister on a basis to be laid down from time to time with the concurrence of the Minister of Finance and on the recommendation of the Public Service Commission.

(2) The power of appointment, promotion or discharge of teachers in State schools shall subject to the provisions of this Act vest in the Minister.

(3) Any teacher who immediately before the commencement of this Act occupies a post on the teaching establishment of any State school shall as from the said date be deemed to have been appointed in terms of this section.

(4) Any disciplinary proceedings in respect of misconduct by any teacher referred to in subsection (3) before the commencement of this Act may be continued or instituted by the Department as if such misconduct had been committed after the commencement.

Establishment of, and appointment, promotion and discharge of teachers in, community schools.

12. (1) The teaching establishment at any community school shall be determined by the Minister on the basis referred to in section 11 (1).

(2) The power of appointment, promotion or discharge of teachers in community schools shall subject to the provisions of this Act vest in the Minister.

(3) Any teacher who immediately before the commencement of this Act was employed by a school board established in terms of any law repealed by section 45, as a teacher in a post in respect

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of which a subsidy is paid by the State, on the teaching establishment of a community school shall as from the said commencement be deemed to have been appointed by the Minister in terms of subsection (2): Provided that any unqualified teacher and any teacher who at the said commencement has already attained the retiring age mentioned in section 21 (7), shall be deemed to have been so appointed on a temporary basis.

(4) Any disciplinary proceedings in respect of misconduct committed by any teacher referred to in subsection (3) before the commencement of this Act may be continued or instituted by the Department as if such misconduct had been committed after the said commencement.

Establishment of, and appointment, promotion and discharge of persons employed at, State-aided schools.

13. (1) Subject to the provisions of subsection (2)—

- (a) the establishment at a State-aided school shall be determined by the Minister on the basis laid down from time to time with the concurrence of the Minister of Finance;
- (b) the power to appoint any person at a State-aided school or to promote or discharge such a person shall be vested in the governing body in question, subject to the approval of the Minister: Provided that in the case of the discharge of such person such approval shall be previously granted;
- (c) the salary, salary scale and allowances of any person appointed on a full-time basis under paragraph (b) in a post in respect of which a subsidy is paid by the State shall be determined by the Minister on the recommendation of the Public Service Commission and with the concurrence of the Minister of Finance; and
- (d) the conditions of service and leave privileges of teachers employed full-time at a State-aided school in posts in respect of which subsidies are paid by the State shall be as prescribed.

(2) If in the opinion of the Minister a governing body fails to have a vacant subsidized teaching post referred to in subsection (1) suitably filled within a period regarded by the Minister as reasonable, and such failure is in the opinion of the Minister prejudicial to the State-aided school, the Minister may appoint a teacher to such post, and such appointment shall be deemed to have been made in terms of subsection (1) (b).

(3) Any teacher who immediately before the commencement of this Act is employed in a post at a State-aided school referred to in section 8 (7) shall be deemed to have been appointed in terms of subsection (1) (b) of this section to such post.

(4) Any disciplinary proceedings in respect of misconduct committed by any teacher referred to in subsection (3) before the commencement of this Act may be continued or instituted by the governing body as if such misconduct had been committed after such commencement.

(5) Any teacher employed in terms of this section in a subsidized post at a State-aided school shall, for the purposes of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), be deemed to be a Government employee, unless the Minister determines otherwise in any particular case.

(6) The services of a teacher in a post in respect of which a subsidy is paid by the State at a State-aided school shall be deemed to have been terminated by the governing body with effect from the first day of the month following the month in which he reaches the age of 65 years, in the case of a male teacher, and 60 years, in the case of a female teacher: Provided that such teacher may thereafter, subject to the provisions of subsection (1) (b), be appointed on a temporary basis.

Appointment of teachers additional to determined teaching establishments at State schools.

14. (1) The Minister may with the concurrence of the Minister of Finance and on the recommendation of the Public Service Commission appoint teachers additional to the teaching establishments at State schools determined in terms of section 11 (1), to perform such services and work as the Minister may from time to time determine.

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(2) The provisions of sections 11 (2) and 17 (1) shall apply *mutatis mutandis* to teachers appointed under this section.

Secondment of certain teachers to service of others.

15. The Minister may with the consent of the teacher concerned second any teacher employed at a State school or a community school or any teacher appointed in terms of section 14, on such conditions (in addition to those prescribed by or under any law) as the Minister may approve with the concurrence of the Minister of Finance, to the service of any other government or any other State department, or of any council, institution or body established by or under any law, or of any other body or person, either for a particular service or a period of time, and such teacher shall, while he is so seconded, remain subject to the provisions of this Act.

Transfer of certain teachers employed at State schools and community schools.

16. (1) Any teacher employed at a State school or a community school may be transferred by the Minister from the post in which he is employed to any other post at the same school or at any other State school or community school or at any other institution under the control of the Department, whether or not such transfer is to a post of a lower grade: Provided that a transfer involving a reduction in such teacher's pensionable emoluments shall not be made without his consent, unless the transfer is in consequence of a reduction of rank imposed in connection with misconduct or inefficiency as a teacher.

(2) A teacher who has been transferred to a post of a grade higher than a grade to which his own rank is appropriate shall not by reason only of such transfer and service in such post be entitled to the higher salary applicable to that post.

Salaries, salary scales, allowances and conditions of service of teachers employed at State schools and community schools.

17. (1) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of this Act the Minister shall, with the concurrence of the Minister of Finance and on the recommendation of the Public Service Commission, determine the salaries, salary scales and allowances, if any, and prescribe the conditions of service, including leave privileges, of teachers employed in a permanent, temporary or part-time capacity at any State school or community school.

(2) Any teacher who immediately before the date on which the management and control of any State-aided or private school is transferred to the Department in terms of section 10 (1) occupies a post on the establishment of such school shall, subject to the requirements for appointment referred to in section 19 and unless the Minister directs otherwise, as from that date—

- (a) be transferred to the service of the Department; and
- (b) be deemed to have been appointed to such post on probation in terms of and subject to the provisions of this Act.

