

*Education and Training Reform Bill
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Part 5.1—Administration

CHAPTER 5—GENERAL

PART 5.1—ADMINISTRATION

5.1.1 Department

- (1) There is to be a Department responsible for the administration of education and training in Victoria with the principal function of assisting the Minister in the administration of this Act.
- (2) The Department is to consist of—
 - (a) a Departmental Head appointed under section 12 or 19 of the **Public Administration Act 2004**; and
 - (b) any other persons employed by the Departmental Head under this Act, the **Public Administration Act 2004** or any other Act.

5.1.2 Supply of information

The council or governing body of an education or training institution must supply the Minister with any information that he or she may reasonably require for the effective monitoring, development and planning of education and training in or related to Victoria.

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PART 5.2—MINISTER'S POWERS

5.2.3 Minister's general powers

- (1) The Minister has power to do anything that is set out in this Act or that is necessary or convenient to be done in or in connection with the functions of the Minister under this or any other Act.
- (2) Without limiting sub-section (1), the Minister also has the following powers—
 - (a) to set the overall policy for education and training in or related to Victoria;
 - (b) to issue policies, guidelines, advice and directions to education or training institutions in or related to Victoria;
 - (c) to establish, name, maintain, carry on, modify, merge or close Government schools and educational services in accordance with this Act;
 - (d) to establish, name, modify, merge or abolish—
 - (i) school councils for Government schools in accordance with this Act;
 - (ii) ACFE regions and regional councils in accordance with this Act;
 - (iii) industry training boards in accordance with this Act;
 - (iv) approved training agents in accordance with this Act;
 - (v) bodies to advise the Minister on education and training matters including post-secondary education;
 - (vi) other bodies in accordance with this Act;

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- (e) to require any education or training institution to supply the Minister with any information that he or she may reasonably require for the effective monitoring, development and planning of education and training in or related to Victoria.
- (3) A person or body established by or under this Act or continued in operation under this Act and a University with a TAFE division must comply with—
- (a) a policy, guideline or direction issued by the Minister to the extent that the policy, guideline or direction relates to, or is expressed to apply to, the operations of that institution, person, body or TAFE division; and
 - (b) a requirement under section (2)(e) issued in writing by the Minister.
- (4) Despite the powers given to the Minister under sub-sections (1) and (2), the Minister may not give any direction to—
- (a) the Victorian Curriculum and Assessment Authority in relation to the awarding of a certificate or qualification to any particular student or the assessment contained in a certificate or qualification to be awarded to any particular student;
 - (b) the Victorian Registration and Qualifications Authority in relation to any particular student about the following—
 - (i) the recognition of the completion of an accredited course or part of an accredited course;
 - (ii) the award or issue of a recognised qualification;
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- (iii) the award or issue of a qualification for an accredited course;
 - (iv) the recognition of the matters in subparagraph (i), (ii) or (iii) by the issuing of a written statement or otherwise.
- (5) The Victorian Registration and Qualifications Authority and the Victorian Curriculum and Assessment Authority must include in their annual report under the **Financial Management Act 1994** in the period to which the report relates a copy of each direction that is given under subsection (2) to the Authority and that is expressed to apply to that Authority.
- (6) Despite subsection (3) the Victorian Institute of Teaching is only required to give due regard to any advice given by the Minister in relation to the exercise of its powers and the performance of its functions.
- (7) Nothing in this section limits the powers of the Minister at common law or under any convention or practice relating to powers of Ministers generally.

5.2.4 Minister's powers about multi-sector arrangements

Without limiting any other powers of the Minister under this Act, the Minister may—

- (a) enter into agreements and effect arrangements to enable—
 - (i) a Government school and a TAFE institute to share facilities or services and to provide or deliver education services in partnership or under a joint arrangement;

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- (ii) shared educational precincts to be established where a Government school, a TAFE institute and a University could be located in the same area;
- (iii) multi-sector education services to be provided at the same location or under the management or control of more than one person or body;
- (b) approve agreements or arrangements entered into by any person or body to do any of the things referred to in paragraph (a).

5.2.5 Minister's powers to acquire land

- (1) The Minister may purchase by agreement or compulsorily acquire any land required for the purposes of this Act.
- (2) Despite sub-section (1), the Minister may only purchase by agreement any estate or interest in land to be used to operate a preschool program or programs on the land or on premises on the land.
- (3) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
 - (a) this Act is the special Act; and
 - (b) the Minister is the Authority.

5.2.6 Minister's power to take land on lease

- (1) The Minister may, for and on behalf of the Crown, take on lease or under any other arrangement any land or premises required for the purposes of this Act.
 - (2) The Minister may, for and on behalf of the Crown, grant or enter into any lease or any other arrangement of any land or premises required for the purposes of providing education or training or
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for providing a direct or indirect benefit to education or training.

5.2.7 Minister's power over reserved Crown lands

The Minister, for and on behalf of the Crown, may enter into any lease or licence over any land reserved for educational purposes under the **Crown Land (Reserves) Act 1978**.

5.2.8 Vesting of property in Minister

- (1) All real property and interests in real property acquired for the purposes of this Act are vested in the Minister and his or her successors.
- (2) The Minister may sell or otherwise dispose of any property or interest in property vested in the Minister and may do all things necessary and execute all necessary documents for that purpose.
- (3) The proceeds of every sale or disposition of interest in fee simple in property must be paid into the Consolidated Fund.

