REPUBLIC OF VANUATU

CONSOLIDATION OF THE FRENCH AND ENGLISH TEXTS OF THE LAWS OF VANUATU ACT [CAP 295]

Approval of the English Text of the Teaching Service Consolidation Edition 2024 Order No. 45 of 2024

In exercise of the powers conferred on me by subsection 9(1) of the Consolidation of the French and English Texts of the Laws of Vanuatu Act [CAP 295], I, the Honourable JOHN AMOS VACHER, Minister of Justice and Community Services, make the following Order:

1 Approval of the English Text of the Teaching Service Consolidation Edition 2024

The English Text of the Teaching Service Consolidation Edition 2024 is approved.

2 Appointed day

The appointed day for the coming into operation of the Teaching Service Consolidation Edition 2024 is the day on which this Order is made.

3 Commencement

This Order commences on the day on which it is made.

Made at Port Vila this 01 **day of** MARCH **, 2024.**

REPUBLIC OF VANUATU Ministry of Justice & Community Service MINISTER Ministère de la Justice et services du Communautée

Honourable JOHN AMOS VACHER
Minister of Justice and Community Services

Commencement: 17 March 2014

TEACHING SERVICE ACT NO. 38 OF 2013

Act 38 of 2013
Act 5 of 2019
Act 1 of 2020
Act 2 of 2021

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TEACHING SERVICE ACT NO. 38 OF 2013

An Act to provide for the Teaching Service and Teaching Service Commission and for related matters.

PART 1 – PRELIMINARY MATTERS

1. Purpose

The purpose of this Act is to establish a Teaching Service and a Teaching Service Commission, to make arrangements for the effective management of the Teaching Service and to provide for the licensing of teachers.

2. Objectives of the Act

The principal objectives of this Act are:

(a) to establish a Teaching Service and to provide for its effective management and leadership; and

(b) to establish an independent Teaching Service Commission that is efficient and effective; and

(c) to provide a legal framework for the employment of teachers in schools to the benefit of children, their families and the nation; and

(d) to establish the rights and obligations of members of the Teaching Service so that teachers understand their prime duty is to their students; and

(e) to establish a system requiring teachers in all schools to meet standards and to be licensed.

3. Guiding principles of the Teaching Service

The guiding principles of the Teaching Service and the Teaching Service Commission are:

(a) to be independent and perform their functions in a fair, impartial and professional manner without undue influence; and

(b) to make employment decisions based only on merit determined in accordance with section 19; and

(c) to provide a workplace that is free from discrimination and recognises the diverse background of employees and students; and

(d) to have the highest ethical standards; and

(e) to be accountable for their actions; and

(f) to be responsive to the Government in providing timely advice and implementing the Government's policies and programs; and

(g) to provide leadership of the highest quality; and

(h) to establish and maintain cooperative workplace relations based on consultation and communication; and

(i) to focus on achieving results and improving performance; and

(j) to observe the law; and

(k) to ensure the interests of children, both individually and collectively is the paramount consideration in all decision making.

4. Interpretation

In this Act, unless the context otherwise requires:

"assisted non-government school" means a non-government school where by agreement the teaching staff are employed by the Teaching Service Commission.

"Board" means the Appeal Board provided for under Part 10;

"Chairperson" means the Chairperson of the Teaching Service Commission appointed under section 5;

"Code of Conduct" means the Code of Conduct issued by the Teaching Service Commission under section 47;

"Commission" means the Teaching Service Commission established by section 5;

"Education Authority" has the same meaning as is provided for in the Education Act No. 9 of 2014;

"employee" means an employee of the Teaching Service Commission;

"instruction" includes teaching and supervising school students;

"licence" means a licence, including an interim licence, to teach issued under Part 4;

"Minister" means the Minister for the time being responsible for education;

"principal" has the same meaning as is provided for in the Education Act No. 9 of 2014;

"Provincial Education Board" has the same meaning as is provided for in the Education Act No. 9 of 2014.

"Provincial Education Officer" has the same meaning as is provided for in the Education Act No. 9 of 2014;

"Public Service" means the Public Service provided for in section 2 of the Public Service Act [CAP 246];

"regulations" means any regulations made and in force under section 68;

"school" has the same meaning as is provided for in the Education Act [CAP 272];

"Secretariat" means the Secretariat established under section 14;

"Secretary" means the Secretary of the Commission appointed under section 14;

"Teaching Service" means the Teaching Service established by section 32;

"trade union" has the same meaning as is provided for in the Trade Unions Act [CAP 161].

PART 2 – TEACHING SERVICE COMMISSION

5. Establishment of the Teaching Service Commission

(1) The Teaching Service Commission is established.

(2) The Teaching Service Commission consists of:

(a) a Chairperson and subject to subsections (3) and (4), four other members appointed by the President on the recommendation of the Minister; and

(b) the Executive Officer of the Vanuatu National Training Council.

(3) At least two members of the Commission must be women.