(3) As from the date on which a teacher is transferred to the service of the Department in terms of subsection (2), his salary shall be adjusted to such notch on the salary scale applicable to his post as the Minister may with the concurrence of the Public Service Commission determine.

(4) Any continuous, full-time employment of any teacher referred to in subsection (2) at any State-aided school immediately before such transfer shall for leave purposes be deemed to have been employment in the service of the Department: Provided that any sick and accumulative vacation leave to which such teacher is entitled on the date of such transfer shall, subject to such conditions as the Minister on the recommendation of the Public Service Commission may determine, be deemed to be leave accrued in terms of this Act.

(5) Any continuous, full-time employment of any teacher referred to in section 12 (3) who immediately before the commencement of this Act was employed by a school board established in terms of any law repealed by section 45 shall for leave purposes be deemed to have been employment in the service of the Department: Provided that any sick and accumulative

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vacation leave to which such teacher is entitled on the date of his transfer to the Department shall be deemed to be leave accrued in terms of this Act.

Protection of pension rights and retirement benefits.

18. Subject to the provisions of the Government Service Pension Act, 1973 (Act No. 57 of 1973), or the Government non-White Employees Pension Act, 1966 (Act No. 42 of 1966), as the case may be, any teacher who at the commencement of this Act is employed in a permanent or temporary capacity at any State school, community school or State-aided school, shall retain all the rights and privileges and remain subject to all the obligations acquired or incurred by him for pension purposes under any law which applied to him immediately before the said date.

Requirements for appointment.

19. (1) Subject to the provisions of sections 11 (3), 12 (3) and 13 (3), no person shall be appointed in a permanent capacity to a post included in the teaching establishment of a State school, community school or State-aided school, unless—

- (a) he is in possession of qualifications determined by the Minister after consultation with the Teachers' Council, and is able to submit satisfactory evidence thereof;
- (b) he is of good character;
- (c) he is free from any mental or physical defect, disease or infirmity likely to hamper the proper discharge of his duties or to necessitate his retirement before attaining his pensionable age;
- (d) he is a South African citizen or a citizen of an independent state; and
- (e) he is below the age of 55 years.

(2) Notwithstanding the provisions of subsection (1) (a) or (d), the Minister may approve that any person—

- (a) who does not possess the determined qualifications referred to in subsection (1) (a), but possesses other qualifications which in the opinion of the Minister will enable such person to render satisfactory service; or
- (b) who is not a South African citizen, but whose permanent appointment will in the opinion of the Minister be in the interests of education,

be appointed at such school in a permanent capacity.

(3) Appointments and promotions of persons in teaching posts at State schools and community schools shall be made on probation, and the period of probation shall be at least 12 calendar months, but the Secretary may extend the period to not more than 36 calendar months: Provided that if a teacher who is serving on probation is promoted to another post a shorter probationary period in the new post may be approved by the Secretary, which, together with the period of service on probation in his previous post, shall be not less than 12 calendar months: Provided further that the probationary period of a teacher shall be extended by the number of days' leave (excluding leave during school holidays) taken by him during the probationary period or any extension thereof.

Temporary and part-time appointments.

20. If a teaching post included in the establishment of a State school, a community school or a State-aided school cannot be filled by a permanent appointment in terms of section 19, such post may, subject to the provisions of sections 11, 12 and 13, be filled by the appointment on a full-time or part-time basis of a suitable person in a temporary capacity.

Discharge of teachers employed at State schools and community schools.

21. (1) Any teacher employed at a State school or a community school may be discharged by the Minister from the service of the Department—

- (a) on account of continued ill-health;
- (b) owing to the abolition of his post or any reduction in or reorganization or readjustment of the staff of a State school or a community school;
- (c) if for reasons other than his own unfitness or incapacity his discharge will promote efficiency or economy in the school in question;

- (d) subject to the provisions of section 24, on account of unfitness for his duties, or incapacity to carry them out efficiently;
- (e) subject to the provisions of section 23, on account of misconduct as defined in section 22; or 5
- (f) if, in the case of a teacher appointed on probation, his appointment is not confirmed.
- (2) Any teacher employed at a State school or a community school who without the permission of the Secretary—
- (a) is absent from duty for a period exceeding fourteen 10 days; or
- (b) is absent from duty and has accepted other employment, shall, subject to the provisions of subsection (3), be deemed to have been discharged on account of misconduct with effect from the day immediately succeeding the last day on which he was on 15 duty.
- (3) If any teacher referred to in paragraph (a) of subsection (2) reports for duty at any time after the expiry of the period referred to in the said paragraph, the Minister may, on such conditions as he may determine, reinstate such teacher in 20 employment and, in that event, the period of his 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.
- (4) For the purposes of paragraph (a) of subsection (1) the 25 Minister may at any time require any teacher appointed in a permanent capacity at a State school or community school to undergo examination by a district surgeon on a specified date, and any teacher who fails or refuses to undergo such examination shall be deemed to be guilty of misconduct as defined in paragraph (c) 30 of section 22 and shall *mutatis mutandis* be subject to the provisions of subsections (23) to (27), inclusive, of section 23.
- (5) A teacher appointed in a permanent capacity at a State school or a community school may terminate his services by giving written notice of one school quarter, or such shorter notice 35 as may be acceptable to the Secretary.
- (6) The services of a teacher employed in a temporary or part-time capacity at a State school or a community school may be terminated by the Minister or the teacher by 24 hours' notice in writing. 40
- (7) The services of a teacher referred to in subsection (1) shall be deemed to have been terminated by the Department with effect from the first day of the month following the month in which he reaches the age of 65 years, in the case of a male teacher, or 60 years, in the case of a female teacher: Provided that such teacher 45 may thereafter be appointed on a temporary basis.

Definition of
misconduct.

