



Tonga

EDUCATION ACT 2013

Act 25 of 2013



EDUCATION ACT 2013

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EDUCATION ACT 2013

Act 25 of 2013

AN ACT RELATING TO EDUCATION

I assent,
TUPOU VI,
26th February 2014.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART 1 - PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the Education Act 2013.
- (2) This Act shall come into force when it is published in the Gazette, except for Part XXI which shall come into force on a date proclaimed by the Minister and published in the Gazette.

2 Interpretation

In this Act, unless the context otherwise requires —

“**Advisory Council**” means the Council established under the provisions of Part IV of 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 25 of this Act;

“Certificate” for the purposes of Part XVI, means a certificate in the prescribed form authorising a person to teach;

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

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

“Chief Executive Officer” means the Government chief executive officer responsible for education and training;

“child” means for the purposes of Part XIX of this Act, any person who is of compulsory school age;

“compulsory school age” subject to section 100, means any age between 4 years and 18 years;

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

“controlling authority” means —

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

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

“early childhood education” means the formal teaching of young children by people outside the family setting and consists of activities and experiences that are intended to effect developmental changes in young children prior to their entry into primary school;

“early childhood education centre” means premises used regularly for the education or care of ten or more children under the age of 5, by the day or part of a day, but does not include premises where all the children present are —

- (a) members of the same family in the care of a member of the family;
- (b) members of the same family in the care of a caregiver who is not acting for gain or reward; or
- (c) premises used for the education of children for any period not exceeding ten hours a week;

“educational institution” means —

- (a) an early childhood education centre;
- (b) a school; or
- (c) a tertiary education institution;

“government school” means –

- (a) a school that is funded by the Government and includes a government established early childhood education centre, primary school, secondary school, special school or institute of higher education; and
- (b) is maintained out of public funds and controlled by the Minister;

“Higher Education” means formal education that is offered as a progression from secondary education and includes technical and vocational training and education;

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

“inclusive education” means the process of strengthening the capacity of the education system to reach out to all learners and students and as an overall principle, guiding all education policies and practices starting from the fact that education is a basic human right and the foundation for a more just and equal society;

“information communications technology” or **“ICT”** means the use of technology to assist in more efficient management systems and analysis of information and for the purposes of this Act refers to the use of computer systems including internet and email, telephones and facsimiles;

“licence” for the purposes of Part XX means a license issued to an early childhood education centre once it is registered under this Act;

“managing authority” means any person or body of persons registered by the Minister in accordance with the provisions of section 27 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;

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

“Minister” means the Minister responsible for education and training;

“Ministry” means the Ministry responsible for education and training;

“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 student includes a guardian and every person who has the actual custody of the student;

“persons with disabilities” includes those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others;

“post basic education” means education and training offered in various settings (formal, non-formal and informal) for students –

- (a) aged 19 or more;
- (b) who have completed secondary education to Year 13;
- (c) whom are no longer attending secondary school;
- (d) whom are not owned and maintained by a religious society for the purpose of theological training;

“prescribe” means —

- (a) prescribe by means of a Notice in the Government Gazette;
- (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;

“recognised institution” for the purposes of section 73(1)(a) means an institution that has been registered and accredited by the Tonga National Qualifications and Accreditation Board or by an equivalent body abroad;

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

“school” means any institution in which not less than 5 students receive regular instruction by way of personal tuition or any assembly of not less than 5 students for the purpose of receiving any such regular instructions or any institution or place from which a regular instruction emanates or is imparted to 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;
- (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;

- (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;

“service provider” means the body, agency, or person who or that operates an early childhood education centre;

“special education” means education or help from a special school, special class, or special service;

“staff development” refers to the range of activities that improve individual staff skills and knowledge in ways that improve their ability to undertake their job and which increase job satisfaction, performance and staff retention;

“staff development activities” includes tertiary qualifications, training courses, workshops, programmes, coaching, mentoring and conferences;

“student” means a 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 or tertiary education institution;

“technical and vocational training and education” or **“TVET”** refers to those aspects of the educational process involving, in addition to general education, the study of technologies and related sciences, and the acquisition of practical skills, attitudes, understanding and knowledge relating to occupants in various sectors of economic and social life;

“universal basic education” refers to the whole range of educational activities that aim to meet the basic learning needs of students, which in the case of Tonga is provided through early childhood education (for children aged 4-5), primary education (Year 1 to 6) and secondary education (Year 7 to 13);

“unsupervised access to children” in relation to a licensed early childhood service, means access to any child that is not supervised by, or otherwise observed by, or able to be directed (if necessary) by, any one or more of the following –

- (a) a registered teacher or holder of a limited authority to teach;
- (b) an employee of the Ministry on whom a satisfactory police vet has been conducted within the preceding 3 years; or

(c) a parent of the child;

“**vocational training**” means short-term training in specific occupationally related skills; and

“**walking distance**” for the purposes of Part XIX means 3 kilometres measured by the most direct available route.

PART II - GENERAL ADMINISTRATION

3 Right to Education in Tonga

- (1) Every child in Tonga shall have the right to receive a quality education.
- (2) Every child shall have the right to access educational and vocational information and guidance.
- (3) Educational and vocational information shall be made available in the Tongan language and the English language.

4 Ministry of Education

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

5 Functions of the Ministry

The Ministry is responsible for —

- (a) improving equitable access to and improving quality of universal basic education for all children in Tonga from age 4 to age 18;
- (b) improving access to quality of post basic education and training in Tonga;
- (c) improving the administration of education and training so that the quality of educational performance is enhanced;
- (d) provision of quality teachers, through pre-service and in-service training of teachers;
- (e) registration and certification of teachers;
- (f) inspection, assessment and appraisal of teaching and non-teaching staff;
- (g) establishing and reviewing national educational standards;
- (h) developing curriculum and instruction materials;
- (i) conducting nationwide student testing, research and planning for programme and performance improvement;
- (j) licensing and certification of schools;

- (k) monitoring and evaluation of boards of education and other school authorities;
- (l) overseeing Higher Education institutions and developing policies to improve the quality, coordination, management, responsiveness and outcomes of Higher Education in Tonga;
- (m) ensuring that Minimal Service Standards are established, maintained and implemented for the health and safety of students and staff in schools and on school grounds;
- (n) increasing the use of information and communications technologies for teaching and learning, and in the work of the Ministry;
- (o) development of the Education Management Information System (EMIS) and other initiatives, for the improved system of school records, creation of student profiles, maintenance of a land and assets register, scheduling and dissemination of information;
- (p) building strategic management capability to ensure that executive management within the Ministry is innovative, flexible and responsive in discharging responsibilities;
- (q) creating a performance culture which reflects a high level of team work, harmony and collaboration, and which builds organizational capability;
- (r) ensuring efficiency and effectiveness of service delivery by Ministry employees and all education providers;
- (s) pursuing the national development goals of the Government as they relate to education;
- (t) actively seeking bilateral, multilateral and international assistance to support the educational goals of the Government;
- (u) accounting for donor funding and meeting reporting obligations to donor agencies and development partners;
- (v) forging strong relationships with executive stakeholders, agencies and communities to ensure that strong relationship management drives the activities and actions of the Ministry;
- (w) development, maintenance and sustainability of infrastructure, facilities, resources and the school environment of government schools; and
- (x) establishing and maintaining a land and assets register.

6 Appointment of the Minister

- (1) The Minister shall be appointed in accordance with clause 51(2) of the Constitution.
- (2) The Minister shall retain his position until the appointment ceases pursuant to clause 51(3) of the Constitution.

7 Functions of the Minister

- (1) The Minister is responsible for carrying out functions –
 - (a) under this Act or any other Act;
 - (b) pursuant to clause 51 of the Constitution; and
 - (c) in accordance with lawful directives of the Prime Minister and Cabinet.
- (2) The Minister is primarily responsible for –
 - (a) overseeing the establishment, development and implementation of educational policies;
 - (b) providing policy advice to Government; and
 - (c) co-ordinating efforts with Government agencies, regional organisations and development partners for the provision of quality education and educational services in the Kingdom.
- (3) The Minister will exercise control over the administration of all Government and non-Government schools in the Kingdom on behalf of the Government. All acts done under the Minister's direction or authority shall be deemed to have been done by the Government.
- (4) 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 in consultation with the Minister of Finance.
- (5) In the exercise and performance of the powers and duties conferred or imposed on him under the provisions of this Act, the Minister shall have regard to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, and having regard to the aptitudes and interests of students themselves, students should be educated in accordance with the wishes of their parents.
- (6) It shall be the duty of the Minister to present to the Legislative Assembly an Annual Report on the condition and progress of education for the year just ended.

8 Appointment of the Chief Executive Officer

- (1) The Public Service Commission, in consultation with the Minister, shall appoint a Chief Executive Officer for the Ministry.
- (2) A person appointed to the position of Chief Executive Officer shall possess at least –
 - (a) a Masters Degree in an area relevant to the position;
 - (b) seven years experience in a senior executive position in the educational sector in the Kingdom,or as prescribed by the Public Service Commission from time to time.

- (3) In addition to the qualifications in subsection (2), a person appointed to the position shall meet key competencies and capabilities established by the Public Service Commission for Chief Executive Officers of Government Ministries.

9 Functions of the Chief Executive Officer

The Chief Executive Officer shall be responsible and accountable to the Minister for –

- (a) the performance of his functions under this Act, as well as statutory functions of a Chief Executive Officer under the Public Service Act;
- (b) the effective administration of the Ministry and proper execution of the Ministry's functions set out in section 5 of this Act;
- (c) the creation and maintenance of full and accurate records of the Ministry's functions and activities, which should include administration files, academic records, staff and student profiles, land and assets, school and administration buildings, statistical information relating to staff and students and any other information that the Minister deems appropriate;
- (d) ensuring that the Ministry's recordkeeping and information management policies meet best practice guidelines and stand up to external scrutiny;
- (e) ensuring that effective measures are put into place to prevent illegal records manipulation, interference or disposal; and
- (f) ensuring confidentiality of Ministry and school information, records and documents by establishing protocols to prevent their unauthorised release.

10 Appointment of staff of the Ministry

- (1) Except for the position of Chief Executive Officer, the Minister shall, in consultation with and on the recommendation of the Staff Board, appoint staff of the Ministry as the Minister may deem necessary.
- (2) The Staff Board shall consist of the following members –
 - (a) the Chief Executive Officer (as Chair);
 - (b) one representative from the Ministry (nominated by the Chief Executive Officer);
 - (c) one representative from the Public Service Commission (nominated by the Chief Executive Officer of the Public Service Commission); and
 - (d) one independent representative (nominated by the Minister with the approval of Cabinet).
- (3) Except for the position of the Chief Executive Officer, the members of the Staff Board shall hold office for a period of 3 years, after which they shall be replaced by new members, appointed in accordance with subsection (2).