(4) The Vanuatu Teachers Union is to nominate a member to the Minister for recommendation to the President.

(5) A person is eligible for appointment as a member of the Commission if the person:

(a) has a wide and detailed knowledge or experience in education issues, education management or education policy; and

(b) is of good standing in the community and has a good character.

(6) One of the members appointed under subsection (2) must have legal or industrial training or experience.

(7) The position of Chairperson must be publicly advertised and the appointment must be based on merit determined in accordance with section 19.

(8) A person is not qualified to be appointed as Chairperson or a member of the Commission if he or she is:

(a) a member of Parliament; or

(b) a member of an Education Authority or Provincial Education Board; or

(c) a person who exercises any position of responsibility in a political party; or

(d) a member of a Local Government Council or Municipal Council; or

(e) has been convicted of a criminal offence which has a penalty of 12 months or more imprisonment.

6. Term of office of the Chairperson and members of the Commission

(1) Subject to subsection (2), the Chairperson and the members of the Commission are to be appointed for a period of 4 years and may be reappointed for another term only.

(2) The Chairperson or a member is no longer qualified to be the Chairperson or a member of the Commission as the case may be if he or she:

(a) has been convicted of a criminal offence which has a penalty of 12 months or more imprisonment; or

(b) has become bankrupt; or

(c) is unable or unfit to discharge his or her functions; or

(d) has been absent from two consecutive meetings of the Commission;

(i) in case of the Chairperson - without the consent of the majority of members; and

(ii) in case of a member - without the consent of the Chairperson.

(3) The Chairperson or a member may resign by notice in writing to the Minister.

(4) This section does not apply to the Executive Officer of the Vanuatu National Training Council.

(5) To avoid doubt in relation to the term of office of the Chairperson and a member of the Commission who was appointed before the commencement of this Act, the Chairperson and the members are to continue to serve in office for the remaining term of their appointment.

7. Acting Chairperson

If at any time the Chairperson is unable to perform the functions of his or her office due to illness or absence from country or such other reasons, the members are to designate another member of the Commission to perform those functions.

8. Meetings of the Commission

(1) The Commission may hold such meetings as are necessary for the proper performance of its functions.

(2) The Chairperson is to preside over all the meetings of the Commission. If the Chairperson is absent the members are to nominate another member to preside over that meeting.

(3) At a meeting of the Commission a quorum consist of the Chairman and three other members present at that meeting. The Commission may meet despite any vacancies in its membership so long as a quorum is present.

(4) Each member present at a meeting has one vote and questions arising at a meeting are to be decided by a majority of votes. If the votes taken are equal, the Chairperson has a casting vote.

(6) Subject to this Act, the Commission may determine and regulate its own procedures.

9. Functions of the Commission

The functions of the Commission are:

(a) to recruit and employ teachers, principals and associated staff in all government and assisted non-government schools; and

(b) to ensure all government schools and all assisted non-government schools are adequately staffed; and

(c) to recruit and employ other staff, including early childhood education teachers and other youth and adult education environments as required; and

(d) to monitor the attendance, efficiency and conduct of all employees in the Teaching Service and to take fair and firm action to maintain high standards in these areas;

(e) to establish and maintain a register and licensing system for teachers;

(f) to establish required standards for the issue of a licence to teach in schools;

(g) to establish, monitor and enforce required standards for ongoing professional development of Teaching Service employees and others licensed to teach;

(h) to assist Education Authorities in obtaining visas, work permits and residence permits for expatriate teachers;

(i) to manage the teacher's discipline;

(j) to advise the Government, the Minister, the Director-General of the Ministry of Education and other senior members of the Government and the Public Service in relation to:

(i) teacher education, both prior to and after appointment to the Teaching Service; and

(ii) teacher recruitment and retention strategies and programs; and

(iii) the remuneration and working conditions of teachers; and

(iv) all other matters concerning the Teaching Service.

10. Powers of the Commission

Subject to this Act, the Commission has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

11. Provision of services to other organisations

(1) The Commission may provide any government or non-government organisation with advice and assistance in the area of teacher recruitment, training, employment and related administration.

(2) The Commission may charge fees for any services provided in accordance with this section.

12. Delegation by the Commission

(1) The Commission may, by instrument in writing, delegate to a person any of its powers, other than the power to delegate, as are specified in the instrument.

(2) A delegation under this section:

(a) may be subject to any conditions or limitations specified in the instrument of delegation; and

(b) is revocable at any time; and

(c) does not prevent the exercise of a power by the Commission.

13. Functions of the Chairperson

The Chairperson is the head of the Commission and has the following functions:

(a) to oversee the effective operation, management and performance of the functions of the Commission; and

(b) to call and preside overall meetings of the Commission; and

(c) to represent the Commission in all matters affecting the Commission; and

(d) such other functions as may be conferred on the Chairperson by or under this Act or any other Act.

14. Delegation by the Chairperson

(1) The Chairperson may, by instrument in writing, delegate to a person any of his or her powers, other than the power of delegation, as are specified in the instrument.