22. A teacher employed at a State school or a community school shall be guilty of misconduct and may be dealt with in accordance with the provisions of section 23 if he—
- (a) contravenes or fails to comply with any provision of this 50 Act, with which it is his duty to comply;
- (b) does, or causes, or permits to be done, or connives at, any act which is prejudicial to the administration, discipline or efficiency of a school, department, office or 55 institution of the Government;
- (c) disobeys, disregards or makes wilful default in carrying out a lawful order given to him, or by word or conduct displays insubordination;
- (d) is negligent or indolent in the discharge of his duties;
- (e) undertakes, without the permission of the Secretary, any 60 private agency or private work in connection with any matter connected with the performance of his official functions or the discharge of his official duties;
- (f) publicly, otherwise than at a meeting convened by an association of teachers recognized in terms of section 65 30, criticizes derogatively the administration of the Department;

- (g) attempts to secure intervention, through any person not in the employment of the Department, in relation to his position and conditions of service, unless it is done to obtain redress of any grievance through Parliament;
- (h) conducts himself in a disgraceful, improper or unbecoming manner, or, while on duty, is grossly discourteous to any person; 5
- (i) uses intoxicating liquor or stupefying drugs excessively, or, while he is or should be on duty, is under the influence of intoxicating liquor or stupefying drugs to an extent which is prejudicial to the school or the Department or to the efficient performance of his duties, unless it is proved that it is not due to any improper conduct or action on his part; 10
- (j) becomes insolvent or compromises with his creditors, unless it is shown that his insolvency or such composition or the making of such decree against him has been occasioned by unavoidable misfortune; 15
- (k) becomes pecuniarily embarrassed, unless it is shown that his pecuniary embarrassment has not been occasioned by imprudence or other reprehensible cause and is not prejudicial to the faithful performance of his duties; 20
- (l) without first having obtained the permission of the Secretary, discloses, otherwise than in the discharge of his official duties, information gathered or obtained by him through his employment at a school or in the Department, or uses such information for any purpose other than for the discharge of his official duties, whether or not he discloses such information; 25 30
- (m) accepts or demands in respect of the discharge of or the failure to discharge his duties any commission, fee or other reward, not being the emoluments payable to him in respect of his duties, or fails to report to the Secretary the offer of any such commission, fee or reward; 35
- (n) misappropriates or improperly uses any property of the State or the school, and such misappropriation or use does not constitute an offence; 35
- (o) is on conviction of any offence sentenced to imprisonment without the option of a fine; 40
- (p) absents himself from his school or duty without leave, unless he can prove a valid cause for his absence;
- (q) with a view to obtaining any privilege or advantage in relation to his official position or his duties, or to causing prejudice to the Government or a department of State or the educational service or a member of such service, makes a false or incorrect statement, knowing it to be false or incorrect; or 45
- (r) contravenes any provision of the rules of the constitution of a medical aid fund or medical aid society of which he is required to be a member in terms of the regulations, or fails to comply with any provision of the said rules with which it is his duty to comply by virtue of his membership of such medical aid fund or medical aid society. 50 55

Procedure in case of misconduct.

23. (1) If a teacher employed at a State school or a community school is accused of misconduct as defined in section 22, the Secretary or any person authorized thereto by the Secretary may charge him in writing under his hand with that misconduct.

(2) The person who signed the charge shall serve it upon the person charged by causing it to be delivered or sent by registered letter to him or to be left at his place of residence or last known place of residence. 60

(3) The charge shall contain or shall be accompanied by a direction calling upon the person charged to transmit or deliver, 65

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within a period which is to be specified in such direction and is to be reasonable, to a person likewise specified, a written admission or denial of the charge and, if he so desires, a written explanation of the misconduct with which he is charged.

(4) The Minister or, if authorized thereto by the Minister either 5 generally or in a particular case, the Secretary or any other officer in the Department, may suspend from duty any person accused of misconduct as defined in section 22, whether or not such person has been charged with misconduct.

(5) The Minister or the other person who suspended any person 10 in terms of subsection (4) may at any time cancel the suspension, but the cancellation of the suspension shall not affect any proceedings in connection with the charge of misconduct.

(6) A person who has been suspended from duty in terms of subsection (4) shall not be entitled to any emoluments in respect 15 of the period of his suspension: Provided that the Minister may order payment to the said person of the whole or a portion of his emoluments.

(7) If no charge under this section is preferred against a person who has been so suspended from duty, he shall be allowed to 20 resume duty as soon as practicable and be paid his emoluments in respect of the period of his suspension in so far as it has not been done already.

(8) (a) If the person charged admits the charge, he shall be deemed to have been found guilty in terms of 25 this section of the misconduct with which he has been charged.

(b) If the person charged denies the charge or fails to comply with the direction mentioned in subsection (3), the Secretary shall appoint a person to inquire into the 30 charge.

(9) (a) The person who is to hold the inquiry shall in consultation with the person who signed the charge fix the time and place of the inquiry, and the person who signed the charge shall give the person charged 35 reasonable written notice of the time and place so fixed: Provided that the Secretary shall have the power to postpone the inquiry on good cause shown.

(b) The law relating to witnesses and evidence which applies in connection with criminal cases in a magis- 40 trate's court, shall *mutatis mutandis* apply for the purposes of and at any such inquiry: Provided that subpoenae to procure the attendance of witnesses thereat shall be issued by the person who is to hold the inquiry.

(10) The person who signed the charge may authorize any 45 person to be present at the inquiry and to adduce evidence and arguments in support of the charge and to cross-examine any person called as a witness for the defence.

(11) (a) At the inquiry the person charged may be present, shall have the right to be heard, to cross- 50 examine any person called as a witness in support of the charge, to inspect any documents produced in evidence and to call other persons as witnesses, either personally or by a representative, and may give evidence himself.

(b) The failure of the person charged to be present at the 55 inquiry, either personally or by a representative, shall not invalidate the proceedings.

