



EDUCATION BILL 2023

(NO. 7 OF 2023)



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A

BILL

Entitled

AN ACT TO PROVIDE FOR THE ADMINISTRATION AND REGULATION OF EARLY CHILDHOOD, PRIMARY AND SECONDARY EDUCATION, INCLUDING BY PROVIDING FOR REGISTRATION OF TEACHERS, EDUCATION PROVIDERS, SCHOOLS AND EARLY CHILDHOOD EDUCATION CENTRES; TO REPEAL THE *EDUCATION ACT* (CAP. 69); AND FOR RELATED PURPOSES.

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

EDUCATION BILL 2023

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EDUCATION BILL 2023

PART 1 PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Education Act 2023*.

2 Commencement

This Act commences on the day appointed by the Minister by notice in the *Gazette*.

3 Interpretation

(1) In this Act, unless the context requires otherwise:

“Administrative Instructions” means Administrative Instructions issued by the Permanent Secretary under section 22;

“approved learning framework” means a learning framework approved by the Minister under section 63;

“approved scheme of secondary education certificates” means the scheme of secondary education certificates approved by the Minister under section 64;

“authorised officer” means a person appointed as an authorised officer under section 107;

“caregiver of a child” means a person with whom the child resides and who takes primary responsibility for meeting the daily care needs of the child (whether or not the person is related to the child);

“child” means a person under the age of 18 years;

“compliance notice” means a compliance notice issued by the Permanent Secretary under section 115;

“compulsory school age” of a child is from 6 years old, or otherwise as stipulated by regulations pursuant to section 61;

“early childhood education” or **“ece”** means education before primary education (but does not include education at that level that takes place other than at an ece centre);

“ece centre”:

- (a) means premises established to provide early childhood education (which premises may be part of premises established to provide childcare, primary education, secondary education or other services); and
- (b) includes premises prescribed by the Regulations to be an ece centre;

“ece centre community” means the following:

- (a) the students, teachers and leaders of the ece centre;
- (b) the parents of students of the ece centre;
- (c) other persons who have a legitimate interest in, or connection with, the ece centre;

“Education Funding Code” means the code issued by the Minister under section 9(1);

“education provider” means a person or body referred to in section 25(2) who or which provides education at a school or ece centre;

“fit and proper person” means:

- (a) a person who is a fit and proper person to be registered as a teacher; or
- (b) a person who is a fit and proper person to be registered as an education provider;

“Government school or ece centre” means a school or ece centre at which education is provided by the Government;

“Honiara City Council” means the council established by section 4 of the *Honiara City Act 1999*;

“leader” means a person holding or acting in a leadership position;

"leadership position" means:

- (a) the position of principal or supervisor; or
- (b) another position classified as a leadership position under section 71(1)(b);

"misconduct" means:

- (a) improperly obtaining registration as a teacher; or
- (b) making a false statement in connection with an application for appointment as a teacher or leader or an increase in salary as a teacher or leader; or
- (c) misappropriating public funds while in employment as a teacher or leader; or
- (d) being convicted of an offence against a child; or
- (e) being convicted, while in employment as a teacher or leader, of an offence punishable by imprisonment; or
- (f) contravening:
 - (i) this Act, the Regulations, the Administrative Instructions or the repealed provisions; or
 - (ii) conditions of registration as a teacher under this Act or the repealed provisions; or
- (g) other misconduct while in employment as a teacher or leader;

"non-government school or ece centre" means a school or ece centre at which education is provided other than by the Government or a Provincial Executive;

"parent of a child" means:

- (a) the biological mother or the adoptive mother of the child under an adoption order made under the *Adoption Act 2004*; or
- (b) the biological father or the adoptive father of the child under an adoption order made under the *Adoption Act 2004*; or

- (c) a person who has been appointed to be the guardian of the child by a court order; or
- (d) a person to whom custody of the child has been granted by agreement approved by a court or by a court order; or
- (e) a person to whom custody of the child has been given in custom; or
- (f) a caregiver of the child who stands in place of the child's mother or father;

"Permanent Secretary" means the Permanent Secretary of the Ministry that is, under the Minister, responsible for the administration of this Act;

"person" means an individual or a body corporate;

Note to definition of "person":

In this Act, person does not have the meaning given to it in section 16(1) of the Interpretation and General Provisions Act (Cap. 85).

A body corporate includes trustees incorporated under the Charitable Trusts Act (Cap. 55).

"primary education" means education after early childhood education and before secondary education at year levels prescribed by the Regulations as primary education;

"principal" means the person holding or acting in the position of principal of a school;

"province" means:

- (a) a province established by section 3 of the *Provincial Government Act 1997*; or
- (b) Honiara City;

"Provincial Education Board" means a board established for a province under section 16;

"Provincial Education Minister" means:

- (a) for a province established by section 3 of the *Provincial Government Act 1997*, the Provincial Minister appointed under that Act who has responsibility for early childhood, primary and secondary education in the province or, if there is no such Minister, the Provincial Executive of the province; or
- (b) for Honiara City, Honiara City Council or, if a member of the Council has responsibility for early childhood, primary and secondary education in Honiara City, that member;

“Provincial Executive” means:

- (a) for a province established by section 3 of the *Provincial Government Act 1997*, the Provincial Executive established under section 19 of that Act for the province; or
- (b) for Honiara City, Honiara City Council;

“provincial school or ece centre” means a school or ece centre at which education is provided by a Provincial Executive;

“Provincial Secretary” means:

- (a) for a province established by section 3 of the *Provincial Government Act 1997*, the person holding or acting in the public office of Provincial Secretary for the province; or
- (b) for Honiara City, Honiara City Council;

“registered” means:

- (a) of a person:
 - (i) registered under Part 4 as a teacher; or
 - (ii) registered under Part 5 as an education provider; and
- (b) of premises, registered under Part 6 as a school or ece centre;

“register of education providers” means the register kept under section 51;

“register of schools and ece centres” means the register kept under section 59;

“register of teachers” means the register kept under section 43;

“Regulations” means Regulations made by the Minister under section 122;

“repealed provisions” means the *Education Act* (Cap. 69), and subsidiary legislation under that Act, as in force immediately before the repeal of that Act under section 123;

“school”:

- (a) means premises established to provide primary or secondary education (whether or not it is established to provide all or only some of the primary and secondary year levels and whether or not it is also established to provide early childhood education or other services); and
- (b) includes premises prescribed by the Regulations to be a school;

“school board” means the board established for a school under section 27;

“school community” means the following:

- (a) the students, teachers and leaders of the school;
- (b) the parents of students of the school;
- (c) other persons who have a legitimate interest in, or connection with, the school;

“secondary education” means education after primary education at year levels prescribed by the Regulations as secondary education;

“serious offence” means any of the following, whether an offence under the law of Solomon Islands or elsewhere:

- (a) a sexual offence;
- (b) an offence involving violence;
- (c) an offence involving dishonesty;
- (d) an offence involving child pornography;

- (e) an offence for which the maximum penalty if committed in Solomon Islands would be imprisonment for 12 months or more;

“Solomon Islands Education Board” means the board established under section 11;

“student” means a person enrolled, or attending, at a school or ece centre as a student;

“supervisor” means a person holding or acting in the position of supervisor of an ece centre;

“teacher”:

- (a) means an individual who teaches early childhood, primary or secondary education; and
- (b) includes an individual holding or acting in a teaching position;

“teaching position” means a position classified as a teaching position under section 71(1)(b);

“variation of registration” means:

- (a) for registration as an education provider:
 - (i) variation of a detail specified in the register of education providers affecting a condition of the registration; or
 - (ii) imposition of a condition of the registration other than on registration; or
 - (iii) variation or revocation of a condition of the registration imposed by the Permanent Secretary; or
- (b) for registration of a school or ece centre:
 - (i) variation of a detail specified in the register of schools and ece centres affecting a condition of the registration; or
 - (ii) imposition of a condition of the registration other than on registration;

- (iii) variation or revocation of a condition of the registration imposed by the Permanent Secretary.

Note to section 3(1):

In this Act, the expressions "Permanent Secretary", "Minister" and "the Government" have the meanings given in section 16 of the Interpretation and General Provisions Act (Cap. 85).

- (2) A note to a provision of this Act:
 - (a) is set out at the foot of the provision to which it relates; and
 - (b) is explanatory in nature; and
 - (c) does not form part of this Act.

4 Act to bind Crown

This Act binds the Crown.

PART 2 OBJECTS, RESPONSIBILITIES AND PRINCIPLES

5 Objects of Act

The objects of this Act are:

- (a) to promote the fundamental right of children to receive early childhood, primary and secondary education; and
- (b) to promote early childhood, primary and secondary education designed to assist children to develop as individuals and to gain relevant knowledge, skills, values and attributes;

6 Shared responsibilities

- (1) The responsibility for early childhood, primary and secondary education is shared by the following:
 - (a) the Government;
 - (b) the Teaching Service Commission;
 - (c) the Solomon Islands Education Board;

- (d) Provincial Executives;
 - (e) Provincial Education Boards;
 - (f) education providers;
 - (g) school boards;
 - (h) teachers and leaders;
 - (i) families and communities.
- (2) The Government must use its best endeavours, within its available resources, to provide funding towards ensuring that all children receive early childhood, primary and secondary education.
- (3) It is acknowledged that:
- (a) other sources of funding for early childhood, primary and secondary education are vital, including funding provided by Provincial Executives, churches, faiths, other non-government organisations and communities; and
 - (b) subject to any change in Government policy, those other sources of funding are the primary sources of funding for early childhood education.
- (4) With limited resources, planning, cooperation and coordination amongst those who share responsibility for early childhood, primary and secondary education is paramount to achieving the objects of this Act.
- (5) In particular:
- (a) the Solomon Islands Education Board is to exercise oversight over national policies relating to early childhood, primary and secondary education and provide advice to the Minister and Permanent Secretary; and
 - (b) the Provincial Education Boards are to exercise oversight over early childhood, primary and secondary education in their respective provinces and assist in the planning and coordination of education; and

- (c) the Minister and the Provincial Education Ministers are to work together to coordinate matters of policy and funding for early childhood, primary and secondary education; and
- (d) the Permanent Secretary and the Provincial Secretaries are to work together to coordinate the practical implementation of this Act and, if appropriate and practicable, the Permanent Secretary is to assign a public officer to each province to facilitate the coordination of education; and
- (e) education providers, school boards and leaders are to cooperate in the administration of this Act and are, in particular, to provide accurate information for the planning and coordination of education.

7 Guiding principles

- (1) To achieve the objects of this Act, those who share responsibility for early childhood, primary and secondary education should aim:
 - (a) to continue to improve access to, quality and management of early childhood, primary and secondary education and the teaching profession; and
 - (b) to foster an understanding and critical appreciation of the values, moral, spiritual, religious, social and cultural, which have been distinctive in shaping Solomon Islands society and which have been recognised and respected within the community; and
 - (c) to promote culture, customs, values and attitudes that foster societal harmony and positive outcomes; and
 - (d) to nurture a sense of personal identity, self-esteem and awareness of one's personal abilities, aptitudes and limitations, combined with a respect for the rights and beliefs of others; and
 - (e) to promote equal educational opportunity for all, including by helping those who are disadvantaged, through economic, social, physical and mental factors, to develop their full potential; and
 - (f) to develop intellectual skills combined with a spirit of inquiry and the capacity to analyse issues critically and constructively; and

- (g) to foster a spirit of self-reliance, innovation, initiative and imagination; and
 - (h) to provide students with the necessary education to support the country's economic development and to enable them to make their particular contribution to society in an effective way; and
 - (i) to create tolerant, responsible, caring and politically aware citizens who understand their rights and responsibilities; and
 - (j) to ensure that young Solomon Islanders acquire a keen awareness of their national heritage and identity, and an awareness and respect and care for the environment.
- (2) Those who share responsibility for early childhood, primary and secondary education should also:
- (a) acknowledge the value of informal teaching of culture and customs by families and communities; and
 - (b) allow a student to participate in the choices that arise in respect of the student's education, including religious instruction, as is appropriate according to the age and capacity of the student.

PART 3 GOVERNANCE AND ADMINISTRATION

Division 1 Minister

8 Minister's functions

- (1) The Minister is responsible for the administration of this Act and has specific functions under this Act relating to:
- (a) the Solomon Islands Education Board; and
 - (b) the Provincial Education Boards; and
 - (c) significant matters of policy, including policy relating to the following:
 - (i) Government funding;
 - (ii) learning frameworks;

(iii) a scheme of secondary education certificates.

(2) In administering this Act, the Minister may:

- (a) request the Solomon Islands Education Board to provide advice on any matter concerning early childhood, primary or secondary education or the potential amendment of this Act or the Regulations; or
- (b) request a Provincial Education Board to provide advice on any matter concerning early childhood, primary or secondary education in its province; or
- (c) seek recommendations and reports from the Permanent Secretary.

9 Education Funding Code

(1) The Minister must issue a code (the “***Education Funding Code***”) setting out:

- (a) principles for determining Government funding for early childhood, primary and secondary education; and
- (b) rules that apply to Government funding for early childhood, primary and secondary education.

(2) Without limiting the form that Government funding may take, Government funding may comprise:

- (a) grants to Provincial Education Boards and education providers who operate schools or ece centres; and
- (b) remuneration for school teachers and leaders.

(3) The rules set out in the Education Funding Code may include rules for:

- (a) the provision of information to support the payment of remuneration to school teachers and leaders; and
- (b) the financial management of grants; and
- (c) purchasing goods or services using grant money.

- (4) The Education Funding Code may contain other provisions about Government funding as the Minister considers appropriate.
- (5) The Education Funding Code must be published in the *Gazette*.
- (6) The Permanent Secretary may make the Education Funding Code available on a Government Internet site or by other means as the Permanent Secretary considers appropriate.
- (7) Sections 62 and 64 (1) of the *Interpretation and General Provisions Act* (Cap. 85) do not apply to the Education Funding Code as a form of subsidiary legislation.

Note to section 9:

Under section 36 of the Interpretation and General Provisions Act (Cap. 85), the Education Funding Code can be amended, substituted or revoked in the same manner as it is made.

10 Delegation by Minister

- (1) The Minister may delegate a function or power of the Minister under this Act (except the power to issue the Education Funding Code or to make Regulations) to:
 - (a) a Provincial Education Minister; or
 - (b) the Permanent Secretary.
- (2) A delegation:
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not prevent the Minister exercising or performing the delegated function or power; and
 - (d) may be revoked by the Minister at any time.
- (3) A delegated function or power may not be further delegated unless that is expressly allowed in the instrument of delegation.
- (4) If a power or function delegated under this section is, when exercised or performed by the Minister, dependent on the opinion, belief or

state of mind of the Minister, the delegate must exercise or perform the power or function on the same opinion, belief or state of mind.

- (5) The exercise of a power or performance of a function by the delegate must be treated as if it were done by the Minister.

Division 2 Solomon Islands Education Board

11 Establishment and functions of Solomon Islands Education Board

- (1) The Solomon Islands Education Board is established.
- (2) The functions of the Solomon Islands Education Board are:
 - (a) to provide advice to the Minister or Permanent Secretary, at the request of the Minister or Permanent Secretary or on its own initiative, on any matter concerning early childhood, primary or secondary education, including any matter of policy relating to the following:
 - (i) funding principles and processes;
 - (ii) registration of teachers, education providers, schools and ece centres;
 - (iii) approval of learning frameworks and a scheme of secondary education certificates;
 - (iv) the financial management of schools and ece centres; and
 - (b) to provide advice to the Minister or Permanent Secretary, at the request of the Minister or Permanent Secretary or on its own initiative, on potential amendments of this Act or the Regulations; and
 - (c) to perform other functions assigned to the Board under this Act or the Regulations.

12 Membership of Solomon Islands Education Board

- (1) The Solomon Islands Education Board consists of:

- (a) the Permanent Secretary; and
 - (b) up to 6 other members appointed by the Minister ("**appointed members**").
- (2) The Minister must ensure that, as far as reasonably practicable:
- (a) the appointed members are drawn from a broad range of education providers and other persons with relevant experience or knowledge; and
 - (b) there are an equal number of men and women members.
- (3) The Minister may seek suggestions for appointment of members from any person or organisation as the Minister considers appropriate.
- (4) The Minister must appoint 1 of the appointed members to be the chairperson of the Solomon Islands Education Board and another of the appointed members to be the deputy chairperson of the Board.
- (5) Subject to removal of a member by the Minister, an appointed member holds office for 3 years or a shorter period specified in the instrument of appointment.
- (6) Subject to subsection (7), an appointed member can be reappointed on the expiration of a term of office.
- (7) The maximum period for which a person may continuously hold office as an appointed member is 6 years.
- (8) The Permanent Secretary is responsible for ensuring that administrative support is provided to the Solomon Islands Education Board.

Note to section 12:

Under section 32(3) of the Interpretation and General Provisions Act (Cap. 85), the Minister has power to suspend or remove a member of the Solomon Islands Education Board and to appoint another person temporarily in place of a member who has been removed or who is temporarily unable to perform official duties as a member.

13**Procedures of Solomon Islands Education Board**

- (1) The chairperson of the Solomon Islands Education Board may convene a meeting of the Board at any time, but must convene a meeting at least twice in each year.
- (2) The chairperson must preside at a meeting of the Solomon Islands Education Board.
- (3) If there is no chairperson or the chairperson is absent from a meeting, the deputy chairperson must preside at the meeting.
- (4) If the deputy chairperson is to preside at the meeting but there is no deputy chairperson or the deputy chairperson is absent from the meeting, a member of the Solomon Islands Education Board chosen by those present must preside at the meeting.
- (5) A quorum of the Solomon Islands Education Board is one half of the total number of its members (ignoring any fraction resulting from the division) plus 1, and no business may be transacted at a meeting unless a quorum is present.
- (6) Subject to subsections (7) and (8), a question arising for decision at a meeting of the Solomon Islands Education Board must be decided by consensus, with the person presiding at the meeting announcing the decision at the time.
- (7) If members at a meeting decide to put a question to a vote or at least 2 members present at a meeting do not agree that the decision announced was the decision of the meeting and immediately ask that the question be put to a vote, the question must be decided by the members present at the meeting and entitled to vote on the question by a majority of the votes cast:
 - (a) by a show of hands; or
 - (b) if at least 2 members so request, in a secret ballot.
- (8) If a question is put to a vote:
 - (a) each member present at the meeting (including the person presiding at the meeting) has 1 vote on the question; and

- (b) in the event of an equality of votes, the person presiding at the meeting has a casting vote.
- (9) Subject to this Act and any directions of the Minister, the Solomon Islands Education Board can determine its own procedures.

14 Conflict of interest – members of Solomon Islands Education Board

- (1) This section applies if a member of the Solomon Islands Education Board:
 - (a) has a direct or indirect financial interest in a matter being considered, or about to be considered, by the Board; or
 - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about a matter being considered, or about to be considered, by the Board.
- (2) The member:
 - (a) must disclose the nature of the interest and how it relates to the matter to the other members; and
 - (b) must not take part in any deliberation or decision about the matter; and
 - (c) must be disregarded for the purpose of constituting a quorum for the deliberation or decision.
- (3) The member need not disclose an interest if:
 - (a) the interest is an interest shared in common with:
 - (i) persons of the class represented by the member or a substantial section of those persons; or
 - (ii) the public generally or a substantial section of the public; or
 - (b) the interest is of a kind exempted from the requirement for disclosure by the Regulations.

- (4) The disclosure must be noted in the records of the Solomon Islands Education Board.
- (5) A failure by a member to disclose an interest in a matter does not, on its own, invalidate a decision of the Solomon Islands Education Board about the matter.

15 Sitting fees and expenses – Solomon Islands Education Board

A member of the Solomon Islands Education Board is not entitled to remuneration, but may receive fees for attending meetings (including meetings of a committee of the Board), or a travelling or subsistence allowance, or be reimbursed expenses, on a basis determined by the Minister by notice in the Gazette.

Division 3 Provincial Education Boards

16 Establishment of Provincial Education Boards

There must be a Provincial Education Board for each province.

