

No. 61, 1965.]

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.

ACT

To provide for the control of education for Indians by the Department of Indian Affairs, to amend the Special Education Act, 1948, the Vocational Education Act, 1955, and the Republic of South Africa Constitution Act, 1961, and to provide for matters incidental thereto.

*(Afrikaans text signed by the State President.)
(Assented to 17th May, 1965.)*

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) "agricultural school" means a school for the education of Indians in agriculture and allied subjects; (xvi)
 - (ii) "continuation class" means a part-time class offered by any person or institution, except a State school, and approved by the Minister; (xxxi)
 - (iii) "commercial vocational education" means education and training consisting of a course in which more than a third of the subjects are prescribed commercial subjects or in respect of which more than eight hours per week are devoted to prescribed commercial subjects; (ix)
 - (iv) "Department" means the Department of Indian Affairs; (viii)
 - (v) "domestic science vocational education" means education and training consisting of a course in respect of which more than eight hours per week are devoted to prescribed domestic subjects; (xii)
 - (vi) "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), and includes vocational education and special education not so provided; (xix)
 - (vii) "employee" means any person who is an employee as defined in section one of the Public Service Act, 1957 (Act No. 54 of 1957); (xxxii)
 - (viii) "governing body", in relation to any school, including a nursery school, or a hostel, means the person managing such school or hostel; (v)
 - (ix) "handicapped child" means an Indian between the ages of three and twenty-three years who, in the opinion of the Secretary, is capable of deriving appreciable 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—
 - (a) cannot derive sufficient benefit from the instruction normally provided in the ordinary course of education; or
 - (b) requires special education in order to facilitate his adaptation to the community; or
 - (c) should not attend an ordinary class in an ordinary school, because such attendance may be harmful to himself or to the other pupils in such class; (i)
 - (x) "high 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; (xi)

- (xi) "home" means an institution in which handicapped children are accommodated and cared for and receive education; (xxviii)
- (xii) "Indian" means a person classified in terms of the Population Registration Act, 1950 (Act No. 30 of 1950), as a member of the Indian group; (xiii)
- (xiii) "Minister" means the Minister of Indian Affairs; (xvii)
- (xiv) "nursery 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; (xiv)
- (xv) "officer" means an officer as defined in section *one* of the Public Service Act, 1957 (Act No. 54 of 1957); (ii)
- (xvi) "part-time class" means a course of education, instruction and training for Indians, but mainly Indians who are not subject to compulsory school attendance; (vii)
- (xvii) "prescribed" means prescribed by regulation; (xxx)
- (xviii) "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; (xv)
- (xix) "reform school" means a reform school established and maintained by the Minister under the provisions of the Children's Act, 1960 (Act No. 33 of 1960); (xxix)
- (xx) "regulation" means a regulation made under this Act; (xxi)
- (xxi) "school" means an institution referred to in paragraph (a) or (b) of sub-section (1) of section *three*, and includes any other institution or class for the education or training of Indians; (xxiii)
- (xxii) "school of industries" means a school of industries established and maintained by the Minister under the provisions of the Children's Act, 1960 (Act No. 33 of 1960); (xviii)
- (xxiii) "Secretary" means the Secretary for Indian Affairs; (xxii)
- (xxiv) "special education" means education 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; (vi)
- (xxv) "special school" means a school in which handicapped 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 which such children receive special education; (xxiv)
- (xxvi) "State-aided school" means a school in respect of which grants-in-aid or subsidies are paid in terms of section *four*, or in respect of which a loan was granted in terms of that section, and which the Minister has by written notice to the governing body in question declared to be a State-aided school for the purposes of this Act; (xxvi)
- (xxvii) "State school" means a school established under section *three* or deemed in terms of that section or section *five* to have been established thereunder; (xxv)
- (xxviii) "technical vocational education" means education and training (theoretical or practical or both theoretical and practical) consisting of a course that includes education and training in any prescribed trade but does not include education or training in woodwork, metal work or any other practical art or craft not being specific education or training for any prescribed trade, if the duration of the education and training in such subjects does not exceed eight hours per week, irrespective of the number of handicraft subjects taken; (xxvii)
- (xxix) "this Act" includes any regulation; (x)
- (xxx) "training-college" means an institution for the education and training of student teachers who are Indians; (xx)
- (xxxi) "vocational education" means commercial vocational education, domestic science vocational education and technical vocational education; (iv)

(xxxii) "vocational school" means a school, or a class attached to another school, for the provision of vocational education to Indians. (iii)

Control of education for Indians.

2. As from the date of commencement of this Act education for Indians shall, subject to the provisions of the said Act, be controlled by the Department in which there shall, for that purpose, be a division of Education at the head of which shall be an officer who has expert knowledge of education matters.

Establishment, erection and maintenance of schools.

3. (1) The Minister may in consultation with the Minister of Finance and out of moneys appropriated by Parliament for the purpose—

- (a) establish, erect and maintain training-colleges, high schools, primary schools, agricultural schools, vocational schools, special schools and homes;
- (b) establish and maintain part-time classes;
- (c) establish, erect and maintain hostels, teachers' quarters, school clinics and any other accessories in connection with State schools.