(c) The person holding the inquiry shall keep a record of the proceedings at the inquiry and of the evidence given 60 thereat.

(12) If the misconduct with which any person is charged, amounts to the commission of an offence and it is proved that he has been convicted thereof by a court of law, a certified copy of the record of his trial and conviction by that court shall be *prima 65 facie* evidence of the commission by him of that offence.

(13) The person holding the inquiry shall after the conclusion thereof decide whether the person charged is guilty or not guilty

of the misconduct with which he has been charged and inform him and the Secretary of his decision.

(14) If the person holding the inquiry finds that the person charged is not guilty of the misconduct with which he has been charged and the person charged was suspended from duty in terms of subsection (4), he shall be allowed to resume duty as soon as practicable and be paid his emoluments in respect of the period of his suspension in so far as it has not been done already. 5

(15) If the person holding the inquiry finds that the person charged is guilty of the misconduct with which he has been charged, the person charged may within 14 days after the date on which he was informed of the finding appeal to the Minister by delivering or posting to the person who held the inquiry a written notice of appeal setting forth fully the grounds of appeal. 10

(16) If the person holding the inquiry finds that the person charged is guilty of the misconduct with which he has been charged, he shall— 15

- (a) after expiry of the period referred to in subsection (15), forward to the Secretary—
- (i) the record of the proceedings at the inquiry; 20
 - (ii) the documentary evidence admitted thereat;
 - (iii) a statement of his finding and his reasons therefor;
 - (iv) any observations which he may wish to make on the case; and
 - (v) if there is an appeal from his finding in terms of subsection (15), the notice of appeal; and 25
- (b) if there is such an appeal from his finding, furnish the appellant with a copy of his reasons for the finding.

(17) If the appellant applies to the Secretary for a copy of the record of the proceedings at the inquiry and of the documentary evidence admitted thereat within 7 days after the date upon which he was furnished with a copy of the reasons for the finding, the Secretary shall furnish him with it. 30

(18) The appellant may, if he has made an application in terms of subsection (17) within 14 days after the date upon which he was furnished with the copy in question, or if he did not make such an application, within 21 days after the date upon which he was furnished with the copy of the reasons for the finding, submit to the Secretary written representations in support of his appeal, and the Secretary shall after receipt thereof or, if he did not receive such representations within the fixed period, after the expiry of such period, submit to the Minister the record of the proceedings at the inquiry, the other documents in his possession which relate to the inquiry or appeal and his recommendation concerning the appeal. 40 45

(19) After consideration of such record and other documents the Minister may allow the appeal in whole or in part and set aside or vary the finding, dismiss the appeal and confirm the finding, or, before arriving at a final decision on the appeal, remit any matter in connection with the inquiry to the person who held the inquiry and direct him to report thereon or to hold a further inquiry and to arrive at a finding thereon. 50

(20) If the Minister has directed that a further inquiry be held, the provisions of subsections (9), (10) and (11) shall apply thereto.

(21) If the Minister has arrived at a final decision on the appeal, he shall convey that decision in writing to the appellant and the Secretary. 55

(22) If the Minister allows the appeal and the appellant has been suspended from duty in terms of subsection (4), he shall be allowed to resume duty as soon as practicable and be paid his emoluments in respect of the period of his suspension in so far as it has not been done already. 60

(23) If the person charged has admitted the charge of misconduct as contemplated in subsection (3), or if he has been found guilty of misconduct in terms of subsection (13) and has not 65

appealed against it within the fixed period, or has appealed against it and the appeal has been dismissed wholly or in part in terms of this section, the Secretary shall subject to the provisions of subsection (24) recommend to the Minister that—

- (a) the person charged be cautioned or reprimanded; 5
- (b) a fine, not exceeding R200, be imposed upon the person charged;
- (c) the person charged be transferred to another post;
- (d) the emoluments or rank or both the emoluments and the rank of the person charged be reduced; 10
- (e) the person charged be discharged from the service of his employer or be called upon to resign therefrom; or
- (f) the person charged shall not be appointed as a teacher for a period determined by the Minister.

(24) (a) Except where the Secretary makes a recommendation under paragraph (e) of subsection (23), he may make a recommendation under more than one of the other paragraphs of that subsection. 15

(b) The Secretary may postpone for a period not exceeding 12 months the making of a recommendation under subsection (23). 20

(25) (a) The Minister may act in accordance with the recommendation of the Secretary in terms of subsection (23) or take any other action which he could have taken if the Secretary had recommended it in terms of that subsection. 25

(b) If a fine is imposed upon any person in terms of this subsection, such fine may be recovered by deducting it from his emoluments in such instalments as the Minister may determine. 30

(c) If the Minister discharges any person in terms of this subsection, the discharge shall take effect on a date fixed by the Minister.

(d) If the Minister calls upon any person in terms of this subsection to resign from the service of his employer and such person fails so to resign with effect from a date fixed by the Minister, he shall be deemed to have been discharged in terms of this subsection from such service with effect from that date. 35

(26) If any person has been suspended from duty in terms of subsection (4) and the Minister deals with him in a manner contemplated in paragraph (a), (b), (c) or (d) of subsection (23), or the Secretary deals with him in accordance with subsection (24) (b), such person shall be allowed to resume duty in an appropriate post as soon as practicable and be paid his emoluments in respect of the period of his suspension in so far as it has not been done already: Provided that if the emoluments or rank of such person is reduced as contemplated in subsection (23) (d), his emoluments in respect of the period of his suspension shall be calculated on the basis of the reduced emoluments or rank, as the case may be: Provided further that if in respect of the period of his suspension emoluments in excess of the emoluments so calculated have already been paid to him in terms of subsection (6), he shall not be obliged to refund the excess. 40 45 50 55

(27) If any person who has been suspended or charged with misconduct in terms of this section resigns from the service of his employer or assumes other employment before the appropriate charge of misconduct has been disposed of under this section, he shall be deemed to have been discharged on account of misconduct from such service with effect from a date fixed by the Minister, unless before the receipt of his notification of resignation or his assumption of other employment, he was notified that he would not be charged with misconduct or, as the case may be, that the charge of misconduct against him had been withdrawn. 60 65

(28) The fact that a person has been convicted or acquitted by a court of law of the commission of an offence shall not preclude the taking of any steps in terms of this section against such person. 65

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Action in case of inefficient teachers employed at State schools or community schools.