17 Functions of Provincial Education Boards

The functions of a Provincial Education Board are:

- (a) to provide advice to the Minister or Permanent Secretary, at the request of the Minister or Permanent Secretary or on its own initiative, on any matter concerning early childhood, primary or secondary education in the province; and
- (b) to assist the Permanent Secretary to coordinate and manage the provision of early childhood, primary and secondary education in the province; and
- (c) to assist the Permanent Secretary to monitor compliance in the province with this Act, the Education Funding Code, the Regulations, the Administrative Instructions and conditions of registration of teachers, education providers, schools and ece centres; and
- (d) to the extent authorised by the Provincial Executive of the province for which the Board is established:

- (i) to manage the allocation of funds provided by the Provincial Executive for early childhood, primary and secondary education in the province and to monitor the application of those funds; and
 - (ii) to keep the Minister informed about funds so provided and about the allocation and application of those funds; and
 - (iii) to provide advice to the Provincial Education Minister or the Provincial Secretary, at the request of the Provincial Education Minister or Provincial Secretary or on its own initiative, on any matter concerning early childhood, primary or secondary education in the province; and
- (e) to perform other functions assigned to the Board:
- (i) under this Act, the Education Funding Code, the Regulations or the Administrative Instructions; or
 - (ii) by written agreement between the Minister and the Provincial Executive of the province.

18 Membership and procedures of Provincial Education Boards

- (1) The membership and procedures of a Provincial Education Board must be determined by written agreement between the Minister and the Provincial Executive of the province.
- (2) The agreement must be consistent with the following:
 - (a) the membership must include persons who represent education providers of non-government schools or ece centres in the province;
 - (b) as far as reasonably practicable, there should be an equal number of men and women members;
 - (c) a Provincial Education Board must be required to meet at least twice in each year.

19 Conflict of interest – members of Provincial Education Boards

- (1) This section applies if a member of a Provincial Education Board:

- (a) has a direct or indirect financial interest in a matter being considered, or about to be considered, by the Board; or
 - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about a matter being considered, or about to be considered, by the Board.
- (2) The member:
- (a) must disclose the nature of the interest and how it relates to the matter to the other members; and
 - (b) must not take part in any deliberation or decision about the matter; and
 - (c) must be disregarded for the purpose of constituting a quorum for the deliberation or decision.
- (3) The member need not disclose an interest if:
- (a) the interest is an interest shared in common with the public generally or a substantial section of the public; or
 - (b) the interest is of a kind exempted from the requirement for disclosure by the Regulations.
- (4) The disclosure must be noted in the records of the Provincial Education Board.
- (5) A failure by a member to disclose an interest in a matter does not, on its own, invalidate a decision of the Provincial Education Board about the matter.

20

No payment from Government to members of Provincial Education Boards

A member of a Provincial Education Board is not entitled to any remuneration, sitting fee, allowance or other payment (including for reimbursement of expenses) from the Government.

Note to section 20:

This section does not prevent a member of a Provincial Education Board receiving remuneration, a sitting fee, allowance or other payment from the Provincial Executive.

Division 4 National and provincial administration

21 Permanent Secretary

- (1) The Permanent Secretary is responsible, under the Minister, for the administration of this Act and, in particular:
 - (a) to plan for the achievement and maintenance of efficiency and competency in the operation of schools and ece centres and amongst teachers; and
 - (b) to make recommendations to the Minister about Government funding of early childhood, primary and secondary education.
- (2) The Permanent Secretary must endeavour to work cooperatively with the Teaching Service Commission, Solomon Islands Education Board and the Provincial Education Boards.
- (3) The Permanent Secretary must provide administrative assistance to the Teaching Service Commission for the performance of its functions.

22 Administrative Instructions issued by Permanent Secretary

- (1) The Permanent Secretary may issue Administrative Instructions on matters concerning early childhood, primary or secondary education.
- (2) The Administrative Instructions:
 - (a) must not be inconsistent with this Act or the Regulations; and
 - (b) must be in writing.
- (3) Administrative Instructions may be issued to:
 - (a) Provincial Education Boards; and
 - (b) education providers and their employees, agents and contractors; and

- (c) school boards; and
 - (d) teachers and leaders; and
 - (e) any other person of a class prescribed by the Regulations.
- (4) Without limiting subsection (1), Administrative Instructions may impose:
- (a) requirements on education providers about:
 - (i) standards to be met by schools and ece centres; and
 - (ii) the form and content of budgets, plans and reports; and
 - (iii) record keeping and reporting; and
 - (iv) steps to be taken in emergencies; and
 - (v) other matters relating to the operation of schools or ece centres, including the management of teachers, leaders and other staff; and
 - (b) requirements on school boards about membership, procedures and reporting; and
 - (c) requirements on leaders about:
 - (i) the financial management of schools and ece centres; and
 - (ii) record keeping and reporting; and
 - (iii) the conduct of regular assessments of the performance and engagement in professional development of teachers; and
 - (iv) identifying and meeting the requirements of students with special needs; and
 - (v) disciplining students and suspending or expelling students; and

- (vi) dealing with steps to be taken in relation to contagious diseases that students, teachers, leaders or other staff may be exposed to; and
 - (vii) any other matter relating to the day-to-day management of schools and ece centres, including the management of teachers, leaders and other staff; and
- (d) requirements on teachers, including the rules of conduct and standards referred to in section 75; and
 - (e) requirements of a kind prescribed by the Regulations.
- (5) Administrative Instructions may:
- (a) impose a requirement that is of general or limited application; and
 - (b) regulate or prohibit conduct; and
 - (c) refer to or incorporate, wholly or partially and with or without modification, a specified code or standard as in force at a specified time or as in force from time to time.
- (6) Before issuing Administrative Instructions, the Permanent Secretary must give the Solomon Islands Education Board and any relevant Provincial Education Board a reasonable opportunity to make submissions on the proposed Administrative Instructions.
- (7) Administrative Instructions, and any code or standard referred to or incorporated in the Administrative Instructions, must:
- (a) be made readily accessible by persons bound by the Administrative Instructions; and
 - (b) be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Permanent Secretary.
- (8) The Permanent Secretary may make the Administrative Instructions available on a Government Internet site or by other means as the Permanent Secretary considers appropriate.

- (9) Sections 61(1), 62 and 64(1) of the *Interpretation and General Provisions Act* (Cap. 85) do not apply to Administrative Instructions as a form of subsidiary legislation.

Note to section 22:

Under section 36 of the Interpretation and General Provisions Act (Cap. 85), the Administrative Instructions can be amended, substituted or revoked in the same manner as they are made.

23 Delegation by Permanent Secretary

- (1) The Permanent Secretary may delegate a function or power of the Permanent Secretary under this Act, the Education Funding Code, the Regulations or the Administrative Instructions (except the power to issue Administrative Instructions) to:
- (a) a Provincial Secretary; or
 - (b) a public officer responsible to the Permanent Secretary (including a person for the time being performing particular duties or holding or acting in a particular position).
- (2) A delegation:
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not prevent the Permanent Secretary performing the delegated function or power; and
 - (d) may be revoked by the Permanent Secretary at any time.
- (3) A delegated function or power may not be further delegated unless that is expressly allowed in the instrument of delegation.
- (4) If a power or function delegated under this section is, when exercised or performed by the Permanent Secretary, dependent on the opinion, belief or state of mind of the Permanent Secretary, the delegate must exercise or perform the power or function on the same opinion, belief or state of mind.
- (5) The exercise of a power or performance of a function by the delegate must be treated as if it were done by the Permanent Secretary.

24 Provincial Secretaries

The Provincial Secretaries should work cooperatively with the Permanent Secretary to facilitate the administration of this Act in their respective provinces.

Division 5 Education providers

25 Education providers

- (1) Early childhood, primary or secondary education may be provided by:
 - (a) the Government; or
 - (b) a Provincial Executive (as authorised by the *Provincial Government Act 1997*); or
 - (c) a church, faith, non-government organisation or other body or individual.
- (2) A reference in this Act to an "**education provider**" is a reference to the following:
 - (a) for education provided by the Government:
 - (i) the Permanent Secretary is the education provider; or
 - (ii) if the Minister, by notice in the *Gazette*, appoints a person to operate a Government school or ece centre on behalf of the Government, that person is the education provider of the school or ece centre;
 - (b) for education provided by a Provincial Executive:
 - (i) the Provincial Secretary is the education provider; or
 - (ii) if the Minister, by notice in the *Gazette* made at the request or with the consent of the Provincial Executive, appoints a person to operate a provincial school or ece centre on behalf of the Provincial Executive, that person is the education provider of the school or ece centre;
 - (c) for education provided by a non-government body or individual:

- (i) the church, faith, non-government organisation or other body or individual that provides the education is the education provider; or
 - (ii) if that body or individual appoints a person to operate a non-government school or ece centre on behalf of the body or individual, that person is the education provider of the school or ece centre.
- (3) If a church, faith, non-government organisation or other body that operates a school or ece centre is not a body corporate, it must appoint a person to operate the school or ece centre on its behalf.

Note to section 25:

Under section 3, "person" means an individual or a body corporate. A body corporate includes trustees incorporated under the Charitable Trusts Act (Cap. 55).

26 General responsibilities of education providers

An education provider has the following responsibilities:

- (a) to operate its schools and ece centres efficiently and effectively;
- (b) to ensure the proper use of Government, provincial or other funding provided to it or its schools and ece centres and to prepare budgets, plans and reports as required;
- (c) to make adequate provision for the health, safety and welfare of students and, in particular:
 - (i) to ensure that child protection is a principle of paramount importance at its schools and ece centres; and
 - (ii) to ensure that arrangements are in place for counselling to be available to students as appropriate;
- (d) to employ teachers and leaders and make adequate provision for their health, safety and welfare;
- (e) to manage, or oversee the management of, the performance of teachers and leaders and the taking of appropriate action to deal with absences, misconduct and unsatisfactory performance;

- (f) to comply, and to facilitate compliance by others, with:
 - (i) this Act, the Education Funding Code, the Regulations and the Administrative Instructions; and
 - (ii) the conditions of registration of the education provider and its schools, ece centres and teachers;
- (g) to ensure that there is a system for the making and resolution of complaints about any matter connected with the provision of education by the education provider;
- (h) to provide or facilitate training for staff of the education provider, and, for a school, the members of the school board, to enable them to perform their functions properly;
- (i) to liaise with the Permanent Secretary:
 - (i) on matters relating to:
 - (A) the registration of the education provider and its schools, ece centres and teachers; and
 - (B) for a school, the performance of the school board; and
 - (ii) on other matters arising in connection with early childhood, primary or secondary education.

Division 6 School boards

27 Establishment of school board for each school

- (1) Subject to subsection (2), the education provider of a school must ensure that there is a school board for the school.
- (2) If the Permanent Secretary is satisfied that it is not reasonably practicable in the circumstances for a school board to be established for a particular school, the Permanent Secretary may, on the application of the education provider of the school or on the Permanent Secretary's own initiative, exempt the school from the application of this section.
- (3) An exemption:

- (a) must be noted in the entry for the school in the register of schools and ece centres; and
- (b) is subject to any conditions noted in the entry.

28 Objects of school board

- (1) The objects of a school board include:
 - (a) to assist the education provider in the operation of the school; and
 - (b) to involve the school community in the governance of the school to strengthen and support the provision of education by the school.
- (2) In particular, a school board should:
 - (a) provide a focus and a forum for the involvement of the school community; and
 - (b) ascertain the educational needs of the local community and the attitude of the local community to educational developments within the school; and
 - (c) ensure that the cultural and social diversity of the community is considered and particular needs are appropriately identified.

29 Functions of school board

The functions of a school board are:

- (a) subject to any directions of the education provider of the school:
 - (i) to set the broad direction and vision of the school; and
 - (ii) to determine policies for the school (consistent with this Act, the Regulations and the Administrative Instructions), including policies for the safety, welfare and discipline of students and for dealing with grievances; and
- (b) to work cooperatively with the education provider of the school, and the principal of the school, to support planning and

budgeting for the operations and development of the school (including any necessary teacher accommodation); and

- (c) to make recommendations to the education provider about the amount, and the manner and frequency of payment, of any monetary contribution sought from parents of students; and
- (d) to monitor the appropriate acquisition and use of resources at the school; and
- (e) at the request of the education provider of the school, to assist in the selection of teachers, leaders or other staff of the school; and
- (f) to assist the principal of the school, at the principal's request, to resolve issues with student attendance, punctuality or discipline; and
- (g) to communicate with the school community and convene meetings of the community as the board considers appropriate; and
- (h) to promote and coordinate fundraising activities at the school; and
- (i) to promote and coordinate the undertaking of work on a voluntary basis for the benefit of the school; and
- (j) to report to the education provider of the school and the school community on the performance of its functions; and
- (k) to perform other functions assigned to the board by the education provider of the school.

30 Limitations on activities of school board

- (1) A school board must not interfere, or take any action that interferes, with:
 - (a) the day-to-day provision, and the management of the day-to-day provision, of education in the school; or
 - (b) the administration of discipline within the school (except to provide support as requested by the principal of the school).

- (2) A school board must not give directions to a teacher in the school in relation to the manner in which the teacher carries out the teacher's duties.
- (3) Where a school board has concerns about misconduct or unsatisfactory performance of a teacher in the school, the school board should raise those concerns with the principal of the school.
- (4) Where a school board has serious concerns about the conduct or performance of a teacher or leader or other member of the staff of the school, the board:
 - (a) must inform the education provider of the school; and
 - (b) may notify the Permanent Secretary in writing of the matter.

31 Membership and procedures of school board

- (1) The Administrative Instructions may contain provisions about the membership and procedures of school boards.
- (2) Subject to the Administrative Instructions, the education provider of a school may determine the membership and procedures of the school board.

32 Allowances and other payments for school board members

- (1) A member of a school board is not entitled to any remuneration, sitting fee, allowance or other payment (including for reimbursement of expenses) from the Government.
- (2) An education provider must not pay a member of a school board remuneration or a fee or allowance for attending meetings of the board, but may pay a board member a travelling or subsistence allowance or reimburse expenses of the member.

Division 7 Principals and supervisors

33 General responsibilities of principals and supervisors

- (1) The principal of a school or supervisor of an ece centre is responsible to the education provider of the school or ece centre for:

- (a) the day-to-day management of the operations of the school or ece centre; and
 - (b) leading professional improvement at the school or ece centre.
- (2) The principal of a school or supervisor of an ece centre must comply, and facilitate compliance by others, with:
- (a) this Act, the Education Funding Code, the Regulations and the Administrative Instructions; and
 - (b) the conditions of registration of the education provider, the school or ece centre and the teachers.

PART 4 REGISTRATION OF TEACHERS

34 Offences relating to requirement for teachers to be registered

- (1) An individual who is not registered as a teacher commits an offence if the individual:
- (a) undertakes employment as a teacher in a school; or
 - (b) for a fee or other consideration, teaches primary or secondary education, or offers to do so; or
 - (c) claims or pretends to be registered as a teacher.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (2) A person commits an offence if:
- (a) the person employs an individual as a teacher in a school; and
 - (b) the individual employed is not registered as a teacher.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

- (3) A person commits an offence if:

(a) in the course of carrying on a business (other than a school), the person employs an individual to teach primary or secondary education; and

(b) the individual employed is not registered as a teacher.

Maximum penalty: 50,000 penalty units or 5 years imprisonment, or both.

(4) Subsections (1), (2) and (3) do not apply in relation to:

(a) a person employed to teach cultural or traditional subjects for less than 5 hours in any 1 week; or

(b) a person teaching under the direct personal supervision of a teacher with full registration; or

(c) a person of a class specified in the Regulations.

Note to section 34:

Early childhood education teachers may, but need not, be registered. Employing persons registered as teachers to provide early childhood education is encouraged.

35 Application for registration as teacher

(1) An application to register a person as a teacher may be made to the Permanent Secretary by:

(a) the person; or

(b) an education provider by whom the person is or is proposed to be employed as a teacher.

(2) The application must:

(a) be made in accordance with the Administrative Instructions; and

(b) be accompanied by the fee (if any) prescribed by the Regulations.

- (3) The applicant must provide the Permanent Secretary with any additional information or evidence required by the Permanent Secretary for the purposes of determining the application.

36 Determination by Permanent Secretary of application for registration as teacher

- (1) On an application to register a person as a teacher, the Permanent Secretary may, subject to this Part:
 - (a) grant the person full registration as a teacher; or
 - (b) grant the person provisional registration as a teacher; or
 - (c) refuse to register the person as a teacher.
- (2) If the Permanent Secretary refuses to register a person as a teacher, the Permanent Secretary must give the applicant for registration written notice of the decision setting out the reasons for the decision.

37 Eligibility for full registration as teacher

A person is eligible for full registration as a teacher only if the person:

- (a) is a fit and proper person to be registered as a teacher; and
- (b) has qualifications in teaching or education prescribed by the Regulations; and
- (c) has successfully completed a period of experience as a teacher as prescribed by the Regulations; and
- (d) has provided to the Permanent Secretary the documents or other evidence prescribed by the Regulations.

38 Grant of provisional registration as teacher

- (1) Provisional registration may only be granted for the following purposes:
 - (a) to allow a person who has the necessary qualifications in teaching or education time:
 - (i) to complete the period of experience as a teacher required for full registration; and

- (ii) if necessary, to provide the documents or other evidence required for full registration;
- (b) if there is an urgent need to deal with a shortage of teachers in a particular subject area, to enable a person with qualifications in that subject area to teach while the person:
 - (i) obtains the necessary qualifications in teaching or education as agreed with the Permanent Secretary; and
 - (ii) completes the period of experience as a teacher required for full registration; and
 - (iii) if necessary, provides the documents or evidence required for full registration.
- (2) Provisional registration as a teacher must not be granted to a person if the Permanent Secretary is aware of a reason to suspect that the person is not a fit and proper person to be registered as a teacher.

39 Duration of provisional registration as teacher

- (1) Provisional registration becomes full registration when the person satisfies all of the requirements for full registration (unless the provisional registration has expired or been cancelled under this Act).
- (2) Subject to subsection (3), provisional registration expires after 2 years if it has not become full registration.
- (3) The Permanent Secretary may postpone the date of expiry of a person's provisional registration by written notice to the person on the Permanent Secretary's own initiative or on application by:
 - (a) the person; or
 - (b) an education provider by whom the person is or is proposed to be employed as a teacher.

40 Fit and proper person test for registration as teacher

- (1) In determining whether a person is a fit and proper person to be registered as a teacher, the Permanent Secretary may take into account the following:

- (a) the person's criminal history;
 - (b) whether the person's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher;
 - (c) the person's conduct as a teacher, including:
 - (i) whether the registration of the person as a teacher within or outside Solomon Islands has previously been suspended or cancelled; and
 - (ii) whether the person has been disqualified from teaching within or outside Solomon Islands;
 - (d) any conduct of the person that:
 - (i) does not satisfy the standard of conduct generally expected of a teacher; or
 - (ii) involves improper conduct relating to a child; or
 - (iii) otherwise shows that the person is unfit to be a teacher;
 - (e) any other matter the Permanent Secretary considers relevant.
- (2) The Permanent Secretary must determine that a person is not a fit and proper person to be registered as a teacher if the person has been found guilty of an offence against a child within the last 10 years.
- (3) The Permanent Secretary must give a person a reasonable opportunity to make submissions about whether the person is a fit and proper person to be registered as a teacher if the Permanent Secretary proposes:
- (a) to refuse to register the person on the ground:
 - (i) that the person is not a fit and proper person to be registered as a teacher; or
 - (ii) that there are reasons to suspect that the person is not a fit and proper person to be registered as a teacher; or

- (b) to cancel the person's provisional registration on the ground that the person is not a fit and proper person to be registered as a teacher.
- (4) If the Permanent Secretary determines that a person with provisional registration is not a fit and proper person to be registered as a teacher:
- (a) the person's provisional registration is cancelled (and any employment as a teacher terminated); and
 - (b) the Permanent Secretary must give written notice of the cancellation to:
 - (i) the person; and
 - (ii) if the education provider by whom the person is or is proposed to be employed as a teacher is known to the Permanent Secretary, the education provider.

