



Tonga

EDUCATION ACT

1988 Revised Edition



EDUCATION ACT

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EDUCATION ACT

Act No. 23 of 1974

AN ACT RELATING TO EDUCATION

Commencement [23rd July, 1975]

PART I. - PRELIMINARY

1 Short title.

This Act may be cited as the Education Act.

2 Interpretation.

In this Act, unless the context otherwise requires —

“**Advisory Council**” means the Council established under the provisions of Part III of this Act;

“**aided school**” means any school which is receiving for the time being grant-in-aid from public funds in a manner provided by this Act;

“**Authorised officer**” means any public officer authorised for the purpose by the Minister;

“**Board of Governors**” means a Board established under the provisions of section 20 of this Act;

“**Certificate**” means a certificate in the prescribed form authorising a person to teach, granted under the provisions of Part XII of this Act;

“**Certificate of recognition**” means a certificate of recognition in the prescribed form issued in accordance with the provisions of Part VIII of this Act;

“**Certificate of registration**” means a certificate of registration in the prescribed form issued in accordance with the provisions of Part VIII of this Act;

“**Child**” means for the purpose of Part XV of this Act any person who is of compulsory school age;

“**control**” means in relation to any school the management thereof in accordance with the provisions of this Act;

“**controlling authority**” means:

- (i) in relation to a government school the Minister;
- (ii) in relation to any other school the Managing Authority;

“**curriculum and curricula**” each means all activities of the school in which the pupils participate and includes all text-books and teaching materials used in implementation of the school's curricula;

“**Director**” means the person appointed in accordance with the provisions of section 8 of this Act and for the time being performing the duties and functions of the office of Director;

“**government school**” means a school which:

- (a) is established under section 17 of this Act; and
- (b) is maintained out of public funds and controlled by the Minister of Education;

“**hostel**” means any boarding establishment run in conjunction with a school;

“**licence**” means a licence in the prescribed form authorising a person to teach, granted under the provisions of Part XII of this Act;

“**managing authority**” means any person or body of persons registered by the Minister in accordance with the provisions of section 21 of this Act as a controlling authority to be generally responsible for schools under their control; and for the purposes of the provisions of this Act relating to applications for the establishment of schools and registration or recognition of schools, includes any person or body of persons proposing to be a controlling authority so responsible;

“**manager**” means —

- (a) in the case of a government school the authorised officer or person or committee of persons appointed in accordance with section 19 of this Act;
- (b) in the case of any other school the person or committee of persons registered by the Minister under the provisions of section 25 of this Act;

“**medical inspection**” includes the physical examination of pupils or students and the consideration of all matters affecting the health of such pupils;

“**Minister**” means the minister appointed in accordance with section 3 (1) of this Act;

“**Ministry**” means the Ministry of Education, Tonga, established in accordance with section 7 of this Act;

“**non-government school**” is any school other than a government school established in accordance with the provisions of this Act;

“**parent**” in relation to any pupil includes a guardian and every person who has the actual custody of the pupil;

“**prescribe**” means —

- (a) prescribe by means of a Notice in the Government Gazette; and
- (b) prescribe by means of a memorandum signed by the Minister; and
- (c) prescribe as a regulation made under the provisions of this Act;

“**principal teacher**” means in relation to any school, the teacher in charge of the school;

“**pupil**” means any person of any age for whom education is provided under the provisions of this Act and any person enrolled on the register of any school;

“**recognition**” means, for the purposes of section 45 of this Act, recognition by the Minister of a certificate awarded elsewhere than in Tonga;

“**recognised school**” means a non-government school granted a certificate of recognition under the provisions of this Act;

“**registered school**” means a non-government school granted a certificate of registration under the provisions of this Act;

“**registered pupil**” means, relation to any school, a pupil registered as such in the register kept in accordance with regulations made under this Act but does not include any pupil who has been withdrawn from the school;

“**school**” means any institution in which not less than 5 pupils receive regular instruction by way of personal tuition or any assembly of not less than 5 pupils for the purpose of receiving any such regular instructions or/and any institution or place from which a regular instruction emanates or is imparted to pupils or students by means of correspondence, but shall not include:

- (a) any institution or assembly in which the instruction is, in the opinion of the Minister, wholly or mainly of a religious character; or
- (b) any institution owned and maintained by a religious society for the purpose of training persons —
 - (i) for the ordained ministry; or
 - (ii) for admission to a religious order under the direction of or associated with such religious society:
Provided that any class, division or section of any such institution or assembly, in which instruction is, in the opinion of the Minister, wholly or mainly devoted to secular subjects shall be deemed to be a school; or
- (c) any institution or assembly the principal purpose of which is to impart instruction in games or sport; or
- (d) any institution or assembly which may be wholly or partially exempted from the provisions of this Act by the Minister;

“**school health officer**” includes any Medical Officer, Assistant Medical Officer, Dental Officer, Health Sister, District Nurse or any other person appointed by the Minister of Health with the prior agreement of the Minister, to act as a school health officer.

PART II. - GENERAL ADMINISTRATION

3 Minister of Education.

- (1) His Majesty shall appoint a Minister of Education.
- (2) The Minister of Education shall be responsible for the administration of this Act on behalf of the Government and all acts done by him or under his direction or authority shall be deemed to have been done by the Government.

4 Minister's powers in respect of public funds etc.

The Minister may from time to time from public funds, establish or maintain or make grants-in-aid to, or advances on loan in respect of non-government schools.

5 Minister's responsibility.

The Minister, in the exercise and performance of the powers and duties conferred or imposed on him under the provisions of this Act shall have regard to the general principle that, so far as is compatible with the provisions of efficient instruction and training and the avoidance of unreasonable public expenditure, and having regard to the aptitudes and interests of pupils themselves, pupils should be educated in accordance with the wishes of their parents.