24. (1) If it is alleged that any teacher employed at a State school or community school is unfit for, or is incapable of performing efficiently, the duties attached to his post for causes not within his control and not attributable to the performance of his duties in the employment of the Department or the school in question, the Secretary may appoint a person to inquire into the allegation. 5

(2) The provisions of subsections (9), (10), (11), (13), (15) to (21), inclusive, and (23) and paragraphs (a) and (c) of subsection (25) of section 23 shall *mutatis mutandis* apply in respect of any inquiry referred to in subsection (1) and the teacher in respect of whom the allegation was made: Provided that in the application of the said subsection (23) the Secretary shall be empowered only to recommend that the teacher in question be discharged from the service of the Department or that his rank be reduced and, if his emoluments are more than the maximum for the reduced rank, such emoluments be reduced to that maximum. 15

Manner in which notice is to be given or statement is to be furnished.

25. Whenever by section 23 or 24 it is provided that—

(a) any notice, statement or other document is to be given or furnished to or served upon any person or that any matter is to be or may be conveyed to any person in writing, such notice, statement, document or writing may be sent by post in a registered letter or be delivered personally to him or left at his last known place of residence; or 25

(b) any person is to be informed of any decision or finding, he may be informed thereof orally or by a document sent by post in a registered letter or delivered personally to him or left at his last known place of residence: Provided that when a person is informed orally of a decision or finding, such decision or finding shall be confirmed in writing as provided in paragraph (a). 30

Misconduct and inefficiency of teachers employed at State-aided schools.

26. (1) The provisions of section 22 shall *mutatis mutandis* apply to all teachers employed on a full-time basis at State-aided schools in posts in respect of which subsidies are paid by the State: Provided that any reference in section 22 to any act which is or may be prejudicial to the Government, a department of State or the educational service shall, in such application, be deemed to include a reference to such an act in respect of the State-aided school or governing body in question. 40

(2) The procedure to be adopted in the case of a teacher referred to in subsection (1) who is alleged to be inefficient or whose conduct is alleged to be unsatisfactory shall be determined in the conditions of service referred to in section 13 (1) (d).

Holding of office by teachers employed at State schools, community schools and State-aided schools.

27. (1) Any teacher employed at a State school, a community school or a State-aided school shall not be or become a member of any committee, council, authority or body established by or in terms of any law, without the consent of the Minister: Provided that the Minister may at any time withdraw such consent. 45

(2) Any teacher referred to in subsection (1) shall not hold any office which in the opinion of the Minister will interfere with the performance of his duties in the service of the school concerned.

(3) If a dispute arises between the State and any committee, council, authority or body referred to in subsection (1), a teacher who is a member of such committee, council, authority or body in terms of subsection (1) shall not take part in the discussion or voting regarding that dispute. 55

(4) If any teacher employed at a State school, a community school or a State-aided school—

(a) accepts a nomination or a requisition as a candidate for 60 election as a member of Parliament, a provincial council

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or a legislative body of a Black state or an independent state; or

(b) is nominated, designated or appointed as a member of a body referred to in paragraph (a),

he shall be deemed to have voluntarily retired from the service of his employer with effect from the date on which he accepted such nomination or requisition or on which he is so nominated, designated or appointed. 5

Performance of other work by teachers employed at State schools, community schools and State-aided schools.

28. (1) Unless it is otherwise provided in his conditions of service— 10

(a) every teacher employed at a State school, a community school or a State-aided school shall at all times be at the disposal of the Department or school at which he is employed;

(b) no teacher employed at a State school, a community school or a State-aided school shall perform or engage himself to perform remunerative work outside his employment at such school without the permission of the Secretary; and 15

(c) no teacher employed at a school referred to in paragraph (a) may claim as of right additional remuneration in respect of any official duty or work which he is required by competent authority to perform. 20

(2) The Secretary may require any teacher employed at a State school or a community school temporarily to perform duties other than those ordinarily assigned to such teacher or appropriate to the grade, designation or classification of his post. 25

Classification of certain posts on establishments of State schools, community schools, and State-aided schools as posts in the Public Service.

29. The Minister may on the recommendation of the Public Service Commission designate any post (other than a teaching post) included in the establishment of a State school, a community school or a State-aided school 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. 30 35

Recognition of teachers' associations.

30. The Minister may for the purpose of consultation recognize associations of teachers and may prescribe requirements for such recognition, and he may at any time withdraw a recognition in terms of this section if he is of the opinion that any requirement has not been satisfied. 40

Teachers' Council for Education and Training.

31. (1) The Minister may at the request of an association of teachers recognized by the Minister as representative of Black teachers attached to schools provided for in this Act, establish a juristic person to be known as the Teachers' Council for Education and Training. 45

(2) The object of the Teachers' Council shall be to uphold and promote esteem for education and the teaching profession and the prestige of those engaged in the teaching profession.

(3) Subject to the provisions of this Act—

(a) the Teachers' Council shall keep a register and shall upon an application, accompanied by the prescribed fee and particulars, enter therein the name of— 50

(i) every Black teacher holding a professional teacher's qualification determined by the Minister; and

(ii) every other Black person who is employed in terms of the provisions of this Act in a full-time permanent teaching post at a school; 55

(b) the Teachers' Council shall draw up a professional code of conduct for registered and provisionally registered persons in order to uphold and promote esteem for education and the teaching profession and the prestige of those engaged in the teaching profession; 60

(c) the Teachers' Council may, if a registered or provisionally registered person is, in terms of the regulations

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contemplated in subsection (4), found guilty of contravening any provision of the code of conduct—

- (i) reprimand or caution or reprimand and caution such person;
- (ii) impose on him a penalty not exceeding R50; or 5
- (iii) remove his name from the register, after consultation with the Secretary if he is employed at a school;

(d) the Teachers' Council may appoint a registrar and other staff to perform such functions as may be assigned to them by the Council. 10

(4) The constitution, duties, powers and functions of the Teachers' Council, the term of office of its members and the quorum for and procedure at its meetings shall be as prescribed.