(2) Any school for the education of Indians which at the commencement of this Act is being maintained by a provincial administration, and any hostel, teachers' quarters, school clinic or other accessories established or erected by a provincial administration and used in connection with any such school, shall be deemed to have been established or erected under the appropriate provision of sub-section (1) of this section, on the date of such commencement.

(3) The Minister may at any time close or disestablish any State school or any hostel, teachers' quarters, school clinic or other accessories used in connection with a State school.

Award of grants-in-aid or subsidies and loans in respect of schools and hostels.

4. (1) Subject to the provisions of sub-section (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 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 sub-section (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.

Transfer of management and control of State-aided schools to the Department.

5. (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* transfer the management and control of such school to the Department with effect from a date fixed in that notice.

(2) The school to which a notice issued in terms of sub-section (1) of this section relates shall be deemed to have been established in terms of the appropriate provision of sub-section (1) of section *three* on the date fixed in that notice.

(3) As from the date so fixed the governing body in question shall no longer have any rights, powers or duties in respect of the school in question.

Registration and management of private schools.

6. (1) No person shall manage any school which is not a State school or a State-aided school—

- (a) unless such school is registered with the Department in the prescribed manner and complies with the prescribed requirements; and
- (b) otherwise than in accordance with the prescribed conditions.

(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 under any law, shall be deemed to have been registered with the Department under sub-section (1).

(3) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding six months.

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

7. The admission of persons to State 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.

Appointment, promotion, transfer and discharge of staff at State schools, schools of industries, reform schools and certain State-aided schools.

8. (1) Notwithstanding anything to the contrary contained in any other law the establishment of any State school, school of industries or reform school or any State-aided school shall be determined by the Minister, on such basis as he may fix from time to time in consultation with the Minister of Finance and on the recommendation of the Public Service Commission.

(2) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of this Act, the power to appoint any person to any post included in the establishment of any State school, school of industries or reform school, or any State-aided school other than a State-aided vocational school, and to promote, transfer or discharge any person occupying any such post, shall be vested in the Minister.

Transfer of certain persons to the service of the Department, and regulation of conditions of service of certain persons employed at private and special schools.

9. (1) Any person other than an officer or an employee who immediately prior to the commencement of this Act is employed by a provincial administration at a school referred to in sub-section (2) of section *three*, shall, as from such commencement, be transferred to the service of the Department, and any such person, and any other person, not being an employee, who immediately prior to such commencement is by virtue of any appointment by or with the approval of a provincial administration employed at any school for the education of Indians subsidized by such administration, shall be deemed to have been appointed in terms of the provisions of this Act and on the date of such commencement, to a post included in the establishment of such school.

(2) Any person other than an officer or an employee who immediately prior to the commencement of this Act occupies a post included in the establishment of a special school subsidized under the Special Education Act, 1948 (Act No. 9 of 1948), shall be deemed to have been appointed to such post in terms of the provisions of this Act and on the date of such commencement.

Transfer of persons employed at a State-aided school to the service of the Department, in the event of the transfer of such school.

10. Any person not employed by the Department who immediately prior to the date on which the management and control of a State-aided school is transferred to the Department in terms of sub-section (1) of section *five*, occupies a post included in the establishment of such school, shall, as from that date, be transferred to the service of the Department and shall, subject to the provisions of this Act, be deemed to have been appointed in terms of the provisions of the said Act to such post on that date.

Conditions of service of persons employed at State schools, schools of industries, reform schools and State-aided schools.

11. (1) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of sub-sections (2) and (3) of this section, the conditions of service, salary scales, allowances and leave privileges of persons (other than officers) 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.

(2) The salary, salary scale, allowances and leave privileges of any person who is, by virtue of the provisions of sub-section (1) of section *nine*, deemed to have been appointed to a post in terms of the provisions of this Act, shall remain the same, as if he had continued occupying the post occupied by him immediately prior to the commencement of this Act, unless or until the Minister determines that the provisions of sub-sections (1) and (3) of this section shall apply in respect of him.

(3) As from the date on which a person is in terms of the provisions of section *ten* transferred to the service of the Department, his salary shall be adjusted to the salary scale applicable to his post, at such notch on that scale as the Minister may determine.

(4) Subject to the provisions of this Act any continuous whole-time employment of any person referred to in section *ten* at any State-aided school immediately prior to the date referred to in that section, shall, for leave purposes, be deemed to be employment in the service of the Department: Provided that any sick and accumulative vacation leave to which such person is entitled on that date shall, subject to such conditions as the Minister on the recommendation of the Public Service Commission may determine, be deemed to be leave earned in terms of this Act.

Pension rights and retirement benefits of persons employed at State schools and certain State-aided schools.