(2) A delegation under this section:

(a) may be subject to any conditions or limitations that are specified in the instrument of delegation; and

(b) is revocable at any time; and

(c) does not prevent the exercise of a power by the Chairperson.

15. Staff of the Secretariat of the Commission

(1) The Public Service Commission is to appoint a secretary and such other staff after consultation with the Commission to be staff of the Secretariat of the Commission.

(2) The secretary is to be responsible for the efficient and professional administration of the office of the Commission.

(3) The Secretary and other staff referred to in subsection (1) are subject to the direction of the Chairperson.

(4) A person who was employed as a staff of the Commission including the secretary immediately before the commencement of this Act is to continue to be employed:

(a) on the position as if he or she was employed under this Act; and

(b) on the same terms and conditions of employment; and

(c) with accrued entitlements,

unless removed from office by the Public Service Commission after consultation with the Commission.

16. Adequate funding to perform functions

The Government must ensure there is a sufficient budget allocated to the Commission and its Secretariat to enable the Commission to perform its functions efficiently, effectively and professionally.

17. Annual report

(1) Within 90 days after the end of each calendar year the Chairperson must provide a detailed report to the Minister on the operations of the Commission and the Teaching Service for that year.

(2) A copy of the report must be tabled in Parliament by the Minister at the next session of Parliament.

PART 3 – DUTY OF COMMISSION TO ACT AS A GOOD EMPLOYER

18. Duty to act as a good employer

(1) It is the duty of each member of the Commission to ensure the Commission is a good employer.

(2) The Commission must, as a good employer:

(a) ensure the fair and proper treatment of its employees in all aspects of their employment; and

(b) ensure selection for employment and promotion is based only on merit and without undue influence; and

(c) ensure there is proper recognition of the achievements of particular employees and the Teaching Service generally; and

(d) promote good and safe working conditions; and

(e) actively encourage the professional development of its employees, both individually and collectively; and

(f) ensure that the recruitment, promotion, professional development, transfer and all other aspects of the management of its employees is carried out without discrimination on the basis of gender, religion, nationality, race, language, home island, disability, trade union membership or activity, marital status, pregnancy, sexual preference or age.

19. Determining merit

In determining a person's merit for appointment, promotion or salary increment, regard must be had to the person's:

(a) skills and abilities to perform the duties and responsibilities of the relevant position; and

(b) standard and efficiency of work performance; and

(c) qualifications and trainings undertaken; and

(d) experience; and

(e) personal qualities and conduct.

20. Minimum qualifications

The Minister, in consultation with the Commission, may determine the required qualifications and any other required standards for:

(a) a particular position or class of positions under this Act; and

(b) a licence to teach in schools, including a licence that is subject to conditions.

PART 4 – REGISTRATION AND LICENSING OF TEACHERS

21. Application for a licence to teach

(1) A person may apply to the Commission for a licence to teach in schools.

(2) The Commission may require a person who has applied for a licence to provide it with any relevant documents or information which may assist in determining whether a licence will be issued and what conditions a licence may be subject to.

(3) The Commission must assess all applications for a licence to teach after it receives the applications and advise in writing whether an application is successful and if so, any conditions that apply to the licence being granted to an applicant.

22. Licence to teach may be subject to conditions

(1) Any licence to teach granted by the Commission may be subject to any conditions the Commission determines to be appropriate.

(2) Without limiting the generality of subsection (1), a licence is to be granted by the Commission for a period of 3 years.

(3) The Commission may prescribe in the Staff Regulations the following matters in relation to licences:

(a) the categories of licence holders under this Act; and

(b) the following fees:

(i) licence fee; and

(ii) annual registration fee; and

(iii) renewal fee for a licence.

(4) The Commission may deduct such fees directly from the salary of a person.

23. Transitional provision in relation to teachers

(1) This section applies to a person who immediately before the commencement of this Act was employed as a teacher at a school.

(2) On or after that commencement, the person is to continue to be employed as a teacher at the relevant school on the same terms and conditions of employment with accrued entitlements.

(3) In addition to subsection (2), the person is deemed to hold an interim licence to teach in schools for a period of one year from the commencement of this Part.

(4) The Commission may extend an interim licence for an additional period of up to one year.

(5) A person who holds an interim licence must apply to the Commission for a licence to teach under section 21 after the expiry of the period referred to in subsection (3) or (4) (whichever applies).

(6) Unless the Commission determines otherwise, interim licences under this section do not have any conditions.

24. Register of teachers

(1) The Commission must establish and maintain a register to be known as the Register of Teachers. The Register of Teachers is to include the following information about each teacher licensed to teach in schools:

(a) the name, address and date of birth of the teacher; and

(b) the date the teacher was licensed to teach in schools; and

(c) the date, if any, the teacher's licence will expire unless extended or renewed; and

(d) any conditions, if any, on the teacher's licence.

(2) The Commission must establish and maintain a free and efficient system for responding to enquiries from Education Authorities, Provincial Education Boards and others with a legitimate professional need to confirm whether a person is licensed to teach in schools.