- (4) The power of appointment in subsection (1) includes the power to –
- (a) recruit;
 - (b) promote; or
 - (c) transfer;
- the employment of staff of the Ministry, in a manner that is consistent with criteria established for the exercise of those powers by the Public Service Commission under the Public Service Act.
- (5) As appropriate, the Minister may recommend to the Public Service Commission to discipline or terminate the employment of a staff member.
- (6) The appointment of staff in a school other than a government school shall lie with the Managing Authority of such school.

11 Delegation of Powers of the Minister and Chief Executive Officer

- (1) Subject to section 13E(1) of the Public Service Act, the Minister or Chief Executive Officer may delegate one or more of his powers to another employee in the Ministry.
- (2) A delegation shall be –
- (a) made in writing;
 - (b) communicated to the person to whom the power is delegated and other employees of the Ministry;
 - (c) state clearly the functions and powers that are being delegated; and
 - (d) state clearly the effective date for the delegation of powers.
- (3) A delegation by a Minister or Chief Executive Officer will continue in effect, even if the person who made the delegation is no longer in office.
- (4) A delegation will end when it is revoked in writing by the Minister or Chief Executive Officer in office.
- (5) The Minister will maintain a register recording the powers that have been delegated, the person to whom the powers have been delegated and the duration for the delegation.

12 Divisions of the Ministry

- (1) The Minister may organise the Ministry into such Divisions or offices as the Minister deems appropriate, for the effective discharge of the duties and responsibilities of the Ministry.
- (2) The Minister shall ensure that each Division has sufficient resources, whether human or financial, to carry out its functions.

- (3) The Minister shall appoint Deputy Chief Executive Officers to be responsible for designated Divisions of the Ministry.
- (4) Specific functions of Deputy Chief Executive Officers shall be determined by the Minister and set out in written policies and regulations of the Ministry.

13 General Functions of a Deputy Chief Executive Officer

In addition to the specific functions allocated to a Deputy Chief Executive Officer under section 12(4), a Deputy Chief Executive Officer will be responsible for the following general functions –

- (a) overseeing the general administration of the Division, managing staff, directing work of the division and advising and reporting to the Chief Executive Officer and Minister as required;
- (b) advising the Chief Executive Officer on budgetary and human resource requirements, outputs of the Division and how the work of the Division might be improved;
- (c) advising the Chief Executive Officer on staffing issues, including recommendations for promotion, demotion, transfer, disciplinary action or termination of employee contracts;
- (d) overseeing the review of the Division's written policies and advising the Chief Executive Officer if policy, legislative or regulatory amendments are required for each Division;
- (e) reporting to the Chief Executive Officer on developments or challenges in his Division and recommending how challenges might be overcome;
- (f) ensuring that each employee –
 - (i) undertakes an induction process and is provided with a copy of relevant laws and regulations of the Ministry and any information relevant to the employee's position;
 - (ii) understands how his functions relate to the overall objectives of the Ministry and national educational goals of Government; and
 - (iii) carries out his functions effectively, in accordance with this Act and laws governing employees of the Public Service;
- (g) analysing the development needs of the Division and individual staff members, and, with the approval of the Minister, ensuring that each staff member has a current development plan to meet those needs;
- (h) proposing sufficient budgetary provision for staff development within each Division and ensuring that staff members are released for approved activities;
- (i) as appropriate, mentoring and counselling staff within the Division; and
- (j) advising on and promoting staff development opportunities and supporting the application of new knowledge, skills or abilities within the workplace.

PART III – FINANCIAL PROVISIONS

14 Ministry budget

The Ministry shall allocate a percentage of its allocated budget for expenditure on –

- (a) special education and the Ministry's responsibilities under section 112;
- (b) early childhood education and the Ministry's responsibilities under section 105;
- (c) staff development needs;
- (d) procurement of new resources and equipment, and their replacement; and
- (e) maintenance of buildings and facilities.

15 Establishment of the Procurement Division

- (1) There is hereby established a Procurement Division for the Ministry.
- (2) The Minister shall appoint a Senior Officer as Head of the Procurement Division and such other officers as are required for the efficient performance of the tasks of the Division.
- (3) Functions of the Procurement Division shall include –
 - (a) monitoring and ensuring effective compliance by officers of the Ministry with the Public Procurement Regulations and regulations and policies of the Ministry governing procurement;
 - (b) providing technical assistance to Ministry staff through the dissemination of procurement technical guidance notes;
 - (c) preparing standard documents to be used in connection with the Ministry's procurement processes and activities;
 - (d) requesting and receiving information, records or documents from officers within the Ministry who are involved in the procurement process;
 - (e) developing, promoting and supporting training and professional development of officers involved in the Ministry's procurement process, including adherence to the highest ethical standards; and
 - (f) maintaining and updating a database of bidders and suppliers who, by reason of having seriously neglected their obligations to the Ministry or having provided false information about their qualifications, have been suspended or debarred by the Government Procurement Committee under the Public Procurement Regulations from participating in public procurement.
- (4) In carrying out his functions, the Head of the Procurement Division shall maintain regular contact with the Procurement Division of the Government,

ensuring that the Division establishes and maintains an up to date register of instructions and processes from that Division, for efficient and effective processing of Ministry purchases and payments.

- (5) The Ministry shall comply with the financial management procedures and rules governing procurement set out in the Public Finance Management Act 2002 and Public Procurement Regulations and Instructions promulgated under that Act.
- (6) From time to time, the Ministry may develop appropriate regulations and financial procedures to govern the financial matters of the Ministry, provided that they are not inconsistent with the Public Finance Management Act 2002 and Public Procurement Regulations and Instructions promulgated under that Act.

PART IV - THE ADVISORY COUNCIL

16 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 19 of this Act; and
- (e) any other educational matters referred to the Council by the Minister.

17 Constitution

- (1) The Council shall consist of the Chief Executive Officer 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 the member’s appointment, but shall be eligible for re-appointment, unless the member sooner dies, resigns or is removed from office by the Minister.
- (3) The Chairperson of the Council shall be appointed by the Minister or, in the Minister’s absence, such other member as the Council shall elect to be temporary chairperson.

- (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 from the Council 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.

18 Resignation and vacancies of membership

- (1) A member of the Council who is an elected or appointed as a member of the Legislative Assembly shall cease to be a member of the Council, but shall be eligible for re-appointment to the Council once he ceases to be a member of the Legislative Assembly.
- (2) A member may resign from office by giving notice in writing to the Minister, but the member shall be eligible for re-appointment at a future time.
- (3) A member may apply to the Minister for a leave of absence, following which the Minister may appoint a similarly qualified person to the Council for the duration of the member's leave of absence.

19 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 Chairperson upon receiving a requisition to do so, 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.

20 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 Chairperson 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 Chairperson, may invite any person to attend any meeting of the Council and such person 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 the discharge of its duties.

21 Chief Executive Officer to report

The Chief Executive Officer shall have a duty to report to the Council on the action taken by the Minister or by the Chief Executive Officer on any matter on which the Council has advised the Minister.

22 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 the 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 Chief Executive Officer shall be ex-officio chairperson 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 provisions of this Act.

PART V - CONTROL OF GOVERNMENT SCHOOLS

23 Establishment of Government schools

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

24 Minister to have control

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 34(1) of this Act.

PART VI - PRINCIPAL TEACHERS OF GOVERNMENT SCHOOLS

25 Boards of Governors or Advisory Committee

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.

26 Regulations under this Part

The Minister may make regulations regarding the functions, powers and duties of a Board of Governors or Advisory Committee and to regulate their meetings and procedures.

PART VII - MANAGING AUTHORITIES

27 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 Principal Teacher under section 32 of this Act.

28 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 students 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.

29 General Managers

- (1) Every Managing Authority shall appoint a General Manager to be the executive of the Managing Authority and shall submit the General Manager's 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 28 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 a person's duties as General Manager, as provided in the last preceding subsection, a General Manager may also be, subject to the provisions of this Act, Principal Teacher 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 Principal Teacher under the provisions of section 32 of this Act.

30 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 \$10,000 and in default of payment to imprisonment for a period not exceeding 6 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 \$5000 and in default of payment to a period of imprisonment not exceeding 6 months.

PART VIII - PRINCIPAL TEACHERS OF NON-GOVERNMENT SCHOOLS

31 Registration

Every Managing Authority shall appoint a Principal Teacher for every school or group of schools under its control, to assist the Managing Authority in the fulfilment of its duties and responsibilities in section 28 of this Act, and shall submit his name, and if the Principal Teacher is appointed *ex-officio*, his title, to the Minister, for registration, and may give to its Principal Teachers directions, not inconsistent with the provisions of this Act, as to their duties and functions:

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

32 Minister may refuse to register

- (1) The Minister after agreement with the Managing Authority concerned may refuse to register as Principal Teacher, 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 Principal Teacher or assisting in the management of any school or group of schools if the person —
 - (a) has been convicted of any offence involving dishonesty, fraud, violence, or moral turpitude;
 - (b) is an undischarged bankrupt; or
 - (c) was Principal Teacher or in any way participating in the management of any school any of the circumstances mentioned in paragraphs (a), (c) and (d) of section 43(1) of this Act arose, in consequence of which the school was closed under the powers conferred by that section.

33 Offence

Any person who functions as Principal Teacher or assists in the management of a school or group of schools when not registered as Principal Teacher 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 \$5000 and in default of payment to imprisonment for a period not exceeding 6 months.

PART IX - CONTROL OF NON-GOVERNMENT SCHOOLS

34 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 Principal Teacher 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 \$5000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

35 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 students 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;
 - (b) the proposed site or premises is unsuitable or inadequate for the type of school sought to be established;
 - (c) the proposed school will not be in the best interests of education in relation to the best use of government funds, or otherwise;
 - (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 Principal Teacher 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 27(3) or section 32 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 Cabinet 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 131 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;
- (b) maintains a school which has not been registered or recognized under this Part of this Act;
- (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 139 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 \$5000 and in default of payment to imprisonment for a period not exceeding 6 months and to a further fine not exceeding \$100 for each day on which the offence continues after conviction therefor.

