

EDUCATION COMMISSION (AMENDMENT) ACT 1987
No. 30

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS TO THE EDUCATION COMMISSION ACT 1980

EDUCATION COMMISSION (AMENDMENT) ACT 1987 No. 30

NEW SOUTH WALES



Act No. 30, 1987

An Act to amend the Education Commission Act 1980 to make further provision with respect to the filling of vacant positions in the Education Teaching Service. [Assented to 15 May 1987]

Education Commission (Amendment) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Education Commission (Amendment) Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 23, 1980

3. The Education Commission Act 1980 is amended in the manner set forth in Schedule 1.

Transitional

4. The Education Commission Act 1980 (as in force immediately before the commencement of this Act) continues to apply as if this Act had not been enacted—

(a) to the filling of a vacancy in the Education Teaching Service if the decision to fill the vacancy was made by the Director-General of Education before the commencement of this Act; and

(b) to an appeal against that decision.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE EDUCATION COMMISSION ACT 1980

(1) Section 47 (**Appointment of permanent staff**)—

(a) Section 47 (2), (3)—

Omit “Notwithstanding the provisions of section 59, the” wherever occurring, insert instead “The”.

(b) Section 47 (5)—

Omit “Notwithstanding the provisions of section 59, and except as provided by subsections (2) and (3), the Director-General of Education may appoint to a permanent position in the Education Teaching Service a person who is not an officer of that service if—”, insert instead “An appointment may be made under this section to a position to which Subdivision 1 of Division 4 applies (vacant position for which there is a promotions list) but only if the appointment is under subsection (2) or (3) or if—”.

(2) Sections 59–59F—

Omit section 59, insert instead:

Application of Subdivision

59. This Subdivision applies to a position in the Education Teaching Service for which there is a promotions list.

Meaning of “fitness”

59A. In this Subdivision—

“fitness” means qualifications and aptitude for the discharge of the duties of a position or class of positions.

Power of Director-General to fill vacancies

59B. (1) If there is a vacancy in a position to which this Subdivision applies, the Director-General of Education may, if of the opinion that the vacancy should be filled, appoint a person to fill the vacancy.

(2) A vacancy to be filled shall be filled in accordance with this Subdivision, unless the vacancy is filled by the transfer of an officer under section 71.

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SCHEDULE 1—*continued*AMENDMENTS TO THE EDUCATION COMMISSION ACT 1980—
*continued***Certain vacancies—appointment on basis of fitness**

59c. (1) This section applies to a vacancy in—

- (a) the position of principal of any class, other than a class prescribed as exempt from the operation of this section; or
- (b) any other position in a school which is a position of a class prescribed for the purposes of this paragraph.

(2) The person appointed to fill a vacancy to which this section applies shall be an officer whose name is on the appropriate promotions list for the vacant position.

(3) The appointment shall be made on the basis of the officer's fitness to fill a position of the class to which the vacant position belongs.

(4) Notwithstanding subsection (2), a person whose name is on any promotions list may be appointed to fill a vacancy to which this section applies on the basis of the person's special fitness to fill the particular position concerned.

Principal of boys' or girls' high school

59d. (1) Only a female officer shall be appointed to fill a vacancy in the position of principal of a girls' high school unless—

- (a) no female officer's name is on the appropriate promotions list; or
- (b) no female officer whose name is on that promotions list applies for and accepts appointment to the position.

(2) Only a male officer shall be appointed to fill a vacancy in the position of principal of a boys' high school unless—

- (a) no male officer's name is on the appropriate promotions list; or
- (b) no male officer whose name is on that promotions list applies for and accepts appointment to the position.

SCHEDULE 1—*continued*AMENDMENTS TO THE EDUCATION COMMISSION ACT 1980—
*continued***Vacancies in other positions**

59E. (1) This section applies to a vacancy in a position to which this Subdivision applies, other than a position to which section 59C applies.

(2) The person appointed to fill a vacancy to which this section applies shall be—

- (a) an officer whose name is on the appropriate promotions list for the position, regard being had to the relative seniority and fitness respectively of officers whose names are on that promotions list; or
- (b) an officer of another division of the Education Teaching Service whom the Director-General of Education considers it desirable to appoint on the ground of the officer's special fitness to fill the vacant position.

(3) In making an appointment under subsection (2) (a), seniority shall be subordinate to considerations of special fitness.

Preference for female officers

59F. (1) The Director-General of Education shall establish and give effect to arrangements for the giving of preference to female officers in the offering of vacant positions under section 59E.

(2) The arrangements shall operate so that, in so far as is reasonably practicable, 40 per cent of the positions to be filled under section 59E (2) (a) in a relevant period shall be offered to female officers in preference to male officers.

(3) A relevant period is each of 5 consecutive periods of 1 year, the first of which begins on the commencement of this section.

(4) Under the arrangements, the positions to which the preference is to apply shall be allocated on a fair and equitable basis.

(5) The Anti-Discrimination Act 1977 does not prevent arrangements being made and given effect to under this section.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE EDUCATION COMMISSION ACT 1980—
continued

(3) Section 60 (**Appeals in respect of seniority etc.**)—

(a) Section 60 (1) (b)—

Omit “or”.

(b) Section 60 (1) (c), (d)—

At the end of section 60 (1) (c), insert:

; or

(d) the filling of a vacant position in the Education Teaching Service to which section 59C applies for which the officer has unsuccessfully applied,

(c) Section 60 (1A)—

After section 60 (1), insert:

(1A) The only ground for an appeal under subsection (1) (d) is that the whole or any part of the selection process for the position was irregular or improper.

(4) Section 62 (**Appeals under the Government and Related Employees Appeal Tribunal Act 1980**)—

(a) Section 62 (2)—

Omit “section 59”, insert instead “section 59E”.

(b) Section 62 (3)—

Omit the subsection.

Education Commission (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE EDUCATION COMMISSION ACT 1980—
continued

(5) Section 71 (**Transfers within a Teaching Service**)—

Section 71 (2)—

At the end of section 71, insert:

(2) This section empowers the transfer of an officer to a position even if it is a vacant position to which Subdivision 1 or 2 applies.