(3) The Commission may establish and maintain a register of persons who are not to be employed in the Teaching Service or licensed to teach in schools.

25. Cancellation of licence to teach

(1) The Commission may cancel a licence, including an interim licence, of a person to teach in schools at any time if:

(a) the fees prescribed under paragraph 22(3)(b) or subsection 29(1) are not paid; or

(b) it reasonably considers the person concerned has provided it with false or misleading information or documents; or

(c) the person concerned is not an employee of the Teaching Service and:

(i) it reasonably considers that if the person was an employee of the Teaching Service he or she would be found guilty of a breach of discipline under section 51 and irrespective of any other likely penalties, would be penalised by having his or her licence to teach cancelled under paragraph 53(1)(h); or

(ii) the person has been convicted of a criminal offence with a penalty of 12 months imprisonment or more.

(2) If the Commission decides to cancel a person's licence to teach under this section it must advise the person in writing:

(a) setting out the reasons for consideration being given to cancelling the person's licence; and

(b) that he or she may make any submission he or she intends to make, provided the submission reaches the Commission within 28 days or such longer period as the Commission determines.

(3) The Commission must consider any submission received in making its decision whether to cancel the person's licence.

(4) If a person's licence is cancelled under this section or under Part 10, the person is not eligible to re-apply for a licence for a period of two years.

26. Variation or imposition of licence conditions

(1) The Commission may vary or impose any conditions on a licence, including an interim licence, at any time if:

(a) it reasonably considers the person concerned has provided it with false or misleading information or documents; or

(b) the person concerned is not an employee of the Teaching Service and;

(i) it reasonably considers that if the person was an employee of the Teaching Service he or she would be found guilty of a breach of discipline under section 51 and irrespective of any other likely penalties, would be penalised by having any conditions varied or imposed on his or her licence to teach under section 53; or

(ii) the person has been convicted of a criminal offence with a penalty of 12 months imprisonment or more.

(2) If the Commission decides to vary or impose any conditions on a person's licence under this section, it must advise the person in writing:

(a) setting out the reasons for deciding to vary or impose any conditions on the person's licence; and

(b) advising the person that he or she may make any submission he or she intends, provided the submission reaches the Commission within 28 days or such longer period as the Commission determines.

(3) The Commission is to consider any submission received in making its decision whether to vary or impose any conditions on the person's licence.

27. Renewal of licence to teach

Three months prior to a person's licence to teach expires, unless advised in writing by the person that a renewal of the licence is not sought, the Commission is to:

(a) review that person's suitability to hold a licence to teach; and

(b) review any conditions on the person's licence; and

(c) seek any additional information it may require from the person; and

(d) seek any report or reference it may require from the principal of the school the person is teaching at or if the person is a principal or is not teaching at a school, another appropriate supervisor or referee; and

(e) advise the person whether the person's licence is to be renewed and if so, what conditions if any, it is subject to.

28. Decisions of the Commission in relation to licences

If the Commission decides:

(a) not to grant a person a licence to teach or to grant a licence subject to conditions; or

(b) not to renew a person's licence or to grant a renewal subject to conditions; or

(c) to cancel a person's licence, including an interim licence; or

(d) to vary or impose conditions on a person's licence, including an interim licence,

the person affected by this decision may lodge an appeal with the Appeal Board.

29. Licence fees

(1) The Minister is to prescribe by regulations fees for the following matters:

(a) an application for a licence; and

(b) an interim licence.

(2) The Commission may deduct such fees directly from the salary of a person.

30. Instruction to be provided by licensed teachers

(1) Instruction at a school may only be provided by a licensed teacher.

(2) This section does not apply to:

(a) a trainee teacher undertaking practice teaching under the supervision of a licensed teacher; or

(b) a parent, other community member or volunteer assisting a licensed teacher; or

(c) an arts or cultural performer, guest speaker, sports coach, music tutor or the like; or

(d) a technical advisor, consultant or volunteer from an international aid agency or the like.

31. Offences

(1) An Education Authority or Provincial Education Board that engages or permits a person who is not licensed to provide instruction in a school, without reasonable excuse, is guilty of an offence punishable on conviction by a fine not exceeding VT 250,000.

(2) An Education Authority or Provincial Education Board that engages or permits a person to provide instruction in a school, in contravention of any condition on that person's licence, without reasonable excuse, is guilty of an offence punishable on conviction by a fine not exceeding VT 250,000.

(3) For the purposes of this section "reasonable excuse" includes but is not limited to:

(a) no person with a licence being reasonably available; or

(b) no person without a relevant condition on that person's licence being reasonably available; or

(c) urgent arrangements required to be made for the supervision of students; or

(d) the person concerned having applied to the Commission for a licence to teach at least three calendar months prior to being engaged or permitted to teach but not having been advised of the Commission's decision in relation to that application; or

(e) an Education Authority or Provincial Education Board being misled or mistaken in reasonably believing the person concerned was licensed to teach in schools or did not have the relevant condition on the person's licence.