PART X – SCHOOL MANAGEMENT

36 Health and safety in schools

- (1) This Part shall apply to all Government and non-Government schools, at all levels of education in Tonga.
- (2) A Managing Authority, Principal or head teacher shall ensure that each school complies with standards prescribed in the Minimal Service Standards adopted by the Ministry, including the requirements for health and safety in schools.
- (3) If the Minister is satisfied that, having regard to the nature of the site or to any existing buildings on any school or to other special circumstances affecting the school premises, it would be unreasonable to require full compliance with the prescribed standards relating to health and safety in schools, the Minister may waive all or any of such prescribed requirements.
- (4) Where it appears to the Minister that the premises of a school do not conform with the prescribed requirements, the Minister may order the Managing Authority, Principal or head teacher of such school to execute within a reasonable period, such specified works as are necessary to secure compliance.
- (5) If the Minister is satisfied that an order under subsection (4) has not been carried out within the specified period, the Minister may order the closure of the school.

37 Corporal Punishment prohibited

- (1) A person in a school or on any school premise shall not –
 - (a) verbally abuse any student; or
 - (b) use force (whether by way of correction or punishment) against any student.
- (2) A person referred to in subsection (1) shall include an employee, agent, or volunteer of the Ministry, Managing Authority or school.

38 Duty to maintain records, registers and reports

The Managing Authority, Principal Teacher or head teacher of every school shall keep and maintain the following documents to ensure the health and safety of students of the school —

- (a) student health records available to the school;
- (b) accident register;
- (c) safety and emergency procedures;
- (d) reports of hazardous circumstances; and
- (e) notifiable diseases register.

39 Notification of the Chief Executive Officer of notifiable diseases, natural disasters or health and safety issues

- (1) The Managing Authority, Principal Teacher or head teacher of a school shall, on the prescribed form, notify the Chief Executive Officer immediately of the occurrence of a notifiable disease, natural disaster or health and safety issue within the school.
- (2) A notifiable disease is a disease which is listed as notifiable by the Ministry of Health under the Public Health Act.

40 Medical and dental care examinations

- (1) From time to time, Government approved health officers will carry out authorised medical and dental examinations of students. Prior to such examination, the Managing Authority, Principal Teacher or head teacher shall ensure that the school has informed and received the written consent of a child's parents or guardians.
- (2) After a medical or dental examination, a child's parents shall be consulted if there is a need for further action.
- (3) A copy of the health officer's report shall be provided to the Principal Teacher and included in a child's medical file.

41 Transfer of student

When a student transfers to another school, the Managing Authority, Principal Teacher or head teacher shall provide the new school with the student's complete record, which shall include the student's profile, medical file, and dental record.

42 Inspection of schools and teachers

- (1) The Minister or any authorised officer may, with due notice to the Managing Authority concerned –
 - (a) visit, enter and inspect any school; and
 - (b) inspect, assess and appraise the work of any teacher 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.

43 Closing of schools

- (1) If, as a result of an inspection carried out in accordance with this Part, 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 students attending, or that any instruction has been imparted to any student, which is prejudicial to peace, good order or good government of the Kingdom;
 - (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;
 - (c) the basic curriculum prescribed or approved by the Minister is persistently and materially departed from in any school;
 - (d) any publication or periodical publication which in accordance with the provisions of section 35(14)(d) of this Act, is for the time being declared by the Minister unsuitable for use in schools or any copy or extract, 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;
 - (e) any school is not for the time being registered or recognised under and in accordance with the provisions of Part VIII of this Act;
 - (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 32 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,

the Minister may, after consultation with the Advisory Council and the Managing Authority, order the closure of 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 to the Cabinet whose decision shall be final. Pending the disposal of such appeal, the Minister may, in his discretion, permit the school to remain open.

44 Offences and penalties

- (1) A person who –
 - (a) 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; or
 - (b) manages or assists in the management of any such school,commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 and in default of payment to imprisonment for a period not exceeding 12 months, and to a further fine, not exceeding \$100 for each day on which the offence continues after the conviction.
- (2) A person who exercises corporal punishment on a student in breach of section 37 commits an offence and shall be liable upon conviction –
 - (a) to a fine not exceeding \$500 for a first offence; or
 - (b) to a fine not exceeding \$1,000 for a second and subsequent offence, or to a term of imprisonment of 6 months, or both.

PART XI - CURRICULA AND EXAMINATIONS

45 Establishment of the Curriculum Development Unit

- (1) There is hereby established a Curriculum Development Unit for the Ministry.
- (2) The Minister shall appoint a Senior Officer as Head of the Unit and such other officers as are required for the efficient performance of the tasks of the Unit.

- (3) The Minister may from time to time employ qualified consultants and technical experts to assist with the work of the Unit.

46 Functions of the Head of the Unit

Functions of the Head of the Unit shall include the following —

- (a) develop policies, criteria and standards for curriculum and assessments of students;
- (b) develop and evaluate curriculum for courses normally undertaken in, or designed to be undertaken in the school years 1 to 14;
- (c) provide guidelines for the modification of curriculum and for the development of individual learning programmes for children with special needs;
- (d) advise or make recommendations to the Minister on any educational policy or strategy relating to the development of curriculum that will prepare students for successful transition into employment, tertiary education, vocational education and training and further education;
- (e) oversee the work of staff of the unit to ensure effective performance of their functions; and
- (f) report to, be accountable for, and advise the Minister on any matter for which the Unit is responsible.

47 Functions of the Curriculum Development Unit

Functions of the Unit shall include but not be limited to the following –

- (a) develop a curriculum framework which recognises that all students should have the opportunity to develop essential values, skills and knowledge through study in key learning areas;
- (b) seek to improve the achievement levels of students through quality learning and teaching programmes;
- (c) provide a structure around which schools can build educational programmes to suit the needs of their students and to respond to changes in society;
- (d) ensure that schools provide learning opportunities that are enriching, enjoyable and challenging for all students;
- (e) facilitate the emergence of schools as learning organisations in learning communities, each with its own way of combining relevant approaches to school organisation, curriculum, and teaching and learning within the context of school-based management;
- (f) provide the scope for schools and their communities to respond in innovative ways to the needs of students situated in the local community and for engaging with global realities; and

- (g) establish and develop aims for early childhood education, inclusive education, basic education, secondary school education, higher education and technical and vocational training to enable young people to realise their potential, achieve their personal ambitions, and contribute to the society in which they live.

48 Guiding principles for curriculum development, content and review

Curriculum development, content and review should be guided by the following principles –

- (a) recognition of the uniqueness of the Kingdom, its people and its culture in providing students with the opportunity to learn about and cultivate an appreciation of Tongan values, history, culture, beliefs and traditions;
- (b) high expectations for achievement and success for all students recognising that all students can be successful when they are provided with sufficient time and support in an environment that is conducive to learning;
- (c) a high level of teacher professionalism and highly effective teaching to ensure quality outcomes for students;
- (d) programmes are carefully planned and use a range of teaching and assessment approaches in order to cater for the various learning styles of students;
- (e) develop and enforce the implementation of the national language policy;
- (f) promotion of the use of Tongan and English languages for construction of knowledge, skills, values and culture, and for creating and fostering understanding of self, others, and of the world;
- (g) development of the whole person by offering learning programmes that build upon students experiences, reinforce prior learning, encourage reflection, facilitate creative and critical thinking, and challenge learner to acquire new knowledge and skills;
- (h) promotion of learning that is relevant, meaningful and useful;
- (i) development of learning programmes that take account of and link with the foundations established through early childhood education and the home, and that connect with the post secondary education and training opportunities, providing an integrated approach to learning;
- (j) encouraging an understanding of the place that Tonga has in the Pacific and globally, and the range of political, economic and social relationships and interactions that the country has in those settings; and
- (k) development of learning programmes that are inclusive of all students, and which recognise and respond to the educational needs and interests of all students including children with special needs, with disabilities, who are gifted, and of both genders.

49 Minister to approve curricula

- (1) The curricula in all government schools shall be as determined by the Curriculum Development Unit and approved by the Minister.
- (2) A Managing Authority shall prescribe the curriculum for schools under its control, subject to prior agreement with the Minister.
- (3) The Minister shall determine regular intervals for the review and development of schools curricula with due regard to evaluations of the existing curricula and changes in society.
- (4) The Ministry will develop and retain a core of curriculum officers in the Unit with the skills and expertise to review and evaluate curricula continuously.

50 Examinations

The Minister may, with the consent of Cabinet, from time to time institute such examinations as the Minister 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.

51 Committees

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

52 Examinations conducted by overseas examining authorities

- (1) The Minister shall, from time to time, after consultation with the Advisory Council, designate overseas examining authorities whose examinations have been approved as examinations suitable for students in the Kingdom and suited to the educational need of the Kingdom. The Minister shall promulgate the titles of such examining authorities by means of notice in the Government Gazette or otherwise.
- (2) The Minister may make regulations governing the arrangements and procedures to be followed in the administration of such examinations conducted in the Kingdom:

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

- (3) 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 (1), 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.

- (4) A Managing Authority that fails to give notice pursuant to section 52(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2000.

PART XII – HIGHER EDUCATION

53 Higher Education Commission

- (1) The Minister is responsible for overseeing the establishment and development of Higher Education institutions in Tonga.
- (2) The Minister may establish a body or commission to provide policy advice for the establishment, development and advancement of Higher Education institutions in Tonga.
- (3) Rules governing the establishment of a body or commission under subsection (2) shall be promulgated under regulations endorsed by the Minister and approved by Cabinet.
- (4) This section shall not affect the responsibility of the Tonga National Qualifications and Accreditation Board to register and accredit post compulsory education providers pursuant to the Tonga National Qualifications and Accreditation Board Act.

54 Responsibilities of the Ministry

- (1) The Ministry is responsible for establishing, and maintaining, a system for higher education that is —
 - (a) relevant to the needs of the public and private sectors of the economy; and
 - (b) consistent with the economic and social goals, and priorities, of the Government.
- (2) The system shall, among other things, provide for —
 - (a) formulating policy on higher education, after consulting key stakeholders;
 - (b) liaising with the public and private sectors of the economy about labour market needs and human resources development;
 - (c) coordinating the long-term development of higher education;

- (d) planning for the funding of higher education, including the recurrent and development needs of Government educational institutions that provide higher education;
 - (e) promoting co-ordination among the various parts of the education system and educational institutions that provide higher education;
 - (f) ensuring the prescribed standards of teaching, assessment and grading are adhered to in order to minimise variability between educational institutions that provide higher education;
 - (g) monitoring and evaluating the performance of the system for higher education in order to ensure the successful performance of all education activities;
 - (h) initiating, supporting and conducting research in the area of higher education, and disseminating the results of the research in order to enhance the quality and relevance of the system for higher education;
 - (i) establishing links with international educational institutions to draw from their experience in the development of the system for higher education;
 - (j) guiding the development of new and emerging vocations to meet the requirements of an ever-changing economy;
 - (k) developing a culture that fosters entrepreneurial and creative skills; and
 - (l) encouraging collaboration between business and the providers of education.
- (3) To the extent possible, the Government shall ensure that higher education in the Kingdom is accessible to all on the basis of capacity.