(5) The Minister may after the constitution of the Teachers' Council in accordance with subsection (4) and after consultation with that Council, make regulations relating to— 15

- (a) membership, registration and provisional registration of teachers, refusal of registration and payment of registration and annual fees; 20
- (b) appeals against refusal of registration and the removal of names from the register;
- (c) offences relating to the registration of names and qualifications;
- (d) committees of the Teachers' Council; 25
- (e) the fees payable in respect of—
 - (i) entries in the register;
 - (ii) certificates of registration, extracts from the register or certified copies thereof;
- (f) the exercise of the right to vote by a person who is a member of more than one recognized teachers' association; 30
- (g) the manner in which complaints, charges or allegations against any person registered or provisionally registered in terms of this Act shall be lodged; 35
- (h) the manner in which a person shall be summoned to appear at an inquiry into an alleged contravention of the code of conduct, and the steps which may be taken against any person if he fails to obey that summons or if he obstructs or interrupts the proceedings at any such inquiry; 40
- (i) the form of subpoenae for the attendance of witnesses at an inquiry into alleged contraventions of the code of conduct, or for the production of a book, register, document or other thing thereat; 45
- (j) the manner in which inquiries into alleged contravention of the code of conduct shall be instituted or the procedure to be followed thereat or any other matter connected with the institution thereof;
- (k) generally, any other matter which the Minister may deem necessary for the proper functioning of the Teachers' Council and any matter connected therewith. 50

(6) From a date determined by the Minister by notice in the *Gazette* no Black person who is not registered or provisionally registered as a teacher by the Teachers' Council, shall be appointed to a full-time, permanent teaching post at a State school, community school or State-aided school, or shall teach at such a school in a full-time, permanent capacity, except in a post determined by the Secretary. 55

(7) Any person who contravenes subsection (6) shall be guilty of an offence and on conviction liable to a fine not exceeding R100 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Effect of removal of names of certain teachers from register of Teachers' Council.

32. (1) Any Black teacher who is employed in a full-time, permanent teaching post at a State school, a community school or a State-aided school where full-time education is provided and— 65

- (a) who is registered or provisionally registered by the Teachers' Council in terms of section 31 (3), and whose

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- name is, after the date referred to in section 31 (6), removed from the register of the Teachers' Council; or
 (b) in respect of whom registration was refused by the Teachers' Council before the date referred to in paragraph (a),

shall be deemed to have resigned from his employment with effect from the date immediately succeeding the day on which his name was so removed, or, in the case of a teacher in respect of whom registration was refused, on the date referred to in section 31 (6), as the case may be: Provided that if on the date on which his name is removed from the register, or, in the case of a teacher in respect of whom registration was refused, on the date referred to in section 31 (6), any charge of misconduct in terms of section 23 is pending against the teacher concerned, such teacher shall not be so deemed so to have resigned from his employment until the inquiry into such charge has been concluded, and he has not been discharged from his employment for misconduct in terms of the provisions of this Act, or is not deemed to have been so discharged.

(2) The provisions of subsection (1) shall *mutatis mutandis* apply to any White teacher whose name is struck off the register of the South African Teachers' Council for Whites in terms of the South African Teachers' Council for Whites Act, 1976 (Act No. 116 of 1976), or in respect of whom registration as a teacher was refused by such Council in terms of the said Act.

Inspection of schools.

33. (1) The Secretary or any officer authorized thereto by the Secretary may hold an inspection or an inquiry in regard to—

- (a) (i) the admission of pupils to and their dismissal from any State school, community school, State-aided school or private school;
 (ii) the provision of education for and guidance to and the care of pupils at such a school;
 (iii) the application and implementation of approved psychological and standardized tests or questionnaires in respect of such pupils;
 (b) the buildings, equipment, stores and finances of any State school, community school or State-aided school and any hostel attached to such school;
 (c) any other matter in connection with any State school, community school, State-aided school or private school which in his opinion ought to be investigated.

(2) Any person who interferes with or hinders or disturbs the Secretary or an officer authorized by him while he is engaged in the performance of his duties in terms of this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R50 and in default of payment to imprisonment for a period not exceeding three months.

Admission of persons to and their discharge from State schools, community schools and State-aided schools.

34. The admission of persons to State schools, community schools and State-aided schools shall take place in the prescribed circumstances and subject to the prescribed conditions, and any person so admitted to any such school may be discharged therefrom in the prescribed circumstances.

Courses for education, instruction or training of persons in schools, establishment of examination board and conduct of examinations.

35. (1) The Minister may institute courses for the education, instruction or training of persons in schools and may abolish any course so instituted.

(2) The Minister shall determine the nature and duration of, and the conditions for admission to, any course instituted under subsection (1).

(3) (a) The Minister shall establish an examination board for the Department and may also establish committees of such board.

(b) The constitution, duties, powers and functions of the examination board and committees of such board shall be as prescribed.

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(4) The Secretary shall determine the syllabus or syllabuses of a course instituted under subsection (1).

(5) The Minister may cause examinations to be conducted in respect of a course instituted under subsection (1) and may cause diplomas or certificates to be issued to persons who have passed such examinations. 5

(6) The Minister may with the concurrence of the Minister of Finance determine the fees, if any, to be paid respect of examinations, diplomas and certificates referred to in subsection (5), and may, with such concurrence, grant exemption from the payment of such fees. 10

School calendar, school holidays and periods of instruction.