12. Notwithstanding anything to the contrary contained in any other law but subject to the provisions of section *thirteen* any person (other than an officer) employed on a whole-time basis and in a permanent capacity at—

- (a) a State school; or
- (b) a State-aided school, if his salary is paid in full by the Department,

shall in respect of pension rights and retirement benefits be dealt with as if he occupied a post included in a division of the public service referred to in paragraph (a) of sub-section (1) of section *three* of the Public Service Act, 1957 (Act No. 54 of 1957).

Pension rights and retirement benefits of certain persons who are being or have been transferred to the service of the Department or are deemed to have been appointed in terms of this Act.

13. (1) Notwithstanding anything to the contrary contained in any other law but subject to the provisions of sub-sections (2), (3) and (4) of this section, the provisions of section *thirteen* of the Government Service Pensions Act, 1955 (Act No. 58 of 1955), shall *mutatis mutandis* apply in respect of any person—

- (a) who by virtue of the provisions of section *nine* is transferred to the service of the Department or is deemed to have been appointed to a post under the provisions of this Act; and
- (b) who immediately prior to the date of commencement of this Act was subject to a pension law administered by a provincial administration,

as if such person was, with effect from the said date, transferred to employment in respect of which he is liable to contribute to the fund referred to in paragraph (a) of sub-section (1) of section *two* of the Government Service Pensions Act, 1955.

(2) (a) If any person to whom the provisions of sub-section (1) apply, does not elect in terms of the provisions of sub-section (2) of section *thirteen* of the Government Service Pensions Act, 1955, to reckon his past pensionable service as pensionable service under that Act, he shall, notwithstanding anything to the contrary contained in any law, remain a member of but not a contributor to the pension or provident fund to which he contributed in respect of such past service.

(b) If for any reason such person retires or is retired or discharged from the service of the Department or from the public service, he shall be entitled to the benefit which would have been payable to him under the provisions of the law which immediately prior to the date of commencement of this Act governed such fund or any other pension or provident fund to which he previously contributed and of which he retained his membership, if on that date he had retired or had been retired or discharged from such past service for the same reason: Provided that if such person is so retired or discharged for a reason mentioned in paragraph (c), (d) or (e) of sub-section (1) of section *twenty-seven* of the Government Service Pensions Act, 1955, any such benefit shall only be payable from the date on which he attains the age at which he would have had the right to retire on pension and would have been required to be retired on pension if the provisions of section *nine* of this Act had not become applicable to him: Provided further that if he is so retired or discharged for a reason mentioned in paragraph (c) or (d) of sub-section (1) of the said section *twenty-seven*, there shall be no addition to the benefit payable to him from any such fund.

(3) If any person to whom the provisions of sub-section (1) apply, retires or is retired or discharged from the service of the Department or from the public service for any reason before he has made an election in terms of sub-section (2) of section *thirteen* of the Government Service Pensions Act, 1955, the provisions of paragraph (b) of sub-section (2) of this section shall *mutatis mutandis* apply in respect of him: Provided that if such person so retires and he was not, for reasons which the Secretary for Social Welfare and Pensions considers good and sufficient, called upon, prior to his retirement, to make an election in terms of sub-section (2) of the said section *thirteen*, the said Secretary may, notwithstanding anything to the contrary contained in any law, permit such person to make such election on or after the date of his retirement but before any pension benefit has been paid to him, and any election so made shall be deemed to have been made in terms of the last-mentioned sub-section before the retirement of such person.

(4) If any person to whom the provisions of sub-section (1) of this section apply, dies before he has made an election in terms of sub-section (2) of section *thirteen* of the Government Service Pensions Act, 1955, or if any person to whom the provisions of sub-section (2) of this section apply, dies before his retirement or discharge from the service of the Department or from the public service, there shall be paid from the relevant pension or provident fund referred to in paragraph (b) of sub-section (2) of this section, the benefit which would have been payable under the law governing such fund if he had died on the day immediately preceding the date of commencement of this Act.

(5) The provisions of this Act shall, subject to the provisions of sub-section (1), not affect the rights and benefits acquired or the obligations incurred by any person referred to in sub-section (2) of section *nine* for pension or retirement purposes under or by virtue of any law which applied in respect of him immediately prior to the date of commencement of this Act.

(6) The provisions of this Act shall not affect the rights and obligations of the Department in respect of the pension rights and retirement benefits of any person referred to in sub-section (2) of section *nine*.

Transfer and secondment of certain persons employed at State schools, schools of industries, reform schools and certain State-aided schools.

14. (1) Any person (other than an officer) 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 sub-section (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.

(2) If a transfer in terms of sub-section (1) involves a reduction of the pensionable emoluments of the person in question for the purposes of any law, such transfer shall not be made without his consent, unless it is made in consequence of a reduction of rank under section *seventeen* or *eighteen*.

(3) Any person referred to in sub-section (1) may, subject to the provisions of sub-section (4) and upon such conditions as the Minister in consultation with the Minister of Finance may determine, be seconded by the Minister—

(a) upon the recommendation of the Public Service Commission, to the service of the State or the administration of the territory of South-West Africa or the service of the State in any other capacity; or

(b) with his own consent, to the service of the government of any other country or of any person.