PART XIII - RELIGIOUS INSTRUCTION

55 Arrangements in non-government schools

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

56 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 students of their respective denominations.

PART XIV – INFORMATION MANAGEMENT SYSTEM

57 Information Management System

- (1) The Ministry shall establish and maintain an Information and Management System to capture all relevant data in relation to the work of the Ministry.
- (2) Relevant data obtained by the Ministry may include the following information –
 - (a) names of employees of the Ministry;
 - (b) qualifications of employees and work experience;
 - (c) employee commencement and termination dates;
 - (d) names of students, academic records and student profiles;
 - (e) names of schools, lands and assets and school profiles;
 - (f) gifts, donations or fundraising proceeds received by the Ministry;
 - (g) research study conducted in the Kingdom and related to education; and
 - (h) any other information that the Ministry requires to effectively carry out its functions and which it may lawfully obtain.
- (3) Data obtained under this Part may be used by the Ministry for the following purposes –
 - (a) informing decision-makers for evidence based decision-making in relation to achieving the educational goals of the Ministry or education in Tonga;
 - (b) directing the Ministry in its management and development goals;
 - (c) assisting with the Ministry's reporting obligations to the Cabinet, Legislative Assembly, development partners and external agencies;
 - (d) facilitating academic accountability through the analysis and reporting of academic data;
 - (e) enabling the Ministry to estimate the real cost of investment in education in Tonga; and
 - (f) any other lawful purpose approved by the Chief Executive Officer.
- (4) At the time prescribed, every school in Tonga including Government and non-Government schools at pre-school, primary, secondary and tertiary levels, shall be required to submit the information under subsection (3) to the Ministry.
- (5) The Ministry shall coordinate its data collection processes, to ensure that the least disruption is made to the work and administration of teaching staff of schools.
- (6) The Ministry shall ensure that all information obtained under this Part is kept confidential at all times.

- (7) A request for information shall be made in writing to the Chief Executive Officer before any information is released by the Ministry.
- (8) When assessing a request for information, the Chief Executive Officer shall ensure that –
 - (a) the person making the request agrees to the condition that if official data will be quoted in a report or publication, he will promptly provide a copy of the report or publication to the Ministry; and
 - (b) releasing the requested information will not contravene any law in the Kingdom relating to the confidentiality of documents or of information.
- (9) The Ministry shall ensure that employees who are responsible for maintaining the information management system are sufficiently trained and supported in appropriate use of the Ministry’s information management system.
- (10) The Ministry will regularly review procedures to ensure that data obtained under this section continues to be relevant, useful and meets the Ministry’s needs.
- (11) Rules governing the maintenance of the Ministry’s information management system may be included in regulations and written policies of the Ministry.

PART XV – TONGA GOVERNMENT SCHOLARSHIPS

58 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 in Tonga and abroad. The scholarships so provided shall be known as “Tonga Government Scholarships”.
- (2) Tonga Government Scholarships will only be awarded by the Ministry on condition that scholarship recipients will return to Tonga to render service to the country.
- (3) The Minister may, with the consent of Cabinet, 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 apply subject to conditions imposed by the donating governments or agencies in relation to scholarships donated by them.

59 Bonded Scholarships

- (1) The Minister shall enter into an agreement under this section with any person who is provided with a –
 - (a) Tonga Government Scholarship to undertake tertiary studies abroad;
 - (b) Tonga Government grant or allowance to undertake teacher training; or
 - (c) Tonga Government grant or allowance to undertake staff development programmes in Tonga or abroad.
- (2) The agreement shall provide for —
 - (a) payment by the Ministry to the person of an amount of money on condition that the person will return to work in Tonga on completion of the person's tertiary studies, training, or programme for a specified period; and
 - (b) an undertaking by the person that, if he defaults on the condition, he will repay (in full or on a pro-rata basis, as determined under the agreement) the amount awarded by the Ministry under subsection (2)(a).
- (3) The Minister shall require that the agreement is signed by a guarantor for the person, in which case the guarantor is jointly and severally liable with the person under the agreement.

60 Scholarship Conditions

- (1) On completion of his studies, a person with a bonded scholarship is required to work in the Kingdom, either immediately or within a period approved by the Minister.
- (2) A person under subsection (1) is deemed to have fulfilled his obligations to the Government when he completes and passes the full course of study, training or programme for which the scholarship was granted and -
 - (a) returns to the Kingdom and works in an agency approved by the Minister for the full duration of the period specified in the agreement; or
 - (b) repays to the Ministry in full, the value of the scholarship, allowance or grant in accordance with the agreement.

61 Notification of Bonded Scholarship in the Government Gazette

If a person who has entered into an agreement with the Minister under section 59 –

- (a) fails to complete the course of study for which the scholarship, grant or allowance was awarded;
- (b) completes the course of study for which the scholarship, grant or allowance was awarded but does not return to Tonga;

- (c) completes the course of study for which the scholarship, grant or allowance was awarded but on his return to Tonga chooses not work for an agency approved by the Minister under section 60(2)(b); or
- (d) completes the course of study for which the scholarship, grant or allowance was awarded but does not work for the full term of the bond in an agency approved by the Minister,

and does not repay the Ministry the full value of the scholarship within the time specified in the agreement, the Minister shall, by notice in the Gazette, declare that the bonded scholarship is immediately payable.

62 Scholarships Committee

There shall be a Scholarships Committee whose function shall be, subject to the provisions of section 58(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.

63 Constitution of Scholarships Committee

- (1) The Scholarship Committee shall consist of a Chairperson, a Deputy Chairperson and such 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 the member sooner dies, resigns or unless the member's appointment is revoked by the Minister with the approval of Cabinet.
- (3) A member may resign from the Committee by giving notice to the Minister in writing.
- (4) Every appointment, revocation of an appointment, or resignation of a member of the Scholarships Committee shall be notified in the Gazette.
- (5) The Secretary to the Scholarships Committee shall be an authorised 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 a member's appointment.

64 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 Chairperson 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 under the provisions of this Act.
- (5) The Scholarships Committee may invite any person to attend any meeting of the Committee and each person may take part in the proceedings of that meeting but shall not be entitled to vote.

65 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 XVI – REGISTRATION OF TEACHERS

66 Interpretation

In this Part, unless the context otherwise requires —

“**good character**” means good character as referred to in section 73(3);

“**registered teacher**” means a person —

- (a) who is registered or provisionally registered under this Part; and
- (b) whose name appears on the register in section 92; and

“**registration**” means registration under section 71, and includes renewal of registration and provisional registration.

67 Scope of this Part

- (1) This Part applies to a —
 - (a) teacher currently teaching in an early childhood education centre, primary, secondary or tertiary school, including a Government or non-Government school;
 - (b) new graduate holding a Diploma in Teaching who intends to teach;
 - (c) teacher who is a member of the administration staff of the Ministry but who intends to teach;
 - (d) teacher educator in a local training institution;
 - (e) teacher in a theological school or institution;
 - (f) retired teacher who has been or will be re-engaged by the Ministry to work as a teacher; and

- (g) foreign volunteer or consultant who will undertake teaching duties in a school or training institution in Tonga for a period of more than one month.
- (2) The employer of a person listed in subsection (1) shall ensure compliance with this Part of the Act.

68 Person shall register to teach

- (1) Every employer shall, on or before 30 April each year, provide the Chief Executive Officer with a form in the prescribed form, listing all persons –
- (a) teaching at the school as at 1 April of that year; and
 - (b) intending to teach at the school after 30 April of that year.
- (2) The Chief Executive Officer shall not permit a person to teach at a school in Tonga unless the person is a holder of a certificate of registration under section 76 or authorisation under section 83 permitting that person to teach or practice teaching at a school in Tonga.

69 Functions of the Chief Executive Officer under this Part

In addition to the functions conferred upon the Chief Executive Officer under this or any other Act, the Chief Executive Officer has the following functions –

- (a) the registration of a person qualified to be registered as a teacher under this Part;
- (b) keeping teacher registration in Tonga under continuous review and making reports and recommendations to the Minister in relation to this;
- (c) conferring and collaborating with employing authorities, teacher education institutions, the teaching profession, teacher organisations and the general community in relation to standards of courses of teacher education acceptable for the purpose of teacher registration and to advise the Minister accordingly;
- (d) conducting relevant review and research projects for the purpose of this Part;
- (e) promoting the teaching profession;
- (f) developing, formulating and improving professional teaching standards attuned to the needs of students and of a professional work force;
- (g) developing, formulating and maintaining a code of professional ethics for the teaching profession; and
- (h) making recommendations to the Minister in relation to special projects, including funding required to undertake such projects.

70 Powers of the Chief Executive Officer under this Part

In furtherance of his functions under section 69, the Chief Executive Officer with the consent of the Minister, shall have the power to —

- (a) collect prescribed fees for the purposes of this Part;
- (b) develop and maintain written policies and instructions which will assist the general public to comply with provisions under this Part; and
- (c) investigate complaints and institute disciplinary action as required.

APPLICATION FOR REGISTRATION**71 Power to register**

- (1) The Chief Executive Officer has the power to grant the registration of a person as a teacher under this Act.
- (2) The power under subsection (1) includes the power to —
 - (a) refuse registration, renew, vary, suspend or cancel such registration; or
 - (b) impose, vary, suspend or revoke conditions.

72 Application for registration

- (1) A person qualified to be registered as a teacher may, in the prescribed form and accompanied by the prescribed fee, apply to the Chief Executive Officer for registration.
- (2) The Chief Executive Officer may require a person to provide any further information he considers necessary to consider the application.