PART 5 – TEACHING SERVICE

32. Teaching Service

(1) The Teaching Service is established.

(2) The Teaching Service consists of employees engaged by the Commission under this Act and under any other legislation empowering the Commission to engage employees.

33. Matters that are subject to this Act

All appointments, promotions, disciplinary action and dismissals concerning members of the Teaching Service must be made in accordance with this Act.

34. Appointments to the Teaching Service

(1) All appointments to the Teaching Service are to be made by the Commission.

(2) The Minister, other members of Parliament, political advisors and those holding positions of authority in political parties must not seek to influence the Commission in relation to appointments to the Teaching Service or any other decisions under this Act either directly or through another person. Any contravention of this subsection is a breach of the Leadership Code within the meaning of the Leadership Code Act [CAP 240].

(3) If a position becomes vacant in the Teaching Service, any suitable person from within or outside the Teaching Service may be appointed to that position.

(4) If the position involves giving instruction in a school, the person appointed must hold and maintain a licence to teach under this Act.

(5) When a person is appointed to the Teaching Service, the appointment is on probation. Unless the Commission directs otherwise, the probation period is for one year commencing from the date on which the person commences duty.

(6) Subject to section 35, an employee appointed on probation remains on probation until his or her employment is confirmed or terminated by the Commission.

(7) The Commission may dismiss an employee at any time while the employee is on probation.

35. Expiration of probation period

(1) As soon as is practicable after the expiration of an employee's probation period, the Commission is to:

(a) confirm the appointment of the person as a permanent employee; or

(b) terminate the employment of the employee; or

(c) direct that the employee is to continue on probation for such further period, up to one year, as the Commission determines.

(2) If however, one year after the expiration of an employee's probation period no action has been taken to confirm the appointment, terminate or extend the probation period of the employee, the employee is deemed to be confirmed as a permanent employee.

36. Evidence of appointment

(1) Any appointment to the Teaching Service must be approved in writing by the secretary acting with the authority and on behalf of the Commission.

(2) A document signed by the secretary certifying any named person was appointed to a position in the Teaching Service from a specified date is sufficient evidence that the person was properly appointed and continues to hold the position from that date unless the contrary is proven.

37. Principals

(1) The Commission is to accord principals of schools a status and conditions of employment appropriate to their responsibilities.

(2) The position of principal in secondary schools must be advertised in a newspaper circulating throughout Vanuatu and by email.

(3) The position of principal in all other secondary schools and primary schools must be advertised in a newspaper circulating throughout Vanuatu and by email, unless the Commission considers this is inappropriate or impractical due to such factors as the size and location of the particular school.

(4) Nothing in this section prevents any other position within the Teaching Service from being advertised in the manner set out in subsection (3).

(5) In this section:

"Primary school" means a school that provides classes for year 1 to year 8;

"senior secondary school" means a school that provides classes for year 11 through to year 13 or year 14 students;

"secondary school" means a school that provides classes for year 9 to year 10;

38. Salary increments

(1) If an employee is entitled to a salary increment on condition of satisfactory service, the Commission may award the increment provided the decision is based only on merit.

(2) In awarding a salary increment the Commission must consult with and take into consideration the views of the immediate supervisor of the employee concerned.

39. Salary deductions

The Commission may only make deductions from the salary of a person:

(a) if authorised to do so under this Act or any other law; or

(b) on the written authority of the person concerned; or

(c) if an allowance or other payment made to the person for a particular purpose, such as a housing allowance, has not been applied to that purpose.

40. Transfer

(1) Subject to the Commission's obligation to act as a good employer and taking into account the costs involved, the Commission may direct an employee to transfer from one position within the Teaching Service to another and at any location in Vanuatu.

(2) If practicable, employees are to be given a minimum of three months notice of being transferred to another location.

(3) The Commission may issue procedures for the arrangement of transfers. Any such procedures must be complied with by Provincial Education Boards, Education Authorities and employees in the Teaching Service.

41. Temporary salaried employees

(1) The Commission may engage such temporary salaried employees as are required and may dismiss a person so engaged with one weeks' notice.

(2) Temporary salaried employees may only be employed for a period up to 6 months which can be extended for a further period of up to six months.

(3) The Commission is to determine the terms and conditions of employment of temporary salaried employees of the Commission.

42. Contract workers

(1) If it is considered inappropriate for a person to be employed on a permanent basis due to the nature of the work required or the seniority of the position, the Commission may engage a contract worker.

(2) At the Commission's discretion, school principal positions may be filled on this basis. In such a situation the appointment must be advertised in a newspaper circulating throughout Vanuatu and by email and based on merit determined in accordance with section 19.

(3) A contract under this section may exclude the person engaged under the contract from being subject to this Act or certain provisions of this Act and may be for such period as the Commission determines.

43. Appeal against promotion decision

An employee in the Teaching Service may appeal against the outcome of a selection process for a promotion to a position but only on the grounds of a lack of compliance with sections 18, 19 or 20 in accordance with the provisions of section 59.