(4) If any person is so seconded such secondment shall not affect the application in respect of him of any law which would have applied in respect of him if he had continued occupying his post at the school in question.

Discharge of persons employed at State schools, schools of industries, reform schools and certain State-aided schools.

15. (1) Any person (other than an officer) occupying on a whole-time basis 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 be discharged by the Minister—

(a) on account of attaining the pensionable age as fixed by or in terms of any law which applies in respect of him, if he is not a person to whom sub-section (1) of section *thirteen* applies;

(b) on account of continued ill-health;

(c) on account of the abolition of his post or a reduction, reorganization or rearrangement of the staff of the school in question;

(d) subject to the provisions of section *eighteen*, on account of unfitness for his duties or incapacity to perform them efficiently;

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

(f) subject to the provisions of section *seventeen*, on account of misconduct as defined in section *sixteen*;

(g) in the case of a female, if she marries.

(2) Any person referred to in sub-section (1) who without the permission of the Secretary or the head or the governing body of the school in question—

(a) is absent from duty for a period exceeding one month; or

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

shall, subject to the provisions of sub-section (3), be deemed to have been discharged on account of misconduct in terms of sub-section (1), in the case contemplated in paragraph (a), with effect from the date immediately succeeding the last day on which he was on duty and, in the case contemplated in paragraph (b), with effect from the date on which he accepted such employment.

(3) If any person referred to in paragraph (a) of sub-section (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 person in his former post or appoint him to any other post referred to in sub-section (1), and in that 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.

Definition of
misconduct.

16. Any person referred to in sub-section (1) of section *fifteen* shall be guilty of misconduct and be subject to the provisions of section *seventeen* if—

- (a) he contravenes or fails to comply with any provision of this Act with which he is obliged to comply;
- (b) he does or causes or permits to be done or connives at anything which is prejudicial to the administration, discipline or efficiency of any department, office or institution of the State or a State-aided school;
- (c) he disobeys, disregards or makes wilful default in carrying out a lawful order given to him by a person having authority to give it, or by word or conduct displays insubordination;
- (d) he is negligent or indolent in the discharge of his duties;
- (e) he undertakes, without the permission of the Minister, any private agency or private work in connection with any matter connected with the performance of his functions or the carrying out of his duties;
- (f) he publicly, otherwise than at a meeting convened by an association or organization recognized by the Minister as representative of persons contemplated in sub-section (1) of section *fifteen*, criticizes the administration of any department, office or institution of the State;
- (g) he is a member of any party-political organization or of any organization which the Minister may by notice in the *Gazette* declare to be an organization of which a person contemplated in sub-section (1) of section *fifteen* may not be a member, or takes an active part in party-political matters, or takes part in any activity or furthers the objects of any organization to which any such notice relates, or encourages disobedience to or resistance against the laws of the State;
- (h) he attempts to secure intervention, through any person who is 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;
- (i) he conducts himself in a disgraceful, improper or unbecoming manner or, whilst on duty, is grossly discourteous to any person;
- (j) he uses intoxicants or stupefying drugs excessively;
- (k) he becomes insolvent or compromises with his creditors or if a decree of civil imprisonment is made against him by any court of law, unless it is shown that his insolvency or the composition or the making of such decree against him has been occasioned by unavoidable misfortune;
- (l) he becomes pecuniarily embarrassed, unless it is shown that his pecuniary embarrassment is not due to any imprudent or other reprehensible act or omission on his part and is not prejudicial to the faithful performance of his duties;
- (m) he, without first having obtained the permission of the Secretary, discloses, otherwise than in the discharge of his duties, information gathered or obtained by him through his employment in the Department or at a State-aided school, or uses such information for any purpose other than the discharge of his duties, whether or not he discloses such information;

- (n) any person corruptly offers him any gift or consideration in respect of or for the discharge or neglect of his duties, and he fails to report it as soon as possible to the Secretary;
- (o) he misappropriates or improperly uses any property of the State, and such misappropriation or use does not constitute an offence;
- (p) he commits a criminal offence;
- (q) he absents himself from duty without leave or valid reason;
- (r) he, with a view to obtaining any privilege or advantage in relation to his position or duties in the employment of the Department or any State-aided school, or to causing prejudice or injury to the State or such a school or any person in the employment of the Department or such a school, makes a false or incorrect statement, knowing it to be false or incorrect.

Procedure
in case of
misconduct.

17. (1) If any person referred to in sub-section (1) of section *fifteen* is accused of misconduct as defined in section *sixteen*, the Secretary may charge him in writing under his hand with that misconduct.

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

(3) The charge shall contain or shall be accompanied by a direction calling upon the person charged to transmit or deliver, 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 may suspend from duty any person accused of misconduct, as defined in section *sixteen*, whether or not such person has been charged with misconduct.

(5) The Minister or any person who, under any power conferred upon him in terms of section *thirty-two*, has suspended any person in terms of sub-section (4), may at any time cancel the suspension, but the cancellation of the suspension shall not affect any proceedings in connection with the accusation of misconduct.