41 Conditions of registration as teacher

- (1) Registration of a person as a teacher is subject to the following conditions:
- (a) the person must, within 21 days after changing the person's name or address, inform the Permanent Secretary by written notice of the change;
 - (b) the person must, within 21 days after being charged with or found guilty of a serious offence or being sentenced to a term of imprisonment, inform the Permanent Secretary by written notice of the details of:
 - (i) the charge or finding of guilt; and
 - (ii) the alleged offence; and
 - (iii) if the person has been found guilty of an offence, the circumstances of the offence;
 - (c) the person must, within 21 days after being dismissed from any employment in response to allegations of improper conduct relating to a child or other misconduct, or resigning from

employment following allegations of improper conduct relating to a child or other misconduct, inform the Permanent Secretary by written notice of the circumstances of the dismissal or resignation;

- (d) conditions imposed by the Permanent Secretary on registration by written notice to the teacher;
 - (e) conditions imposed under the processes for management of a teacher set out in Part 8.
- (2) Without limiting the conditions of registration of a person as a teacher that may be imposed under subsection (1)(d) or (e), the conditions may:
- (a) require the person to complete a course; or
 - (b) require the supervision of the person; or
 - (c) require the provision of further evidence as to the person's competence; or
 - (d) restrict the subjects that the person may teach; or
 - (e) restrict the level of education that the person may provide.
- (3) The Permanent Secretary may, on application by a person registered as a teacher or on the Permanent Secretary's own initiative, vary or revoke conditions of the person's registration imposed by the Permanent Secretary under subsection (1)(d) or (e).
- (4) An application under subsection (3) must:
- (a) be made in accordance with the Administrative Instructions; and
 - (b) be accompanied by the fee (if any) prescribed by the Regulations.
- (5) A person registered as a teacher commits an offence if the person contravenes a condition of the person's registration that:
- (a) requires the Permanent Secretary to be notified of a matter; or

(b) imposes a restriction on the practice of teaching by the person.

Maximum penalty: 50,000 penalty units.

42 Certificate of registration as teacher

(1) The Permanent Secretary must, on registration of a person as a teacher, issue to the person a certificate of registration that includes the following information:

- (a) the person's full name and registration number;
- (b) for provisional registration, the expiry date of the registration;
- (c) any other information the Permanent Secretary considers appropriate.

(2) A person registered as a teacher commits an offence if the person fails or refuses, without reasonable excuse, to return the person's certificate of registration to the Permanent Secretary in accordance with a written request of the Permanent Secretary.

Maximum penalty: 30,000 penalty units.

43 Register of teachers

(1) The Permanent Secretary must keep a register of teachers.

(2) The register may be kept electronically.

(3) The register must specify, in relation to each person registered as a teacher:

- (a) the person's full name, personal address and business address (if any); and
- (b) the person's registration number; and
- (c) the qualifications in teaching or education required for registration that are held by the person; and
- (d) details of any specialist qualifications held by the person and determined by the Permanent Secretary to be appropriate for inclusion in the register; and

- (e) details of any conditions of registration imposed by the Permanent Secretary or under the processes for the management of teachers set out in Part 8; and
 - (f) for provisional registration, the expiry date of the person's registration; and
 - (g) details of any suspension or cancellation of the teacher's registration.
- (4) The register may include such other information as the Permanent Secretary considers appropriate.
 - (5) The Permanent Secretary may correct an error in the register without giving notice to any person.
 - (6) A copy of the register must be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Permanent Secretary.
 - (7) The register may be made available on a Government Internet site or by other means as the Permanent Secretary considers appropriate.
 - (8) The personal or business address of a person registered as a teacher and the details of any suspension or cancellation of the teacher's registration as a consequence of incapacity of the person must be excluded from the copy of the register made available under subsection (6) or (7).

PART 5 REGISTRATION OF EDUCATION PROVIDERS

44 Requirement for registration as education provider

- (1) A person must not operate a school or ece centre unless the person is registered as an education provider.
- (2) A person commits an offence if:
 - (a) the person operates a school or ece centre or causes or permits another to operate a school or ece centre on behalf of the person; and

- (b) the person who operates the school or ece centre is not registered as an education provider.

Maximum penalty: 100,000 penalty units or 10 years imprisonment, or both.

- (3) This section does not apply to:
 - (a) the operation of a Government school or ece centre; or
 - (b) the operation of a school or ece centre exempted from the application of this section by the Regulations.

45 Application for registration as education provider

- (1) A person may apply to the Permanent Secretary for registration as an education provider.
- (2) The application must:
 - (a) be made in accordance with the Administrative Instructions; and
 - (b) be accompanied by the fee prescribed by the Regulations.
- (3) The applicant must provide the Permanent Secretary with any additional information or evidence required by the Permanent Secretary for the purposes of determining the application.

46 Determination by Permanent Secretary of application for registration as education provider

- (1) On an application for registration as an education provider, the Permanent Secretary may, subject to this Part:
 - (a) register the applicant as an education provider; or
 - (b) refuse to register the applicant as an education provider.
- (2) If the Permanent Secretary refuses to register an applicant as an education provider, the Permanent Secretary must give the applicant written notice of the decision setting out the reasons for the decision.

47 Eligibility for registration as education provider

- (1) A person is only eligible to be registered as an education provider if:
 - (a) the person is a fit and proper person to be registered as an education provider; and
 - (b) the person has the capacity (including financial capacity), or has made or proposes to make appropriate arrangements, to satisfy:
 - (i) the requirements of this Act, the Education Funding Code, the Regulations and the Administrative Instructions; and
 - (ii) the conditions of registration of an education provider and of the schools or ece centres operated by the education provider; and
 - (c) the person states in writing that the person agrees to comply with this Act and its objects and guiding principles.
- (2) If a person operates, or is to operate, a school or ece centre on behalf of another person or body:
 - (a) the requirement for the person to be a fit and proper person to be registered as an education provider extends to the person, or the members of the body, on whose behalf the school or ece centre is, or is to be, operated; and
 - (b) in considering the capacity of the person to operate the school or ece centre, any support available to the person from the person or body on whose behalf the school or ece centre is, or is to be, operated is to be taken into account.

48 Fit and proper person and capacity tests for registration as education provider

- (1) Without limiting the matters that may be taken into account in considering whether a person is a fit and proper person to be registered as an education provider, the following may be taken into account:
 - (a) the criminal record and reputation of the person;

- (b) for a body corporate, the criminal record and reputation of each of the members of the governing body of the body corporate;
 - (c) the person's record of compliance with the following:
 - (i) this Act, the Education Funding Code, the Regulations and the Administrative Instructions;
 - (ii) any compliance notices issued under this Act;
 - (iii) the repealed provisions.
- (2) In determining whether a person has the capacity to be an education provider or whether there are or will be appropriate arrangements in place, conditions proposed to be imposed on registration of the education provider, including conditions relating to the management of teachers and leaders, may be taken into account.

49 Conditions of registration as education provider

- (1) Registration as an education provider is subject to the following conditions:
- (a) a condition that the education provider may only provide the type and level of education specified for the education provider in the register of education providers;
 - (b) conditions imposed by this Act, the Regulations or the Administrative Instructions;
 - (c) any other conditions imposed by the Permanent Secretary, on registration or subsequently, by written notice to the education provider.
- (2) Without limiting the conditions of registration of an education provider that may be imposed by the Permanent Secretary, the conditions may:
- (a) require the education provider to follow particular practices in relation to the management of teachers and leaders, including by authorising the Provincial Education Board, the Permanent Secretary or a Provincial Secretary or other person:

- (i) to make decisions related to the employment of teachers and leaders on behalf of the education provider; or
 - (ii) to manage payments of remuneration to teachers and leaders; or
 - (b) limit the number of schools or ece centres that may be operated by the education provider or their locations; or
 - (c) require specified monitoring, evaluation or reporting to be undertaken in connection with the provision of education by the education provider; or
 - (d) specify action that must be taken or refrained from being taken by the education provider in connection with the provision of education.
- (3) The Permanent Secretary may, on the application of a registered education provider or on the Permanent Secretary's own initiative, vary the registration of the education provider or another education provider.
- (4) An application for variation of registration of an education provider must:
- (a) be made in accordance with the Administrative Instructions; and
 - (b) be accompanied by the fee (if any) prescribed by the Regulations.
- (5) Before varying the registration of an education provider other than on application or with the consent of the education provider, the Permanent Secretary must, unless satisfied that urgent action is required, give the education provider a written notice:
- (a) specifying the proposed variation; and
 - (b) inviting written submissions to be made to the Permanent Secretary within a specified period (of at least 28 days) about the proposed variation.
- (6) The Permanent Secretary must consider any written submissions received within the period allowed.

(7) Government or provincial funding may be provided on the basis of compliance with specified conditions of registration and compliance with the conditions is one of the factors that may affect the level of future Government or provincial funding of the education provider.

(8) A registered education provider commits an offence if a condition of the education provider's registration is contravened.

Maximum penalty: 100,000 penalty units or 10 years imprisonment, or both.

(9) It is a defence to a charge for an offence under subsection (8) if it is proved that:

(a) the contravention was not intentional; and

(b) the defendant used due diligence to prevent the contravention.

50

Certificate of registration of education provider

(1) The Permanent Secretary must, on registration of a person as an education provider, issue to the person a certificate of registration that includes the following information:

(a) the person's full name and registration number;

(b) the type and year levels of education that the education provider may provide;

(c) any other information the Permanent Secretary considers appropriate.

(2) A registered education provider commits an offence if the education provider fails or refuses, without reasonable excuse, to return its certificate of registration to the Permanent Secretary in accordance with a written request of the Permanent Secretary.

Maximum penalty: 30,000 penalty units.

51

Register of education providers

(1) The Permanent Secretary must keep a register of education providers.

- (2) The register may be kept electronically.
- (3) The register must specify the following for each registered education provider:
 - (a) the name and contact details of the education provider;
 - (b) for a body corporate, the names and contact details of the members of the governing body of the education provider;
 - (c) if the education provider operates, or is to operate, a school or ece centre on behalf of another person or body:
 - (i) the name and contact details of that other person or body; and
 - (ii) if the body is a body corporate, the names and contact details of the members of the governing body of the body corporate;
 - (d) the type and year levels of education that the education provider may provide;
 - (e) the registration numbers of the schools or ece centres operated by the education provider;
 - (f) any conditions of registration imposed by the Permanent Secretary;
 - (g) details of any cancellation of registration.
- (4) It is a condition of registration of an education provider that the education provider must, as soon as reasonably practicable, inform the Permanent Secretary by written notice of any change in the information in the register.
- (5) The Permanent Secretary may correct an error in the register without giving notice to any person.
- (6) A copy of the register must be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Permanent Secretary.

- (7) The register may be made available on a Government Internet site or by other means as the Permanent Secretary considers appropriate.

PART 6 REGISTRATION OF SCHOOLS AND ECE CENTRES

52 Requirement for registration of school or ece centre

- (1) Premises must not be opened or operated as a school or ece centre unless the school or ece centre is registered.
- (2) A person commits an offence if the person operates, or causes or permits another to operate, a school or ece centre that is not registered.

Maximum penalty: 100,000 penalty units or 10 years imprisonment, or both.

- (3) This section does not apply to the operation of a school or ece centre exempted from the application of this section by the Regulations.

Note to section 52:

Government schools and ece centres are required to be registered, but they will be registered by the Permanent Secretary without application. See section 59(3).

53 Application for registration of school or ece centre

- (1) An application to the Permanent Secretary for registration of a provincial school or ece centre or non-government school or ece centre:
- (a) may be made by the proposed education provider of the school or ece centre; and
- (b) must be made at least 6 months before the start of the first term for which the school or ece centre is proposed to open; and
- (c) must be made in accordance with the Administrative Instructions; and
- (d) must be accompanied by the fee prescribed by the Regulations.

- (2) The applicant must provide the Permanent Secretary with any additional information or evidence required by the Permanent Secretary for the purposes of determining the application.

54 Determination by Permanent Secretary of application for registration of school or ece centre

- (1) On an application for registration of a provincial or non-government school or ece centre, the Permanent Secretary may, subject to this Part:
 - (a) register the school or ece centre; or
 - (b) refuse to register the school or ece centre.
- (2) If the Permanent Secretary refuses to register a school or ece centre, the Permanent Secretary must give the applicant written notice of the decision setting out the reasons for the decision.

55 Role of Provincial Education Board in determining application

- (1) The Permanent Secretary must:
 - (a) provide a copy of an application for registration of a school or ece centre to the Provincial Education Board of the province in which the school or ece centre is proposed to be located; and
 - (b) invite the Provincial Education Board to make written submissions on the application to the Permanent Secretary within a specified period.
- (2) The Permanent Secretary must consider any written submissions received within the period allowed.
- (3) If a Provincial Education Board makes a submission recommending refusal of an application for registration of a school or ece centre:
 - (a) it must give written reasons for its recommendation; and
 - (b) the Permanent Secretary must refuse the application unless the Minister approves the granting of the application.

Matters to be considered for registration of school or ece centre

- (1) The Permanent Secretary must not register a provincial school or ece centre or non-government school or ece centre unless it is or is to be operated by a registered education provider.
- (2) In determining an application for registration of a school or ece centre, the Permanent Secretary must have regard to the following matters:
 - (a) the demand or potential demand for enrolment at the school or ece centre;
 - (b) whether funds will be available to support and operate the school or ece centre;
 - (c) whether the land, buildings and facilities are suitable for the school or ece centre in terms of size, nature and quality;
 - (d) whether there is any dispute in relation to the land and the suitability of the arrangements with the owners of the land under which the land may be used for the school or ece centre;
 - (e) local community support for the school or ece centre;
 - (f) the availability of suitable persons to be teachers and leaders at the school or ece centre;
 - (g) the adequacy of the nature and content of the instruction offered, or to be offered, at the school or ece centre;
 - (h) the adequacy of arrangements at the school or ece centre for the safety, health and welfare of teachers, leaders and students and for the management of teachers and leaders;
 - (i) for an ece centre, the adequacy of arrangements for the children to enrol in primary education on completion of early childhood education;
 - (j) the extent to which the school or ece centre meets any standards for schools or ece centres set out in the Administrative Instructions and the potential for the education provider to work towards the school or ece centre meeting those standards;

- (k) any other matter that the Permanent Secretary considers appropriate.

57 Conditions of registration of school or ece centre

- (1) Registration of a school or ece centre is subject to the following conditions:
 - (a) the school or ece centre must be operated only by the education provider specified in the register of schools and ece centres;
 - (b) education must only be offered at the school or ece centre at the year levels specified in the register of schools and ece centres;
 - (c) the school or ece centre must only be operated at the campus or premises specified in the register of schools and ece centres;
 - (d) the school or ece centre must not be combined with another school or ece centre without that combination being registered as a school or ece centre;
 - (e) other conditions imposed by this Act, the Regulations or the Administrative Instructions;
 - (f) any other conditions imposed by the Permanent Secretary, on registration or subsequently, by written notice to the education provider.
- (2) Without limiting the conditions of registration of a school or ece centre that may be imposed by the Permanent Secretary, the conditions may:
 - (a) limit the number of students that may be enrolled in the school or ece centre; or
 - (b) require specified buildings, facilities or equipment to be provided at the school or ece centre; or
 - (c) require a program to be put in place for the maintenance or improvement of buildings, facilities or equipment; or

- (d) require specified monitoring, evaluation or reporting to be undertaken in connection with the operation of the school or ece centre; or
 - (e) specify action that must be taken or refrained from being taken to facilitate improvements in the provision of early childhood, primary or secondary education at the school or ece centre.
- (3) The Permanent Secretary may, on the application of the education provider of a school or ece centre or on the Permanent Secretary's own initiative, vary the registration of a school or ece centre.
- (4) An application for variation of the registration of a school or ece centre must:
- (a) be made in accordance with the Administrative Instructions; and
 - (b) be accompanied by the fee (if any) prescribed by the Regulations.
- (5) Before varying the registration of a school or ece centre other than on application or with the consent of the education provider of the school or ece centre, the Permanent Secretary must, unless satisfied that urgent action is required, give the education provider of the school or ece centre and the Provincial Education Board of the province in which the school or ece centre is located a written notice:
- (a) specifying the proposed variation; and
 - (b) inviting written submissions to be made to the Permanent Secretary within a specified period (of at least 28 days) about the proposed variation.
- (6) The Permanent Secretary must consider any written submissions received within the period allowed.
- (7) Government or provincial funding may be provided on the basis of compliance with specified conditions of registration and compliance with the conditions is one of the factors that may affect the level of future Government or provincial funding of the school or ece centre.

- (8) An education provider of a school or ece centre commits an offence if a condition of registration of the school or ece centre is contravened.

Maximum penalty: 100,000 penalty units or 10 years imprisonment, or both.

- (9) It is a defence to a charge for an offence under subsection (8) if it is proved that:
- (a) the contravention was not intentional; and
 - (b) the defendant used due diligence to prevent the contravention.

58

Certificate of registration of school or ece centre

- (1) The Permanent Secretary must issue to the education provider of a school or ece centre a certificate of registration for the school or ece centre that includes the following information:
- (a) the name and (except for a Government school or ece centre) registration number of the education provider;
 - (b) the name and registration number of the school or ece centre;
 - (c) any other information the Permanent Secretary considers appropriate.
- (2) It is a condition of the registration of a school or ece centre that the certificate must be prominently displayed at the school or ece centre.
- (3) An education provider commits an offence if the education provider fails or refuses, without reasonable excuse, to return a certificate of registration of a school or ece centre to the Permanent Secretary in accordance with a written request of the Permanent Secretary.

Maximum penalty: 30,000 penalty units.

59

Register of schools and ece centres

- (1) The Permanent Secretary must keep a register of schools and ece centres.
- (2) The register may be kept electronically.

- (3) The Permanent Secretary must ensure that all Government schools and ece centres are included in the register.
- (4) The Permanent Secretary may adopt a system of classification for distinguishing between:
 - (a) different types of schools and ece centres; and
 - (b) different year levels of education.
- (5) The register must specify the following for each registered school or registered ece centre:
 - (a) the name and (except for a Government school or ece centre) registration number of the education provider of the school or ece centre and the contact details of the education provider;
 - (b) the name and registration number of the school or ece centre;
 - (c) the classification of the school or ece centre according to the system adopted by the Permanent Secretary;
 - (d) the location of each campus or premises of the school or ece centre;
 - (e) the year level or levels of education provided at each campus or premises of the school or ece centre;
 - (f) any conditions of registration of the school or ece centre imposed by the Permanent Secretary;
 - (g) details of any cancellation of registration.
- (6) The Permanent Secretary may include other information in the register as the Permanent Secretary considers appropriate, including, for example, the following:
 - (a) the number of students enrolled in the school or ece centre;
 - (b) the name of the principal of the school or the supervisor of the ece centre;
 - (c) the number of teachers and leaders employed at the school or ece centre;

- (d) a description of the premises, buildings and facilities of the school or ece centre;
 - (e) for a school, the members of the school board;
 - (f) for a school providing secondary education, the subjects offered at the school or any special educational focus of the school.
- (7) It is a condition of the registration of a school or ece centre that the Permanent Secretary must, as soon as reasonably practicable, be informed by written notice of any change in the information in the register relevant to the school or ece centre or of any proposal to close a registered school or registered ece centre.
- (8) The Permanent Secretary may correct an error in the register without giving notice to any person.
- (9) A copy of the register must be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Permanent Secretary.
- (10) The register may be made available on a Government Internet site or by other means as the Permanent Secretary considers appropriate.

PART 7 PROVISION OF EDUCATION AND FACILITIES

Division 1 Enrolment and attendance

60 Terms, days and hours of education at schools and ece centres

- (1) The Permanent Secretary must, for each calendar year:
- (a) determine the terms, days and hours for the provision of education at schools and ece centres; or
 - (b) determine rules that education providers must apply to determine the terms, days and hours for the provision of education at their schools and ece centres.
- (2) The terms, days and hours may vary according to the year level of education, the location of the school or ece centre or any other factor.