PART 6 – TEACHING SERVICE EMPLOYEES IN ASSISTED NON-GOVERNMENT SCHOOLS

44. Employment in assisted non-government schools

(1) Teaching Service employees in assisted non-government schools are employed by the Commission on the same basis as Teaching Service employees in government schools.

(2) Unless otherwise approved by the Commission, Teaching Service employees in assisted non-government schools are only paid in relation to their educational work directly associated with the relevant school. If a Teaching Service employee is engaged on church or other non-school activities, the Commission must be notified immediately by the Education Authority or the principal of the school concerned so an appropriate payroll deduction can be made.

(3) Appointments, promotions and transfers of Teaching Service employees in government and non-government schools can only be made by the Commission. Any purported appointment, promotion or transfer of a Teaching Service employee made by an Education Authority or a school is ineffective.

(4) Education Authorities may recommend people for appointment, promotion and transfer provided:

(a) written evidence of a merit selection process having been undertaken in relation to a recommendation for appointment or promotion; and

(b) written evidence of the employee's views having been taken into account and the reasons for the proposed transfer in relation to a recommendation for transfer,

is submitted to the Commission with the recommendation. The Commission is not required to accept any such recommendation.

PART 7 – TRANSFER BETWEEN SERVICES

45. Arrangement for transfer

(1) The Commission and the Public Service Commission may make arrangements at any time for the transfer of a specific employee or class of employees between the Teaching Service and the Public Service in either direction.

(2) A transferred employee is duly appointed as an employee of the Teaching Service or Public Service respectively on the date of transfer.

(3) A transferred employee who was a permanent employee of the Teaching Service or Public Service immediately before the transfer is a permanent employee of the other Service upon transfer.

(4) A transferred employee who was on probation in the Teaching Service or Public Service immediately before the transfer is a probationary employee of the other Service upon transfer and is on probation for the period remaining immediately prior to transfer.

46. Conditions of appointment of transferred employees

(1) An employee transferred under this Part:

(a) is entitled to be paid at a rate at least equal to the rate which the employee was entitled to be paid in his or her substantive position immediately before the transfer; and

(b) retains any entitlements accrued immediately before the transfer, such as annual leave and sick leave, as if those entitlements had been accrued in the employment of the Service the employee has been transferred to; and

(c) has continuity of service as if all prior employment in the Service transferred from was prior employment in the Service transferred to.

(2) The Commission may determine the terms and conditions of employment, including salary of employees transferred to the Commission under this Part.

PART 8 – CODE OF CONDUCT

47. Minister to issue a Code of Conduct

(1) The Minister in consultation with the Commission is to issue a Code of Conduct which applies to all employees in the Teaching Service.

(2) The Commission is to ensure the Code of Conduct is readily accessible to all employees in the Teaching Service, parents, students and community members.

48. Private employment

(1) Except as provided for in section 57, an employee in the Teaching Service may not engage in any paid employment or other work or operate any business outside the Teaching Service except with the prior agreement in writing of the Commission. This includes receiving additional payment from an Education Authority, school council or other person in relation to work performed at a school or elsewhere as part of or related to the employee's work in the Teaching Service.

(2) The Commission must not give approval under this section where the paid employment, other work or business will interfere with the proper performance of the employee's duties in the Teaching Service.

(3) This section does not apply to work undertaken for community and professional organisations which is essentially voluntary but where expenses, an honorarium or an allowance is paid.

49. Elections

(1) An employee in the Teaching Service who intends to become a candidate for election to Parliament must resign from the Teaching Service before being declared as a candidate.

(2) If such an employee is unsuccessful in being elected to Parliament, he or she is eligible to be reinstated to the position held at the time of resignation or an equivalent position. Upon reinstatement under this section the employee concerned has continuity of employment, except that the employee:

(a) is not to receive salary or any similar payment for the period of absence; and

(b) is to have any severance payment that was made upon resignation deducted from any severance payment made at the termination of the employee's continued period of employment.

(3) To avoid doubt, a person who resigns under subsection (1), is to be paid such entitlements as is required by law or under any contractual arrangements with the Commission.

50. Employee obligations

Employees of the Teaching Service must at all relevant times:

(a) comply with generally accepted community standards of behaviour; and

(b) obey any lawful direction given by a person in authority or the Commission, including a direction to transfer; and

(c) behave with honesty and integrity; and

(d) act with care and diligence; and

(e) treat all students, parents, fellow employees and community members with respect and courtesy; and

(f) disclose and take reasonable steps to avoid any conflict of interest; and

(g) use resources and public money in a responsible manner; and

(h) not make improper use of information obtained in the course of employment; and

(i) not make improper use of status, power or authority to gain or seek to gain a benefit or advantage, either personally or for another person.