(6) A person who has been suspended from duty in terms of sub-section (4), shall not be entitled to any emoluments in respect 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 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 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 sub-section (3), the Secretary shall appoint a person to enquire into the charge.

(c) The Secretary may appoint one or more persons to sit in an advisory capacity as assessor or assessors with the person who is to hold the enquiry.

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

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

(10) The Secretary may authorize any person to be present at the enquiry 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 enquiry the person charged may be present, shall have the right to be heard, to cross-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 enquiry, either personally or by a representative, shall not invalidate the proceedings.
- (c) The person holding the enquiry shall keep a record of the proceedings at the enquiry and of the evidence given thereat.
- (12) If the misconduct with which any person is charged, is 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 facie* evidence of the commission by him of that offence.
- (13) The person holding the enquiry shall after the conclusion thereof decide whether the person charged is guilty or not guilty of the misconduct with which he is charged and inform him and the Secretary of his decision.
- (14) If the person holding the enquiry finds that the person charged is not guilty of the misconduct with which he was charged, and the person charged was suspended from duty in terms of sub-section (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.
- (15) If the person holding the enquiry finds that the person charged is guilty of the misconduct with which he is charged, the person charged may within fourteen days after the date on which he was informed of the finding, appeal therefrom to the Minister by delivering or posting to the person who held the enquiry a written notice of appeal in which are set forth fully the grounds on which the appeal is based.
- (16) If the person holding the enquiry finds that the person charged is guilty of the misconduct with which he is charged, he shall—
- (a) after expiry of the period referred to in sub-section (15), forward to the Secretary—
- (i) the record of the proceedings at the enquiry;
 - (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 sub-section (15), the notice of appeal; and
- (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 enquiry and of the documentary evidence admitted thereat, within seven 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.
- (18) The appellant may, if he has made an application in terms of sub-section (17), within fourteen days after the date upon which he was furnished with the copy in question, or, if he did not make such an application, within twenty-one 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 prescribed period, after the expiry of such period, submit to the Minister the record of the proceedings at the enquiry, the other documents in his possession which relate to the enquiry or appeal, and his recommendation concerning the appeal.
- (19) After consideration of the record and other documents in question 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 enquiry to the person who held the enquiry and direct him to report thereon or to hold a further enquiry and to arrive at a finding thereon.
- (20) If the Minister has directed that a further enquiry be held, the provisions of sub-sections (9), (10) and (11) shall apply in respect thereof.

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

(22) If the Minister allows the appeal and the appellant was suspended from duty in terms of sub-section (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.

(23) If the person charged has admitted the charge of misconduct as is contemplated in sub-section (3), or if he has been found guilty of misconduct in terms of sub-section (13) and has not appealed therefrom within the period prescribed, or has appealed therefrom and the appeal has been dismissed wholly or in part in terms of this section, the Secretary shall, subject to the provisions of sub-section (24), recommend to the Minister that—

- (a) the person charged be cautioned or reprimanded;
- (b) a fine, not exceeding two hundred rand, be imposed upon the person charged;
- (c) the person charged be transferred to another post;
- (d) the emoluments or grade or both the emoluments and grade of the person charged be reduced; or
- (e) the person charged be discharged from the service of his employer or be called upon to resign therefrom.

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

(b) The Secretary may postpone for a period not exceeding twelve months the making of a recommendation under sub-section (23).

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

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

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

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

(26) If any person has been suspended from duty in terms of sub-section (4) and the Minister deals with him in a manner contemplated in paragraph (a), (b), (c) or (d) of sub-section (23), or the Secretary deals with him in accordance with paragraph (b) of sub-section (24), 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 grade of such person is reduced as is contemplated in paragraph (d) of sub-section (23), his emoluments in respect of the period of his suspension shall be calculated on the basis of the reduced emoluments or grade, 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 sub-section (6), he shall not be obliged to refund the excess.

(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 prior to 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.

(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.

(29) (a) If any person referred to in sub-section (1) of section *fifteen* who is deemed to have been appointed

to his post in terms of the provisions of this Act, committed, prior to the commencement of this Act, any misconduct in contravention of the provisions of any law which applied prior to such commencement in respect of him, proceedings on account of such misconduct may, in terms of this section, be instituted or continued against him and he may be dealt with thereunder.

- (b) If any penalty on account of misconduct was prior to the commencement of this Act imposed upon any person referred to in paragraph (a), and such penalty is still in force at such commencement, it shall remain in force unless the Minister otherwise directs.

Action in the case of persons employed at State schools, schools of industries, reform schools and certain State-aided schools, who are inefficient.

18. (1) If it is alleged that any person referred to in sub-section (1) of section *fifteen* is unfit for, or is incapable of performing efficiently, the duties attached to his post from 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 enquire into the allegation: Provided that the Secretary shall not so appoint any person unless, if the allegation is made by a person who is not an officer or who is not in the service of the Department, such allegation is contained in an affidavit or solemn declaration.

(2) The Secretary may appoint one or more persons to sit in an advisory capacity as assessor or assessors with the person who is to hold the enquiry.