- (3) The Permanent Secretary must inform registered education providers of a determination under subsection (1) by publishing the information on a Government Internet site or by other means, as the Permanent Secretary considers appropriate.
- (4) It is a condition of the registration of a school or ece centre that, if it is not possible for education to be provided at the school or ece centre on a day on which it should be provided for reasons beyond the control of the education provider of the school or ece centre, any directions given by the Permanent Secretary for alternative arrangements for the provision of education must be complied with.

61 Compulsory enrolment and attendance at school

- (1) A child must be enrolled at school from the compulsory school age, or at such age as otherwise provided in regulations.
- (2) The Permanent Secretary may issue a written notice to a parent of a child of compulsory school age to take specified action to ensure that the child is enrolled in, and attends, a school.
- (3) A parent of a child of compulsory school age who has been issued with a notice under subsection (2) commits an offence if:
 - (a) the child is not enrolled in a school in accordance with the notice; or
 - (b) the child is not attending school in accordance with the notice.

Maximum penalty: for a first offence, 2000 penalty units; and for a subsequent offence, whether or not relating to the same child of the parent, 5000 penalty units.

- (4) Subsection (3)(b) does not apply if there is a reasonable excuse for the failure of the child to attend school or if the failure to attend school results from circumstances outside of the control of the parent.

62 Method of enrolment

- (1) A parent of a child may apply for enrolment of the child in a school or ece centre by lodging a completed enrolment form with the principal of the school or supervisor of the ece centre.

- (2) The enrolment form must require the following information:
 - (a) the identity of the child;
 - (b) the identity and contact details of each parent of the child;
 - (c) the place of residence of the child;
 - (d) the age of the child.
- (3) If required by the principal of the school or supervisor of the ece centre, the parent must provide evidence of:
 - (a) the age of the child; and
 - (b) the family name of the child; and
 - (c) the person's parental relationship to the child.
- (4) This section does not entitle a child to be enrolled in a particular school or ece centre.

Division 2 Learning frameworks and scheme of secondary education certificates

63 Learning frameworks

- (1) The Minister must approve a learning framework for early childhood education and for each year of primary and secondary education.
- (2) Learning frameworks may distinguish between early childhood education and different year levels of primary and secondary education (for example, junior and senior secondary education) as the Minister considers appropriate.
- (3) A learning framework may comprise of:
 - (a) for early childhood education:
 - (i) activities, including core activities, supporting materials and other learning resources used in the activities; or
 - (ii) a framework within which activities may be developed; and

- (b) for primary and secondary education:
 - (i) a curriculum of subjects and courses, including the core content of the courses, supporting materials and other learning resources used to deliver the courses; or
 - (ii) a framework within which a curriculum of subjects and courses may be developed.
- (4) Before approving a learning framework, the Minister must consult with the Solomon Islands Education Board and the Provincial Education Boards.
- (5) The Permanent Secretary must ensure that:
 - (a) a copy of each approved learning framework is readily accessible by education providers, school communities and ece centre communities; and
 - (b) a copy of each approved learning framework is kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Permanent Secretary.
- (6) An approved learning framework may be made available on a Government Internet site or by other means as the Permanent Secretary considers appropriate.
- (7) Subject to subsection (8), it is a condition of the registration of a school or ece centre that the approved learning frameworks are followed at the school or ece centre.
- (8) A school or ece centre may offer:
 - (a) an alternative learning framework with the written approval of the Minister; and
 - (b) alternative programs designed:
 - (i) to accelerate students who are older than their peers into later years of study; or
 - (ii) to cater for other students with special educational needs.

64 **Scheme of secondary education certificates**

- (1) The Minister must approve a scheme (a “***scheme of secondary education certificates***”) for certificates to be recognised nationally, evidencing the achievement of students in secondary education.
- (2) A scheme of secondary education certificates may:
 - (a) establish processes and standards to be used to assess the achievements of students; and
 - (b) include action to be taken for the purposes of assuring the quality and suitability of those processes and standards.
- (3) Before approving a scheme of secondary education certificates, the Minister must consult with the Solomon Islands Education Board and the Provincial Education Boards.
- (4) The Permanent Secretary must ensure that:
 - (a) a copy of the approved scheme of secondary education certificates is readily accessible by education providers and school communities; and
 - (b) a copy of the approved scheme of secondary education certificates is kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Permanent Secretary.
- (5) The approved scheme of secondary education certificates may be made available on a Government Internet site or by other means as the Permanent Secretary considers appropriate.

Division 3 Language of instruction

65 Language of instruction

- (1) The local vernacular, Pijin, English or sign language should be used individually or in combination to facilitate learning according to the needs of the students.
- (2) A teacher must endeavour to use English as the principle language of instruction from the year level of primary education (or, if the

Regulations prescribe some other year level, from that year level onwards).

Division 4 Religious instruction and pastoral care

66 Religious instruction and pastoral care

- (1) Offering religious instruction and pastoral care to students of a school is important.
- (2) Religious instruction in the denomination or sect or particular faith that is predominant amongst parents of students at a school, or in various forms of religious instruction, should be offered to students.
- (3) At a Government or provincial school, arrangements must be in place for parents to be able to exempt their children from particular religious instruction.

Division 5 Infrastructure

67 Minimum infrastructure obligation

- (1) It is a condition of the registration of a school or ece centre that the school or ece centre:
 - (a) must be reasonably clean, safe and secure; and
 - (b) must have an adequate supply of clean running water; and
 - (c) must have sufficient toilet and bathroom facilities for students and teachers (in working order and with doors that can be shut for privacy and safety).
- (2) It is a condition of registration of an education provider that the education provider must, if the education provider becomes aware of non-compliance with subsection (1) at any of its schools or ece centres:
 - (a) immediately make the resources required to resolve the problem available and take action to rectify the problem; or
 - (b) if that is not reasonably practicable:

- (i) order a temporary closure of the school or ece centre while the problem is resolved; and
- (ii) notify the Permanent Secretary of that temporary closure; and
- (iii) endeavour to ensure that the problem is resolved as quickly as possible so that the school or ece centre can be reopened.

68 Community use of school facilities

- (1) It is a condition of the registration of an education provider of a school for which Government funding is provided that the school must be made available for reasonable use by other organisations and people, including providers of adult and community education, at any reasonable time when it is not being used for the purposes of the school.
- (2) Any charge made for non-commercial community use of a school for which Government funding is provided must represent only the additional cost of utilities, cleaning and the like arising from such use.

69 Offences on school or ece centre premises

- (1) A person commits an offence if the person trespasses on education premises.

Maximum penalty: 10,000 penalty units or 12 months imprisonment, or both.

- (2) A person who is not a student of the school or ece centre commits an offence if the person behaves in an offensive or disorderly way on education premises.

Maximum penalty: 10,000 penalty units or 12 months imprisonment, or both.

- (3) A person commits an offence if the person:
 - (a) is on education premises; and
 - (b) is directed to leave the premises by:

- (i) an authorised officer; or
 - (ii) a police officer; or
 - (iii) the principal of the school or supervisor of the ece centre;
or
 - (iv) a person authorised by the principal or supervisor; and
- (c) fails to leave the premises in accordance with the direction.

Maximum penalty: 10,000 penalty units or 12 months imprisonment, or both.

(4) In this section:

"education premises" means land (including a building or structure on the land) on which there is a registered school or registered ece centre.

PART 8 MANAGEMENT OF TEACHING PROFESSION

Division 1 Employment of teachers and leaders

70 Employment by education provider

- (1) The education provider of a school or ece centre is the employer of the teachers and leaders in the school or ece centre (even if the Government pays the salary of the teachers and leaders).
- (2) An education provider must, after making a decision affecting the appointment of a school teacher, inform the Teaching Service Commission of the decision in the manner requested by the Teaching Service Commission.

71 Classification and duties of teachers and leaders

- (1) The Regulations may:
 - (a) limit the types of teaching and leadership positions available in schools and ece centres; and

(b) classify positions in schools or ece centres as teaching positions or leadership positions.

(2) The Administrative Instructions may:

(a) specify mandatory or desirable requirements for appointment to teaching or leadership positions; and

(b) specify the duties of persons appointed to teaching or leadership positions.

72 Salary, leave and other employment conditions

(1) The Regulations may:

(a) determine a salary structure for teachers and leaders in schools or ece centres; and

(b) provide for leave entitlements of teachers and leaders in schools or ece centres; and

(c) determine other terms and conditions for the employment of teachers and leaders in schools or ece centres; and

(d) provide for other matters relating to the employment of teachers and leaders in schools or ece centres, including matters relating to the following:

(i) permissible deductions from salary;

(ii) the basis of engagement;

(iii) temporary acting positions;

(iv) promotion or an increase in salary;

(v) transfer;

(vi) resignation;

(vii) termination of employment.

(2) The Administrative Instructions may determine how the classification level and remuneration of a teacher or leader employed in a school or ece centre must be determined.

73 Relationship with other sources of employment conditions

- (1) The conditions of employment set out in the Regulations and Administrative Instructions apply to a teacher or leader in a school or ece centre unless the terms of a particular employment contract provide for different conditions that are more advantageous to the teacher or leader.
- (2) In the case of a teacher or leader employed by the Government, the conditions of employment set out in the Regulations and Administrative Instructions apply to the teacher or leader to the exclusion of any conditions that might otherwise apply as a person holding an office of emolument in the service of the Crown in a civil capacity in respect of the Government.
- (3) To the extent that the conditions or arrangements set out in this Act, the Regulations or the Administrative Instructions are inconsistent with the *Labour Act* (Cap. 73), those conditions or arrangements prevail.

74 Conciliation of employee grievances by education provider

An education provider must endeavour to resolve grievances of its teachers or leaders by conciliation (regardless of the fact that the teachers or leaders may apply for review of employment decisions to the Teaching Service Commission under Division 4).

Division 2 Conduct rules and standards

75 Rules of conduct and teacher and leader standards

- (1) The Administrative Instructions may set out the following:
 - (a) rules of conduct for teachers and leaders;
 - (b) standards for teachers and leaders.
- (2) Teachers and leaders must, in performing their duties, comply with the rules of conduct.
- (3) The standards for teachers and leaders are relevant to assessing the performance of teachers and leaders.

Division 3 Powers to manage teachers and leaders

Subdivision 1 Introduction

76 Protection of safety and welfare of students

- (1) Protecting the safety and welfare of students must be the paramount consideration for exercising powers under this Division.
- (2) In particular, if a teacher or leader is alleged to have engaged in inappropriate conduct towards a student, steps must be taken immediately to ensure that the teacher or leader has no further contact with the student until the matter has been properly investigated and appropriate action taken.

77 Application of Division to conduct

- (1) This Division applies to conduct engaged in by a teacher or leader:
 - (a) whether before or after the commencement of this Act; and
 - (b) whether within or outside Solomon Islands.
- (2) Nothing prevents more than one form of action being taken against a teacher or leader for misconduct.
- (3) If conduct constitutes an offence and also misconduct, the taking of action under this Division is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to taking action under this Division.

Subdivision 2 Powers of education provider

78 Reduction in remuneration for unauthorised absence or failure to perform duties

- (1) If a teacher or leader is absent from duties without lawful authority, the education provider may, as the employer of the teacher or leader, direct that the teacher or leader not be paid remuneration for the period of the absence.
- (2) If, in consequence or furtherance of industrial action, a teacher or leader refuses or fails to carry out duties that the teacher or leader

has been lawfully instructed to perform, the education provider may, as the employer of the teacher or leader, direct that the teacher or leader not be paid remuneration for any day (or part of a day) on which the teacher or leader refuses or fails to carry out those duties.

- (3) A direction under subsection (2) is effective to prevent payment of remuneration to a teacher or leader despite the fact that, on any day (or part of a day) to which the direction relates, the teacher or leader performs some (but not all) of the duties that the teacher or leader has been lawfully instructed to perform.
- (4) If the Government is paying the salary of a teacher or leader, the Permanent Secretary may exercise the powers of an education provider under this section (even if the education provider chooses not to do so in the particular case).

79

Powers of education provider to take action against teacher or leader

- (1) An education provider may, by written notice to a teacher or leader employed by the education provider, terminate the employment of the teacher or leader on any of the following grounds:
 - (a) physical or mental incapacity to perform duties satisfactorily;
 - (b) unsatisfactory performance of duties;
 - (c) misconduct.
- (2) An education provider may, on the ground of misconduct:
 - (a) reprimand a teacher or leader employed by the education provider; or
 - (b) suspend a teacher or leader employed by the education provider from duty without remuneration and without accrual of service for a specified period (not exceeding 1 month); or
 - (c) if the misconduct involves the provision of false or misleading information resulting in a higher classification level being determined for a teacher or leader employed by the education provider than should have been determined, reduce the classification level of the teacher or leader to the level that should have been determined.

- (3) Before taking action under this section, the education provider must give the teacher a written notice:
 - (a) specifying the action proposed to be taken; and
 - (b) stating the particulars of the allegations against the teacher or leader; and
 - (c) inviting the teacher or leader to make submissions to the education provider within a specified period (of at least 28 days) about why the action should not be taken.
- (4) The education provider must consider any submissions received within the period allowed.
- (5) If the education provider has made reasonable endeavours to give a teacher or leader written notice under subsection (3) but has been unable to locate the teacher or leader or to give the teacher or leader the notice, the education provider may take action against the teacher or leader after taking whatever steps the education provider considers appropriate to try to bring the matter to the attention of the teacher or leader.

80 Power to investigate impairment of capacity

- (1) An education provider may investigate whether the capacity of a teacher or leader employed by the education provider to perform duties is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher or leader.
- (2) The education provider may, during the course of an investigation, require the teacher or leader:
 - (a) to undergo a medical examination by a medical practitioner selected by the education provider; and
 - (b) to provide, or authorise the medical practitioner to provide, a report on the results of the medical examination to the education provider.
- (3) If the teacher or leader refuses or fails, without reasonable excuse, to comply with a requirement under subsection (2), the education provider may suspend the teacher or leader on leave without pay until the teacher or leader complies with the requirement.

- (4) The education provider must provide the teacher or leader with a copy of any report on the results of a medical examination required under this section.

81 Power to suspend from duty pending investigation into misconduct

- (1) An education provider may suspend a teacher or leader employed by the education provider from duty pending the completion of an investigation or process in respect of alleged misconduct if the education provider decides that it is in the public interest or the interest of a place at which the teacher or leader performs duties to do so.
- (2) Subject to subsection (3), a suspension will be with remuneration and accrual of service.
- (3) A suspension may be without remuneration and without accrual of service if:
 - (a) the teacher or leader has been charged with an offence against a child or any offence punishable by imprisonment; or
 - (b) the teacher or leader has been given written notice under section 79(3) setting out details of alleged misconduct on the part of the teacher; or
 - (c) section 79(5) applies.
- (4) The education provider must reimburse remuneration and reinstate the accrual of service withheld as a result of the suspension of a teacher or leader from duty if a court finds the person not guilty of the criminal offence or the education provider decides that the person was not guilty of misconduct (or both if the teacher or leader has been both charged with the criminal offence and given notice setting out details of alleged misconduct).
- (5) The education provider may revoke a suspension at any time.

82 Referral of matter to police or Permanent Secretary for investigation

- (1) If an education provider reasonably suspects that a teacher or leader employed, or formerly employed, by the education provider has

engaged in misconduct constituting an offence, the education provider must refer the matter to the police.

- (2) An education provider may, in the manner approved by the Permanent Secretary, refer a matter relating to the conduct or performance of a teacher or leader employed, or formerly employed, by the education provider to the Permanent Secretary for investigation under this Act (and the Permanent Secretary may decide whether or not to investigate the matter).

83 Referral of matter to Teaching Service Commission

Subject to any limitations specified in the Regulations, an education provider may refer a matter relating to the conduct or performance of a teacher or leader employed, or formerly employed, by the education provider to the Teaching Service Commission.

Subdivision 3 Powers of Permanent Secretary

84 Interpretation

In this Subdivision:

“leader” includes a person who is or has been employed as a leader, whether or not the person is or has been registered as a teacher under this Act or the repealed provisions;

“teacher” includes a person who is or has been employed as a teacher, whether or not the person is or has been registered as a teacher under this Act or the repealed provisions.

85 Investigation into capacity, performance or conduct

- (1) The Permanent Secretary may, at the request of an education provider made in accordance with the Administrative Instructions or on the Permanent Secretary’s own initiative, investigate:
 - (a) whether a person’s capacity to perform duties as a teacher or leader is seriously impaired by an illness or disability affecting the person’s behaviour or competence as a teacher or leader; or
 - (b) whether a teacher or leader has engaged in misconduct; or

- (c) whether a teacher or leader whose performance has been assessed as unsatisfactory has been given a reasonable opportunity to improve but has not achieved a satisfactory level of performance; or
 - (d) whether a teacher or leader has otherwise ceased to be a fit and proper person to be registered as a teacher.
- (2) The powers in this Subdivision are in addition to the powers of investigation under Part 11.
 - (3) If the person to whom an investigation relates is a teacher or leader employed by an education provider, the Permanent Secretary must, as soon as practicable, give notice of the commencement of the investigation, and then of the outcome of the investigation, to the education provider.

86 Powers to investigate impairment of capacity

- (1) The Permanent Secretary may, during the course of an investigation, require the teacher or leader:
 - (a) to undergo a medical examination by a medical practitioner selected by the Permanent Secretary; and
 - (b) to provide, or authorise the medical practitioner to provide, a report on the results of the medical examination to the Permanent Secretary.
- (2) If a person registered as a teacher refuses or fails, without reasonable excuse, to comply with a requirement under subsection (1), the Permanent Secretary may suspend the person's registration until the person complies with the requirement.
- (3) Unless the Permanent Secretary directs otherwise, a teacher or leader is taken to be on leave without pay from employment as a teacher or leader for any period for which the person's registration as a teacher is suspended and the period does not count as service as a teacher or leader.
- (4) The Permanent Secretary must provide the teacher or leader with a copy of any report on the results of a medical examination required under this section.

87

Power to suspend registration pending investigation into misconduct

- (1) The Permanent Secretary may suspend the registration of a person as a teacher pending the completion of an investigation or process in respect of alleged misconduct if the Permanent Secretary decides that it is in the public interest or the interest of a place at which the person performs duties to do so.
- (2) Unless the Permanent Secretary directs otherwise, a teacher or leader is taken to be on leave without pay from employment as a teacher or leader for any period for which the person's registration as a teacher is suspended and the period does not count as service as a teacher or leader.
- (3) The Permanent Secretary may revoke a suspension at any time.

88

Power to hold inquiry into misconduct

- (1) The Permanent Secretary may, during the course of an investigation, hold an inquiry to determine whether a teacher or leader has engaged in misconduct.
- (2) The Permanent Secretary must:
 - (a) give the teacher or leader to whom an inquiry relates at least 28 days' written notice of the time and place at which the Permanent Secretary intends to commence conduct of the inquiry; and
 - (b) include in the notice particulars of the allegations that are the subject of the inquiry; and
 - (c) give the teacher or leader a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Permanent Secretary.
- (3) The Permanent Secretary may adjourn an inquiry from time to time as the Permanent Secretary considers appropriate.
- (4) If the Permanent Secretary has made reasonable endeavours to give the teacher or leader written notice under subsection (2) but has been unable to locate the teacher or leader or to give the teacher or leader the notice, the Permanent Secretary may proceed after taking

whatever steps the Permanent Secretary considers appropriate to try to bring the matter to the attention of the teacher or leader.

- (5) If the teacher or leader to whom an inquiry relates does not attend at the time and place fixed by the Permanent Secretary for the commencement or resumption of the inquiry, the Permanent Secretary may proceed to hear and determine the matter in the absence of the teacher or leader.
- (6) In an inquiry, the Permanent Secretary:
 - (a) is not bound by the rules of evidence, may consider information obtained through an investigation under this Act and may obtain information on any matter as the Permanent Secretary considers appropriate; and
 - (b) may, on the Permanent Secretary's own initiative or on the application of the teacher or leader concerned, direct that the inquiry or a part of the inquiry be held in private; and
 - (c) must endeavour to take steps to protect and assist any student or other vulnerable witness giving evidence in the inquiry; and
 - (d) may, subject to this Act, determine the procedures to be followed in the inquiry.