6 Annual Report of the Minister.

It shall be the duty of the Minister to present annually to His Majesty a Report on the condition and progress of education for the year just ended.

7 Ministry of Education.

There shall be a Ministry of Education under the direction and control of the Minister.

8 Director of Education.

- (1) The Minister shall, with the consent of Cabinet, appoint a Director of Education and, subject to approval of public funds for the purpose by the Legislative Assembly, such other officers of the Ministry as he may deem necessary.
- (2) The Minister may give directions, not inconsistent with the provisions of this Act, as to the duties and responsibilities of the Director and any other officer of the Ministry.

9 Duties and functions of the Director.

- (1) It shall be the duty and function of the Director to act in accordance with directions given to him by the Minister within the provisions of this Act and generally to assist the Minister.

- (2) It shall further be the function and duty of the Director, notwithstanding the provisions of Part II of this Act, to advise the Minister, as he may deem appropriate, on any educational matter.

PART III. - THE ADVISORY COUNCIL

10 The Advisory Council for Education.

For the purposes of this Act there shall be an Advisory Council to be styled “The Advisory Council for Education” and the Council shall, subject to the provisions of this Act, be a consultative body to advise the Minister on —

- (a) education policy and planning;
- (b) the provision and organisation of educational facilities in the Kingdom;
- (c) proposed legislation affecting education;
- (d) any educational matters submitted in writing by not less than three members subject to the provisions of section 13 of this Act;
- (e) any other educational matters referred to the Council by the Minister.

11 Constitution.

- (1) The Council shall consist of the Director of Education as an ex-officio member and such and so many others as the Minister may from time to time appoint provided always that the Council shall include a representative from each of the Managing Authorities.
- (2) Subject to the provisions of this Act every appointed member shall hold office for 2 years from the date of his appointment, but shall be eligible for re-appointment, unless he sooner dies, resigns or is removed from office by the Minister.
- (3) The Chairman of the Council shall be appointed by the Minister, or, in his absence, such other member as the Council shall elect to be temporary chairman.
- (4) The Secretary to the Advisory Council shall be an authorised officer assigned for the purpose by the Minister.
- (5) The Minister may, after consultation with such Managing Authority as may be concerned, revoke the appointment of any member.
- (6) Every appointment, resignation or revocation of a member shall be notified in the Government Gazette.

- (7) No act or proceeding of the Council, or of any committee of the Council, shall be questioned and invalidated on account of any vacancy among the members of the Council, or any of its committees or of any defect in their appointment.

12 Resignation and vacancies of membership.

- (1) A member of the Council, who is an elected or appointed member of the Legislative Assembly, shall cease to be a member of the Council if he ceases to be a member of the Assembly, but shall be eligible for re-appointment.
- (2) Any member may resign his office by giving notice thereof in writing to the Minister but shall be eligible for re-appointment.
- (3) Members may apply to the Minister for leave of absence and when the Minister has granted such leave of absence he may appoint for the duration of such absence a person similarly qualified to act in the place of such member.

13 Meetings of the Council.

- (1) The Council shall meet at such times as the Minister may decide and in any case not less than 3 times a year at intervals of not less than 14 weeks:
Provided that special meetings of the Council shall be convened by the Chairman upon his receiving a requisition so to do, signed by not less than 3 members and endorsed by the Minister; provided further that such requisition shall state the object for which the meeting may be summoned.
- (2) The Minister may, at his sole discretion, convene a special meeting of the Council and may preside over any such meeting.

14 Procedure at meetings.

- (1) At least half of the number of members shall form a quorum.
- (2) Recommendations of the Council at meetings thereof shall be made and recorded by the majority vote of members present and voting.
- (3) The Chairman of a meeting shall have an original and a casting vote.
- (4) the Council may regulate its own procedure insofar as the same is not prescribed by or under the provisions of this Act.
- (5) The Council, with the approval of the Chairman, may invite any person or persons to attend any meeting of the Council and such persons may take part in proceedings of that meeting but shall not be entitled to vote:

Provided that persons so co-opted shall be persons with special knowledge or experience required by the Council in its discharge of its duties.

15 Director to report.

It shall be the duty of the Director to report to the Council the action taken by him or the Minister on any matter on which the Council has advised the Minister.

16 Sub-committee of the Council.

- (1) The Council may, subject to any restriction imposed by the Minister, appoint committees with power to co-opt, from time to time, persons with special knowledge or experience required by the committees in their discharge of their duties:

Provided that there shall be not less than 2 members of the Council on every such committee and provided further that the Director shall be ex-officio chairman of every such committee.

- (2) The Council may authorise such committees to consider educational matters which the Council may refer to them and to report to the Council thereon; provided that any matters so referred by the Council are related to matters which have been referred to the Council in accordance with the provision of this Act.

PART IV. - CONTROL OF GOVERNMENT SCHOOLS

17 Establishment of Government schools.

The Minister may from time to time with the consent of the Privy Council, establish new government schools in any locality; provided that due regard is had to any educational facilities that are already provided by any other schools already established in the locality.

18 Minister to have control.

- (1) The Minister shall have control within the provisions of this Act of all government schools and may adopt a system of classification similar to that which he may adopt for non-government schools as provided under section 28 (1) of this Act.
- (2) Subject to any regulations made under this Act the Minister shall appoint, transfer, suspend or dismiss teachers or the staff of Government schools

and shall admit, transfer, suspend or dismiss pupils in government schools.

PART V. - MANAGERS OF GOVERNMENT SCHOOLS

19 Appointment of Managers

The Minister shall appoint a manager for every government school or group of Government schools to assist him in the general management thereof and he shall prescribe to managers so appointed by him directions not inconsistent with the provisions of this Act, as to their duties and responsibilities:

Provided that, when he appoints a Board of Governors as provided under section 20 of this Act, he may, at his discretion waive the appointment of a manager.

