

EDUCATION COMMISSION (AMENDMENT) ACT 1988
No. 29

NEW SOUTH WALES



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EDUCATION COMMISSION (AMENDMENT) ACT 1988 No. 29

NEW SOUTH WALES



Act No. 29, 1988

An Act to amend the Education Commission Act 1980 to abolish the Education Commission of New South Wales and to make further provision for the promotion of school teachers on merit. [Assented to 6 July 1988]

See also Miscellaneous Acts (Education Commission) Amendment Act 1988.

*Education Commission (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Education Commission (Amendment) Act 1988.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Schedules 1 (23) and (26) and 2 (3), and section 3 in its application to those provisions, commence on the date of assent.

Amendment of Education Commission Act 1980 No. 23

3. The Education Commission Act 1980 is amended as set out in Schedules 1 and 2.

**SCHEDULE 1—AMENDMENTS CONCERNING THE ABOLITION
OF THE EDUCATION COMMISSION**

(Sec. 3)

(1) Long title—

Omit “to constitute the Education Commission of New South Wales and to specify its functions;”.

(2) Section 1—

Omit the section, insert instead:

Short title

1. This Act may be cited as the Teaching Services Act 1980.

(3) Section 2 (**Commencement**)—

Section 2 (3)—

Omit the subsection.

(4) Section 3 (**Arrangement**)—

Omit the section.

(5) Section 4 (**Definitions**)—

(a) Section 4 (1), definitions of “Chairman”, “Commission”, “member”—

Omit the definitions.

(b) Section 4 (1)—

After the definition of “school”, insert:

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SCHEDULE 1—AMENDMENTS CONCERNING THE ABOLITION
OF THE EDUCATION COMMISSION—*continued*

“Secretary” means the Secretary of the Ministry of Education
and Youth Affairs;

- (6) Part 2, heading (**The Commission**)—
Omit the heading, insert instead:
PART 2—EMPLOYMENT FUNCTIONS OF SECRETARY
- (7) Part 2, Division 1 (**Constitution of the Commission**) (sections 6–21)—
Omit the Division.
- (8) Part 2, Division 2, heading (**Functions of the Commission**)—
Omit “Commission”, insert instead “Secretary”.
- (9) Part 2, Division 2, Subdivision 1 (**General**) (section 22)—
Omit the Subdivision.
- (10) Part 2, Division 2, Subdivision 2, heading (**Functions as an employer**)—
Omit the heading.
- (11) Section 23 (**Commission’s functions as an employer**)—
Omit the section.
- (12) Section 23A—
Before section 24, insert:
Secretary to act for Crown
23A. The Secretary, in exercising a function under this Part,
acts for the Crown.
- (13) Sections 24–28—
Omit “Commission” wherever occurring, insert instead
“Secretary”.
- (14) Section 27—
Omit “Without limiting or derogating from section 6 (2), the”,
insert instead “The”.
- (15) Section 28A—
After section 28, insert:

*Education Commission (Amendment) 1988*SCHEDULE 1—AMENDMENTS CONCERNING THE ABOLITION
OF THE EDUCATION COMMISSION—*continued***Delegation**

28A. The Secretary may delegate to any person any of the Secretary's functions under this Act, other than this power of delegation.

- (16) Part 2, Division 2, Subdivision 3 (**Functions relating to the provision of education services**) (section 29)—
Omit the Subdivision.
- (17) Part 2, Division 2, Subdivision 4 (**Miscellaneous**) (sections 30–34)—
Omit the Subdivision.
- (18) Part 2, Division 2, Subdivision 5 (**Regulation of exercise of functions**) (sections 35, 36)—
Omit the Subdivision.
- (19) Sections 37 (2), 38 (2), 39 (2), 40 (2), 47 (4), 50 (4), 51 (2), 55 (4), 58 (4), 67 (2), 71A (4), 73 (1)—
Omit "Commission" wherever occurring, insert instead "Secretary".
- (20) Sections 46 (2), 54 (2)—
Omit ", with the approval of the Commission," wherever occurring.
- (21) Section 99—
Omit the section, insert instead:
Making of regulations by the Governor
99. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by Part 2 or Schedule 3 is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to Part 2 or Schedule 3.
- (22) Sections 100 (1) (j), 101 (1) (k)—
Omit "Schedules 1 and 2" wherever occurring, insert instead "Schedule 3".
- (23) Section 103—
After section 102, insert:
Savings and transitional provisions
103. Schedule 3 has effect.
- (24) Schedule 1 (**Provisions relating to the preservation of rights of the Chairman**)—
Omit the Schedule.

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**SCHEDULE 1—AMENDMENTS CONCERNING THE ABOLITION
OF THE EDUCATION COMMISSION—*continued***

(25) Schedule 2 (**Provisions relating to meetings of the Commission**)—
Omit the Schedule.