89

Action to deal with impairment, misconduct or unsatisfactory performance

- (1) This section applies if, after conducting an investigation and giving the teacher or leader a reasonable opportunity to make submissions, the Permanent Secretary is satisfied on the balance of probabilities that:
 - (a) the capacity of the teacher or leader to perform duties is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher or leader; or
 - (b) the teacher or leader has engaged in misconduct; or
 - (c) the performance of the teacher or leader is unsatisfactory and the teacher or leader has been given a reasonable opportunity to improve but has not achieved a satisfactory level of performance; or

- (d) the teacher or leader has otherwise ceased to be a fit and proper person to be registered as a teacher.
- (2) If this section applies, the Permanent Secretary may do 1 or more of the following:
- (a) in the case of a person registered as a teacher:
 - (i) impose conditions on the person's registration;
 - (ii) suspend the person's registration for a specified period or until the fulfilment of specified conditions or until the Permanent Secretary orders otherwise;
 - (iii) cancel the person's registration with immediate effect or with effect at a future specified date;
 - (b) in any case, for misconduct:
 - (i) reprimand the teacher or leader;
 - (ii) if the misconduct involves the provision of false or misleading information resulting in a higher classification level being determined for the teacher or leader than should have been determined, order that the classification level of the teacher or leader be reduced to the level that should have been determined;
 - (iii) disqualify the teacher or leader from being registered as a teacher permanently or for a specified period or until the fulfilment of specified conditions or until the Permanent Secretary orders otherwise.
- (3) A teacher or leader is taken to be on leave without pay from employment as a teacher or leader for any period for which the person's registration as a teacher is suspended and the period does not count as service as a teacher or leader.
- (4) If a person's registration as a teacher is cancelled, the person's employment as a teacher or leader is automatically terminated.

90 Referral of matter to police

If the Permanent Secretary reasonably suspects that a teacher or leader has engaged in misconduct constituting an offence, the Permanent Secretary must refer the matter to the police.

91 Referral of matter to Teaching Service Commission

Subject to any limitations specified in the Regulations, the Permanent Secretary may refer a matter relating to the conduct or performance of a teacher or leader to the Teaching Service Commission.

Division 4 Role of Teaching Service Commission

92 Interpretation

In this Division:

“employment decision”

(a) means:

- (i) a decision of an education provider under section 79; or
- (ii) an administrative decision of an education provider about the engagement, promotion, transfer, remuneration or entitlements of a teacher or leader (whether made before or after the commencement of this section); but

(b) does not include:

- (i) a decision of an education provider under section 78; or
- (ii) a decision of an education provider under section 81 (other than a decision to suspend without remuneration and without accrual of service); or
- (iii) a decision of a kind excluded from this definition by the Regulations;

“referral” means a referral of a matter to the Teaching Service Commission under section 83 or 91;

“registration decision” means:

- (a) a decision to refuse an application for registration as a teacher (whether made under this Act or the repealed provisions); or
- (b) a decision to impose a condition of registration, or to refuse to vary or revoke a condition of registration, of a teacher; or
- (c) a decision of the Permanent Secretary under section 89 or a decision to cancel registration made under the repealed provisions;

“review” means a review of an employment decision or registration decision by the Teaching Service Commission under section 94;

“teacher or leader” includes a former teacher or leader.

93 Constitutional powers

- (1) Section 116B of the Constitution gives the Teaching Service Commission powers to make appointments of school teachers (including power to confirm appointments) and to remove and to exercise control over school teachers.
- (2) The Teaching Service Commission may exercise its constitutional powers as it sees fit.
- (3) Pursuant to section 137(5) of the Constitution, this Act expands the role of the Teaching Service Commission so that the Teaching Service Commission can effectively and efficiently oversee teacher employment and registration decisions made under the schemes in this Act in a comprehensive and cohesive manner.

94 Right to review by Teaching Service Commission

- (1) A teacher or leader aggrieved by an employment decision or registration decision directly affecting the teacher or leader may apply to the Teaching Service Commission for review of the decision.
- (2) An application for review by the Teaching Service Commission of an employment decision or registration decision must be lodged with the Commission within 28 days after the day on which the teacher or leader is notified of the decision.

- (3) The Teaching Service Commission may, in a particular case, extend the period within which an application for review must be made.
- (4) An application for review may be withdrawn by written notice signed by the teacher or leader and lodged with the Teaching Service Commission (or by some other form of notice approved by the Permanent Secretary).

95 Conduct of referral or review

- (1) A referral or review must commence within 28 days after the referral or the making of the application for review.
- (2) A referral or review must be completed within 28 days after the teacher or leader concerned has finished providing information and making submissions on the application.
- (3) The Teaching Service Commission may extend the time for completion of a referral or review but only if there are special reasons in the circumstances of the individual case for doing so.
- (4) A referral or review must be conducted:
 - (a) as quickly, and with as little formality, as a proper consideration of the matter allows; and
 - (b) in accordance with the rules of natural justice.

Note to subsection (4):

This means that both the teacher or leader and the education provider or Permanent Secretary must be given a reasonable opportunity to make submissions.

- (5) A review of an employment or registration decision must be conducted with a view to determining whether the decision subject to review is lawful and, even if it is lawful, whether it is harsh, unjust or unreasonable.
- (6) The parties to a referral or review are not to be legally represented, but nothing prevents the teacher or leader concerned from being assisted by an industrial association or a person other than a legal practitioner in presenting the teacher's or leader's case.

Determination of referral or review

- (1) On a referral, the Teaching Service Commission may make any decision that the education provider or Permanent Secretary could have made in relation to the matter.
- (2) On a review of an employment or registration decision, the Teaching Service Commission may:
 - (a) confirm the decision; or
 - (b) withdraw the decision; or
 - (c) substitute the decision with a decision that the Teaching Service Commission considers appropriate.
- (3) In addition, on a referral by an education provider or a review of an employment decision, the Teaching Service Commission may exercise the powers of the Permanent Secretary to make a registration decision relating to the person if the Commission determines that the circumstances of the particular case warrant that action.
- (4) The parties to the referral or review must be given written notice of the decision made by the Teaching Service Commission.
- (5) A decision made on a referral or review by the Teaching Service Commission is not subject to further review.

Administrative assistance and delegation

- (1) The Permanent Secretary must provide administrative assistance to the Teaching Service Commission for its functions under this Part.
- (2) A person who was involved in the making of an employment or registration decision subject to a referral or review must not be personally involved in providing administrative assistance to the Teaching Service Commission for the referral or review.
- (3) The Teaching Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this Division by directions in writing to any member of the Commission or to any public officer or to any provincial government officer.

PART 9 DISMISSAL OF SCHOOL BOARD

98 Dismissal of school board

- (1) The Permanent Secretary may, by written notice to the chairperson of a school board, dismiss the school board if there are proper grounds for the dismissal.
- (2) There are proper grounds for the dismissal of a school board if the Permanent Secretary is satisfied:
 - (a) that:
 - (i) the board has not exercised its functions for 6 months or more; or
 - (ii) there are not enough elected or appointed members for a quorum to be formed at board meetings; or
 - (iii) the board has engaged in misconduct or maladministration that is more than trivial; or
 - (iv) the board is otherwise not functioning in a satisfactory manner; and
 - (b) that the board has been given a reasonable opportunity to rectify the problem and has not satisfactorily done so.
- (3) Before dismissing a school board, the Permanent Secretary must give the school board, the education provider of the school and the principal of the school a written notice:
 - (a) specifying the action proposed to be taken; and
 - (b) stating the grounds on which the Permanent Secretary proposes to take the action and the facts that, in the Permanent Secretary's opinion, establish the grounds; and
 - (c) inviting written submissions to be made to the Permanent Secretary within a specified period (of at least 28 days) about why the action should not be taken.
- (4) The Permanent Secretary must consider any written submissions received within the period allowed.

- (5) The Permanent Secretary must also consult with the relevant Provincial Education Board before dismissing a school board.
- (6) If a school board is dismissed, all the offices of the elected or appointed members of the board fall vacant and fresh elections or appointments must be made.

PART 10 CANCELLATION OF REGISTRATION OF EDUCATION PROVIDER, SCHOOL OR ECE CENTRE

99 Cancellation of registration of education provider

- (1) The Permanent Secretary may, by written notice to the education provider of a provincial school or ece centre or non-government school or ece centre, cancel the registration of the education provider if there are proper grounds for the cancellation.
- (2) There are proper grounds for the cancellation of the registration of an education provider if the Permanent Secretary is satisfied that:
 - (a) the education provider is not eligible, or has ceased to meet the requirements for eligibility, to be registered as an education provider; and
 - (b) there has been a reasonable opportunity for the education provider to rectify the problem and the education provider has not satisfactorily done so.
- (3) There are proper grounds for the cancellation of the registration of an education provider if the Permanent Secretary is satisfied that:
 - (a) there has been, in connection with the education provider, a serious contravention or a pattern of contraventions of this Act, the Education Funding Code, the Regulations, the Administrative Instructions, or the conditions of registration of the education provider or the schools or ece centres of the education provider; and
 - (b) the education provider has been given a reasonable opportunity to remedy or mitigate the consequences of the default and to take or refrain from taking action to prevent the continuance or

recurrence of the default and the education provider has not satisfactorily done so.

- (4) There are proper grounds for the cancellation of the registration of an education provider if the Permanent Secretary is satisfied that the education provider has ceased to operate any schools or ece centres.
- (5) Before cancelling the registration of an education provider, the Permanent Secretary must give the education provider a written notice:
 - (a) specifying the action proposed to be taken; and
 - (b) stating the grounds on which the Permanent Secretary proposes to take the action and the facts that, in the Permanent Secretary's opinion, establish the grounds; and
 - (c) inviting written submissions to be made to the Permanent Secretary within a specified period (of at least 28 days) about why the action should not be taken.
- (6) If the education provider operates a school or ece centre on behalf of another person or body, that other person or body must also be given the notice.
- (7) The Permanent Secretary must consider any written submissions received within the period allowed.
- (8) The Permanent Secretary must also consult with Provincial Education Boards of provinces in which the education provider operates a school or ece centre before cancelling the registration of an education provider.
- (9) Unless the Permanent Secretary is satisfied that circumstances warrant otherwise:
 - (a) cancellation of the registration of an education provider should not take effect until there has been a reasonable opportunity:
 - (i) to investigate whether closure of the schools and ece centres of the education provider could be avoided through transfer of the schools and ece centres to other

registered education providers or agreements under section 102; and

- (ii) for such transfers or agreements to take effect; and
 - (b) cancellation of the registration of an education provider should take effect at the end of the last term in a year, with each school or ece centre community affected by the cancellation being given as much advance notice as possible.
- (10) If the registration of an education provider is cancelled, the registration of each school and ece centre of the education provider that has not been transferred to another education provider or taken over under section 102 is also cancelled.

100 Cancellation of registration of school or ece centre

- (1) The Permanent Secretary may, by written notice to the education provider of a provincial school or ece centre or non-government school or ece centre, cancel the registration of the school or ece centre if there are proper grounds for the cancellation.
- (2) There are proper grounds for the cancellation of the registration of a school or ece centre if the Permanent Secretary is satisfied that:
 - (a) the education provider of the school or ece centre does not have the capacity to operate the school or ece centre as required by this Act; and
 - (b) there has been a reasonable opportunity for the education provider to rectify the problem and the education provider has not satisfactorily done so.
- (3) There are proper grounds for the cancellation of the registration of a school or ece centre if the Permanent Secretary is satisfied that:
 - (a) there has been, in connection with the school or ece centre, a serious contravention or a pattern of contraventions of this Act, the Education Funding Code, the Regulations, the Administrative Instructions, or the conditions of registration of the school or ece centre or teachers employed in the school or ece centre; and

- (b) the education provider has been given a reasonable opportunity to remedy or mitigate the consequences of the default and to take or refrain from taking action to prevent the continuance or recurrence of the default and the education provider has not satisfactorily done so.
- (4) There are proper grounds for the cancellation of registration of a school or ece centre if the Permanent Secretary is satisfied that:
 - (a) there is insufficient demand for enrolment in the school or ece centre to warrant continued registration of the school or ece centre, taking into account:
 - (i) the competing interests of schools and ece centres for Government funding and other relevant factors; and
 - (ii) for ece centres, the need for ece centres to remain open even with low demand for enrolment in order for young children who are unable to walk long distances to receive early childhood education; or
 - (b) the school or ece centre has ceased to operate.
- (5) Before cancelling the registration of a school or ece centre, the Permanent Secretary must give the education provider and the principal and school board of the school, or the supervisor of the ece centre, a written notice:
 - (a) specifying the action proposed to be taken; and
 - (b) stating the grounds on which the Permanent Secretary proposes to take the action and the facts that, in the Permanent Secretary's opinion, establish the grounds; and
 - (c) inviting written submissions to be made to the Permanent Secretary within a specified period (of at least 28 days) about why the action should not be taken.
- (6) If the education provider operates the school or ece centre on behalf of another person or body, the notice must also be given to the other person or body.
- (7) The Permanent Secretary must consider any written submissions received within the period allowed.

- (8) Before cancelling the registration of a school or ece centre, the Permanent Secretary must also consult with the Provincial Education Board of the province in which the school or ece centre is located.
- (9) Unless the Permanent Secretary is satisfied that circumstances warrant otherwise:
 - (a) cancellation of the registration of a school or ece centre should not take effect until there has been a reasonable opportunity:
 - (i) to investigate whether closure of the school or ece centre could be avoided through transfer of the school or ece centre to another registered education provider or an agreement under section 102; and
 - (ii) for such a transfer or agreement to take effect; and
 - (b) cancellation of the registration of a school or ece centre should take effect at the end of the last term in a year, with the school or ece centre community being given as much advance notice as possible.

101 Government schools and ece centres

If the Permanent Secretary has concerns about a Government school or ece centre that are similar to those that may lead to cancellation of registration of a provincial school or ece centre or non-government school or ece centre, the Permanent Secretary must inform the Minister of those concerns with a view to steps being taken urgently to mitigate or rectify the concerns.

102 Action to avoid closure of school or ece centre

- (1) This section applies if a school or ece centre will be closed unless the school or ece centre is transferred to another registered education provider or action is taken under this section.
- (2) The operation of a school or ece centre to which this section applies may be taken over on a temporary or permanent basis as follows:
 - (a) by the Minister by agreement between the Minister and the education provider of the school or ece centre;

- (b) for a non-government school or ece centre, by the Provincial Executive, acting with the written approval of the Minister, by agreement between the Provincial Executive and the education provider of the school.
- (3) If a provincial school or ece centre or non-government school or ece centre is taken over by the Minister on a permanent basis, the school or ece centre becomes a Government school or ece centre.
- (4) If a non-government school or ece centre is taken over by a Provincial Executive on a permanent basis, the school or ece centre becomes a provincial school or ece centre.
- (5) If the education provider or former education provider of a school or ece centre the subject of an agreement under this section and the Minister or Provincial Executive are unable to come to an agreement about how the assets and liabilities that relate to the school or ece centre are to be dealt with, the Minister may give directions determining how they are to be dealt with.
- (6) Neither the Minister nor a Provincial Executive is under an obligation to take action to avoid the closure of a school or ece centre.

PART 11 ENFORCEMENT AND EMERGENCY POWERS

Division 1 Information gathering and sharing

103 Information for maintenance of registers

- (1) The Permanent Secretary may, by written notice, require a person to provide to the Permanent Secretary information reasonably required for the maintenance of a register kept under this Act.
- (2) The notice must specify:
 - (a) the information required; and
 - (b) how the information is to be provided; and
 - (c) the period within which the information is to be provided.

- (3) A person commits an offence if the person fails or refuses, without reasonable excuse, to provide information as required by notice under this section.

Maximum penalty: 30,000 penalty units.

104 Information from Commissioner of Police relevant to teachers or education providers

- (1) This section applies to information relevant to the question of whether a person is a fit and proper person to be, or to continue to be, registered as a teacher or education provider.

Note to subsection (1):

For example, information about criminal convictions, including criminal convictions of the members of the governing body of an education provider that is a body corporate.

- (2) Subject to subsection (3), the Commissioner of Police must, at the request of the Permanent Secretary, and may, on the Commissioner's own initiative, make available to the Permanent Secretary information to which this section applies (whether or not the person to whom the information relates has consented to the provision of the information).
- (3) The Commissioner of Police need not make information available if the Commissioner considers that making the information available:
- (a) may prejudice or otherwise hinder an investigation to which the information may be relevant; or
 - (b) may lead to the identification of an informant; or
 - (c) may affect the safety of a police officer, informant or other person.

105 Arrangements between Permanent Secretary, DPP, and Commissioner of Police for reporting of offences

- (1) This section applies to the following offences:
- (a) an offence committed, or alleged to have been committed, by a person who is registered as a teacher that raises serious

concerns about whether the person is a fit and proper person to continue to be registered as a teacher;

- (b) an offence committed, or alleged to have been committed, by an education provider, or a member of the governing body of a body corporate that is an education provider, that raises serious concerns about whether the education provider is a fit and proper person to continue to be registered as an education provider.
- (2) The Permanent Secretary, the Director of Public Prosecutions and the Commissioner of Police must establish arrangements for reports to be made to the Permanent Secretary of the laying of charges of offences to which this section applies and the outcomes of the proceedings on the charges.
 - (3) The arrangements must define the offences to which they are to apply and specify the contents of the reports and the times within which the reports must be made.
 - (4) The Permanent Secretary, the Director of Public Prosecutions and the Commissioner of Police must, at least annually, review the arrangements to ensure their continuing effectiveness.

106 Notification to education provider

- (1) The Permanent Secretary may provide information about a person that the Permanent Secretary obtains under this Division to the education provider who employs the person or of whose governing body the person is a member.
- (2) If the information relates to a person being charged with an offence and the charge is subsequently withdrawn or the person is subsequently acquitted, the Permanent Secretary must inform the education provider of the withdrawal or acquittal as soon as practicable.

Division 2 Authorised officers

107 Authorised officers

- (1) The Permanent Secretary may appoint the following to be an authorised officer:

- (a) a public officer responsible to the Permanent Secretary;
 - (b) a person of a class specified in the Regulations (such as a provincial government officer with relevant functions).
- (2) The Permanent Secretary must issue each authorised officer with an identity card.
- (3) The identity card must show a recent photograph of the authorised officer.
- (4) An authorised officer exercising a power under this Division must produce the officer's identity card for inspection if asked to do so by:
- (a) the person in relation to whom the power is being exercised; or
 - (b) a person performing duties at a school or ece centre or place of business at which or in relation to which the power is being exercised.
- (5) A person who ceases to be an authorised officer commits an offence if the person does not return the person's identity card to the Permanent Secretary within 21 days after the cessation.

Maximum penalty: 1000 penalty units.

108 Inspections, audits, assessments and investigations

- (1) The Permanent Secretary may:
- (a) require an authorised officer to conduct an inspection of a school or ece centre, or the records of a school, ece centre or education provider, for a specified purpose; or
 - (b) require an authorised officer to conduct an audit of the whole of the operations, or of a specified aspect of the operations, of a school or ece centre against specified criteria; or
 - (c) require an authorised officer to conduct an investigation into whether a person is or remains, a fit and proper person to be registered as a teacher or education provider; or
 - (d) at the request of, or with the consent of, the education provider of a school or ece centre, require an authorised officer to

- conduct an assessment of the performance of a teacher or leader of the school or ece centre; or
- (e) require an authorised officer to conduct an investigation into a matter referred to in section 85(1); or
 - (f) require an authorised officer to conduct an investigation into an allegation of a contravention of this Act, the Education Funding Code, the Regulations, the Administrative Instructions or conditions of registration of a teacher, education provider, school or ece centre.
- (2) Without limiting the purposes for which the Permanent Secretary may require an audit of the operations of a school or ece centre to be conducted, those purposes include the following:
- (a) to ascertain the level of compliance with this Act, the Education Funding Code, the Regulations, Administrative Instructions and conditions of registration of the teachers, education provider, school or ece centre;
 - (b) to monitor the use of Government, provincial and community funding and provide information for the purposes of funding decisions;
 - (c) to determine areas requiring improvement in the operations of the school or ece centre and to facilitate planning for such improvement.
- (3) If the Permanent Secretary requires the conduct of an audit of the whole of the operations of a school or ece centre, the education provider of the school or ece centre must be given at least 28 days' written notice of the proposal to conduct the audit and of the period over which it is proposed to be conducted.