20 Boards of Governors Advisory Committee.

- (1) If, in the opinion of the Minister, the establishment of a Board of Governors, or an Advisory Committee, would be in the interest of any government school or group of government schools, he may by notification in the Gazette, establish a Board of Governors or an Advisory Committee for that school or group of schools with such membership, powers, duties and functions as the Minister may prescribe.
- (2) Where such a Board of Governors or Advisory Committee is established the Minister may prescribe the procedure governing the conduct of its meeting.

PART VI. - MANAGING AUTHORITIES

21 Registration.

- (1) The Management of every non-government school or group] of schools shall be vested in a properly constituted controlling authority and herein and hereafter referred to as the “Managing Authority”.
- (2) Every such Managing Authority shall submit to the Minister its title, for registration, and any other information the Minister may require concerning its constitution.
- (3) The Minister shall register every such Managing Authority, but may refuse to register it if, after consultation with the Advisory Council, he considers such Managing Authority to be not properly constituted as a

controlling authority or if it includes amongst its members any person who would be debarred from being a manager under section 26 of this Act.

22 Responsibilities and functions.

- (1) Each managing Authority shall be responsible for the management and organisation in accordance with the provisions of this Act of all the schools under its control.
- (2) Subject to the provisions of this Act, registered Managing Authorities shall admit or appoint as the case may be, transfer, suspend or dismiss the pupils or members of staff of the schools under their control and shall deal with all matters relating to establishment, management, organisation and discontinuance of such schools.
- (3) All Managing Authorities shall supply to the Minister such information, concerning their schools and matters related thereto as the Minister may from time to time request or require in pursuance of the duties and functions conferred or imposed on under the provisions of this Act.

23 General Managers.

- (1) Every Managing Authority shall appoint a General Manager, to be the executive of the Managing Authority and shall submit his name, and if he is appointed ex-officio his title, to the Minister for registration.
- (2) The General Manager shall be the corresponding manager of the Managing Authority and shall receive and deal with all correspondence with the Minister on the functions and responsibilities of the Managing Authority referred to in section 22 of this Act:

Provided that all acts done by a General Manager shall be deemed to have been done by the Managing Authority.

- (3) Without prejudice to his duties as General Manager, as provided in the last preceding subsection, a General manager may also be, subject to the provisions of this Act, manager of a school or group of schools.
- (4) The Minister after agreement with the Managing Authority concerned may refuse to register as General Manager any person who would be debarred from being a manager under the provisions of section 26 of this Act.

24 Offence.

- (1) Any person or body of persons who form a Managing Authority or manage schools or assist in the management of schools as if they were a Managing Authority when they are not registered as such, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50 and in default of payment to imprisonment for a period not exceeding 3 months.
- (2) Any person who functions as General Manager or assists in performing the functions of a General Manager when he is not registered as General Manager shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100 and in default of payment to a period of imprisonment not exceeding 6 months.

PART VII. - MANAGERS OF NON-GOVERNMENT SCHOOLS

25 Registration.

Every Managing Authority shall appoint a Manager for every school or group of schools under its control, to assist the Managing Authority in the fulfilment of its duties and responsibilities referred to in section 22 of this Act, and shall submit his name, and if the manager is appointed ex-officio, his title, to the Minister, for registration, and may give to its Managers' directions, not inconsistent with the provisions of this Act, as to their duties and functions:

Provided that all acts done by a Manager shall be deemed to have been done by the Managing Authority.

26 Minister may refuse to register.

- (1) The Minister after agreement with the Managing Authority concerned may refuse to register as Manager, any person who has been or is liable to be prohibited from managing or assisting in the management of a school.
- (2) The Minister shall have power by notice in writing to the Managing Authority concerned, to prohibit any person from being a Manager or assisting in the management of any school or group of schools if —
 - (a) he has been convicted of any offence involving dishonesty, fraud, violence, or moral turpitude; or
 - (b) he is an undischarged bankrupt; or
 - (c) while he was manager or in any way participating in the management of any school any of the circumstances mentioned in

paragraphs (a), (c) and (d) of section 32(1) of this Act arose, in consequence of which the school was closed under the powers conferred by that section.

27 Offence.

Any person who functions as Manager or assists in the management of a school or group of schools when not registered as Manager or after he has been prohibited from doing so under the provisions of the last preceding section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100 and in default of payment to imprisonment for a period not exceeding 6 months.

PART VIII.- CONTROL OF NON-GOVERNMENT SCHOOLS

28 Classification of schools.

- (1) The Minister after agreement with the Managing Authority concerned may adopt a system of classification with appropriate nomenclature for distinguishing —
 - (a) different types of schools according to the nature or form, or highest form, of education provided therein respectively; and
 - (b) different classes, standards or forms within schools according to the stage and nature of education provided therein respectively.
- (2) Any Manager of a school or any member of a Managing Authority who, with intent to mislead, wilfully publishes any written matter or wilfully causes any matter to be broadcast suggesting that the school is of a type or classification other than that in which it is, for the time being, classified under this Part of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding \$50 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

29 Establishment of non-Government schools.

- (1) The Minister may, after consultation with the Advisory Council, apply the provisions of this section in part or in whole, to any school in existence before the coming into force of this Act as if it were a school to be established under the provisions of this section.
- (2)