73 Criteria for registration

- (1) The Chief Executive Officer shall not register a person as a teacher unless he is satisfied that the person has —
 - (a) successfully completed an approved course and holds a qualification relating to teacher education and training from a recognised institution in Tonga or abroad, and completed at least one year of full-time teaching to the satisfaction of the Chief Executive Officer;
 - (b) contributed to educational practice and has qualifications and experience that, in the opinion of the Chief Executive Officer, are sufficient to warrant registration; or
 - (c) complied with any requirements of the Chief Executive Officer during any period of provisional registration.

- (2) In addition to the requirements under subsection (1), the Chief Executive Officer shall ensure that the person is —
 - (a) of good character; and
 - (b) is fit to be a teacher, which may include requiring the person to be certified by a registered medical practitioner that he is medically fit to be a teacher.
- (3) In determining whether a person is of good character under subsection (2), the Chief Executive Officer should consider —
 - (a) any conviction of, or charge made against the applicant; and
 - (b) any behaviour of the applicant that —
 - (i) does not satisfy a standard of behaviour generally expected of a teacher;
 - (ii) is otherwise disgraceful or improper; or
 - (iii) shows that the applicant is unfit to be a teacher, even if the matter occurred in another country.
- (4) Where the Chief Executive Officer takes into account any matter under subsections (2) and (3), the Chief Executive Officer shall give the applicant an opportunity to respond, in writing or orally, to such matter.
- (5) The applicant may appear before the Chief Executive Officer with or without a representative.

74 Notice of Chief Executive Officer's decision

- (1) The Chief Executive Officer shall, within 14 days after the date of his decision on an application, notify the applicant in writing about the decision, including the reasons for refusal if the application is denied.
- (2) The notice given under subsection (1) shall also state the right of the applicant to appeal the decision and the period of appeal under section 85.
- (3) For an approval for provisional registration, the notice shall also state —
 - (a) additional qualifications or relevant experience required for full registration; and
 - (b) the time within which the applicant shall obtain or complete the stated additional qualifications or experience.

75 Registration fee

- (1) A person who is registered, or whose registration is renewed (including provisional registration and limited authority), shall pay an annual prescribed registration fee for each year for which the registration is granted or renewed.

- (2) The registration fee in subsection (1) shall be paid on or before 31 December each year during the currency of the registration, failing which the registration shall lapse.
- (3) The registration fee, once paid to the Ministry, is non-refundable.
- (4) All fees collected under this Part shall be accounted for and paid into the general revenue of the Kingdom.

76 Certificate of registration

- (1) If an application for registration (including a renewal or provisional registration) is granted by the Chief Executive Officer, the Chief Executive Officer shall issue a certificate of registration in the prescribed form.
- (2) If a certificate of registration is lost or destroyed, the Chief Executive Officer may, on payment of the prescribed fee, issue a replacement certificate.

77 Duration of registration

The period of registration shall be 3 years starting on 31 January of the year when the application for registration is granted and ending on 30 January in the third year.

78 Extension of registration

- (1) A person whose registration will expire on 30 January of a particular year or whose registration has lapsed under section 75(2) may, in the prescribed form and accompanied by the prescribed fee, apply to the Chief Executive Officer for an extension of his registration until 31 January of the following year.
- (2) An applicant is allowed two such extensions, after which an application for renewal of registration shall be made.

79 Renewal of registration

- (1) A person may, in the prescribed form and accompanied by the prescribed fee, apply to the Chief Executive Officer for renewal of registration.
- (2) The application shall be accompanied by satisfactory evidence of —
 - (a) ongoing competence; and
 - (b) any professional development courses or programmes undertaken.
- (3) In addition to the requirements of subsection (2), the Chief Executive Officer shall not renew the registration of a person unless he satisfied that the person —
 - (a) continues to be of good character pursuant to sections 73(2) and 73(3); and

- (b) meets minimum standards and requirements of the Ministry in its staff appraisal process.
- (4) Once satisfied that a person is eligible for renewal of his registration, the Chief Executive Officer shall renew the registration for a period not exceeding 3 years, subject to payment of the prescribed fees.

80 Provisional registration

- (1) If the Chief Executive Officer finds that a person applying for full registration —
 - (a) does not possess the necessary qualifications and experience for full registration but is likely to obtain the qualifications and experience required for full registration; and
 - (b) is of good character,the Chief Executive Officer may grant to the applicant a provisional registration, subject to conditions that the Chief Executive Officer may determine.
- (2) The period of provisional registration shall not exceed 2 years, after which the applicant shall apply for full registration.

81 Reports from employers on provisional registrants

- (1) The Chief Executive Officer may require a person who has been granted a provisional registration to submit a report, in an approved form, from the person's employer with respect to —
 - (a) the manner in which the person has performed teaching duties; and
 - (b) any recommendations as to the person's suitability for full registration.
- (2) An employer may make a recommendation to the Chief Executive Officer for full registration after a person who has been granted provisional registration has completed one year of teaching.

82 Cancellation of provisional registration

The Chief Executive Officer may cancel a provisional registration if the person to whom provisional registration was granted fails to comply with a condition of the registration.

83 Limited authority to teach

- (1) A person shall not practise teaching as a teacher trainee at a school, unless the person has written authorisation, in a prescribed form, from the Chief Executive Officer.

- (2) The Chief Executive Officer may grant a teacher trainee a limited authority to teach at any school in any specified subject, if the Chief Executive Officer is satisfied that the person —
 - (a) does not meet the requirements for full registration or provisional registration but has undertaken appropriate training as a teacher;
 - (b) is a teacher trainee recommended by a recognised teacher education college in Tonga or abroad; and
 - (c) is of good character.
- (3) If a person is eligible under subsection (2), the Chief Executive Officer may grant to that person a limited authority to teach for a period of up to 2 years, and may extend this for a further period for up to 2 years.
- (4) A person or employer who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$2,000.

84 Cancellation of limited authority

The Chief Executive Officer may cancel or suspend a limited authority to teach issued to a person under section 83 if the person —

- (a) is convicted of an offence in Tonga or in another country;
- (b) does not qualify for full registration after 4 years; or
- (c) the Chief Executive Officer considers it appropriate to do so.

APPEALS

85 Right of Appeal

- (1) A person who is aggrieved by a decision of the Chief Executive Officer under this Part may lodge an appeal, in writing, to the Minister.
- (2) An appeal shall be lodged with the Minister within 30 days of the date of receiving the decision by the Chief Executive Officer.
- (3) The Minister may confirm, vary or revoke the decision of the Chief Executive Officer or grant a new one.
- (4) In determining a matter on appeal, the Minister may take into consideration any evidence or statement relating to the character, academic and general suitability of the appellant.

COMPLAINTS AND DISCIPLINARY ACTION

86 Complaints

- (1) A person may lodge, in writing, a complaint with the Chief Executive Officer about the professional conduct of a registered teacher.
- (2) The Chief Executive Officer may dismiss a complaint if it is frivolous or vexatious. In such circumstance, the Chief Executive Officer shall notify the complainant of dismissal of the complaint.
- (3) On receipt of a complaint and as soon as reasonably practicable, the Chief Executive Officer shall send a copy of the complaint to the —
 - (a) person to whom the complaint is made against; and
 - (b) employer of the person to whom the complaint is made against.
- (4) The Chief Executive Officer shall carry out an inquiry into the matter in accordance with procedures set out in written policies and regulations of the Ministry.

87 Disciplinary action on conviction

- (1) A registered teacher who is convicted of an offence in another country shall, within 28 days of the conviction, notify the Chief Executive Officer in writing of the —
 - (a) nature of the offence;
 - (b) penalty imposed by the court; and
 - (c) circumstances in which the offence was committed.
- (2) On receiving a notice under subsection (1), the Chief Executive Officer may —
 - (a) caution the teacher with no further action; or
 - (b) if the circumstances of the offence render the teacher unfit to teach —
 - (i) suspend the teacher's registration for any period, and subject to any conditions considered appropriate; or
 - (ii) cancel the teacher's registration.
- (3) The Chief Executive Officer may, on suspension of the registration of a teacher pursuant to subsection 2(b)(i), substitute full registration with provisional registration for any period of time, and impose conditions that the Chief Executive Officer deems fit.

OFFENCES AND PENALTIES

88 Unregistered person not permitted to teach

A person who is not registered under this Part and continues to teach in contravention of section 68, commits an offence and shall be liable upon conviction —

- (a) for a first offence, to a fine not exceeding \$5,000; and
- (b) for a second or subsequent offence, to a fine not exceeding \$20,000.

89 Unregistered person not to be employed

(1) A person or institution that employs a person who is not registered or authorised to teach under this Act, commits an offence and shall be liable upon conviction —

- (a) for a first offence, to a fine not exceeding \$10,000;
- (b) for a second or subsequent offence, to a fine not exceeding \$25,000.

(2) A person who is not a registered teacher who enters a school to supervise or assess the work of a practicing teacher or of a trainee teacher without being authorised to do so by the Chief Executive Officer, commits an offence and shall be liable upon conviction —

- (a) for a first offence, to a fine not exceeding \$5,000;
- (b) for a second or subsequent offence, to a fine not exceeding \$10,000.

90 Notification of sexual allegations

(1) Where there is a sexual allegation involving a student and a teacher and the employer has undertaken measures that has resulted in the dismissal or resignation of the teacher, the employer shall, within 7 days of making such decision or receiving the resignation, notify the Chief Executive Officer of the matters set out in subsection (2).

(2) The notice shall include the following —

- (a) name of the employer and school;
- (b) name of the teacher;
- (c) date the employer gave notice to the teacher of the dismissal or the employer was given notice of the teacher's resignation;
- (d) date of effect of the dismissal or resignation;
- (e) the sexual allegation, particulars of the sexual allegation and any other relevant information; and

- (f) reasons given by the employer for the dismissal or by the relevant teacher for resigning.
- (3) After considering the notice, the Chief Executive Officer may –
 - (a) refer the matter to the Commissioner of Police for further investigation;
 - (b) refer the matter to the Minister with recommendations for an internal inquiry; or
 - (c) cancel the registration of the teacher with no further action.
- (4) Where a teacher has been convicted under sections 80, 81, 115, 115A, 116, 118, 120, 121, 122, 124, 125, 126, 127, 128, 129, 132, 133, 136, 137, of the Criminal Offences Act of a sexual offence by a court, the Chief Executive Officer shall cancel his registration to teach and record the person's name on the teachers' register in section 92 as not being permitted to teach in Tonga for an indefinite period.
- (5) An employer that fails to comply with the notice requirements under this section commits an offence and shall be liable upon conviction —
 - (a) for a first offence, to a fine not exceeding \$5,000;
 - (b) for a second or subsequent offence, to a fine not exceeding \$10,000.