(3) The provisions of sub-sections (9), (10), (11), (13), (15) to (21), inclusive, and (23), paragraphs (a) and (c) of sub-section (25) and paragraph (a) of sub-section (29) of section *seventeen* shall *mutatis mutandis* apply in respect of any enquiry referred to in sub-section (1) and the person in respect of whom the allegation was made: Provided that in the application of the said sub-section (23) the Secretary shall only have the power to recommend that the person in question be discharged from the service of his employer or that his grade be reduced and his emoluments be reduced to the maximum for the reduced grade.

Powers of persons employed at State schools, schools of industries, reform schools and certain State-aided schools in respect of acceptance of other employment or remuneration.

19. (1) Any person referred to in sub-section (1) of section *fifteen*—

- (a) shall, as far as is practicable, place the whole of his time at the disposal of the school at which he is employed;
- (b) shall not, without the permission of the Secretary, perform or bind himself to perform other remunerative work; and
- (c) shall not be entitled to additional remuneration in respect of any duty or work performed by him by order of a competent authority,

unless his conditions of service provide otherwise or, in the case contemplated in paragraph (c), the Secretary determines otherwise.

(2) If any person referred to in sub-section (1) receives any remuneration or allowance otherwise than in terms or by virtue of the provisions of this Act or any other law, he shall pay it into the Consolidated 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.

Classification of certain posts at State schools, schools of industries and reform 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, 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 *one* of the said Act, and in respect of which the provisions of the said Act shall apply.

Courses for the education or training of persons in State schools, schools of industries, reform schools and State-aided schools, and conducting of examinations.

21. (1) The Minister may institute courses for the education or training of persons in State schools, schools of industries, reform schools and State-aided schools, and abolish any course so instituted.

(2) The Minister shall determine the nature and length of, and the conditions for admission to, any course instituted in terms of sub-section (1).

(3) The Minister may cause examinations to be conducted in respect of any course instituted in terms of sub-section (1), and may cause diplomas or certificates to be issued to persons who have passed such examinations.

(4) Until the Minister otherwise determines the Department of Education, Arts and Science 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 administrations.

Inspection of schools and hostels, and enquiries in connection with matters relating to schools or hostels.

22. (1) The Secretary may inspect any school or hostel, or enquire into any matter relating to any school or hostel, and may require the head of or any other person employed at any school to furnish him with such information at the disposal of such head or person as, in his opinion, may be necessary for the exercise of his powers and the performance of his functions and duties in terms of this Act.

(2) Any person who inspects any school or hostel or holds an enquiry in terms of sub-section (1) may—

(a) if he has reason to believe that any person is able to give evidence or to produce any document or other article which will be relevant to any inspection or enquiry in terms of sub-section (1), summon such person by a subpoena under his hand, to appear before him at a time and place specified in the subpoena, to be interrogated or to produce that document or other article; and

(b) call as a witness and administer an oath or affirmation to any person present at such inspection or enquiry who was or might have been summoned in terms of paragraph (a), interrogate such person and require him to produce any document or other article in his possession or custody or under his control which the person holding the enquiry has reason to believe may be relevant to the inspection or enquiry.

(3) The law relating to witnesses and evidence which applies in connection with criminal cases in a magistrate's court shall *mutatis mutandis* apply in respect of any person summoned or called as a witness in terms of sub-section (2).

(4) Any person who prevents any other person from appearing in accordance with a subpoena issued in terms of paragraph (a) of sub-section (2) at the time and place in question, or from producing any document or other article as required in terms of paragraph (b) of the said sub-section, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand.

Compulsory school attendance.

23. (1) If the Minister is satisfied that sufficient and suitable school accommodation is available he may by notice in the *Gazette* declare that regular attendance at such kind of State school or State-aided school as may be specified in such notice, shall be compulsory for every Indian belonging to an age group and resident in an area so specified.

(2) If a parent or the guardian or the person having the custody or charge of any person who by virtue of the provisions of sub-section (1) is required to attend a school regularly, after a period of six months from the date of the relevant notice referred to in that sub-section 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, if it is the first time that he is convicted of such an offence, to a fine not exceeding ten rand or to imprisonment for a period not exceeding one month and, if it is the second or a subsequent time that he is so convicted, to a fine not exceeding forty rand or to imprisonment for a period not exceeding two months.

(3) The compulsory education provided for in sub-sections (1) and (2) shall be free.

Financial and other assistance to pupils at certain schools.

24. The Minister may out of moneys appropriated by Parliament for the purpose and on such basis and subject to such conditions as he may in consultation with the Minister of Finance determine, grant financial or other material assistance or both financial and other material assistance to a pupil at a State school or a State-aided school.

Payment of school and boarding fees.

25. (1) Any person admitted to a State school or the person liable for the maintenance of any such person, shall pay such school fees (if any) and, if such person is being provided with board by the Department, such boarding fees as the Minister may in consultation with the Minister of Finance determine or prescribe.

(2) Different fees may in terms of sub-section (1) be determined or prescribed in respect of different classes of persons, and the Minister may after such consultation exempt in such manner as he may deem fit any person or any class of persons wholly or partly from the payment of fees so determined or prescribed.