- (a) Any person or body of persons desirous of establishing a non-government school shall first apply in the prescribed manner and in the case of any application, under which the proposed school does not conform wholly to conditions prescribed under this Act, the Minister may, in approving such application impose such conditions as he thinks fit.
 - (b) After approval being given, and at the due time as prescribed by the Minister, the applicant shall apply for a prescribed certificate of registration or recognition as the case may be.
- (3) For the purpose of this Act, the establishment of a school, without prejudice to the generality of that expression shall be deemed to include —
- (a) the provisions of any nature or form of education in any school, being a nature or form of education different from the nature or form of education falling within the classification in which the school is, for the time being, classified;
 - (b) the adoption by the Managing Authority of any school, by any means, in relation to the school, of a different nomenclature from that in which that school is, for the time being classified;
 - (c) the re-opening of any school which has remained closed for a consecutive period of 6 months or more;
 - (d) the transfer of management or change of controlling authority of any school, whether such transfer or change takes effect by way of partnership or otherwise;
 - (e) the transfer of a school to a new site;
 - (f) any new or additional classroom or other building for instructional purposes to be constructed after the establishment of the school has been approved;
 - (g) the construction or purchase or renting of a building to be used for the purpose of conducting a school.
- (4) The Minister after agreement with the Managing Authority concerned may refuse any application for approval of the establishment of a school if he is satisfied that —
- (a) the number of potential pupils in the area capable of benefiting from the facilities offered by the proposed school is too small to warrant the establishment of such a school; or
 - (b) the proposed site or premises is unsuitable or inadequate for the type of school sought to be established; or
 - (c) the proposed school will not be in the best interests of education in relation to the best use of government funds, or otherwise; or

- (d) adequate provision already exists for the type of education which it is proposed to give in the school; or
 - (e) the proposed Managing Authority or proposed Manager or any proposed assistant in the management of such school is prohibited or is liable to be prohibited from serving in such capacity under the provisions of section 21 subsection (3) or section 26 of this Act as the case may be.
- (5) Where the Minister has refused his approval under the provision of the last preceding subsection the applicant for such approval may, within 30 days of the date of such refusal, appeal to the Privy Council whose decision shall be final.
- (6) The Minister may refuse an application for a certificate of registration or recognition if, in his opinion, there has been a breach —
- (a) of any prescribed condition of registration or recognition; or
 - (b) of any condition imposed by the Minister when approving the application under subsection (1) of this section.
- (7) The Minister may, when issuing a certificate of registration or recognition, classify the school in a category which may be provided therein and shall specify in such certificate any condition thereof which may be prescribed from time to time or such conditions which the Minister thinks fit to impose in accordance with subsection (2)(a) of this section.
- (8) The Minister may cancel the certificate of registration or recognition as the case may be, of any school which he is satisfied has remained closed for a period of 6 consecutive months.
- (9) The Minister, may, at any time, cancel the certificate of registration or recognition of a school which has ceased or failed to conform to the conditions prescribed or imposed by the Minister, for such a school under subsection (2)(a) of this section.
- (10)
- (a) The Managing Authority of any registered or recognized school shall be specified in the certificate of registration or recognition of such school and when any change of Managing Authority occurs, within 3 months of such change, the Minister shall be informed thereof in writing and the certificate shall be returned for endorsement thereon of the change of controlling authority.
 - (b) The provisions of the last preceding paragraph shall be deemed to be a prescribed condition of any certificate of registration or recognition.
- (11)
- (a)

- (i) A certificate of registration or recognition shall be returned to the Minister within 14 days of his request therefore being received in writing, to be endorsed to give effect to the powers of the Minister prescribed by this section or under this Act;
 - (ii) The provisions of the last preceding sub-paragraph shall be deemed to be a prescribed condition of any certificate of registration or recognition.
- (b) The Minister may, instead of endorsing any such certificate, cancel the same and issue another in its place.
- (12) The Minister shall, in every case where a certificate of registration or recognition is endorsed or cancelled, or replaced by a different certificate, make suitable amendments or entries in the register maintained by him under the provisions of section 57 of this Act.
- (13) The Minister or any authorised officer may, without notice, visit, enter and inspect, any place in which there is reason to believe that a school is being conducted, approval for the establishment of which has not been registered or recognized under this Part of the Act:

Provided that no inspection of any staff living quarter shall be carried out except with the prior permission of the occupier of such quarter.

Offence.

- (14) Any person who —
- (a) proceeds with the establishment of a school, approval for the establishment of which has not been granted; or
 - (b) maintains a school which has not been registered or recognized under this Part of this Act; or
 - (c) manages or assists in the management of any such school, or of any school the registration or recognition of which is cancelled under the provisions of this section; or
 - (d) manages or assists in the management of any school in which to his knowledge any publication or periodical publication which is for the time being declared to be unsuitable for use in schools by the Minister under the provisions of section 64 of this Act or any copy thereof, or extract therefrom, is used as part of the instruction provided in such school, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50 and in default of payment to imprisonment for a period not exceeding 3 months and to a further fine not exceeding \$2 for each day on which the offence continues after conviction therefore.

30 Health and safety.

- (1) If the Minister is satisfied with respect to any school that having regard to the nature of the site or to any existing buildings thereon or to other special circumstances affecting the school premises, it would be unreasonable in that case to require conformity with the prescribed requirements relating to health and safety in schools, in any particular respect, he may waive all or any of such prescribed requirements.
- (2) Where it appears to the Minister that the premises of any school do not conform with any such regulation, he may order the Managing Authority of such school to execute within a reasonable period to be stated in the order, such specified works as are necessary to secure such conformity and, if the Minister is satisfied that such an order has not been carried out, he may order the Managing Authority to close the school.

31 Inspection of schools.

- (1) The Minister or any authorised officer may visit, with due notice to the Managing Authority concerned, and enter and inspect, any school and may inspect the works of any teacher or teachers in such school.
- (2) For the purpose of this section a school shall be deemed to include any part of such school and any building used in connection with it, including workshops, dormitories, kitchens, sanatoria, hostels and all auxiliary buildings.