91 False or misleading information or document

A person who provides the Chief Executive Officer or Minister with —

- (a) information that the person knows is false or misleading in a material particular; or
- (b) a document containing information that the person knows is false, incomplete or misleading in a material particular,

commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years, or both.

REGISTER OF TEACHERS

92 Chief Executive Officer to maintain a register of teachers

- (1) The Chief Executive Officer shall maintain a register in which are recorded the names of all persons who have been registered to teach under section 71, or pursuant to any other requirement under this Act.
- (2) The register should contain the following information —
 - (a) full name and address of the registered person;
 - (b) type of registration and conditions, if any;

- (c) particulars of qualifications and experience by which a person is registered;
 - (d) information relating to the suspension, cancellation, expiration or renewal of a registration;
 - (e) information relating to an allegation or conviction in Tonga or abroad;
 - (f) date and duration of registration; and
 - (g) any other prescribed particulars.
- (3) The register shall be kept at a place determined by the Chief Executive Officer, and be available for inspection during office hours by a person who has paid the prescribed fee.
- (4) The Chief Executive Officer may remove the name of a person from the register if the person —
- (a) named on the register has died;
 - (b) requests that his name be removed from the register if the person is no longer employed as a teacher;
 - (c) has not applied for renewal of registration under section 79;
 - (d) has not paid the prescribed annual registration fee by the due date; or
 - (e) registration is cancelled under section 71, 82, 84, or 85.

REGULATIONS UNDER THIS PART

93 Regulations

- (1) The Minister may make regulations to give effect to the provisions under this Part, and in particular to regulate —
- (a) procedures and requirements for applications;
 - (b) prescribed forms;
 - (c) fees, charges and other costs for the purpose of this Part;
 - (d) the process for an inquiry or appeal;
 - (e) inspection of, entry or cancellation of a name on the register; and
 - (f) any other matter provided under this Part.
- (2) Regulations may prescribe penalties not exceeding \$2,000 or to imprisonment not exceeding 2 years, for offences created under those regulations.

ANNUAL REPORT TO MINISTER

94 Annual report on teacher registration

The Chief Executive Officer shall submit an annual report to the Minister covering matters under this Part for the preceding year. The annual report shall be submitted together with a financial report detailing and accounting for teacher registration and other prescribed fees received under this Part.

PART XVII - FEES

95 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 student or potential student 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 student or potential student 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 student or group of students.
- (4) Fees for tuition, books, board or medical attention payable in respect of the students in any government school shall be payable at such time and in such manner as may be prescribed.
- (5) The parent of a student shall be liable for all fees due in respect of such student at a government school, whether or not such parent enrolled such student, 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.

96 Crediting to fees

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

PART XVIII - MEDICAL INSPECTION

97 Medical inspection

- (1) Every student 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 student objects to medical inspection or to medical or dental treatment by such officer, the parent may signify the objection in writing to the Principal, who may excuse such student 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 the parent's 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 student may be excluded from the school in the absence of such reports.

- (2) If any student, 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 student to be medically examined and to produce a certificate signed by a medical practitioner that the student is free from any condition liable to endanger the health of others and may exclude such student from attendance at school until the student has produced such a certificate.

PART XIX - COMPULSORY EDUCATION

98 Compulsory school age

- (1) This section shall apply to every child living in Tonga, whether or not that child is a Tongan subject or otherwise.
- (2) Subject to section 100, the age for compulsory education in Tonga is between 4 and 18 years of age. Accordingly a child is deemed to be of compulsory school age if the child has attained the age of 4 years and has not attained the age of 19 years.
- (3) A government school may charge school fees with the approval of the Minister and Cabinet.

99 Parent's duty to have child educated

- (1) The parent of a child shall ensure that the child is enrolled at a school at the beginning of the term that starts immediately before the child turns 4 years of age.

- (2) It shall be the duty of the parent or guardian of every child of compulsory school age to ensure that the child receives a suitable and efficient education by regular attendance at a school unless —
- (a) there is no school within walking distance of the child's place of residence;
 - (b) the parent or guardian makes other arrangements, deemed by the Minister to be suitable and efficient, for the education of the child;
 - (c) the child has completed 12 years of education; or
 - (d) the child is prevented from attending school by sickness or some other unavoidable cause.
- (3) A parent or guardian who does not comply with subsection (2) commits an offence, unless the parent or guardian has a reasonable excuse and his child has been exempted from attending school pursuant to section 100.

100 Exemption from attending school

- (1) The Chief Executive Officer may exempt a parent from complying with section 99 if the Chief Executive Officer is reasonably satisfied that —
- (a) the child is prevented from attending school due to —
 - (i) illness or injury;
 - (ii) the risk of infection to others; or
 - (iii) a reason that the Chief Executive Officer considers sufficient for preventing the child from attending school;
 - (b) the child is of employable age and is being trained in an apprenticeship or is employed; or
 - (c) the child has been suspended from school and will either return to the same school, or the parent is in the process of enrolling the child at another school.
- (2) An exemption under this section may be for a period that the Chief Executive Officer considers appropriate in the circumstances.
- (3) The Chief Executive Officer shall not exempt a child solely on the basis that a child has special needs.
- (4) A decision of the Chief Executive Officer under this section shall be final.

101 Regular non-attendance at school

Notwithstanding proceedings under section 104, where a child is found to be missing or absent from school on a regular basis, a School Attendance Officer should endeavour to do the following —

- (a) meet with the parents or guardians of the child to ascertain why the child is missing school regularly;
- (b) inform the parents or guardians of the child of the duty imposed by section 99;
- (c) provide recommendations to the Chief Executive Officer on how to resolve the problems related to that child's non-attendance; and
- (d) assist the parents or guardians of the child to ensure that the child is able to attend school regularly.

102 Minister to regulate

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

103 School Attendance Officer and powers

- (1) The Minister may appoint School Attendance Officers on a full time or a part-time basis to enforce the provisions of this Part.
- (2) A School Attendance Officer, with the consent of the owner, may enter any yard, house, building or place between the hours of 8am and 5pm of any day of the week except Sundays and public holidays to make enquiries as to any child residing or employed there.
- (3) A person who —
 - (a) wilfully hinders or obstructs a School Attendance Officer in the performance of the Officer's duty;
 - (b) wilfully makes a false representation 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 upon conviction thereof shall be liable to a fine not exceeding \$1000.

104 Offence

A parent or guardian who fails to perform the duties imposed by section 99 or fails to fulfil any requirements prescribed under section 100 of this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$500 in the case of a first offence and \$1000 in the case of every ensuing offence.

PART XX – EARLY CHILDHOOD EDUCATION

105 Responsibilities of the Ministry

- (1) The Ministry shall ensure that all children in Tonga who are 4 to 5 years of age have access to education at an early childhood education centre.
- (2) In overseeing the provision of early childhood education in Tonga, the Ministry shall ensure the following —
 - (a) production and dissemination of culturally appropriate developmental learning resources;
 - (b) provision of quality pre-service teacher training at the Tonga Institute of Education;
 - (c) provision of quality in-service training and professional development programmes for existing teachers at the early childhood level;
 - (d) incentives to improve the qualifications of teachers in the early childhood sector, such as financial subsidies (through the scholarship system) for access to the University of the South Pacific and other tertiary institute courses in early childhood education for people intending to work in this area in the community;
 - (e) support for the development of new early childhood centres in areas where there is no provision, and expansion of the sector to improve access for vulnerable and disadvantaged children;
 - (f) development of learning and development standards for early childhood education curriculum.
 - (g) development of good quality teaching and learning resources;
 - (h) establishment of remuneration and conditions for early childhood education teachers;
 - (i) development of coherent and holistic national policy and planning frameworks for the development of the sector;
 - (j) establishment of coordinating bodies at national level to provide leadership for development of the sector;
 - (k) establishment and strengthening of cross-sectoral partnerships with relevant Ministries and non-government organisations working in the early childhood education sector;
 - (l) strengthening of partnerships and an increase in community participation in the early childhood education sector;
 - (m) establishment of a national database to collect accurate disaggregated data from the early childhood education sector;
 - (n) support for parent education initiatives; and
 - (o) facilitating and undertaking an analysis of the long-term implications of providing a subsidy for enrolments in early childhood education.

- (3) The Minister shall appoint qualified staff to act as early childhood education officers responsible for overseeing the implementation of provisions and enforcing regulations promulgated under this Part.

106 Service providers operating early childhood education centres to be licensed

- (1) A person or service provider who is operating or intending to operate an early childhood education centre in Tonga shall be registered pursuant to regulations promulgated under this Part.
- (2) An early childhood education classroom which is operating within the premises of a registered school shall be registered pursuant to subsection (1).
- (3) A person or service provider who operates an early childhood education centre without holding a valid licence commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 6 months, or both.

107 Funding of certain early childhood services

- (1) Each year, the service provider of a licensed early childhood education centre may be entitled to receive from the Ministry a general grant or one or more discretionary grants out of money –
 - (a) appropriated by the Legislative Assembly;
 - (b) assigned by the Ministry; or
 - (c) provided by donors.
- (2) The amount of each grant will be determined by the Minister, subject to the approval of Cabinet.
- (3) The Ministry may from time to time determine the means by which the amount of grant may be calculated or ascertained.
- (4) A grant may be —
 - (a) paid subject to conditions which the Minister, with the approval of Cabinet, specifies in writing; or
 - (b) awarded for purposes specified by grant conditions.
- (5) A service provider shall ensure that —
 - (a) where a grant has been paid subject to conditions, the conditions are complied with; and
 - (b) if a grant has been awarded for purposes specified by the Minister or donor, the grant is used only for those purposes.
- (6) The Minister may withhold transfer of a grant in whole or in part if the service provider –

- (a) is not licensed for the current year;
- (b) fails to comply with requirements under subsection (5); or
- (c) fails to comply with conditions of provisional or full registration of the centre pursuant to regulations promulgated under this Part.

108 Payment of fees for attendance of children at Early Childhood Education Centres or kindergartens

A registered service provider that is the holder of a current licence may charge a fee in respect of the attendance of any child at any early childhood education centre or kindergarten that it administers.

109 Transitional provisions

Existing early childhood centres

- (1) The manager of an early childhood education centre that was operating immediately before the commencement of this Part –
 - (a) shall within 30 days of the commencement of this Part, apply to the Chief Executive Officer for registration of the centre; and
 - (b) will be granted provisional registration for a period of 1 year.
- (2) Before the expiration of the period of provisional registration, the service provider shall apply for full registration of the centre pursuant to regulations promulgated under this Part.
- (3) The Minister may prescribe a fee for registration under this section.