Exercise of rights acquired and fulfilment of obligations incurred by a provincial administration in connection with education for Indians.

26. (1) As from the commencement of this Act—

- (a) the control of all property which is being used immediately prior to or was acquired prior to such commencement by a provincial administration exclusively for the purposes of or in connection with education for Indians and which is the property of the State, and all obligations of such provincial administration in respect thereof, shall pass to the Department;
- (b) all the other obligations lawfully incurred by a provincial administration for the purposes of or in connection with education for Indians and existing immediately prior to the said commencement (excluding any obligation to pay a bonus or an allowance to a retired teacher or retired employee who was in the service of such provincial administration in connection with education for Indians or to a dependant or any person receiving a pension in respect of such service of such teacher or employee, in supplementation of any pension payable to any such person) shall pass to the Department;
- (c) all rights which a provincial administration has against any person immediately prior to the said commencement and which were acquired for the purposes of or in connection with education for Indians, shall vest in the Department:

Provided that the provisions of this section shall not apply to any asset acquired or liability incurred in connection with any pension, retirement or provident fund administered by a provincial administration.

(2) The Secretary may, in consultation with the Treasury, compensate a provincial administration for any property or rights referred to in paragraphs (a) and (c) of sub-section (1).

Passing of certain property and obligations to State on transfer of State-aided school to Department.

27. (1) As from the date on which the management and control of a State-aided school is, in terms of section five, transferred to the Department, all the property which immediately prior to that date was vested in the governing body of that school and used or intended to be used exclusively for the purposes of such school, shall vest in the State, and after the said date all the property which would have accrued to such governing body for such purposes if this Act had not been passed, shall vest in the State.

(2) If any property which by trust, donation or bequest was vested in or would have accrued to any governing body, vests in the State in terms of sub-section (1), the Secretary shall deal with such property in accordance with the conditions of such trust, donation or bequest.

(3) As from the date referred to in sub-section (1) the rights and liabilities acquired or incurred by the governing body in question for the purposes of or in connection with the school in question, shall pass to the State.

(4) No transfer duty, stamp duty or registration fees shall be payable in respect of the acquisition of any property or rights by the State in terms of this section.

Expropriation of land.

28. If a provincial administration prior to the commencement of this Act commenced the taking of steps to expropriate any land for the purposes of education for Indians, such steps may be continued by such administration as if this Act had not been passed, and the provisions of paragraph (a) of sub-section (1) and sub-section (2) of section twenty-six shall *mutatis mutandis* apply in respect of any land so expropriated.

Exclusion of provisions of Act 30 of 1941.

29. No pupil at a State school, school of industries, reform school or a State-aided school shall for the purposes of the Workmen's Compensation Act, 1941, and in connection with his attendance at such school be regarded as a workman under the said Act or some other person entitled to payment thereunder.

Recognition of teachers' associations.

30. The Minister may for purposes of consultation recognize associations of Indian teachers.

Establishment of education advisory council for Indians, and committees or bodies for schools.

31. (1) The Minister may establish an education advisory council for Indians in the manner prescribed by regulation.

(2) The Minister may in the manner prescribed by regulation establish a committee or other body for a State school or a State-aided school.

(3) The constitution, powers, duties and functions, and the period of office of and allowances payable to members, of the council and a committee or body established in terms of sub-section (1) or (2), shall be as prescribed.

Assignment of powers and duties by Minister and Secretary.

32. (1) The Minister may assign, either generally or in any particular case, any power or duty conferred or imposed upon him by this Act, other than the powers conferred upon him by sections *twenty-three* and *thirty-three*, to the Secretary or any other officer in the Department.

(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.

Regulations.

33. (1) Subject to the provisions of sub-section (3) the Minister may make regulations—

- (a) as to teachers' associations for the purpose of recognition in terms of section *thirty*;
- (b) as to the establishment, erection, maintenance, management and control of State schools and hostels, teachers' quarters, school clinics and any other accessories in connection with such schools;
- (c) as to the award of grants-in-aid or subsidies and loans to governing bodies of State-aided schools, including nursery schools, and hostels;
- (d) as to the registration and management of private schools referred to in section *six*, and the requirements to be complied with by such schools;
- (e) as to the admission of persons to, the control of pupils at and their discharge from State schools and State-aided schools, and the suspension of or the imposition or infliction of other punishments upon pupils at such schools;
- (f) subject to the provisions of sub-section (6), as to the medium of instruction and religious instruction in State schools, schools of industries, reform schools or State-aided schools;
- (g) as to the appointment of persons for duty at State schools, schools of industries and reform schools and State-aided schools, and the grading, remuneration, promotion, transfer, discharge, discipline, behaviour, powers, duties, hours of attendance, leave privileges and other conditions of service of, and the occupation of teachers' quarters by, and the payment of travelling, subsistence and other allowances and remuneration for services outside the prescribed hours of attendance to such persons and persons deemed to be appointed in terms of this Act;
- (h) providing for the registration of Indians qualified as teachers;
- (i) as to the medical examination of teachers employed at, and of pupils at State schools, schools of industries, reform schools and State-aided schools, and the issue of certificates in connection with such examinations;
- (j) as to the mental, bodily or other examination of any person who is suspected of being a handicapped child and is in terms of section *twenty-three* required to attend a school regularly;
- (k) as to the school which any person is to attend for the purposes of section *twenty-three*, and exemption from the obligation so to attend a school;
- (l) as to the courses of education and training in State schools, schools of industries, reform schools and State-aided schools;
- (m) as to the inspection of State schools, schools of industries, reform schools and State-aided schools, of