36. The Secretary shall determine the school calendar, school holidays and periods of instruction, and he may determine different school calendars, school holidays and periods of instruction for different schools or schools in different areas. 15

Compulsory school attendance.

37. (1) The Minister may by notice in the *Gazette* declare that regular attendance at any kind of school specified in such notice, to such extent and under such circumstances as may be so specified, shall be compulsory for every Black person belonging to an age group and who is resident in an area so specified. 20

(2) If a parent or guardian or the person having the custody or charge of any person who by virtue of the provisions of subsection (1) is required to attend a school regularly, after a period of six months from the date of the notice referred to in that subsection fails, without reasonable cause and after a written warning by the Department, to cause such person to attend an appropriate school regularly, he shall be guilty of an offence and liable on conviction to a fine not exceeding R10 or to imprisonment for a period not exceeding one month on conviction of a first offence or to a fine not exceeding R40 or to imprisonment for a period not exceeding two months on conviction of a second or subsequent offence. 25

(3) Any person who during the usual hours of attendance at school utilizes in connection with any employment, whether for remuneration or otherwise, the services of a child who is in terms of subsection (1) required to attend a school regularly and who is not exempted from compulsory attendance in terms of the regulations, or harbours such child, or any person who neglects or refuses to furnish information to or who hinders or obstructs a school attendance officer in the lawful execution of his duties, shall be guilty of an offence and liable on conviction to a fine not exceeding R50 or in default of payment to imprisonment for a period not exceeding one month. 30 35 40

Financial and other assistance for education and training.

38. The Minister may out of moneys appropriated by Parliament for the purpose and on such basis and such conditions as he may with the concurrence of the Minister of Finance determine grant financial or other material assistance or both financial and other material assistance to— 45

(a) a pupil who is resident in the Republic and who has been admitted to a State school, a community school, a State-aided school or a school situated in a Black state designated by the Minister for the purposes of this section; 50

(b) a student at a university or university college established by or under any law;

(c) a person who is not such a pupil or student, for education and training approved by the Minister. 55

Payment of tuition and boarding fees.

39. (1) Subject to the provisions of subsections (2) and (4), no tuition fees for the attendance of State schools, community schools and State-aided schools shall be payable.

(2) The Minister may with the concurrence of the Minister of Finance determine tuition fees payable by persons at any State school or community school offering courses in advanced technical education or courses for the education of adults. 60

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(3) Any person who has been admitted to a State school or a community school or the person who is liable for the maintenance of any person so admitted shall, if the person so admitted is provided with board by the Department, pay such boarding fees as the Minister may determine with the concurrence of the Minister of Finance. 5

(4) If the parents or the person liable for the maintenance of a pupil who has been admitted to a State school, a community school or a State-aided school, are or is not resident in the Republic, his parents or such person shall pay such tuition fees, boarding fees and fees for books and educational aids which have been provided free of charge, as the Minister may determine with the concurrence of the Minister of Finance. 10

(5) (a) Different fees may be determined in respect of different categories of persons or different courses. 15

(b) The Minister may with the concurrence of the Minister of Finance exempt, in such manner as he may deem fit, any person or any category of persons wholly or partly from the payment of such fees.

Unauthorized persons may not visit certain schools or enter the school grounds or school premises.

40. (1) No person except— 20

(a) a pupil, teacher or an employee of the school in question;

(b) the Minister, the Secretary or any officer authorized in terms of section 33;

(c) a member of the council, committee, board or other body established in terms of section 7 for the school in question who acts with the written approval of the chairman of such council, committee, board or other body; 25

(d) a parent or guardian in connection with the education of his child, or for the purpose of attending a sports meeting, concert or any other event of the school in which his child has an interest; 30

(e) a visitor from some other school for the purposes of participating in school sports or other school activities; 35 or

(f) members of the community who at the invitation of the principal attend a particular school activity,

may without the written permission of the Secretary visit a State school or a community school or any hostel attached to such school or enter the school grounds or premises of such school or hostel. 40

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R100 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment. 45

Health services in State schools, community schools and State-aided schools.

41. (1) The Secretary may in consultation with the Secretary for Health cause health services to be rendered at State schools, community schools and State-aided schools and hostels attached to such schools. 50

(2) Health services referred to in subsection (1) may include the medical, psychological and dental inspection of pupils, teachers and hostel staff, the inspection of school and hostel buildings and grounds, and the consideration of all matters pertaining to the health and physical well-being of pupils, teachers and hostel staff. 55

(3) The Minister may in consultation with the Minister of Health make regulations—

(a) for the compulsory medical, psychological and dental examination of pupils;

(b) for the compulsory medical examination of teachers and hostel staff whose state of health is reasonably suspected of being a source of danger to pupils; 60

(c) for the inspection of school and hostel buildings and the grounds of schools and hostels from a health point of view;

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- (d) for the right of access to a school or hostel in order to conduct inspections or examinations referred to in this section;
- (e) for the exclusion of any pupil, teacher or member of a hostel staff from any State school, community school or State-aided school or hostel on medical grounds or on grounds of failure to submit himself to a compulsory medical examination; 5
- (f) generally for the purposes of this section and the furtherance of its objects. 10

Delegation of duties, powers and functions by Minister and Secretary.

42. (1) The Minister may delegate, either generally or in any particular case, any duty, power or function imposed or conferred upon or assigned to him by this Act, other than the duties, powers or functions imposed or conferred upon or assigned to him by sections 3, 4, 8 (4) (b), 13 (1) (c) (in so far as it relates to the determination of salary scales and allowances), 17 (1) (in so far as it relates to the determination of salary scales and allowances), 23 (in so far as it relates to the discharge of a teacher and appeals), 30, 31, 35, 37 and 43, to the Secretary or any other officer in the Department on such conditions as the Minister may determine. 15 20
- (2) The Secretary may delegate, either generally or in any particular case, any duty, power or function imposed or conferred upon or assigned to him by this Act, other than any duty, power or function delegated to him in terms of subsection (1), to any other officer in the Department on such conditions as he may determine. 25
- (3) Any delegation in terms of this section may at any time be varied or withdrawn.