109

General powers of authorised officers

- (1) An authorised officer may, as reasonably required for the performance of a function under section 108, enter a place to which this section applies at any reasonable time and while there do one or more of the following:
- (a) inspect anything in or on the place;

- (b) require a person to produce a record or other document, including a written record that reproduces in an understandable form information stored by computer or other process;
 - (c) examine, copy or take extracts from a record, document or information so produced or require a person to provide a copy of any such record, document or information;
 - (d) take photographs, films or audio, video or other recordings;
 - (e) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, an offence under this Act or the Regulations;
 - (f) require a person whom the authorised officer reasonably suspects has committed, is committing, or is about to commit, an offence under this Act or the Regulations to state the person's full name and usual place of residence and to produce evidence of the person's identity;
 - (g) require a person whom the authorised officer reasonably suspects has knowledge of matters in respect of which information is required for the performance of the function to answer questions in relation to those matters;
 - (h) give a direction required in connection with the exercise of a power conferred by a paragraph above or otherwise in connection with the performance of the function.
- (2) In the performance of functions under section 108 or the exercise of powers under this section, an authorised officer may be assisted by such persons as the authorised officer considers necessary in the circumstances.
- (3) All persons who share responsibility for education at a school or ece centre, or work at a place of business of an education provider, must cooperate with the performance of functions under section 108, or the exercise of powers under this section, by an authorised officer and provide reasonable assistance to the authorised officer as requested by the authorised officer.
- (4) An authorised officer must not unreasonably disrupt the provision of education in the course of performing functions under section 108 or exercising powers under this section.

- (5) An individual is not obliged to provide information as required under this section if to do so might tend to incriminate the person or make the person liable to a penalty.
- (6) This section applies to the following places:
 - (a) the premises of a school or ece centre;
 - (b) a place of business of an education provider;
 - (c) a place that an authorised officer reasonably suspects is being used for the purposes of a school, ece centre or place of business of an education provider.

110 Report of authorised officer

- (1) An authorised officer must provide a report to the Permanent Secretary on the performance of functions under section 108.
- (2) The Permanent Secretary must give a copy of a report of an audit of the operations of a school or ece centre undertaken under section 108(1)(b) to:
 - (a) the education provider of the school or ece centre; and
 - (b) for a school, the school board and the principal; and
 - (c) for an ece centre, the supervisor of the ece centre.
- (3) The Permanent Secretary must give a copy of a report of an assessment of the performance of a teacher or leader of a school or ece centre undertaken under section 108(1)(d) to:
 - (a) the education provider of the school or ece centre; and
 - (b) if the report relates to a person other than the principal of the school or supervisor of the ece centre, the principal of the school or the supervisor of the ece centre; and
 - (c) the person to whom the report relates.

111

Powers to obtain information about potential students

An authorised officer may, for the purposes of the administration of this Act, attend at any reasonable time at residential premises and request a person in the premises to provide the officer with:

- (a) the full names of all children who are of compulsory school age and who are resident in the premises; and
- (b) the respective ages of those children; and
- (c) whether the children are enrolled in schools and, if so, the schools in which they are enrolled.

112

Obstruction of authorised officer

(1) A person commits an offence if:

(a) the person:

- (i) hinders or obstructs an authorised officer, or a person assisting an authorised officer; or
- (ii) uses abusive, threatening or insulting language to an authorised officer or a person assisting an authorised officer; or
- (iii) when required by an authorised officer under this Division to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; and

(b) the person knows the authorised officer is exercising powers, or performing functions, under this Act or that the person is assisting an authorised officer exercising such powers or performing such functions.

Maximum penalty: 10,000 penalty units or imprisonment for 12 months.

(2) An individual cannot be prosecuted for refusing or failing to answer a question on the grounds that to do so might tend to incriminate the person or make the person liable to a penalty.

113 Falsely representing to be authorised officer

A person commits an offence if the person:

- (a) represents, by words or conduct, that the person or another person is an authorised officer; and
- (b) knows the representation is false.

Maximum penalty: 10,000 penalty units or imprisonment for 12 months.

114 Protection from liability

An authorised officer is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the performance of a function or exercise of a power under this Division.

Division 3 Compliance notices

115 Compliance notices

- (1) The Permanent Secretary may issue a written notice (a "**compliance notice**") to a person for the purposes of securing compliance, or remedying or mitigating the consequences of noncompliance, with a requirement imposed by this Act, the Education Funding Code, the Regulations, the Administrative Instructions or a condition of registration of a teacher, education provider, school or ece centre.
- (2) A compliance notice must:
 - (a) specify the default; and
 - (b) specify the action required to be taken, or refrained from being taken, to prevent the continuance or recurrence of the default or to remedy or mitigate the consequences of the default.
- (3) Contravention of a compliance notice is not an offence in itself, but the Permanent Secretary may take contravention of the notice into account in determining whether to take action, and what action to take, in respect of the matter under this Act.

Division 4 Public warnings and emergencies

116 Permanent Secretary may issue public warnings

- (1) The Permanent Secretary may, if satisfied that it is in the public interest to do so, make a public statement identifying and giving warnings or information about:
 - (a) a teacher who is not registered as required by this Act; or
 - (b) an education provider who is not registered as required by this Act; or
 - (c) a school or ece centre that is not registered as required by this Act; or
 - (d) any other matter that adversely affects or may adversely affect the interests of persons in connection with early childhood, primary or secondary education.
- (2) The statement may identify a particular person or body or a particular education provider, school or ece centre.
- (3) Neither the Permanent Secretary nor the Crown incurs liability for a statement made by the Permanent Secretary in good faith in the exercise or purported exercise of powers under this section.
- (4) A person incurs no liability for publishing in good faith a statement made by the Permanent Secretary under this section or a fair report or summary of such a statement.

117 Emergency powers of Permanent Secretary

- (1) The Permanent Secretary may, if satisfied that it is necessary or desirable to do so in an emergency, give directions to education providers that:
 - (a) all schools or ece centres in a specified area or in the whole of Solomon Islands be closed and remain closed; or
 - (b) specified action be taken at, or in connection with, all schools or ece centres in a specified area or in the whole of Solomon Islands.

- (2) The purpose of the directions must be to protect the health and safety of the school or ece centre community or the broader community.
- (3) The directions may be given by Administrative Instructions, notice in the Gazette, radio or television broadcast or other means as the Permanent Secretary considers most suitable in the circumstances of the emergency.
- (4) An education provider commits an offence if the education provider, without reasonable excuse, contravenes a direction given under this section.

Maximum penalty: 100,000 penalty units.

PART 12 REVIEW OF CERTAIN DECISIONS OF PERMANENT SECRETARY

118 Right of review of certain decisions of Permanent Secretary

- (1) A right to make an application to the Minister for review lies against a decision of the Permanent Secretary made in the exercise or purported exercise of a power under this Act as follows:
 - (a) an applicant for registration, or variation of registration, as an education provider or of a school or ece centre may apply for review of a decision to refuse the application;
 - (b) a person to whom a compliance notice is issued may apply for review of the decision to issue the notice;
 - (c) a member of a school board may apply for review of a decision to dismiss the school board;
 - (d) an education provider may apply for review of a decision to cancel or vary the registration of the education provider or a school or ece centre of the education provider.
- (2) Subject to this section, an application for review must be lodged with the Minister within 1 month after the applicant receives written notice of the decision to which the application relates.
- (3) The Permanent Secretary must, on application by a person who could apply for review of a decision of the Permanent Secretary, give

the person a written statement of the reasons for the Permanent Secretary's decision.

- (4) If a written statement of the reasons for a decision are not given by the Permanent Secretary at the time of making the decision and the person affected by the decision, within 1 month after receiving written notice of the decision, applies to the Permanent Secretary for a written statement of reasons for the decision, the time for making an application for review runs from the time when the person receives the written statement of reasons.
- (5) The Minister must establish a review committee consisting of 3 public officers to hear and determine an application for review.
- (6) No public officer who has been involved in the decision under review may be appointed as a member of the review committee.
- (7) A decision made by a majority of the members of the review committee is a decision of the committee.
- (8) A review must be conducted:
 - (a) as quickly, and with as little formality, as a proper consideration of the matter allows; and
 - (b) in accordance with the rules of natural justice.
- (9) On a review, the review committee may:
 - (a) confirm the decision of the Permanent Secretary; or
 - (b) withdraw the decision of the Permanent Secretary; or
 - (c) substitute the decision of the Permanent Secretary with a decision that the review committee considers appropriate.

PART 13 MISCELLANEOUS

119 False or misleading information

- (1) A person commits an offence if:

- (a) the person gives false or misleading information to the Minister or Permanent Secretary under this Act, the Education Funding Code, the Regulations or the Administrative Instructions; and
- (b) the person knows, or is reckless as to whether, the information is false or misleading.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

- (2) It is a defence to a charge for an offence under subsection (1) for giving false or misleading information in a document that the person, when giving the document:
 - (a) drew the false or misleading aspect of the document to the attention of the Minister or Permanent Secretary; and
 - (b) to the extent to which the person could reasonably do so, gave the Minister or Permanent Secretary the information necessary to correct the document.

- (3) In this section:

“misleading information” means information that is misleading in a material particular or because of the omission of a material particular.

120 Confidentiality of information

- (1) A person commits an offence if:
 - (a) the person obtains information in the course of performing functions connected with the administration of this Act or obtained information in the course of performing functions connected with the administration of the repealed provisions; and
 - (b) the person engages in conduct that results in the disclosure of the information.

Maximum penalty: 30,000 penalty units.

- (2) Subsection (1) does not apply if:

- (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act or the repealed provisions; or
 - (iv) to an authority in another jurisdiction that is responsible for the regulation of teachers for the purposes of the proper performance of its functions; or
- (b) the information is otherwise available to the public.

121 Evidentiary aids

- (1) In legal proceedings, a certificate signed by the Permanent Secretary certifying as to any of the following matters is, in the absence of proof to the contrary, proof of the matter:
 - (a) a specified person was or was not registered as a teacher at a specified date or during a specified period;
 - (b) a specified person was registered as a teacher subject to specified conditions at a specified date or during a specified period;
 - (c) a specified person was or was not registered as an education provider at a specified date or during a specified period;
 - (d) a specified person was registered as an education provider subject to specified conditions at a specified date or during a specified period;
 - (e) a specified school or ece centre was or was not registered at a specified date or during a specified period;
 - (f) a specified school or ece centre was registered subject to specified conditions at a specified date or during a specified period;

- (g) a specified person was or was not the education provider of a specified school or ece centre at a specified date or during a specified period;
 - (h) a specified person was an authorised officer at a specified date or during a specified period.
- (2) In legal proceedings, evidence of the contents of Administrative Instructions, or a code or standard referred to or incorporated in Administrative Instructions, may be given by production of a document apparently certified by the Permanent Secretary to be a true copy of the Administrative Instructions, code or standard.

122 Regulations

- (1) The Minister may make such Regulations that are necessary or expedient for the purposes of the administration of this Act.
- (2) Without limiting subsection (1), the Regulations may:
 - (a) establish requirements for the acceptance of students for enrolment in a particular school or ece centre, subject to specified conditions; and
 - (b) prohibit or impose conditions on the charging of fees (however described) to parents of students by education providers; and
 - (c) require periodic fees to be paid for registration and provide for remission of the fees in specified circumstances; and
 - (d) exempt teachers or leaders in Government ece centres from the application of specified provisions of this Act (conditionally or unconditionally); and
 - (e) provide powers (including powers to require information to be verified by statutory declaration) and specify procedures for the conduct of referrals and reviews under this Act.
- (3) The Regulations may leave a matter to be determined by the Permanent Secretary, including in the Administrative Instructions.

PART 14 REPEAL AND TRANSITIONAL PROVISIONS

123 Repeal of Education Act (Cap. 69)

The *Education Act* (Cap. 69) is repealed.

124 Registration of teachers

(1) Subject to this Act, registration of a person as a teacher in force under Part VI of the *Education Act* (Cap. 69) immediately before the commencement of this section will, on that commencement, continue:

(a) if the person has not then completed the person's required period of experience as a teacher, as provisional registration of the person as a teacher under this Act; and

(b) in any other case, as full registration of the person as a teacher under this Act.

(2) Where the person does not have the qualifications in teaching or education specified in the Regulations for full registration, the person's registration will expire at the end of the second year after the year during which this section commences unless the person has attained those qualifications before that date.

(3) The Permanent Secretary may, on the application of a person to whom subsection (2) applies or on the Permanent Secretary's own initiative, postpone the date of expiry of the person's registration as a teacher under that subsection.

125 Registration of education providers

(1) On the commencement of this section, the following are taken to be registered education providers (without the need for an application for registration to be made):

(a) each education provider of a non-government school or ece centre identified by the Permanent Secretary by notice in the *Gazette*;

(b) the Provincial Secretaries of each province that, immediately before that commencement, provides early childhood, primary

or secondary education as authorised by the *Provincial Government Act 1997*.

- (2) The Permanent Secretary must, as soon as reasonably practicable, complete an entry in the register of education providers for each of the education providers to whom subsection (1) applies containing the information required under section 51(3), including:
 - (a) the type and year levels of education that the education provider may provide; and
 - (b) specifying any conditions of registration that the Permanent Secretary considers appropriate.
- (3) If a school or ece centre is registered under section 126 or 127 and the education provider listed in the register of schools and ece centres under that section is not an education provider to whom subsection (1) applies:
 - (a) section 44 does not apply in relation to the education provider until the end of the 2nd year after the year during which this section commences (or such later time as is approved by the Permanent Secretary by written notice to the education provider); and
 - (b) the Permanent Secretary may, by written notice to the education provider, impose conditions on the education provider of a kind that could be imposed if the education provider were registered; and
 - (c) if a condition imposed under paragraph (b) is contravened, the exemption under paragraph (a) ceases to apply.
- (4) If an education provider is not registered within the time allowed under subsection (3), any schools and ece centres then operated by the education provider cease to be registered unless they have, within that period, been transferred to a registered education provider or the Government.

126 Schools and ece centres on register

- (1) Subject to this Act, registration of a school or ece centre in force under Part IV of the *Education Act* (Cap. 69) immediately before the

commencement of this section will, on that commencement, continue as registration of the school or ece centre under this Act.

- (2) The Permanent Secretary must, as soon as reasonably practicable and in consultation with the education authority approved under the repealed provisions for the school or ece centre, complete an entry for the school or ece centre in the register of schools and ece centres, including by:
 - (a) identifying:
 - (i) the education provider of the school or ece centre; and
 - (ii) for a school, if appropriate, a body that is to be taken to be the school board; and
 - (b) specifying any conditions of registration that the Permanent Secretary considers appropriate.
- (3) For each registered school or registered ece centre, the Permanent Secretary must give a written notice to the education provider identified in the entry in the register of schools and ece centres under subsection (2) of:
 - (a) the details of the entry; and
 - (b) any conditions imposed by the Permanent Secretary.
- (4) The Permanent Secretary may prioritise work required under this section as the Permanent Secretary considers appropriate according to the available resources.

127

Schools and ece centres funded but not on register

If, immediately before the commencement of this section, Government funding for the operation of a school or ece centre (including through the payment of the salaries of teachers and leaders) was provided despite the fact that the school or ece centre was not registered under the repealed provisions:

- (a) section 52 does not apply in relation to the school or ece centre until the end of the second year after the year during which this section commences (or such later time as is approved by the

Permanent Secretary by written notice to the education provider of the school or ece centre); and

- (b) the Permanent Secretary may, by written notice to the education provider of the school or ece centre, impose conditions on the continued operation of the school or ece centre of a kind that could be imposed if the school or ece centre were registered; and
- (c) if a condition imposed under paragraph (b) is contravened, the exemption under paragraph (a) ceases to apply.

128 Continuation of employment

If registration of an education provider or school or ece centre under this Part effects a change in the person who employs teachers, leaders or other staff of a school or ece centre, the transfer of employment does not:

- (a) constitute a breach of the person's contract of employment or termination of the person's employment; or
- (b) affect the continuity of the person's employment for any purpose; or
- (c) affect any existing and accruing rights in respect of leave; or
- (d) affect any other conditions of the person's employment, except as set out in Regulations made under section 129.

129 Transitional Regulations

- (1) The Regulations may provide for a matter of a transitional nature:
 - (a) because of the enactment of this Act; or
 - (b) to allow or facilitate the transition to the operation of this Act.
- (2) Regulations made under this section may have retrospective operation to a day not earlier than the date this section commences.
- (3) To the extent to which Regulations made under this section have retrospective operation, they do not operate to the disadvantage of a person by:

- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) Regulations made under this section must declare that they are made under this section.
- (5) Regulations made under this section expire 2 years after the date this section commences.

EDUCATION BILL 2023
EXPLANATORY MEMORANDUM

OBJECT

The Education Bill 2023 proposes a new comprehensive education legislative framework to achieve reform of the education sector and make improvements in early childhood, primary and secondary education. The Bill's object is to develop a strong and accountable education system for the benefit of the children of Solomon Islands.

To achieve its objective, the Bill:

- establishes common goals and guiding principles for those who share responsibility for early childhood, primary and secondary education;
- establishes the Solomon Islands Education Board (to replace the National Education Board) to provide advice at the national level;
- requires Provincial Education Boards to provide advice and coordination at the provincial level;
- provides for the Permanent Secretary to issue Administrative Instructions relating to early childhood, primary or secondary education;
- clarifies responsibilities for the operation of schools and ece centres, including for the employment and management of teachers and leaders;
- requires school boards to be established for schools;
- outlines the responsibilities of principals and supervisors;
- provides for the registration of teachers, education providers, schools and ece centres;
- introduces compulsory education and provides for certain standards to be met in the provision of early childhood, primary and secondary education;
- confers powers on the Permanent Secretary to facilitate the administration of the Act;
- provides a mechanism for review of certain decisions of an education provider or the Permanent Secretary;

- provides for the following range of subordinate instruments to cover the detail and allow for flexibility:
 - Regulations made by the Minister
 - an *Education Funding Code* (for financial controls) issued by the Minister
 - learning frameworks and a scheme of secondary education certificates approved by the Minister
 - Administrative Instructions issued by the Permanent Secretary.
- provides for an integrated system for the making of employment and registration decisions overseen by the Teaching Service Commission, ensuring that education providers, the Permanent Secretary and the Commission all have the powers they need to perform their respective functions under the Bill effectively.

CONTENT

PART 1 Preliminary matters

Clause 1 provides for the short title of the Act.

Clause 2 allows the Minister to appoint a date for the Act to commence.

Clause 3 contains definitions for the purposes of the Act.

The concept of early childhood education is used to describe formal learning before primary education. Primary education includes PPY (primary preparation year).

The place at which early childhood education is provided is described as an ece centre. The term "supervisor" is used for the leader of education at such a centre.

The concept of a school is used to describe a place at which primary or secondary education is provided. The term "principal" is used for the leader of education at a school.

There are 3 types of schools and ece centres:

- Government;

- provincial (with Honiara City being regarded as a province for the purposes of the Act);
- non-government (which includes those belonging to a church, faith, non-government organisation or other body or person).

The term “education provider” is used for the body responsible for operating a school or ece centre.

Any combination of early childhood, primary and secondary education may be provided at the same place.

References to the Minister in the Act are references to the National Minister responsible for the portfolio of education. The definition does not refer to the current title of the Minister because that title might change.