New early childhood centres

- (4) The manager of an early childhood education centre that intends to operate as an early childhood education centre after the commencement of this Part –
 - (a) shall apply to the Chief Executive Officer for full registration of the centre pursuant to regulations promulgated under this Part; and
 - (b) may be granted full or provisional registration by the Chief Executive Officer if the service provider meets criteria established by this Part and prescribed under regulations.

110 Regulations under this Part

- (1) The Minister may make regulations to give effect to the provisions under this Part, and in particular to —
 - (a) licensing of service providers to provide early childhood services of any kind;
 - (b) criteria for the granting, transfer or suspension of licences;

- (c) management and control of licensed early childhood education centres;
 - (d) duties of service providers;
 - (e) inspection of an early childhood education centre;
 - (f) curriculum of an early childhood education centre;
 - (g) assessment of teachers at an early childhood education centre;
 - (h) prescribing forms, fees and charges under this Part;
 - (i) process for the appeal of a decision by the Ministry;
 - (j) prescribe for transitional matters not provided for under this Part; and
 - (k) any other matter which is deemed appropriate by the Minister for the effective implementation of this Part.
- (2) Regulations made under section (1) may (without limitation) do all or any of the following —
- (a) prescribe minimum standards relating to premises, facilities, programmes of education, practices in relation to children’s learning and development, staffing and parental participation, child teacher ratios, health and safety requirements, implementation of the curriculum framework, communication and consultation with parents, and the operation or administration of these services to ensure the health, comfort, care, education, and safety of children attending licensed early childhood education centres;
 - (b) authorise the Minister, after consultation with relevant stakeholders, to prescribe criteria to assess compliance with the minimum standards imposed by regulations and publication of such minimum standards in the Government Gazette;
 - (c) limit or regulate the number of children who may attend licensed early childhood education centres;
 - (d) provide for the grant, duration, expiry, renewal, suspension, transfer, reclassification, and cancellation of licences of one or more specified kinds for service providers;
 - (e) prescribe records to be kept by service providers in respect of children attending licensed early childhood education centres; and
 - (f) regulate qualifications to be held by employees of early childhood education centres.
- (3) Regulations made under this Part may prescribe penalties not exceeding \$5,000 or to imprisonment not exceeding 2 years, for offences under the regulations.

PART XXI – SPECIAL NEEDS AND INCLUSIVE EDUCATION

111 Principle of inclusiveness

Every child under the age of 19 years has a right to access quality education in Tonga, irrespective of the child's gender, religion, socio-economic status, physical **condition** and location.

112 Responsibilities of the Ministry in relation to children with special needs

For the purposes of improving the access to quality education in Tonga for children with special needs, the Ministry shall focus on providing the following —

- (a) reviewing the school curriculum to ensure that it caters adequately for children with special learning needs, and make available appropriate learning materials and equipment for special education;
- (b) provide incentives to improve the qualifications of teachers in the special education field, such as financial subsidies for supporting access to special education programmes for teachers of special needs children offered by tertiary education providers, and making provision for training of special education teachers at the Tonga Institute of Education;
- (c) facilitating a baseline survey to ascertain the nature, number and extent of children with special needs (including those children currently attending schools, and those whose needs are too acute and who do not attend school);
- (d) establishing a central database with detailed information about people (including children and adults) who have special learning needs, having due regard to privacy considerations;
- (e) providing assistance for special needs children in existing schools through —
 - (i) a special needs component in all pre-service teacher training;
 - (ii) providing teachers of children with special needs with professional development opportunities and targeted in-service training to assist them to help children with special needs; and
 - (iii) training of teacher aides who could provide individual assistance to children with special learning needs;
- (f) capacity building at all levels, addressing both short and long term needs;
- (g) policy development in the area of special needs and inclusive education;
- (h) enhancing budgetary allocations for school, TVET and community development in inclusive education strategies and approaches in service education for classroom teachers and TVET trainers for working with different categories of the special needs population; and

- (i) improving Ministry databases to identify and track special needs children in communities.

113 Equal rights to early childhood, primary and secondary education

- (1) Except as provided under this Part, a child with special educational needs (whether because of disability or otherwise) has the same right to enrol and to receive an education at a Government school as a child who does not.
- (2) The right to receive an education under subsection (1) includes education at the early childhood, primary and secondary levels.
- (3) Nothing in subsection (1) shall affect or limit the effect of provisions under this Act or regulations relating to the general enrolment, suspension, expulsion, and exclusion of students.

114 Enrolment of student with special needs

- (1) If satisfied that a person under 19 years of age should receive special education, the Chief Executive Officer shall require the written agreement of the child's parents that the child should be enrolled, before directing that the child be enrolled at a particular Government school, special school, or special class.
- (2) Where there has been an agreement or direction by the Chief Executive Officer under subsection (1) the child shall be allowed to enrol at the school or class concerned.
- (3) A parent who, more than 1 month after a direction is given by the Chief Executive Officer under subsection (1), fails or refuses to comply with the direction, commits an offence and shall be liable upon conviction to a fine not exceeding \$500 or a term of imprisonment not exceeding 1 month, or both.
- (4) No child shall continue to be enrolled at a school or class except pursuant to a written agreement or direction under subsection (1).

115 Regulations under this Part

- (1) The Minister shall with the consent of Cabinet, promulgate regulations establishing guidelines for early childhood education centres and schools in relation to –
 - (a) identification and assessment of students with special needs;
 - (b) modification of teaching programmes for students with special needs;
 - (c) level of training in special education for all teachers or any category of teacher;
 - (d) provision of facilities, materials and resources for students with special needs;

- (e) transfer of students with special needs into mainstream classes; and
 - (f) use, implementation, monitoring, evaluation and accountability for donor funds.
- (2) The Minister may also promulgate regulations for any other matter which the Minister may deem necessary for the provision of a quality education for students with special needs.

116 Commencement of this Part

This Part will come into force on a date proclaimed by the Minister in the Government Gazette.

PART XXII – TECHNICAL AND VOCATIONAL EDUCATION AND TRAINING

117 Responsibilities of the Ministry in relation to TVET

- (1) The Ministry shall endeavour to provide learning pathways for all students, including TVET programmes, apprenticeships and opportunities for students from forms 4 to 7 and at post basic education levels.
- (2) The Ministry should ensure that students wanting to engage in TVET at these levels have the opportunity to —
- (a) participate in activities that occur outside formal school settings, such as community development training and other non-formal short courses;
 - (b) participate in ongoing work experience, apprenticeships and other part-time employment which may be categorised as TVET;
 - (c) participate in formal technical, vocational, or life skills training options outside the school; and
 - (d) obtain a range of generic skills required in the work force including general experience and competence in the use of information technology.
- (3) The Ministry should ensure provision of quality vocational courses and programmes through –
- (a) establishment of occupational standards;
 - (b) training and employment of qualified instructors;
 - (c) provision of necessary resources and equipment for TVET training; and
 - (d) establishment of quality assurance processes and mechanisms.

- (4) The Ministry should encourage access and equitable participation in TVET of students from disability groups, lower-income families, rural areas, outer islands, and of girls.
- (5) Schools giving students the TVET opportunities shall not allow these in any way to negatively impact on the delivery of basic formal education.

118 Cooperation with Tonga National Qualifications and Accreditation Board and TVET service providers

In pursuing the objectives for TVET under this Part, the Ministry shall liaise with the Tonga National Qualifications and Accreditation Board and external service providers to ensure that there is a seamless transition from secondary school vocational training to post-basic vocational training for students who intend to pursue formal vocational qualifications in Tonga or abroad.

119 Cooperation with Employers

- (1) The Ministry shall assist in providing a link between employers and training providers who provide vocational training. It shall work closely with employers to identify the skills and training needed for respective types of employment and seek to provide adequate resources for training providers so that they can offer students courses in relevant fields.
- (2) The Ministry shall enable employers to have greater input into the mix of skills required of students and graduates of tertiary education institutions.
- (3) The Ministry shall actively seek opportunities for on-the-job training in the workplace based upon regular consultation with employers. Training systems should not operate in isolation of labour market demand and with little or no employer participation.

120 TVET Advisory Committee

- (1) The Minister may establish a TVET Advisory Committee to provide policy advice for the establishment of –
 - (a) a Vocational Qualifications Framework; and
 - (b) minimum standards for the provision of TVET programmes in schools.
- (2) The Ministry, in consultation with the TVET Advisory Committee should focus on providing the following –
 - (a) developing a flexible system, responsive to changes in the national and global environment;
 - (b) serving secondary school age students with a range of aptitudes and interests and providing equal opportunity and support for alternative pathways;

- (c) developing an appropriate and integrated qualifications framework that allows students who are pursuing non-academic areas to gain credit and recognition which could be applied to further education;
- (d) ensuring that secondary school age children who may wish to emigrate abroad as adults have the skills and competencies required in a global economy;
- (e) ensuring that service providers meet agreed policy standards and that students and taxpayers receive value for money; and
- (f) ensuring that the system is sufficiently flexible to accommodate changes in the labour market and economy, and that the Ministry has the required information and flexible options to redirect areas of focus and support in response.

PART XXIII – INFORMATION COMMUNICATIONS TECHNOLOGY

121 Responsibilities of the Ministry

- (1) The Ministry shall seek to provide an education system that provides all students with up to date skills in the use of information and communications technology and that the system uses available technologies to maximum advantage in planning, management, and the delivery of educational services.
- (2) In implementing information and communications technology in the education system, the Ministry should ensure that it —
 - (a) works closely with industry groups so that the needs of the Tongan economy and private sector for skilled personnel are met;
 - (b) provides wider access to information communications technology training at all levels within the Ministry and schools, to develop competence among teachers and ensure that students are competent in the use of information and communications technology;
 - (c) makes electronic resources available to schools, particularly schools in rural areas and in outer islands;
 - (d) evaluates and adopts as appropriate new information communications technology-based opportunities for delivering instruction in areas of multi-grade teaching, distance education, assessment and remediation, and meeting special needs; and
 - (e) effectively integrates information and communications technology into the operation of the education sector through development of the Education Management and Information System (EMIS), Schools' Management and Information System (SMIS) and other initiatives, for improved systems of school records, scheduling and dissemination of information.