PART 9 – DISCIPLINARY PROCEDURE

51. Breach of discipline

An employee who:

(a) is guilty of misconduct; or

(b) has failed to comply with the Code of Conduct; or

(c) has failed to comply with this Act or regulations or the Education Act [CAP 272] or regulations; or

(d) is negligent, inefficient, incompetent or unfit or unable to perform his or her duties;

(e) owes any person or a business owner any monies and fails to make appropriate payments as agreed upon by the employee and the person or business owner,

commits a breach of discipline.

52. Meaning of misconduct

(1) For the purposes of paragraph 51(a), an employee is guilty of misconduct if he or she:

(a) has any sexual contact or a sexual relationship of any kind with a student at any school; or

(b) physically assaults a child, including administering corporal punishment of any kind to a student; or

(c) wilfully disobeys or disregards a lawful direction given by a person in authority; or

(d) uses illegal drugs including but not limited to cannabis, cocaine and heroine; or

(e) uses kava or alcohol to excess or in a manner that adversely affects the performance of his or her duties; or

(f) misappropriates funds or goods and gains an improper personal benefit or procures an improper benefit for someone else; or

(g) is guilty of any disgraceful or improper conduct which is likely to have a detrimental effect on the reputation of the Teaching Service.

(2) In this section:

"Corporal punishment" means the use of physical force to punish or correct a student and includes any action intended or likely to cause physical pain or discomfort.

53. Penalties

(1) If an employee has committed a breach of discipline, the Commission may impose one or more of the following penalties:

(a) caution or reprimand;

(b) fine;

(c) reduction of salary to a lower level within the salary range for the position held by the employee;

(d) demotion;

(e) variation or imposition of conditions on a licence to teach in schools;

(f) forfeiture of any accrued entitlements including but not limited to annual leave and sick leave;

(g) dismissal;

(h) cancellation of a licence to teach in schools.

(2) If a fine is imposed under this section the Commission may deduct the amount of the fine directly from the salary or any other entitlements, such as severance pay, of the employee concerned.

54. Disciplinary investigation

(1) If a breach of discipline is alleged or suspected and is not minor, the Commission must arrange for an investigation to be undertaken. The investigation must be conducted by a senior employee or other suitably qualified person with no previous involvement in

the matter and a written report must be prepared by the investigator for the Commission's consideration.

(2) The employee who is subject to the investigation must be advised of the details of the alleged misconduct, failure to comply, inefficiency, incompetence, lack of fitness or inability and be given a reasonable opportunity to respond. Any such response must be included in the written report provided to the Commission and must be considered in determining whether there has been a breach of discipline.

(3) Minor disciplinary issues are to be dealt with directly by the principal of the relevant school. If the minor disciplinary issue concerns a school principal, it is to be dealt with by the relevant Provincial Education Officer or Education Authority.

(4) Ceremonies and other custom practices may be used in resolving minor disciplinary issues.

(5) If the Commission reasonably suspects that an employee has committed a criminal offence which has a penalty of imprisonment for 12 months or more it must as soon as possible, advise the Police or other appropriate authority.

55. Criminal charges and conviction

(1) If an employee is charged with a criminal offence which has a penalty of 12 months imprisonment or more the relevant Provincial Education Officer or Education Authority must immediately notify the Commission.

(2) If an employee is convicted of a criminal offence which has a penalty of 12 months imprisonment or more, the Commission may dismiss the employee from the Teaching Service.

56. Disciplinary determination

(1) If the Commission determines that an employee has committed a breach of discipline or an employee has been convicted of a criminal offence which has a penalty of 12 months imprisonment or more, the employee concerned must be given a reasonable opportunity to make a submission in relation to the penalty being imposed on him or her by the Commission

(2) Any submission on penalty received from the employee must be considered by the Commission in determining what penalty, if any, to impose.

(3) Ceremonies and other custom practices may also be considered in a disciplinary matter.

(4) The Commission's determination on penalty must be delivered as soon as possible to the relevant employee in writing. The determination is taken to have been made when:

(a) if delivered personally - it is actually delivered to the employee concerned; or

(b) if delivered by mail - when in the ordinary course of events it would be delivered; or

(c) if delivered electronically - on the day it is sent.

57. Suspension

(1) If an investigation is being conducted under section 54 or an employee has been charged with a criminal offence which has a penalty of 12 months imprisonment or

more, the Commission may suspend the employee concerned from duty. The Commission may lift the suspension at any time.

(2) The Commission may determine that all or part of a suspension is on half pay or without pay. While suspended without pay an employee is entitled to undertake paid employment or other work or operate a business outside the Teaching Service.

(3) Where an employee is suspended under this section and the Commission, a Disciplinary Appeal Board or the Supreme Court ultimately does not find there has been a breach of discipline or the employee is not convicted of an offence which has a penalty of 12 months imprisonment or more, the suspension must be immediately lifted. If all or part of the suspension was without pay or was on half pay, the employee must be paid his or her usual salary for the relevant period.

58. Appeals

Subject to other provisions of this Act, an employee may appeal a decision of the Commission under subsection 35(1) (b) or (c) or sections 43, 55, 56, or 57 to the Appeal Board.