32 Closing of schools.

- (1) If, as a result of an inspection carried out in accordance with the provisions of the last preceding section or otherwise, the Minister is satisfied that —
 - (a) any school is conducted in a manner which is calculated to be detrimental to the physical, mental or moral welfare of the pupils attending thereat, or that any instruction has been imparted therein, to any pupil, which is prejudicial to peace, good order or good government of the Kingdom; or
 - (b) the premises of any school do not and cannot at reasonable expense be made to conform with the prescribed requirements relating to health and safety; or
 - (c) the basic curriculum prescribed or approved by the Minister is persistently and materially departed from in any school; or
 - (d) any publication or periodical publication which in accordance with the provisions of section 29 subsection (14)(d) of this Act, is for the time being declared by the Minister unsuitable for use in schools or

- any copy thereof, or extract therefrom, is, or has been, after the date of such declaration, knowingly used or referred to in, or in the course of, or as part of the instruction provided in any school; or
- (e) any school is not for the time being registered or recognized under and in accordance with the provisions of Part VIII of this Act; or
 - (f) any person is managing or assisting in the management of any school after having been prohibited from serving in such capacity under the provisions of section 26 of this Act; or
 - (g) it is not in the best interests of education in relation to the best use of government funds, or otherwise to keep any school open, he may after consultation with the Advisory Council and the Managing Authority order the Managing Authority of such school to close the school.
- (2) The Managing Authority of any school may, at any time, request the Minister to close such school and, in such event, the Minister may order the Managing Authority of such school to close the school.
- (3) Any school ordered to be closed under the provisions of this section and which has remained closed for a period of less than 6 months may be reopened at the discretion of the Minister after consultation with the Managing Authority responsible for that particular school.
- (4) When a school has been ordered to be closed under any of the provisions of this Act, the Managing Authority of such school may, within 30 days of the date of such order, appeal against such order of closure to the Privy Council whose decision shall be final and pending the disposal of such appeal, the Minister may, in his discretion, permit the school to remain open.

33 Offence.

Any person who keeps open or reopens otherwise than in accordance with the provisions of this Act a school ordered to be closed under the provisions of this part of this Act, or manages or assists in the management of any such school, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100 and in default of payment to imprisonment for a period not exceeding 6 months, and to a further fine, not exceeding \$4 for each day on which the offence continues after conviction therefor.

PART IX.- CURRICULA AND EXAMINATIONS

34 Minister to approve curricula.

- (1) The curricula in all government schools shall be as laid down or approved from time to time by the Minister.
- (2) Any Managing Authority shall prescribe the curriculum for schools under its control subject to prior agreement with the Minister.

35 Examinations.

The Minister may, with the consent of Cabinet, from time to time institute such examinations as he shall deem necessary, and may make regulations concerning the content and conduct of such examinations and the moderation of results:

Provided that, where a prescribed text is not acceptable to a Managing Authority on grounds of religious doctrine, the Minister may, after consultation with such Managing Authority, prescribe an alternative.

36 Committees.

The Minister may, at his discretion, establish committees on a temporary basis, comprising such persons as he may think fit, to advise him on any curriculum and any examination.

37 Examinations conducted by overseas examining authorities.

- (a) The Minister shall, from time to time, after consultation with the Advisory Council, designate overseas examining authorities whose examinations are approved by him as examinations suitable for pupils in Tonga and suited to the educational need of Tonga and he shall promulgate the titles of such examining authorities by means of notice in the Gazette or otherwise.
- (b) The Minister may make regulations governing the arrangements and procedures to be followed in the administration of such examinations conducted in Tonga:

Provided always that any such regulations shall not be inconsistent with the examination instructions of the examining authority.

- (c) The Managing Authority of any school which presents, or intends to present, candidates, for any overseas examination other than those promulgated under the provisions of subsection (a) of section 37 of this Act, shall notify the Minister of such intentions as soon as

possible and in any case at least 2 months before the date of the examination.

Offence.

- (d) Any Managing Authority who fails to give such notice shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25.

PART X. - RELIGIOUS INSTRUCTION

38 Arrangements in non-Government schools.

Provision for religious instruction may be made in any non-government school by its controlling authority.

39 Minister to arrange in Government schools.

The Minister shall make suitable arrangements for the Ministers of religion of any denomination or persons accredited by any denominations to visit government schools for the purpose of giving religious instruction to pupils of their respective denominations.

PART XI. - SCHOLARSHIPS FOR EDUCATION AND TRAINING BOARD

40 Tonga Government Scholarships.

- (1) Subject to the provisions of this Part of this Act there may be provided annually, from public funds, scholarships for the purpose of enabling persons who have the necessary qualifications to undergo approved courses of education; and training, board and scholarships so provided shall be known as "Tonga Government Scholarships".
- (2) Such courses of study shall normally only be approved on condition that they will fit such persons to return to Tonga to render service to the country.
- (3) The Minister may, with the consent of Privy Council, make regulations with regard to the granting and holding of Tonga Government Scholarships and of any scholarships donated by governments and agencies other than the Tonga Government for award by the Tonga Government:

Provided that such regulations shall not in any way be inconsistent with conditions imposed by the donating governments or agencies in relation to scholarships donated by them.

41 Scholarships Committee.

There shall be a Scholarships Committee whose function shall be, subject to the provisions of section 40(3), to make the awards of Tonga Government Scholarships and of scholarships donated by governments and agencies other than the Tonga Government for award by the Tonga Government.