- (3) In carrying out its functions under subsection (2), the Ministry shall have due regard for and ensure the safety and protection of students from cyber crime.
- (4) The Ministry will seek capital investment from the public and private sectors to achieve the potential benefits that information communications technology may generate.

122 Budgetary support for this Part

The Ministry budget to support the use of information communications technology shall be comprised of —

- (a) budgetary support from the Government;
- (b) funds appropriated by the Legislative Assembly;
- (c) external assistance from donors;
- (d) industry assistance; and
- (e) assistance from regional or international organisations in the information communications technology sector.

123 Information Communications Technology Advisory Committee

The Minister may establish an Information Communications Technology Advisory Committee to provide policy advice on the use of information and communications technology in the education sector, and to assist with the following —

- (a) development of an information and communications technology education policy for Tonga;
- (b) development of a policy and planning framework for the Education Management Information System and Schools' Management Information System, to improve data and information collection and retrieval systems for the provision of accurate, timely, and relevant data for informed decision-making within the Ministry and at all levels of Government;
- (c) development of a system for the collection and analysis of information on information communications technology educational uses and “best practice” elsewhere;
- (d) dissemination of information on information communications technology options to school managers, linked with criteria and a system of competitive grants under which schools and other institutions could pilot test and evaluate information communications technology solutions;
- (e) analysis of the cost-effectiveness of information communications technology delivery modalities, with special emphasis on the costs and benefits of substituting technology for labour, and the potential impact on salary savings relative to costs;

- (f) analysis of the capacity and costs associated with maintaining and supporting information communications technology hardware and software, and establishing appropriate schedules for equipment depreciation and replacement; and
- (g) facilitating investment in human resource capacity development and skill development.

PART XXIV – STAFF DEVELOPMENT

124 Staff Development for Ministry employees

- (1) The Ministry shall strengthen the capability and effectiveness of teachers and staff through continuous staff development.
- (2) Staff development activities shall be aimed to assist the Ministry by —
 - (a) developing a workforce that is skilled and appropriately qualified with the capacity to fulfil functions and goals of the Ministry;
 - (b) enhancing the performance, effectiveness and efficiency of staff members for the delivery of high quality educational and administrative services;
 - (c) facilitating the recruitment and retention of high quality staff;
 - (d) maintaining and increasing job satisfaction;
 - (e) developing the ability of staff to initiate and respond constructively to change; and
 - (f) providing support for career advancement.

125 Study Assistance for Staff Members

- (1) The Ministry shall support and encourage staff members to attain formal qualifications related to enhancing performance in current or future roles.
- (2) Study assistance is a privilege granted at the discretion of the Ministry in the interests of appropriate development for the staff member and overall organisational performance.
- (3) The Ministry shall identify certain areas of priority for the granting of study assistance, such as for the development of early childhood education, inclusive and special needs education, technical and vocational training and use of information and communications technology.
- (4) Study assistance may be comprised of a financial grant, payment of tuition fees or leave to attend classes and examinations.

126 Eligibility for staff development and study assistance

A permanent staff member who has worked within the Ministry for a continuous period of –

- (a) one year or more shall be, with the approval of the Minister, eligible to take part in staff development activities;
- (b) two years or more shall be, with the approval of the Minister, eligible to apply for study assistance;
- (c) three years or more shall be, with the approval of the Minister, eligible to apply for a Tongan Government Scholarship under Part XII.

127 Equity

Staff development activities and assistance shall be provided and allocated on an equitable basis, and where appropriate, should accommodate specific needs of under-represented groups.

PART XXV – HEALTH AND SAFETY IN THE MINISTRY**128 Responsibilities of the Ministry**

- (1) The Ministry shall endeavour to provide a safe and healthy environment for its employees, contractors and members of the public within Ministry facilities.
- (2) The Chief Executive Officer has the overall responsibility for the effective management of health and safety policies within the Ministry.
- (3) To the extent possible, the Chief Executive Officer shall —
 - (a) maintain an effective programme to ensure that all workplace hazards are systematically identified and appropriate measures introduced to control those hazards;
 - (b) establish, review and monitor evacuation procedures for the Ministry and schools in the event of a natural or man-made disaster;
 - (c) ensure that all employees have the opportunity to participate in health and safety programmes in the development of safe practices for the Ministry;
 - (d) ensure that current information relating to health and safety issues is made available to all Ministry employees; and
 - (e) encourage Ministry staff to set a high standard of health and safety management by personal example.

129 Responsibilities of Ministry Employees

- (1) Every Ministry employee shall be responsible for promoting a safe and healthy environment for themselves, their students and as well as those involved in, or affected by, the Ministry's activities.
- (2) Every Ministry employee shall -
 - (a) immediately report all accidents and incidents to their Deputy Chief Executive Officer or the Chief Executive Officer;
 - (b) carry out their work in a way that does not adversely affect their own health and safety or that of others;
 - (c) remain informed and abide by Ministry health and safety rules, policies and procedures; and
 - (d) when available, undertake training or instruction in health and safety programmes to ensure they are competent to carry out their health and safety responsibilities within the Ministry.

130 Regulations under this Part

The Minister shall, with the consent of Cabinet, promulgate regulations for the health and safety of Ministry employees, students, contractors and members of the public utilising Ministry facilities.

PART XXVI - REGISTERS**131 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 "recognised" 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 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.

132 Minister to maintain various registers

- (1) The Minister shall maintain separately and in a suitable format, registers as follows —
 - (a) 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 27 of this Act;
 - (b) 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 29 of this Act;
 - (c) a register in which is recorded the name or title of every Principal Teacher approved by the Minister for registration under the provisions of section 31 of this Act;
 - (d) a register in which is recorded the name of land and assets of the Ministry pursuant to section 133 of this Act;
 - (e) a register recording any powers of the Minister or Chief Executive Officer that have been delegated pursuant to section 11 of this Act; and
 - (f) any other register prescribed by this Act.
- (2) The Minister shall record on the relevant register any Managing Authority or any General Manager or any Principal Teacher or any teacher who is prohibited under the provisions of this Act from being a Managing Authority or a General Manager or a Principal Teacher or a teacher as the case may be.

133 Land and Assets Register

- (1) The Minister may, with the consent of Cabinet, make regulations for the establishment and maintenance of a Land and Assets Register for the Ministry.
- (2) The Land and Assets Register should, among other things, contain the following information –
 - (a) details of physical assets and chattels owned by the Ministry in Tonga;
 - (b) details of land leases of the Ministry with dates of commencement and expiry;
 - (c) details and locations of offices and administration buildings of the Ministry in Tonga;
 - (d) details and location of all Government schools in Tonga; and
 - (e) copies of leases of the Ministry with relevant maps of leased lands.
- (3) Regulations under subsection (1) should provide approved processes for the acquisition and disposal of assets of the Ministry, together with prescribed forms.

- (4) Any changes to the information in subsection (2) shall be recorded in the Land and Assets Register.

PART XXVII - REGULATIONS

134 Regulations

The Minister may, with the consent of and subject to any directions which Cabinet may make, revoke and vary regulations for any purposes for which regulations may be made under this Act with respect to any or all of the following matters —

- (a) establishment, administration, management and closing of schools;
- (b) classification of schools;
- (c) methods of selection for admission to schools;
- (d) inspection of schools including the curriculum and syllabi to be followed;
- (e) arrangements and procedures to be followed for the administration of overseas examinations under the provisions of section 52;
- (f) conditions governing the recognition or registration of schools;
- (g) conditions of certificate of recognition or registration;
- (h) conditions of service including appointment, transfer, suspension and dismissal of teachers in Government schools;
- (i) providing for and regulating the making and maintenance of grants-in-aid to non-government schools;
- (j) management of staff and students, including procedures dealing with school violence by and against students;
- (k) minimum requirements for building and equipment used in schools and for the health and safety of students, and the requirements for differently classified schools as may be necessary;
- (l) approving the plans of any new school to be established under section 35 of this Act;
- (m) the manner in which application shall be made for the establishment of schools in accordance with the provision of section 35 of this Act;
- (n) form of certificates and licences for teachers who have been registered to teach;
- (o) improving conditions subject to which certificates and licences for teachers who have been registered 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;

- (p) 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;
- (q) providing for and regulating the compilation and production of proper accounts of income and expenditure of schools and of controlling authorities of schools;
- (r) 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; and
- (s) forms to be prescribed for the purposes of this Act and of regulations made under this Act.

PART XXVIII - LEGAL PROCEDURE

135 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 the court 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.

136 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.

PART XXIX - GENERAL

137 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.

138 Copyright over Ministry publications

Subject to copyright and intellectual property right laws of Tonga, the Ministry will have copyright over all works published by an employee, contractor or volunteer working in or for the Ministry in the course of their employment.

139 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 \$2,000 and in default of payment to imprisonment for any period not exceeding two months.

140 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.

141 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.

142 Transitional provisions

The following provisions will apply with respect to the commencement and implementation of certain provisions in this Act —

- (a) the provisions relating to age of compulsory education in section 98(2) will not commence until the Minister, by notice in the Gazette, declares that the Ministry is ready to implement and enforce this provision;
- (b) the provisions relating to Teacher Registration in Part XIII will not commence until the Minister, by notice in the Gazette, declares that the Ministry is ready to implement and enforce those provisions;
- (c) upon issuance of the notice by the Minister in the Gazette in paragraph (b), all teachers currently teaching in schools will be granted provisional registration for one year on lodgement of an application for provisional registration and on payment of the prescribed fee. A provisional registration will only be extended with the approval of the Chief Executive Officer;
- (d) a teacher granted provisional registration under paragraph (c) shall lodge an application for full registration within the first six months of the date of the notification in the Gazette; and
- (e) a trainee teacher undertaking teaching practice at the commencement of Part XIII is deemed to have been authorised by virtue of section 83 on lodgement of an application for limited authority to teach and on payment of the prescribed fee.

143 Consequential Amendments

- (1) The Education Act (Cap. 86) is hereby repealed.
- (2) Section 2 of the Tonga National Qualifications and Accreditation Board Act is amended by deleting the number “14” in the definition of “post compulsory education” and replacing it with the number “19”.
- (3) Section 12 of the Public Service Act is repealed and replaced with the following new section 12 –

“12 Employee matters to be under Act

All appointments, promotions, disciplinary matters and terminations in respect of the Public Service shall be made in accordance with this Act and any written policies of Government as directed by Cabinet, provided that employees of the Ministry responsible for education and training below the position of Chief Executive Officer shall be dealt with under the Education Act.”

Passed by the Legislative Assembly this 16th day of October 2013.