Exclusion of provisions of Workmen's Compensation Act, 1941.

43. No pupil at a State school, a community school or a State-aided school shall for the purposes of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), and in connection with his attendance at such school be regarded as a workman as contemplated in that Act or as some other person entitled to payment thereunder. 30

Regulations.

44. (1) The Minister may make regulations—
- (a) as to any matters which by this Act are required or permitted to be prescribed; 35
 - (b) determining the duties and powers of the Secretary or any other officer of the Department in connection with the control, supervision and administration of education;
 - (c) as to the establishment, maintenance, management, control and disestablishment of State schools and community schools; 40
 - (d) as to the registration of State-aided and private schools and the exemption from registration of schools and the conditions of exemption; 45
 - (e) as to the making of grants-in-aid or subsidies and loans to the owners or governing bodies of State-aided schools and the circumstances in which grants-in-aid, subsidies or loans may be terminated, reduced or withdrawn;
 - (f) relating to the control and treatment of pupils at State schools, community schools and State-aided schools, and any hostel attached to such schools, and the suspension of, or the imposition or infliction of other punishments upon, pupils at such schools; 50
 - (g) as to the medium of instruction in schools and the manner in which parents shall be consulted about this; 55
 - (h) as to the appointment of teachers for duty at State schools, community schools and State-aided schools, and as to the grading, promotion, transfer, termination of services, discipline, behaviour, duties, powers and hours of attendance of such teachers, and the occupation of teachers' quarters by such teachers, and the payment to such teachers of transport, subsistence and other allowances and remuneration, if any, for services outside the prescribed hours of attendance; 60 65

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- (i) providing for the registration by the Department of persons qualified as teachers;
- (j) as to the medical examination (which may include psychological examination) of teachers employed at State schools, community schools and State-aided schools, and the issue of certificates in connection with such examinations and the circumstances in which medical examinations are required for the purposes of this Act;
- (k) as to religious instruction and religious ceremonies at schools;
- (l) as to the mental, physical or other examination of any child who is suspected of being a handicapped or mentally retarded child;
- (m) as to compulsory school attendance and the conditions subject to which a person may be exempted from such obligation;
- (n) as to the inspection of schools and hostels;
- (o) as to the conducting of examinations, including the appointment, discipline, conduct, duties and powers of examiners, moderators, invigilators and other persons whose services are required in connection therewith, the enrolment of candidates for examinations, the conduct and discipline of candidates before, during and after examinations and the issue of diplomas and certificates;
- (p) as to the recognition of teachers' associations in terms of section 30;
- (q) as to the management, control and maintenance of any State-aided school;
- (r) as to the control and management of, the admission of pupils to, and the requirements for appointment of teachers at, State-aided nursery schools;
- (s) as to the control of moneys collected for or in relation to any State school, community school or State-aided school;
- (t) as to the conditions and circumstances under which teachers employed at State schools, community schools and State-aided schools may be required to become and remain members of a medical aid fund or medical aid society;
- (u) as to the constitution, powers, duties and functions of a governing body of a State-aided special school;
- (v) as to the establishment, maintenance and control of any hostel attached to a school, and the treatment of pupils at such a hostel;
- (w) generally, as to any other matter in respect of which the Minister may deem it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) The generality of the power conferred by paragraph (w) of subsection (1) shall not be limited by the provisions of the other paragraphs of the said subsection.

(3) The Minister shall not make any regulations as to any fee or allowance payable to or by any person or as to the control of any moneys except with the concurrence of the Minister of Finance.

(4) Different regulations may be made in respect of different schools or kinds of schools or schools in different areas.

(5) The regulations may provide for penalties for any contravention thereof or failure to comply therewith, of a fine not exceeding R500 or in default of payment imprisonment for a period not exceeding twelve months.

Repeal of laws and savings.

45. (1) Subject to the provisions of this Act the laws specified in the Schedule are hereby repealed to the extent set out in the third column, except in so far as the said laws apply in the territory of South West Africa, including the Eastern Caprivi Zipfel.

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(2) Anything done in terms of powers conferred by or by virtue of any provision of any law repealed by subsection (1), and any rights or obligations acquired or incurred in terms of any such provision, shall be deemed to have been done, acquired or incurred by the competent authority in terms of powers conferred by or in terms of the corresponding provision of this Act. 5

(3) Until the Minister makes regulations in terms of section 44, the regulations in force under any law repealed by subsection (1) (hereinafter referred to as the existing regulations) shall, notwithstanding such repeal and in so far as the existing regulations can be applied and are not inconsistent with the provisions of this Act, continue to apply: Provided that whenever the Minister makes regulations relating to any of the matters referred to in section 44, that part of the existing regulations relating to any matter dealt with in the regulations so made shall be deemed to have been 15 repealed.

Short title and commencement

46. (1) This Act shall be called the Education and Training Act, 1979, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in 20 respect of different provisions of this Act.

Schedule

LAWS REPEALED

No. and year	Short title	Extent of repeal
Act No. 47 of 1953	Black Education Act, 1953	The whole
Act No. 44 of 1954	Black Education Amendment Act, 1954	The whole
Act No. 36 of 1956	Black Education Amendment Act, 1956	The whole
Act No. 33 of 1959	Black Education Amendment Act, 1959	The whole
Act No. 55 of 1961	Black Education Amendment Act, 1961	The whole
Act No. 24 of 1964	Black Special Education Act, 1964	The whole
Act No. 44 of 1970	Black Education Amendment Act, 1970	The whole
Act No. 57 of 1975	General Law Amendment Act, 1975	Section 22
Act No. 56 of 1977	Black Education Amendment Act, 1977	The whole
Act No. 67 of 1978	Black Education Amendment Act, 1978	The whole