hostels, quarters, clinics and other accessories used in connection with such schools, and of pupils at such schools;

- (n) as to the conducting of examinations in respect of and the granting of diplomas and certificates to persons who attended a course of education or training at a State school, school of industries, reform school or State-aided school;
- (o) as to the fees (if any) payable in respect of board provided by the Department and the attendance at schools or courses referred to in paragraph (l), and in respect of examinations, diplomas and certificates referred to in paragraph (n), and as to the exemption from the payment of such fees;
- (p) as to the granting of financial or other material assistance to pupils at State schools or State-aided schools;
- (q) as to the control of moneys collected for any State school or any State-aided school;
- (r) generally, as to any other matter in respect of which the Minister may deem it necessary or expedient to make regulations to achieve the objects of this Act.

(2) The generality of the power conferred by paragraph (r) of sub-section (1) shall not be limited by the provisions of the other paragraphs of the said sub-section.

(3) Regulations as to any fees or allowances payable by or to any person or the control of any moneys, may only be made in consultation with the Minister of Finance.

(4) Different regulations may in terms of sub-section (1) be made in respect of different schools or different kinds of schools.

(5) Regulations made in terms of sub-section (1) may prescribe in respect of any contravention thereof or failure to comply therewith, a penalty of a fine not exceeding twenty rand or imprisonment for a period not exceeding one month.

(6) Regulations under paragraph (f) of sub-section (1) shall not deprive any parent of the right of final decision regarding the medium of instruction of a child of such parent where any doubt exists as to the official language in which such child is more proficient.

Substitution of section 1bis of Act 9 of 1948, as inserted by section 35 of Act 47 of 1963 and amended by section 25 of Act 24 of 1964.

34. (1) The following section is hereby substituted for section *one bis* of the Special Education Act, 1948:

"Applica-
tion of Act. 1bis. The provisions of this Act shall not apply in respect of any handicapped child as defined in section *one* of the Coloured Persons Education Act, 1963 (Act No. 47 of 1963), or section *one* of the Bantu Special Education Act, 1964 (Act No. 24 of 1964), or section *one* of the Indians Education Act, 1965."

(2) Any regulation made under the Special Education Act, 1948, which immediately prior to the commencement of this Act applies in respect of any special school for Indians shall, in so far as it is not in conflict with the provisions of this Act, continue so to apply until a date fixed by the Minister by notice in the *Gazette*.

Substitution of section 1bis of Act 70 of 1955, as inserted by section 36 of Act 47 of 1963 and amended by section 26 of Act 24 of 1964.

35. The following section is hereby substituted for section *one bis* of the Vocational Education Act, 1955:

"Applica-
tion of Act. 1bis. The provisions of this Act shall not apply in respect of any school for vocational education, part-time class or continuation class established and maintained exclusively for the education of Coloured persons as defined in section *one* of the Coloured Persons Education Act, 1963 (Act No. 47 of 1963), or of Bantu persons as defined in section *one* of the Bantu Special Education Act, 1964 (Act No. 24 of 1964), or of Indians as defined in section *one* of the Indians Education Act, 1965."

Amendment of section 84 of Act 32 of 1961, as amended by section 37 of Act 47 of 1963.

36. (1) Section *eighty-four* of the Republic of South Africa Constitution Act, 1961, is hereby amended by the substitution for paragraph (c) of sub-section (1) of the following paragraph:

“(c) education, other than higher education, education for Coloured persons as defined in section *one* of the Coloured Persons Education Act, 1963 (Act No. 47 of 1963), education for Indians as defined in section *one* of the Indians Education Act, 1965, and Bantu Education, until Parliament otherwise provides;”.

(2) Notwithstanding the provisions of sub-section (1) a provincial council shall continue to be as competent to make ordinances for the proper administration of any pension or provident fund referred to in sub-section (2) of section *thirteen* as it would have been if this Act had not been passed.

Short title and commencement.

37. (1) This Act shall be called the Indians Education Act, 1965, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provinces or different kinds of schools in the Republic or different provinces.

(3) If a date is so fixed in respect of a particular kind of school only—

(a) any reference in this Act and in paragraph (c) of sub-section (1) of section *eighty-four* of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), to education for Indians shall, in respect of any province in question, be construed as a reference to such education provided in such schools; and

(b) any reference in this Act to schools in general shall, in respect of any province in question, be construed as a reference to such schools.