Clause 4 provides that the Act binds the Crown. This means that the Government must comply with any requirements that apply to it.

PART 2 Objects, responsibilities and principles

Clause 5 sets out the objects of the Act and how those objects are achieved by the Act.

Clause 6 sets out the bodies that share responsibility for early childhood, primary and secondary education, namely:

- the Government;
- the Teaching Service Commission;
- the Solomon Islands Education Board;
- Provincial Executives;
- Provincial Education Boards;
- education providers;
- school boards;
- teachers and leaders;
- families and communities.

The clause:

- requires the Government to use its best endeavours, within its available resources, to provide funding towards ensuring that all

- children receive early childhood, primary and secondary education;
and
- recognises the importance of other sources of funding and provides that, subject to any change in Government policy, those other sources of funding are the primary sources of funding for early childhood education; and
 - points out the importance of coordination to ensure that resources are used wisely; and
 - draws out the relationships between the different layers of administration that share the responsibility.

Clause 7 sets out principles that are to guide those who share responsibility for early childhood, primary and secondary education to achieve the objects of the Act.

PART 3 Governance and administration

Division 1 Minister

Clause 8 introduces the role of the Minister and the Minister's responsibilities for high level policy matters.

Clause 9 requires the Minister to publish an *Education Funding Code* in the *Gazette* setting out principles and rules for funding. This is the equivalent of the Grants Code under section 38 of the current *Education Act* (Cap. 69). The Permanent Secretary may make the code available on a Government Internet site.

Clause 10 provides for delegation by the Minister.

Division 2 Solomon Islands Education Board

Clause 11 provides for the establishment and functions of the Solomon Islands Education Board. This is the body currently known as the National Education Board and provided for in Part II of the current *Education Act* (Cap. 69).

The Board is:

- to provide advice to the Minister or Permanent Secretary, at the request of the Minister or Permanent Secretary or on its own initiative, on any matter concerning early childhood, primary or secondary education, including any matter of policy relating to the following:

- funding principles and processes;
- registration of teachers, education providers, schools and ece centres;
- approval of learning frameworks and a scheme of secondary education certificates;
- the financial management of schools and ece centres; and
- to provide advice to the Minister or Permanent Secretary, at the request of the Minister or Permanent Secretary or on its own initiative, on potential amendments of the Act or the Regulations; and
- to perform other functions assigned to the Board under the Act or Regulations.

Clause 12 deals with membership of the Board. Members may be appointed for up to 3 years at a time and may not serve a consecutive period of more than 6 years.

Clause 13 deals with the procedures of the Board. There must be at least 2 meetings in each year.

Subject to the Act and any directions of the Minister, the Board may determine its own procedures. For example, the Board may decide to establish committees to perform or assist it in particular aspects of its functions. A committee might, for example, be established to provide advice on behalf of the Board to the Minister about learning frameworks and the scheme of secondary education certificates. In establishing a committee, the Board would determine the membership and functions of the committee and how it is to operate.

Clause 14 requires disclosure of matters by Board members in order to avoid conflicts of interest.

Clause 15 provides that a member of the Solomon Islands Education Board is not entitled to remuneration, but may receive an allowance for attending meetings (including meetings of a committee of the Board), or a travelling or subsistence allowance, or be reimbursed expenses, on a basis determined by the Minister by *Gazette* notice.

Division 3 Provincial Education Boards

Clause 16 provides that there is to be a Provincial Education Board for each province. Honiara City is regarded as a province for this purpose.

Clause 17 sets out the functions of a Provincial Education Board, namely:

- to provide advice to the Minister or Permanent Secretary, at the request of the Minister or Permanent Secretary or on its own initiative, on any matter concerning early childhood, primary or secondary education in the province; and
- to assist the Permanent Secretary to coordinate and manage the provision of early childhood, primary and secondary education in the province; and
- to assist the Permanent Secretary to monitor compliance in the province with the Act, the Education Funding Code, the Regulations, the Administrative Instructions and conditions of registration of teachers, education providers, schools and ece centres; and
- to the extent authorised by the Provincial Executive of the province for which the Board is established:
 - to manage the allocation of funds provided by the Provincial Executive for early childhood, primary and secondary education in the province and to monitor the application of those funds; and
 - to keep the Minister informed about any funds so provided and about the allocation and application of those funds; and
 - to provide advice to the Provincial Education Minister or the Provincial Secretary, at the request of the Provincial Education Minister or Provincial Secretary or on its own initiative, on any matter concerning early childhood, primary or secondary education in the province; and
- to perform other functions assigned to the Board:
 - under the Act, the Education Funding Code, the Regulations or the Administrative Instructions; or
 - by written agreement between the Minister and the Provincial Executive of the province.

Ministry officers may be assigned to a province to help carry out the coordination role of the Board.

Clause 18 provides that the membership and procedures of a Provincial Education Board are to be determined by written agreement between the Minister and the Provincial Executive of the province. However, members who represent education providers of non-government schools or ece centres must be included and, as far as reasonably practicable, gender balance must be achieved in the membership.

Clause 19 requires disclosure of matters by Board members in order to avoid conflicts of interest.

Clause 20 provides that a member of a Provincial Education Board is not entitled to any remuneration, allowance or payment from the Government. It is up to a provincial government to make decisions about whether it wants to provide allowances to, or pay the expenses of, members.

Division 4 National and provincial administration

Clause 21 sets out the function of the Permanent Secretary to administer the Act under the Minister and emphasises the functions of planning for improvements in education and recommending funding arrangements. The need to work cooperatively with the Teaching Service Commission, Solomon Islands Education Board and the Provincial Education Boards is also mentioned.

Clause 22 empowers the Permanent Secretary to issue Administrative Instructions on matters concerning early childhood, primary or secondary education to any of the following:

- Provincial Education Boards;
- education providers;
- school boards;
- leader and teachers; and
- any other person of a class specified in the Regulations.

The clause sets out examples of the sorts of things that may be included in Administrative Instructions.

Clause 23 provides for delegation by the Permanent Secretary.

Clause 24 requires Provincial Secretaries to work cooperatively with the Permanent Secretary to facilitate the administration of the Act.

Division 5 Education providers

Clause 25 explains that early childhood, primary or secondary education may be provided by:

- the Government; or
- a Provincial Executive as authorised by the *Provincial Government Act 1997*; or

- a church, faith, non-government organisation or other body or individual.

It defines "**education provider**" for each of these categories:

- for education provided by the Government:
 - the Permanent Secretary is the education provider; or
 - if the Minister, by *Gazette* notice, appoints a person to operate a Government school or ece centre on behalf of the Government, that person is the education provider of the school or ece centre;
- for education provided by a Provincial Executive:
 - the Provincial Secretary is the education provider; or
 - if the Minister, by *Gazette* notice made at the request or with the consent of the Provincial Executive, appoints a person to operate a provincial school or ece centre on behalf of the Provincial Executive, that person is the education provider of the school or ece centre;
- for education provided by a non-government body:
 - the church, faith, non-government organisation or other body or individual that provides the education is the education provider; or
 - if that body or individual has appointed a person to operate a non-government school or ece centre on behalf of the body or individual, that person is the education provider of the school or ece centre.

The clause provides that if a church, faith, non-government organisation or other body that operates a school or ece centre is not a body corporate, it must appoint a person (that is, an individual or body corporate) to operate the school or ece centre on its behalf.

Clause 26 sets out the responsibilities of an education provider, namely:

- to operate its schools and centres efficiently and effectively;
- to ensure the proper use of Government, provincial or other funding provided to it or its schools and ece centres and to prepare budgets, plans and reports as required;
- to make adequate provision for the health, safety and welfare of students and, in particular:
 - to ensure that child protection is a principle of paramount importance at its schools and ece centres; and
 - to ensure that arrangements are in place for counselling to be available to students as appropriate;

- to employ teachers and leaders and make adequate provision for their health, safety and welfare;
- to manage or oversee the management of the performance of teachers and leaders and the taking of appropriate action to deal with absences, misconduct and unsatisfactory performance;
- to comply, and to facilitate compliance by others, with:
 - the Act, the Education Funding Code, the Regulations and the Administrative Instructions; and
 - the conditions of registration of the education provider and its schools, ece centres and teachers;
- to ensure that there is a system for the making and resolution of complaints about any matter connected with the provision of education by the education provider;
- to provide or facilitate training for staff of the education provider, and, for a school, the members of the school board, to enable them to perform their functions properly;
- to liaise with the Permanent Secretary:
 - on matters relating to:
 - the registration of the education provider and its schools, ece centres and teachers; and
 - for a school, the performance of the school board; and
 - on other matters arising in connection with early childhood, primary or secondary education.

Division 6 School boards

Clause 27 requires each school to have a school board, unless the Permanent Secretary grants an exemption.

Clause 28 specifies that the object of a school board is to assist the education provider in the operation of the school and to involve the school community in the governance of the school to strengthen and support education, and in particular, a school board should:

- provide a focus and a forum for the involvement of the school community; and

- ascertain the educational needs of the local community and the attitude of the local community to educational developments within the school; and
- ensure that the cultural and social diversity of the community is considered and particular needs are appropriately identified.

Clause 29 sets out the functions of a school board as follows:

- subject to any directions of the education provider of the school:
 - to set the broad direction and vision of the school; and
 - to determine policies for the school (consistent with the Act, the Regulations and the Administrative Instructions), including policies for the safety, welfare and discipline of students and for dealing with grievances; and
- to work cooperatively with the education provider of the school, and the principal of the school, to support planning and budgeting for the operations and development of the school (including any necessary teacher accommodation); and
- to make recommendations to the education provider about the amount, and the manner and frequency of payment, of any monetary contribution sought from parents of students; and
- to monitor the appropriate acquisition and use of resources at the school; and
- at the request of the education provider of the school, to assist in the selection of teachers, leaders or other staff of the school; and
- to assist the principal of the school, at the principal's request, to resolve issues with student attendance, punctuality or discipline; and
- to communicate with the school community and convene meetings of the community as the board considers appropriate; and
- to promote and coordinate fundraising activities at the school; and
- to promote and coordinate the undertaking of work on a voluntary basis for the benefit of the school; and
- to report to the education provider of the school and the school community on the performance of its functions; and
- to perform other functions assigned to the board by the education provider of the school.

Clause 30 limits what a school board can do by stating that it must not interfere, or take any action that interferes, with:

- the day-to-day provision, and the management of the day-to-day provision, of education in the school; or
- the administration of discipline within the school (except to provide support as requested by the principal of the school).

It deals with the relationship between a school board and the school teachers and leaders by making it clear that the board cannot give directions relating to the manner in which they carry out official duties. However, it expressly authorises the board to raise concerns about misconduct or unsatisfactory performance with the principal.

It requires a school board to pass on serious concerns about staff conduct or competency to the education provider of the school. The school board is also empowered to pass on concerns to the Permanent Secretary.

Clause 31 contemplates that the Administrative Instructions will contain provisions about the membership and procedures of school boards.

Clause 32 provides that a school board member is not entitled to remuneration, allowance or other payment from the Government. An education provider is not to pay a member of a school board remuneration or an allowance for attending meetings of the board, but may pay a travelling or subsistence allowance, or reimburse expenses. This is aimed at ensuring that school boards have members who are volunteers interested in supporting the operation of the school.

Division 7 Principals and supervisors

Clause 33 sets out the responsibilities of the principal of a school or supervisor of an ece centre for the day-to-day management of the operations of the school or ece centre and for leading professional improvement at the school or ece centre.

PART 4 Registration of teachers

Clause 34 deals with offences relating to requirements for teachers to be registered

Clause 35 deals with the making of an application for registration as a teacher.

Clause 36 deals with the mechanics of the Permanent Secretary making a decision on an application.

Clause 37 sets out the criteria for eligibility for full registration as a teacher, namely, the person must:

- be a fit and proper person to be registered as a teacher; and
- have qualifications in teaching or education specified in the Regulations; and
- have successfully completed a period of experience as a teacher as required by the Regulations; and
- have provided the documents specified in the Regulations to the Permanent Secretary. These are intended to include a medical report and a criminal record check.

Clause 38 provides that the Permanent Secretary may grant provisional registration to a person. Provisional registration is primarily to enable a qualified person time to complete the required period of experience. However, provisional registration can also be used, if there is an urgent need to remedy a shortage of teachers in a particular subject area, to allow persons to teach in that subject area while they obtain the necessary qualifications.

Clause 39 provides that provisional registration expires after 2 years if it has not become full registration unless the Permanent Secretary, on application by the person or the education provider of the school or ece centre in which the person is or is proposed to be employed as a teacher, extends the period of provisional registration by written notice to the person.

Clause 40 sets out the matters that may be considered in determining whether a person is a fit and proper person to be registered as a teacher, namely:

- the person's criminal history; and
- whether the person's capacity to teach is seriously impaired by an illness or disability affecting the person's behaviour or competence as a teacher; and
- the person's conduct as a teacher, including whether the registration of the person as a teacher within or outside Solomon Islands has been suspended or cancelled or whether the person has been disqualified from teaching within or outside Solomon Islands; and
- any conduct of the person that:

- does not satisfy the standard of conduct generally expected of a teacher; or
- involves improper conduct relating to a child; or
- otherwise shows that the person is unfit to be a teacher; and
- any other matter the Permanent Secretary considers relevant.

The person must be given a reasonable opportunity to make submissions about a proposal to find the person not a fit and proper person to be registered as a teacher.

Clause 41 provides that registration as a teacher is subject to conditions requiring the teacher to inform the Permanent Secretary of certain matters. It also allows the Permanent Secretary to impose other conditions on registration or under clause 90, including conditions:

- requiring the person to complete a course;
- requiring the supervision of the person;
- requiring the provision of further evidence as to competence;
- restricting the subjects that the person may teach;
- restricting the education that the person may provide.

It is an offence to contravene a condition of registration that requires the Permanent Secretary to be notified of a matter or imposes a restriction on the practice of teaching by the person.

Conditions of registration may also be imposed under a process for the management of a teacher set out in Part 8.

Conditions of registration are a new mechanism for achieving improvement.

Clause 42 provides for the issuing of certificates of registration.

Clause 43 requires the Permanent Secretary to keep a register of persons registered as teachers. Portion of the register may be made available for public inspection on a Government Internet site or by other means.

PART 5 Registration of education providers

Clause 44 creates an offence requiring an education provider to be registered to operate a school or ece centre.

Clause 45 deals with the making of an application for registration as an education provider.

Clause 46 deals with the mechanics of the Permanent Secretary making a decision on an application.

Clause 47 sets out the eligibility requirements for registration as an education provider. There is a fit and proper person test (including for members of the governing body of an education provider that is a body corporate) and a capacity test – to check that the provider will be able to comply with obligations under the Act.

Clause 48 sets out details of those tests.

Clause 49 provides for conditions of registration of an education provider.

Clause 50 provides for the issuing of certificates of registration.

Clause 51 requires the Permanent Secretary to keep a register of persons registered as education providers. Portion of the register may be made available for public inspection on a Government Internet site or by other means.

PART 6 Registration of schools and ece centres

Clause 52 makes it an offence to operate, or cause or permit another to operate, a school or ece centre unless it is included in the register of schools and ece centres.

Clause 53 deals with the making of an application for registration of a provincial or non-government school or ece centre.

Clause 54 deals with the mechanics of the Permanent Secretary making a decision on an application.

Clause 55 provides that if a Provincial Education Board recommends refusal of an application under this section, the Permanent Secretary must refuse the application unless the Minister approves the granting of the application. This is designed to enable proper coordination and planning of education at the provincial level.

Clause 56 sets out the criteria to be considered by the Permanent Secretary in determining an application for registration of a school or ece centre, namely:

- there must be a registered education provider;

- the demand or potential demand for enrolment at the school or ece centre;
- whether funds will be available to support and operate the school or ece centre;
- the adequacy of the land, buildings and facilities;
- the arrangements with the owners of the land under which the land may be used for the school or ece centre;
- local community support for the school or ece centre;
- the availability of suitable persons to be teachers and leaders of the school or ece centre;
- the adequacy of the nature and content of the instruction offered, or to be offered, at the school or ece centre;
- the adequacy of arrangements at the school or ece centre for the safety, health and welfare of the leaders, teachers and students and the management of the staff;
- for an ece centre the adequacy of arrangements for the children to enrol in primary education on completion of early childhood education;
- whether the school or ece centre will meet any standards required to be met by Administrative Instructions and the potential for the education provider to work towards the school or ece centre meeting those standards;
- any other matter that the Permanent Secretary considers appropriate.

Clause 57 imposes certain conditions of registration and empowers the Permanent Secretary to impose further conditions on the registration of a school or ece centre by written notice to the education provider of the school or ece centre. Examples of conditions are set out in the clause. These include matters relating to employment of staff and the management of payments of remuneration to staff.

It is anticipated that the Ministry and education providers will embrace conditions as a new mechanism for planning for improvement in manageable steps.

Clause 58 provides for a certificate of registration to be prominently displayed at the registered school or ece centre.

Clause 59 requires the Permanent Secretary to keep a register of schools and ece centres and sets out the information that must or may be entered in the register. The education provider of a school or ece centre is required to provide information to the Permanent Secretary to enable the register to be kept up-to-date.

PART 7 Provision of education and facilities

Division 1 Enrolment and attendance

Clause 60 empowers the Permanent Secretary to determine for each calendar year:

- the terms, days and hours for the provision of education at schools and ece centres; or
- rules that education providers must apply to determine the terms, days and hours for the provision of education at their schools and ece centres.

The clause enables the Permanent Secretary to require a school or ece centre to make up days missed.

Clause 61 provides for compulsory education of children. The details of when a student must be enrolled will be set out in the Regulations. It is intended that compulsory education will comprise primary and junior secondary education.

The provision covers attendance as well as enrolment, but it is a defence that the failure of the child to attend did not result from any failure of the defendant to exercise proper care and control of the child.

Clause 62 provides for the method of enrolment and enables a principal or supervisor to require production of a student's birth certificate or the like.

Division 2 Learning frameworks and scheme of secondary education certificates

Clause 63 requires the Minister to approve a learning framework for early childhood education and for each year of primary and secondary education.

Before approving a learning framework, the Minister is required to consult with the Solomon Islands Education Board and the Provincial Education Boards.

The education provider of a school or ece centre is obliged to implement the approved learning frameworks but:

- may, with the approval of the Minister, offer an alternative learning framework; and
- may offer alternative programs designed to accelerate students who are older than their peers into later years of study or to cater for other students with special educational needs.

The latter is designed to cover both gifted students and those with difficulties or disabilities.

Clause 64 requires the Minister to approve a scheme for certificates to be recognised nationally, evidencing student achievements in secondary education.

Before approving a scheme of secondary education certificates, the Minister is required to consult with the Solomon Islands Education Board and the Provincial Education Boards.

Division 3 Language of instruction

Clause 65 provides that teachers must endeavour to use English as the principal language of instruction from the year of primary education intended for children who are 9 years of age onwards (or, if the Regulations specify some other year level, from that year level onwards).

However, the clause provides that local vernacular, Pijin, English or sign language should be used individually or in combination to facilitate learning according to the needs of the students.

Division 4 Religious instruction and pastoral care

Clause 66 recognises the importance of offering religious instruction and pastoral care to students at school. The clause requires a Government or provincial school to have arrangements in place for parents to exempt students from particular religious instruction.

Division 5 Infrastructure

Clause 67 deals with minimum infrastructure obligations of education providers of schools and ece centres, mainly relating to clean water and toilet facilities at each school and ece centre.

Clause 68 requires the education provider of a school that receives Government funding to make the school premises available for reasonable community use.

Clause 69 creates a series of offences designed to protect the premises of registered schools and ece centres. It makes it an offence to trespass or to behave in an offensive or disorderly way on the premises (although this does not apply to a student). It also allows the principal or supervisor or a person authorised by the principal or supervisor to ask someone to leave the premises.

PART 8 Management of teaching profession

This Part provides for an integrated system to support improvements in the day-to-day management of teachers by education providers and the Permanent Secretary and to ensure that the Teaching Service Commission has all the powers it needs to deal effectively and efficiently with employment and registration decisions made under the schemes in this Act in a comprehensive and cohesive manner.