42 Constitution of Scholarships Committee.

- (1) The Scholarships Committee shall consist of the Minister as ex-officio Chairman, the Director as ex-officio member and such and so many other members as the Minister, with the approval of Cabinet, may appoint.
- (2) Every appointed member shall hold office for a period of three years unless he sooner dies, resigns or unless his appointment is revoked by the Minister with the approval of Cabinet.
- (3) Any member may resign his appointment by giving notice thereof to the Minister in writing.
- (4) Every appointment or revocation of an appointment and resignation of a member of the Scholarships Committee shall be notified in the Government Gazette.
- (5) The Secretary to the Scholarships Committee shall be an authorized officer appointed by the Minister.
- (6) No act or proceeding of the Committee shall be questioned and invalidated on account of any vacancy among its members or of any defect in their appointment.

43 Procedure at meetings.

- (1) A quorum of any meeting of the Scholarships Committee shall be half of the number of the members of the Committee.
- (2) Decisions of the Committee shall be made and recorded by the majority vote of members present.
- (3) The Chairman shall have an original and a casting vote.
- (4) The Committee may regulate its own procedure in so far as the same is not prescribed by or under the provisions of this Act.

- (5) The Scholarships Committee may invite any person or persons to attend any meeting of the Committee and each person or persons may take part in the proceedings of that meeting but shall not be entitled to vote.

44 Public Notice of Scholarships and administrative arrangements.

The Minister shall give adequate notice, through press and radio and any other suitable media of scholarships that are available; and shall prescribe administrative arrangements governing the submission of applications and the procedure to be followed by the Committee in dealing with applications and the granting of awards.

PART XII. - TEACHERS

45 Certificate or licence to teach required.

No person shall teach any school unless he holds a certificate authorising him to teach issued by or recognized by the Minister, or a licence to teach issued by, or with the authority of, the Minister and signed by the Minister or by an authorised officer:

Provided that if it appears to the Minister that in the case of any particular person not being the holder of such a certificate or licence, special circumstances exist, the Minister may authorise such person to teach in any specified school, or in any specified class, standard or form in any specified school, or classification or type of school, subject to such restrictions or limitations as the Minister may think fit to impose after consultation with each Managing Authority regarding teachers from schools under its control.

46 Issue and cancellation of certificate or licences and appeals against cancellation.

- (1) Subject to any regulations made under the provisions of this Act, the Minister may issue to any person a certificate or licence authorising such person to teach in any school or classification or type or school or may recognize a teaching certificate awarded elsewhere:

Provided that —

- (a) the Minister may, after consultation with such Managing Authority as may be concerned, refuse to issue or at any time cancel any such certificate or licence or his recognition of a certificate awarded elsewhere, if he is satisfied that such person is unsuitable to be a teacher on the grounds that he —

- (i) has been guilty of dereliction of duty or moral turpitude or habitual drunkenness; or
 - (ii) has been convicted of an offence involving dishonesty, fraud or violence; or
 - (iii) has imparted to any pupil any instruction which the Minister considers to be prejudicial to peace, good order or good Government in the Kingdom or detrimental to the physical, mental or moral welfare of the pupils; or
 - (iv) has given to the Minister or an authorized officer false information relating to his character, qualifications and experience; and
- (b) any person whose certificate, licence or recognition has been so cancelled, may, at any time after the expiration of 12 months from the date of such cancellation and from time to time at intervals of not less than 6 months thereafter, apply to the Minister for the restoration of such certificate, licence or recognition and the Minister may, having regard to the character of such person, his conduct subsequent to such cancellation and any other circumstances which the Minister may consider relevant restore such certificate, licence or recognition or may refuse the application;
- (c) The Minister may, in his discretion, at any time cancel any such certificate and issue in place thereof a licence to teach and may, likewise, issue a certificate upon the cancellation of a licence.
- (2) Upon refusing to issue or cancelling any certificate or recognition or upon refusing to restore any cancelled certificate or recognition as aforesaid, the Minister shall notify the person whose certificate or recognition is refused or cancelled or whose application for the restoration of any cancelled certificate or recognition has been refused, provided that, in all such cases, the Minister shall allow a period of not less than one month during which the applicant may submit to the Minister for his re-consideration, any new facts or representations in support of his case.

47 Appointment of teachers.

The appointment of teachers in any school other than a government school, shall lie with Managing Authority of such school.

48 Offence.

Any person who —

- (a) not being the holder of a certificate of licence to teach issued under the provisions of section 46 of this Act and not being a person authorised by the Minister to teach under the provisions of the proviso to section 45 of this Act, teaches or assists in teaching in any school; or
- (b) employs or engages as a teacher in any school any person, not being the holder of a certificate or licence as aforesaid and not being a person authorised as aforesaid; or
- (c) being a person authorised to teach by the Minister under the provisions of the proviso to section 45 of this Act, teaches or assists in teaching in any school in which he is not so authorised to teach or in any class, standard or form in which he is not authorised to teach; or
- (d) employs or engages such a person as is referred to in the last preceding paragraph as a teacher in any school or in any class, standard or form in which such person is not so authorised to teach; or
- (e) teaches or acts as a teacher otherwise than in accordance with any conditions to which his certificate or licence to teach is subject;
- (f) being the holder of a certificate or licence to teach under the provisions of section 46 of this Act or being a person authorised by the Minister to teach under the provisions of the proviso to section 45 of this Act uses as part of the instruction provided in any school any publication or periodical publication which has been declared by the Minister to be unsuitable for use in schools, or any copy thereof or extract therefrom,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100 or to imprisonment for a period not exceeding 6 months:

Provided that it shall not be an offence under this section for a person whose certificate, licence or recognition has been cancelled by the Minister under the provisions of section 46 of this Act to teach or assist in teaching pending the determination of any appeal lodged by him under the provisions of that section unless such person has been suspended or interdicted from duty.