(26) Schedule 3—

At the end of the Act, insert:

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 103)

PART 1—GENERAL

Definitions

1. In this Schedule—

“Commission” means the Education Commission of New South Wales as constituted in accordance with this Act immediately before the relevant commencement;

“relevant commencement” means the commencement of Schedule 1 (7) to the 1988 Act;

“the 1988 Act” means the Education Commission (Amendment) Act 1988.

Savings and transitional regulations

2. (1) The regulations made by the Governor may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

The 1988 Act.

Miscellaneous Acts (Education Commission) Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON THE EDUCATION
COMMISSION (AMENDMENT) ACT 1988**

Abolition of the Commission

3. On the relevant commencement, the Commission is abolished.

Members of the Commission

4. (1) A person who, immediately before the relevant commencement, held office as a member of the Commission—

(a) ceases to hold office as such on that commencement; and

(b) is not entitled to any remuneration or compensation because of the loss of that office.

*Education Commission (Amendment) 1988***SCHEDULE 1—AMENDMENTS CONCERNING THE ABOLITION OF THE EDUCATION COMMISSION—*continued***

(2) Nothing in this clause affects any arrangement for the appointment of any such person to a position in the service of the Government.

References to the Commission etc.

5. On and from the relevant commencement, a reference in any other Act, or in any instrument made under any Act or in any other instrument of any kind, to the Commission, to the Chairman of the Commission or to a member of the Commission shall be read as a reference to the Secretary.

Transfer of assets, liabilities etc. of Commission

6. On and from the relevant commencement, any assets, rights, liabilities or obligations of the Commission shall become assets, rights, liabilities or obligations of the Crown.

Agreements

7. Any agreement between the Commission and an association or organisation made under section 26 and in force immediately before the relevant commencement shall be taken to be, after that commencement, an agreement between the Secretary and the association or organisation made under that section, as amended by the 1988 Act.

Determination of conditions of employment by the Commission

8. Any determination of conditions of employment under section 25, 47 (4), 50 (4), 55 (4) or 58 (4) made by the Commission and in force immediately before the relevant commencement shall be taken to be, after that commencement, a determination made by the Secretary under the section concerned, as amended by the 1988 Act.

Delegations by Commission of functions as an employer

9. Any delegation under section 34 made by the Commission and in force immediately before the relevant commencement shall (if the function delegated is exercisable by the Secretary) be taken to be, after that commencement, a delegation made by the Secretary under section 28A, as inserted by the 1988 Act.

Repeal of Education Commission (Teaching Services Elections) Regulation 1980

10. On the relevant commencement, the Education Commission (Teaching Services Elections) Regulation 1980 is repealed.

SCHEDULE 2—AMENDMENTS CONCERNING PROMOTION ON MERIT

(Sec. 3)

(1) Section 41 (**Delegation of functions**)—

Section 41 (5)—

After “a Teaching Service”, insert “(except under section 59C—appointment on merit)”.

(2) Sections 59C, 59D—

Education Commission (Amendment) 1988

SCHEDULE 2—AMENDMENTS CONCERNING PROMOTION ON
MERIT—*continued*

Omit the sections, insert instead:

Appointment on merit—certain vacancies

59C. (1) This section applies to positions of teachers in public schools which are positions of a class declared by the Minister by order published in the Education Gazette to be a class of positions to which this section applies.

(2) If a vacancy in such a position is to be filled, the person appointed to fill the vacancy must be a person who is eligible under section 59D to be considered for the position.

(3) Of the eligible persons who apply and are prepared to accept the appointment, the person appointed must be the person whose fitness for the position is greater than that of any other applicant.

(4) Despite subsection (3), a person may be appointed to fill such a vacancy on the basis of the person's special fitness for the position.

Eligibility for appointment on merit

59D. (1) A person is eligible to be considered for a position under section 59C on the basis of fitness only if—

- (a) the person's name is on the promotions list appropriate to the position; or
- (b) the person is an officer in the Education Teaching Service and the Director-General of Education has determined that the person is, or persons of a class of which that person is a member are, fit for the position.

(2) A person is eligible to be considered for the position on the basis of special fitness only if—

- (a) the person's name is on a promotions list (whether or not appropriate to the position); or
- (b) the person is an officer in the Education Teaching Service and the Director-General of Education has determined that the person is, or persons of a class of which the person is a member are, specially fit for the position.

(3) Section 59F (**Preference for female officers**)—

Omit the section.

(4) Section 59G—

Before section 60, insert:

SCHEDULE 2—AMENDMENTS CONCERNING PROMOTION ON
MERIT—*continued*

Principal of boys' or girls' high school

59G. (1) The person appointed to fill a vacancy in the position of principal of a single sex high school must be a person of that sex unless no person of that sex who is eligible for the position applies for and accepts appointment to the position.

(2) This section applies no matter which provision of this Subdivision the vacancy is filled under.