Division 1 Employment of teachers and leaders

Clause 70 makes it clear that the education providers are the employers of teachers and leaders.

Clause 71 provides that the Regulations or Administrative Instructions may:

- classify positions in schools and ece centres as teaching or leadership positions; and
- specify mandatory or desirable requirements for appointment to teaching or leadership positions; and
- specify the duties of persons appointed to teaching or leadership positions.

Clause 72 provides that the Regulations or Administrative Instructions may:

- determine a salary structure for leadership and teaching positions in schools or ece centres; and
- provide for leave entitlements of teachers and leaders in schools or ece centres; and
- determine other terms and conditions for the employment of teachers and leaders in schools or ece centres; and
- provide for matters relating to the employment of teachers and leaders in schools or ece centres, including matters relating to the following:
 - permissible deductions from salary;

- the basis of engagement;
- temporary acting positions;
- promotion or an increase in the salary level of a teacher or leader;
- transfer;
- resignation;
- termination of employment.

Clause 73 provides that an education provider can enter into an employment contract with a teacher that provides conditions that are more advantageous to the employee.

The clause makes it clear that the teaching employment conditions apply to teachers and leaders in Government schools.

The clause also provides that to the extent that the conditions or arrangements set out in the Regulations or Administrative Instructions are inconsistent with the *Labour Act* (Cap. 133), those conditions or arrangements prevail.

Clause 74 requires an education provider to attempt to resolve grievances of teachers by conciliation.

Division 2 Conduct rules and standards

Clause 75 contemplates that the Administrative Instructions may set out:

- rules of conduct for teachers and leaders; and
- standards for teachers and leaders.

It makes it clear that the rules of conduct are mandatory and that the performance of teachers and leaders will be assessed against the standards.

Division 3 Powers to manage teachers and leaders

Subdivision 1 Introduction

Clause 76 requires protecting the safety and welfare of students to be the paramount consideration for exercising powers under the Division.

Clause 77 makes sure that conduct of a teacher or leader before the commencement of the Act or in another country is relevant for disciplinary matters.

Subdivision 2 Powers of education provider

Clause 78 enables an education provider to direct that a teacher or leader not be paid for a period for which the teacher or leader is absent from duties without lawful authority or is not performing duties because of industrial action. The Regulations will set out what absences may be authorised.

It also enables the Permanent Secretary to exercise these powers if the Government is paying the salary of the teacher or leader.

Clause 79 sets out the powers of an education provider to terminate the employment of a teacher or leader for incapacity, unsatisfactory performance or misconduct. In the case of misconduct, the other options open to the education provider are to reprimand the teacher or leader, suspend the teacher or leader without pay for up to 1 month or if the misconduct is around the determination of a particular classification level for the teacher or leader, to reduce the classification level to that which would have applied if the correct information had been known.

The education provider must first give written notice to the teacher or leader setting out the grounds and listen to what the teacher or leader has to say about the matter.

Clause 80 enables an education provider to require a teacher or leader to undergo a medical examination to investigate whether the teacher's or leader's capacity to perform duties is seriously impaired by an illness or disability.

Clause 81 empowers an education provider to suspend a teacher or leader from duty pending an investigation into misconduct.

Clause 82 requires an education provider to report suspected offences to the police. It also enables an education provider to refer a matter for investigation to the Permanent Secretary if it appears that the additional powers of authorised officers may be required.

Clause 83 provides a discretion for the education provider to refer a matter to the Teaching Service Commission. It is expected that very serious or sensitive cases would be referred. The Regulations can impose limitations on the matters that may be referred.

Subdivision 3 Powers of Permanent Secretary

Clause 84 provides for the Interpretation of terms in Subdivision 3.

Clause 85 gives the Permanent Secretary power to investigate capacity, misconduct or performance of a teacher or leader and whether or not a person has ceased to be a fit and proper person to be registered as a teacher. The Permanent Secretary is required to keep the relevant education provider informed.

In a case of unsatisfactory performance, the Permanent Secretary is given power to investigate whether the teacher or leader has been given a reasonable opportunity to improve but has not achieved a satisfactory level of performance.

Clause 86 empowers the Permanent Secretary to require a teacher or leader to undergo a medical examination.

Clause 87 empowers the Permanent Secretary to suspend the registration of a teacher pending an investigation. This will have the effect of the teacher being on leave without pay unless the Permanent Secretary directs that the teacher should continue to receive pay.

Clause 88 enables the Permanent Secretary to hold an inquiry into a teacher's misconduct and sets out certain processes that must be followed.

Clause 89 sets out the action that the Permanent Secretary may take if satisfied of incapacity, misconduct or unsatisfactory performance as follows:

- in the case of a person registered as a teacher:
 - impose conditions on the person's registration;
 - suspend the person's registration for a specified period or until the fulfilment of specified conditions or until the Permanent Secretary orders otherwise;
 - cancel the teacher's registration with immediate effect or with effect at a future specified date;
- in any case, for misconduct:
 - reprimand the teacher or leader;
 - if the misconduct involves the provision of false or misleading information resulting in a higher classification level being determined for the teacher or leader than should have been determined, order that the classification level of the teacher or leader be reduced to the level that should have been determined;
 - disqualify the teacher or leader from being registered as a teacher permanently or for a specified period or until the

fulfilment of specified conditions or until the Permanent Secretary orders otherwise.

If a person's registration as a teacher is suspended, the teacher or leader will be on leave without pay and if the registration is cancelled, the teacher's or leader's employment will be terminated.

Clause 90 requires the Permanent Secretary to refer cases of suspected offences to the police.

Clause 91 enables the Permanent Secretary to refer a matter to the Teaching Service Commission. The Regulations can impose limitations on referrals.

Division 4 Role of Teaching Service Commission

Pursuant to section 137(5) of the Constitution, the role of the Teaching Service Commission is expanded under this Act so that it can deal effectively and efficiently with employment and registration decisions made under the schemes in this Act in a comprehensive and cohesive manner.

Clause 92 is an interpretation provision for the Division.

Clause 93 provides that the Teaching Service Commission is established under section 116A of the Constitution. Section 137(5) of the Constitution provides that "In addition to the functions conferred upon them by or under this Constitution, any such Commission shall have powers and other functions (if any) as may be prescribed." Pursuant to that subsection, the role of the Teaching Service Commission is expanded under this Act so that it can deal effectively and efficiently with employment and registration decisions made under the schemes in this Act in a comprehensive and cohesive manner.

Clause 94 provides a teacher or leader with a right of review by the Teaching Service Commission of certain employment decisions made by an education provider and of registration decisions made by the Permanent Secretary.

Clause 95 applies to such a review and to a referral of a matter to the Teaching Service Commission by an education provider or by the Permanent Secretary. The clause sets out a timeframe and rules for the conduct of the referral or review.

A review must be conducted with a view to determining whether the decision subject to review is lawful and, even if it is lawful, whether it is harsh, unjust or unreasonable.

Clause 96 sets out the decisions that may be made by the Teaching Service Commission. These are designed to enable the matter to be finally decided without further consideration by the education provider or Permanent Secretary.

Clause 97 requires the Permanent Secretary to provide administrative assistance to the Teaching Service Commission, but to ensure that individuals who have been personally involved in a decision or matter subject to review or referral are excluded from providing assistance in the particular case. The clause also provides for delegation of powers by the Teaching Service Commission.

PART 9 Dismissal of school board

Clause 98 empowers the Permanent Secretary to dismiss a school board if satisfied:

- that:
 - the board has not exercised its functions for 6 months or more; or
 - there are not enough elected or appointed members for a quorum to be formed at board meetings; or
 - the board has engaged in misconduct or maladministration that is more than trivial; or
 - the board is otherwise not functioning in a satisfactory manner; and
- that the board has been given a reasonable opportunity to rectify the problem and has not satisfactorily done so.

The board and the education provider and principal of the school must be given an opportunity to comment before action is taken to dismiss the board. The Provincial Education Board must also be consulted.

PART 10 Cancellation of registration of education provider, school or ece centre

Clause 99 empowers the Permanent Secretary to cancel the registration of an education provider on grounds set out in the clause. These include if the education provider has ceased to be eligible to be registered or there has been a serious contravention or pattern of contraventions that have not been rectified.

Before registration is cancelled, the education provider is to be given an opportunity to transfer schools and ece centres to another registered education provider, or to enter into an agreement for schools and ece centres to be taken over by the Government or a province, to avoid cancellation of the registration of the schools and ece centres.

Clause 100 empowers the Permanent Secretary to cancel the registration of a provincial or a non-government school or ece centre on grounds set out in the clause. These include if the education provider does not have the capacity to operate the school or ece centre in accordance with the Act or there has been a serious contravention or pattern of contraventions that have not been rectified or if the school or ece centre has ceased to operate or the number of enrolments are so low as to not warrant registration continuing.

The Permanent Secretary must give the education provider, school board and principal or supervisor an opportunity to make submissions.

The Permanent Secretary must also consult with the relevant Provincial Education Board before taking action under the provision.

In addition, an opportunity must be given to investigate whether the school or ece centre could be transferred to another education provider or taken over by the Government or province to avoid its closure.

Clause 101 provides that if there are similar concerns in relation to a Government school the matter must be raised with the Minister.

Clause 102 empowers the Minister, or a Provincial Executive acting with the approval of the Minister, to agree to take over the operation of a school or ece centre to avoid it closing (including through cancellation of registration) on a temporary or permanent basis. If the arrangement is permanent, the school or ece centre will become a Government or provincial school or ece centre.

PART 11 Enforcement and emergency powers

Division 1 Information gathering and sharing

Clause 103 empowers the Permanent Secretary to require a person to provide information reasonably required for the maintenance of the registers under the Act. It is an offence not to comply with the requirement.

Clause 104 requires the Commissioner of Police to provide, subject to certain limitations, information to the Permanent Secretary about criminal convictions and other information to which the Commissioner has access relevant to the

question of whether a person is a fit and proper person to be, or continue to be, registered as a teacher or education provider.

Clause 105 contemplates arrangements between the Permanent Secretary, Director of Public Prosecutions and Commissioner of Police for reporting of registered teachers or education providers being charged with or found guilty of an offence.

Clause 106 enables the Permanent Secretary to provide information about a person that the Permanent Secretary obtains under the Division to the education provider of the school or ece centre in which the person is employed.

Division 2 Authorised officers

Clause 107 provides for the appointment of authorised officers by the Permanent Secretary and for the issue of identity cards.

Clause 108 gives the Permanent Secretary power to:

- require an authorised officer to conduct an inspection of a school or ece centre, or the records of an education provider or a school or ece centre, for a specified purpose; or
- require an authorised officer to conduct an audit of the whole of the operations, or of a specified aspect of the operations, of a school or ece centre against specified criteria; or
- require an authorised officer to conduct an investigation into whether a person is a fit and proper person to be, or to continue to be, registered as a teacher or education provider; or
- at the request of, or with the consent of, the education provider of a school or ece centre, require an authorised officer to conduct an assessment of the performance of a teacher or leader of the school or ece centre; or
- require an authorised officer to conduct an investigation into a matter referred to in clause 86(1); or
- require an authorised officer to conduct an investigation into an allegation of non-compliance with the Act, the Education Funding Code, the Regulations, the Administrative Instructions or the conditions of registration of a teacher, education provider, school or ece centre.

The clause includes examples of the purposes for which the auditing powers may be used.

In the case of an audit of the whole operations of a centre or school, the Permanent Secretary is required to give at least 28 days' written notice of the proposal to conduct the audit and of the period over which it is proposed to be conducted.

Clause 109 lists the powers that an authorised officer may use in an inspection, investigation, audit or assessment.

All persons who share responsibility for education at a school or ece centre are required to cooperate with the performance of functions by an authorised officer and provide reasonable assistance to the authorised officer as requested by the authorised officer.

An authorised officer is required not to unreasonably disrupt the provision of education in the course of performing functions.

Clause 110 requires an authorised officer to provide a report to the Permanent Secretary on the performance of functions under clause 108.

A copy of a report of an audit of the operations of a school or ece centre is required to be given to:

- the education provider of the school or ece centre; and
- the school board; and
- the principal of the school or supervisor of the ece centre.

A copy of a report of an assessment of the performance of a teacher or leader of a school or ece centre is required to be given to:

- the education provider of the school or ece centre; and
- if the report relates to a teacher other than the principal or supervisor, the principal of the school or supervisor of the ece centre; and
- the person to whom the report relates.

Clause 111 is an additional power for an authorised officer at any reasonable time to attend at residential premises and request a person in the premises to provide the officer with:

- the full names of all children of compulsory school age and resident in the premises; and
- the respective ages of those children; and
- whether the children are enrolled in schools and, if so, the schools in which they are enrolled.

Clause 112 creates an offence of obstructing an authorised officer.

Clause 113 creates an offence of falsely representing that a person is an authorised officer.

Clause 114 provides immunity from liability for an authorised officer acting in good faith.

Division 3 Compliance notices

Clause 115 empowers the Permanent Secretary to issue a written notice to a person for the purposes of securing compliance, or remedying or mitigating the consequences of noncompliance, with a requirement imposed by the Act, the Education Funding Code, the Regulations, the Administrative Instructions or a condition of registration of a teacher, education provider, school or ece centre.

A person does not commit an offence if the person does not comply with a notice but non-compliance is relevant to a determination of whether to take action and what action to take under the Act.

Division 4 Public warnings and emergencies

Clause 116 allows the Permanent Secretary to give public warnings relating to unregistered education providers, schools, ece centres or teachers or any other matter that adversely affects or may adversely affect the interests of persons in connection with early childhood, primary or secondary education, without fear of being accused of defamation.

Clause 117 gives the Permanent Secretary power in an emergency to give directions aimed at protecting the health and safety of a school or ece centre community or the broader community.

PART 12 Review of certain decisions of Permanent Secretary

Clause 118 provides that a person against whom a decision is made by the Permanent Secretary under the Act may apply for review of the decision to the Minister as follows:

- an applicant for registration, or variation of registration, as an education provider or of a school or ece centre may apply for review of a decision to refuse the application;
- a person to whom a compliance notice is issued may apply for review of the decision to issue the notice;

- a member of a school board may apply for review of a decision to dismiss the board;
- the education provider of a school or ece centre may apply for review of a decision to cancel or vary the registration of the education provider or of a school or ece centre of the education provider.

The person may seek reasons for the decision from the Permanent Secretary and the application must be made within 1 month after receiving a written statement of the reasons. The Minister is to appoint a committee of 3 public officers to hear and determine an application for review. No public officer who has been involved in the decision under review may be appointed as a member of the review committee.

PART 13 Miscellaneous

Clause 119 makes it an offence to make a statement that is false or misleading in a material particular in any information provided to the Minister or Permanent Secretary under the Act, the Education Funding Code, the Regulations or the Administrative Instructions.

Clause 120 requires information obtained by a person under the Act in the course of official duties to be kept confidential except in specified circumstances.

Clause 121 is a provision that provides evidentiary aids for legal proceedings.

Clause 122 provides general regulation making power.

PART 14 Repeal and transitional provisions

Clause 123 repeals the *Education Act (Cap. 69)*.

Clause 124 provides for the continued registration of teachers. However, those teachers who do not have the required qualifications in teaching or education must attain those qualifications within 2 years after the year of commencement of the Act or such longer period as the Permanent Secretary allows if they are to continue to be registered as teachers.

Clause 125 provides for the continued recognition of certain approved education authorities as registered education providers, without the need for an application for registration.

Clause 126 provides for the continued registration of schools and ece centres that are already registered. It is contemplated that the Permanent Secretary will

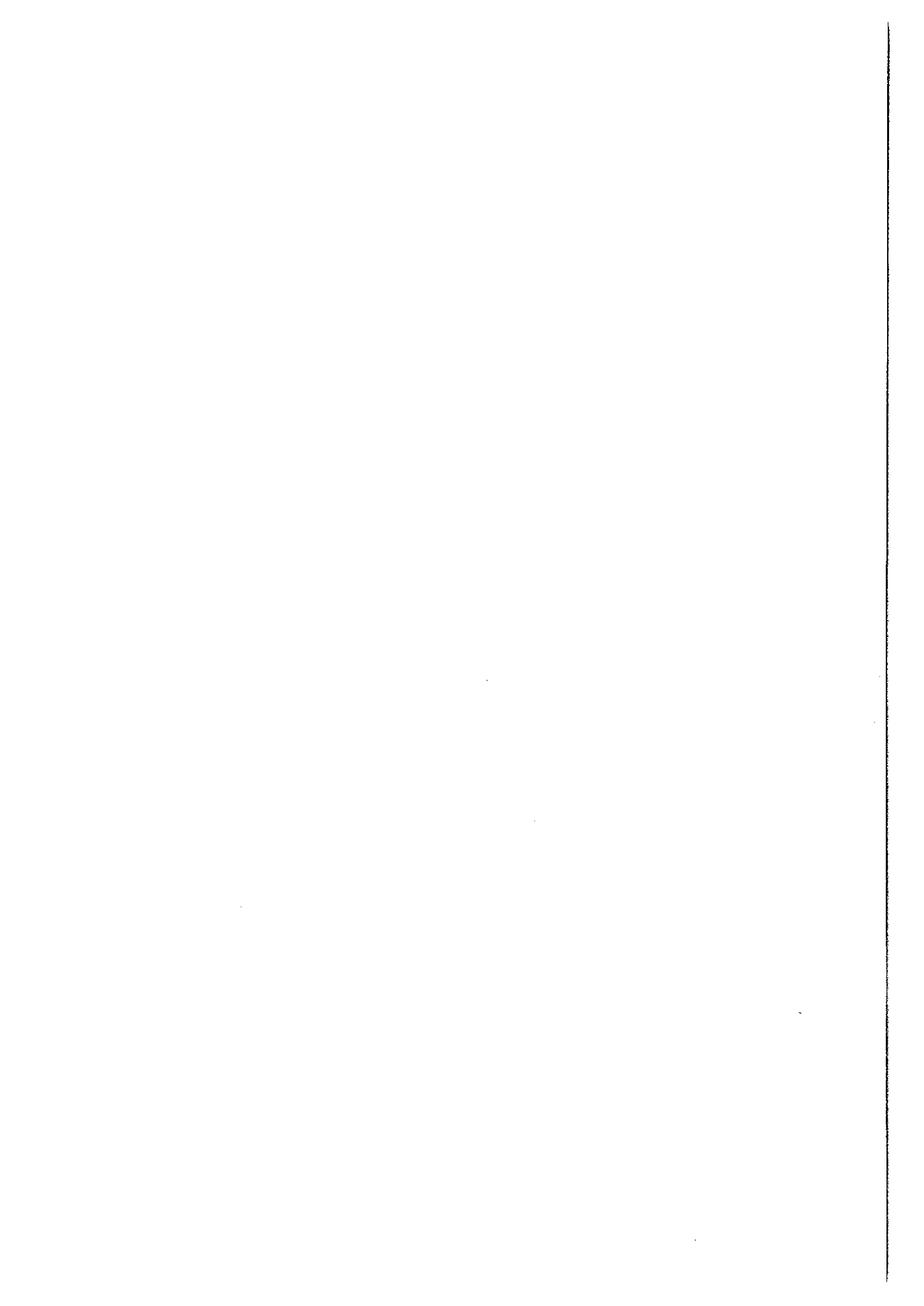
develop the register of schools and ece centres including by identifying the education providers of schools and centres.

Clause 127 provides for the continued operation of schools and ece centres that are not currently in the register but that receive Government funding. The clause gives these schools and ece centres a grace period of 2 years after the year of commencement of the Act to enable them to become registered. However, it is possible, in the meantime, for conditions to be imposed on the education providers of these schools and ece centres by the Permanent Secretary.

Clause 128 is designed to ensure that any change to the education provider of a school or ece centre under the transitional provisions does not affect the continued employment of the staff of the school or ece centre or an employee's entitlements or employment contract.

Clause 129 allows for transitional regulations to be made where necessary.

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