PART XIII. - FEES

49 Fees to be prescribed.

- (1) Such fees as may be prescribed by the Minister, with the consent of Cabinet, shall be payable in government schools.

- (2) Any pupil or potential pupil in respect of whom any fees are due and owing may be refused admission or re-admission to school, as the case may be, or if such pupil or potential pupil has been admitted or readmitted may be excluded from school until all fees due up to the date of such exclusion have been paid.
- (3) The Minister with the consent of Cabinet may remit, in whole or in part, the fees due in respect of tuition, books, board or medical attention from any individual pupil or group of pupils.
- (4) Fees for tuition, books, board or medical attention payable in respect of the pupils in any government school shall be payable at such time and in such manner as may be prescribed.
- (5) The parent of a pupil shall be liable for all fees due in respect of such pupil at a government school, whether or not such parent enrolled such pupil, and the Minister or the Principal or other person or body by whom such fees are recoverable may, in his or its own name, institute proceedings for the recovery from such parent of any such fees.

50 Crediting to fees.

All fees in respect of pupils in government schools shall be accounted for and paid into the general revenue of the Kingdom.

PART XIV. - MEDICAL INSPECTION

51 Medical inspection.

- (1) Every pupil in attendance at a school shall be liable to medical inspection and medical and dental treatment by a school health officer:

Provided that if a parent of any pupil objects to medical inspection or to medical or dental treatment by such officer he may signify his objection in writing to the Principal, who may excuse such pupil from such medical inspection on condition that the parent agrees to arrange at his own expense for medical inspection or treatment, as the case may be, to be carried out by a medical or dental practitioner of his own choice and, in the case of inspection, to forward to the school health officer a report of the results of the examination and agrees that the pupil may be excluded from the school in the absence of such reports.

- (2) If any pupil, whether excused from medical inspection by the school health officer or not, appears to the Principal to require medical inspection, such Principal may require such pupil to be medically

examined and to produce to him a certificate signed by a medical practitioner that he is free from any condition liable to endanger the health of others and may exclude such pupil from attendance at school until he shall have produced such a certificate.

PART XV. - COMPULSORY EDUCATION

52 Compulsory school age.

In this part of this Act:

- (a) “**compulsory school age**” means any age between 6 years and 13 years and accordingly every person shall be deemed to be of compulsory school age if he has attained the age of 6 years and has not attained the age of 14 years;
- (b) “**walking distance**” means 2 miles measured by the nearest available route.

53 Parent's duty to have child educated.

It shall be the duty of the parent of every child of compulsory school age to cause him to receive suitable and efficient education by regular attendance at school unless:

- (i) There is no school within walking distance of the child's place of residence;
- (ii) The parent or guardian makes other arrangements, deemed by the Minister to be suitable and efficient, for the education of the child;
- (iii) The child has completed 6 years of primary education;
- (iv) The child is prevented from attending school by sickness or other unavoidable cause.

54 Minister to regulate.

The Minister shall prescribe from time to time procedures governing the administration of this Part of this Act.

55 School Attendance Officer and powers.

- (1) For more effectually carrying out the provisions of this Part of this Act the Minister may appoint School Attendance Officers on a full time or a part-time basis and he shall prescribed the duties of such Attendance Officers.
- (2) The Minister may designate any officer of the Ministry to carry out the duties of School Attendance Officer prescribed under subsection (1) of this section.
- (3) Any School Attendance Officer after seeking permission from the owner may enter any yard, house, building or place between the hours of 8 a.m. and 5 p.m. of any day of the week except Sundays and public holidays to make enquiries as to any child there residing or employed.
- (4) Everyone who —
 - (a) wilfully hinders or obstructs a School Attendance Officer in the performance of his duty; or
 - (b) wilfully makes any false representations to a School Attendance Officer with respect to the age or employment of a child whether that child is of compulsory school age or not; or
 - (c) wilfully refuses to afford to a School Attendance Officer reasonably requiring it, any information that he possesses as to the age or employment of a child, whether the child is of compulsory school age or not,

shall be guilty of an offence and on summary conviction thereof shall be liable to a fine not exceeding \$10.

56 Offence.

Any parent or guardian who fails to perform the duties imposed on him by section 53 or fails to fulfil any requirements prescribed under section 54 of this Act shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$10 in the case of a first offence and \$20 in the case of every ensuing offence.

PART XVI. - REGISTERS

57 Minister to maintain a Register of schools.

- (1) The Minister shall maintain a register in which shall be recorded in suitable format all government and non-government schools and such register shall record in respect of each school its name, the locality in

which it is situated, its status whether “government” or “recognized” or “registered” its classification and the name or title of its controlling authority and any other information which in the opinion of the Minister is relevant for the purpose of registration.

- (2) The Minister shall remove from such register any school that is closed under the provisions of this Act.
- (3) The Minister, shall, at convenient intervals, publish in the Gazette a list of schools for the time being registered by him under the provisions of subsection (1) of this section and of any schools which have been closed or the registration or recognition of which has been endorsed or amended or cancelled under the provision of this Act.

58 Minister to maintain various

- (1) The Minister shall maintain separately and in suitable format registers as follows —
 - (i) a register in which is recorded the name or title of every Managing Authority approved by the Minister for registration in accordance with the provisions of section 21 of this Act;
 - (ii) a register in which is recorded the name or title of every General Manager approved by the Minister for registration under the provisions of section 23 of this Act;
 - (iii) a register in which is recorded the name or title of every Manager approved by the Minister for registration under the provisions of section 25 of this Act;
 - (iv) a register in which are recorded the names of all persons to whom a certificate or licence to teach or other form of recognition has been issued by him under the provisions of section 46 subsection (1) of this Act.
- (2) The Minister shall remove from the relevant register any Managing Authority or any General Manager or any Manager or any teacher who is prohibited under the provisions of this Act from being a Managing Authority or a General Manager or a Manager or a teacher as the case may be.