59. Form of appeal

(1) Appeals must be made in writing and must be received by the secretary of the Appeal Board within 28 days of the date on which the determination being appealed against was made. The Appeal Board may accept a late appeal in exceptional circumstances such as delay due to the employee concerned being in an isolated location.

(2) The Appeal Board must as soon as possible convene a meeting to hear the appeal.

PART 10 – APPEAL BOARD

60. Appeal Board constitution

(1) The Appeal Board consists of the following persons:

(a) a nominee of the Vanuatu Teacher's Union; and

(b) a nominee of the Law Commission; and

(c) a nominee of the Vanuatu National Council of Women; and

(d) a nominee of the Ministry of Education; and

(e) the secretary of the Commission who is to be the secretary of the Board.

(2) The Minister is to appoint the Chairperson of the Board from amongst the members of the Board listed in subsection (1). To be eligible for appointment as the chairperson, a person must have legal or industrial training or experience and be of good character.

(3) A person is not qualified to be appointed to a Board if he or she is:

(a) a member of Parliament; or

(b) a member of an Education Authority or a Provincial Education Board; or

(c) a person who exercises any position of responsibility in a political party; or

(d) a member of a Provincial Government Council or Municipal Council.

(4) A Board member must declare his or her conflict of interest on any matter being appealed to the Board and may not take part in any discussions or decisions to be made on such matter.

61. Procedure

(1) Subject to this Act and regulations, a Board may determine its own procedures and is to conduct itself without regard to legal formality or the rules of evidence.

(2) A Board may summon a person before it to give evidence and to produce documents.

(3) A Board may require a person giving evidence before it to take an oath or affirmation that he or she will tell the truth and may administer that oath or affirmation.

(4) A summons to a witness under this section may be served personally or by sending it by prepaid post to the last known address of the person concerned.

(5) A person summoned to attend as a witness before the Board must not, without reasonable excuse:

(a) refuses or fails to attend; or

(b) refuses or fails to produce documents in accordance with the summons; or

(c) refuses to take an oath or affirmation to tell the truth; or

(d) refuses to answer a question the Board determines must be answered unless the person reasonably believes the answer to the question will incriminate him or her.

(6) A person who contravenes subsection (5) is guilty of an offence punishable on conviction by a fine not exceeding VT250,000.

(7) The hearing of an appeal before a Board is open to the public unless the Board determines that the appeal be heard in private.

(8) The Board may give directions prohibiting or restricting the publication or other disclosure of evidence given or tendered before the Board.

(9) A person who contravenes subsection (8) is guilty of an offence punishable on conviction by a fine not exceeding VT250,000.

62. Representation

A party to an appeal may be represented:

(a) by a lawyer or a trade union industrial officer; or

(b) with the leave of the Board, by a person who is not a lawyer or a trade union industrial officer.

63. Board decision

(1) A Board may confirm, vary or set aside a determination or decision being appealed against.

(2) A decision of a Board is final other than on a question of law, and the Commission is to take such action as is necessary to give effect to the decision.

64. Attempt to influence Board or Commission

(1) A person must not attempt to unduly influence a Board, any person appointed to a Board, the Commission or any member of the Commission in relation to any licence or disciplinary appeal or matter.

(2) A person who contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding VT500,000 or a term of imprisonment not exceeding one year or both.

(3) This section does not prohibit a person from:

(a) making submissions or representations in any licence or disciplinary appeal or matter at the request or invitation of a Board or the Commission; or

(b) giving evidence as a witness or in some other capacity to a Board or the Commission.

PART 11 – PROTECTION AND EDUCATIONAL INTERESTS OF CHILDREN TO BE PARAMOUNT

65. Protection and educational interests of children to be paramount consideration

(1) The protection and educational interests of children is to be the paramount consideration:

(a) in making any decision under this Act; and

(b) in dealing with any appeal against, or determining any claim arising from or in relation to that decision.

(2) This section has effect despite the provisions of the Trade Disputes Act [CAP 162] or any other Act or law.

PART 12 – MISCELLANEOUS MATTERS

66. Medical examinations

(1) The Commission may require an employee or an applicant for employment to submit to a medical examination by a registered medical practitioner.

(2) The cost of any such examination must be met by the employee.

67. Rules

(1) The Commission may make rules, not inconsistent with this Act and any Regulations made under section 68, determining matters that are required or permitted to be determined by the Commission.

(2) A rule made under this section may apply generally to all employees in the Teaching Service or to a specified category of employees.

68. Regulations

The Minister may make regulations not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Amendments

4	*Amended by Acts 1 of 2020, 2 of 2021*
6	*Substituted by Act 5 of 2019*
9(c)	*Amended by Act 1 of 2020*
37(1)	*Amended by Act 1 of 2020*
37(2)	*Amended by Act 1 of 2020*
42(2)	*Amended by Act 1 of 2020*
54(3)	*Amended by Act 1 of 2020*