PART XVII. - REGULATIONS

59 Regulations.

The Minister, may, with the consent of and subject to any directions which Privy Council may give in relation thereto make, revoke and vary regulations for any purposes for which regulations may be made by him under this Act and may prescribe anything which may be prescribed thereunder and otherwise for the furthering or better carrying out the objects of this Act, and in particular, but without prejudice to the generality of the foregoing, making regulations, or may prescribe anything with respect to any or all of the following matters:

- (i) The establishment, administration, management and closing of schools;
- (ii) The classification of schools;
- (iii) Methods of selection for admission to schools;
- (iv) The Inspection of schools and the curriculum and syllabi to be followed therein;
- (v) Arrangements and procedures to be followed for the administration of overseas examinations under the provision of section 37;
- (vi) Conditions governing the recognition or registration of schools;
- (vii) Conditions of certificate of recognition or registration;
- (viii) Conditions of service including appointment, transfer, suspension and dismissal of teachers in Government schools;
- (ix) Providing for and regulating the making and maintenance of grants-in-aid to non-government schools;
- (x) The minimum requirements for building and equipment used in schools and for the health and safety of pupils therein and such different requirements for differently classified schools as may be necessary;
- (xi) Approving the plans of any new school to be established under section 29 of this Act;
- (xii) The manner in which application shall be made for the establishment of schools in accordance with the provision of section 29 of this Act;
- (xiii) The form of certificates and licences to teach;
- (xiv) Improving conditions subject to which certificates and licences to teach may be issued, specifying the qualifications required for certificated and licensed teachers and prohibiting

a teacher not holding any such certificates or licence from teaching in any particular class, standard or forms in any school or classification or type of school;

- (xv) Specifying the time and the manner in which fees for tuition, books, board or sports shall be payable in respect of government schools and providing for the commission of the whole or any part of such fees;
- (xvi) Providing for and regulating the compilation and production of proper accounts of income and expenditure of schools and of controlling authorities of schools;
- (xvii) Providing for the procedure to be adopted by the Advisory Council and any Board, Committee or other body constituted, appointed or established under the provisions of this Act;
- (xviii) Forms to be prescribed for the purpose of this Act and of regulations made under this Act.

PART XVIII. - LEGAL PROCEDURE

60 Opinion of Magistrate to be held to be true age of child in absence of definite evidence.

Where the age of any child is required to be ascertained in any judicial proceeding under this Act the adjudicating Magistrate on production of the child before him and on considering any evidence of age that may be adduced and the appearance of the child and in the absence of clear testimony to the contrary may declare and note on the proceedings what in his opinion is the true age of such child and such age shall for all purposes connected with that proceeding be taken to be the true age of such child at that time.

61 Officer may obtain copy of certificate of birth.

The Minister shall be entitled to obtain from the Registrar of Births, certificate copy of any entry in any register in his custody with respect to the birth of any child.

62 Summary Jurisdiction as to orders.

All orders which any Magistrate is authorised to make under this Act shall be applied for, made and enforced according to the provisions of the Magistrates' Courts Act.

63 No fees for any process under this Act.

No person, whether complainant, plaintiff or defendant, shall be required to pay any fees for any process in any proceedings taken or had under the provisions of this Act against the parent of any child.

PART XIX. - GENERAL**64 Unsuitable publications.**

The Minister after consultation with the Advisory Council may, by notice in the Gazette, declare any publications or periodical publication to be unsuitable for use in schools, and such a declaration made in respect of a periodical publication may include all past and future issues thereof. For the purpose of this section, the expression “publication” shall have the meaning assigned to it in Section 2 of the Prohibited Publications Act and “periodical publication” shall mean a publication so defined which is issued periodically or in parts or numbers at intervals, whether regular or irregular; and such a declaration as aforesaid shall be deemed to extend to all copies, in whatever language, of such publication or periodical publication.

65 Penalty for disturbance.

Any person who maliciously disturbs any school or who insults or abuses any teacher in the presence or hearing of the children assembled in school or in the school grounds shall be guilty of an offence and shall be liable to a fine not exceeding \$20 and in default of payment to imprisonment for any period not exceeding two months.

66 Saving.

No defect or invalidity in the appointment of any member of any Council, Board, Committee or other body, constituted, appointed or established by or under the provisions of this Act shall prejudicially affect or render invalid any proceedings of, or the exercise of any functions, by, any such Council, Board, Committee or other body.

67 Signification of documents.

(1) Any order notice, approval, disapproval or document made or issued by any Council, Board, Committee or other body established, appointed or constituted by or under the provisions of this Act may be signified by the

Chairman or secretary of such Council, Board, Committee or other body, or by any member thereof duly authorised in that behalf, and any order, notice, approval, disapproval or document purporting to be so authenticated shall be deemed, until the contrary is proved, to have been made or issued by the Council, Board, Committee or other body on whose behalf it purports to have been made or issued.

- (2) Any order, notice, approval, disapproval, certificate, licence or other document made or issued by or under the provisions of this Act purporting to have been made or issued by the Minister shall be deemed, until the contrary is proved, to have been made or issued by the Minister.

68 Repeal.

The Education Act of 1927 is hereby repealed:

Provided that any existing rules, regulations, orders, appointments, certificates, licences or notices made or granted thereunder shall, except only so far as they conflict with the provisions of this Act, remain in force until revoked, as if they were regulations, orders, appointments, certificates, licences or notices made or granted under this Act.¹

¹ No Subsidiary legislation has been made under Act 23 of 1974. For a reference to subsidiary legislation made under the 1927 Act, see the Index to Laws at the beginning of Volume 1 of this edition of the Laws of Tonga