5.2.9 Agreements and arrangements concerning use of property

- (1) The Minister may enter into an agreement or arrangement, on any terms that the Minister thinks fit, with any person (including any other responsible Minister of the Crown) or body—
 - (a) for or in relation to the use of any real or personal property for the purposes of this Act; or
 - (b) for or in relation to the use, for the benefit of the community, or any part of the community, of—
 - (i) any lands vested in the Minister or taken on lease under section 1.3.5; or

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- (ii) any lands of the Crown reserved for any educational purpose (whether or not vested in trustees or jointly in the Minister for the time being administering the **Conservation, Forests and Lands Act 1987** and trustees); or
 - (iii) any equipment or materials used for the purposes of any Government school.
 - (2) Without limiting the generality of sub-section (1), an agreement or arrangement under this section may provide for—
 - (a) the development, construction, improvement, renovation or repair of any property to which the agreement or arrangement relates; and
 - (b) the provision of services or performance of work in connection with the use of any such property.
 - (3) For the purpose of carrying out an agreement or arrangement under sub-section (1), the Minister may do anything and exercise any powers, functions and authorities as, in the opinion of the Minister, are necessary or expedient to carry out the terms of the agreement or arrangement.
 - (4) Despite anything to the contrary in any other Act, a responsible Minister of the Crown or public statutory body is authorised and empowered by authority of this section to enter into an agreement or arrangement under this section with the Minister and to do or suffer anything necessary or expedient for carrying the agreement or arrangement into effect.
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- (5) A Minister of the Crown, at the request of the Minister or a school council, with the approval of the Minister, may enter into any agreement or arrangement which the Minister is authorised to enter into under this section.
- (6) A Minister of the Crown or the school council may do anything and exercise any powers, functions and authorities as in his, her or its opinion are necessary or expedient to carry out the terms of the agreement or arrangement.
- (7) An agreement or arrangement made under this section is of full force and effect despite anything to the contrary in any Act or law relating to Crown lands.

5.2.10 Minister's powers for off shore education services

- (1) The Minister may do all or any of the following to enable educational, training or other related services to be provided outside Victoria—
 - (a) enter into a contract or arrangement for providing those educational, training or other related services outside Victoria and employ people outside Victoria to provide those services;
 - (b) purchase, acquire or dispose of land or any interest in land or premises outside Victoria or enter into any agreement concerning land or premises outside Victoria;
 - (c) enter into a joint venture with another person or body to provide educational, training or other related services overseas outside Victoria.

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- (2) Without limiting sub-section (1), the Minister may enter into a contract or arrangement for educational or other related services of a Government school to be provided (whether within or outside Victoria) to persons not attending a Government school.

5.2.11 Delegations by Minister

The Minister may, by instrument, delegate to another Minister, a member of the Parliament of Victoria or any person employed under this Act or involved in the administration of this Act his or her powers under this Act, other than—

- (a) the power to issue directions or guidelines to any body established under this Act or any other body established under any other Act that the Minister is responsible for administering; or
- (b) to issue guidelines about vocational education and training or adult, community and further education in Victoria; or
- (c) to acquire real property or an interest in real property by agreement or compulsory acquisition; or
- (d) to nominate or appoint any Chairperson, member or acting member of a board established under this Act; or
- (e) to fix fees; or
- (f) to appoint authorised officers or school attendance officers; or
- (g) this power to delegate.

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5.2.12 Establishment of bodies to advise Minister

- (1) The Minister may from time to time by order appoint any person or establish any body comprising persons with experience or expertise in, or able to offer informed advice about, education and training—
 - (a) to advise the Minister on any matter relating to education and training referred to the person or body by the Minister; and
 - (b) to exercise any of the powers and functions of the Minister that are delegated to the person or body under this Act.
- (2) The Minister may, in any Order made under subsection (1), make any provision with respect to the terms and conditions of appointment of the person or of the members of the body and the functions and procedure of the person or the body as the Minister thinks fit.
- (3) Nothing in this section limits the powers of the Minister to establish advisory committees or other similar bodies or have regard to the advice of any person, committee or other body.

5.2.13 Minister's powers to require financial agreements

The Minister may require any person or body that receives or will receive any grant of money from the State for educational purposes to enter into an agreement setting out the terms and conditions of receiving that money.

5.2.14 Minister's powers to make orders

The Minister may make any Orders that are required, permitted or authorised to be made by the Minister under this Act.

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5.2.15 Minister's powers to fix fees

- (1) The Minister, by Order, may fix any fees that are required, permitted or authorised to be fixed by the Minister under this Act.
 - (2) The Minister's powers to fix fees may be exercised by fixing different fees for different classes of applications or investigations.
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PART 5.3—SECRETARY'S FUNCTIONS AND POWERS

5.3.1 Secretary's powers of employment

- (1) For the purposes of this Act, there shall be staff employed by the Secretary under Part 3 of the **Public Administration Act 2004**.
- (2) Staff employed for the purposes of Part 2.4, Chapter 5, Division 1 of Part 3.1, Division 2 of Part 3.3 or Chapter 4 may only be employed by the Secretary under Part 3 of the **Public Administration Act 2004**.

5.3.2 Secretary's other functions and powers

The Secretary is responsible for implementing any policy or decision of the Minister or of the Commission made in accordance with Part 3.1.

5.3.3 Delegation of Secretary's powers

- (1) The Secretary, by instrument, may delegate to any person any power or function of the Secretary under this Act, other than this power of delegation and the Secretary's powers under section 2.4.3(1)(c) and (d).
- (2) The Secretary may, by instrument, delegate to a school council any power or function of the Secretary relating to the employment of persons under section 2.4.3(1)(c) and (d).
- (3) A school council may by instrument delegate to a member or the members of a sub-committee which consists entirely of members of the council all or any of the powers or functions delegated to the council under sub-section (2).

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Part 5.3—Secretary's Functions and Powers

- (4) The Secretary may, by instrument, limit the powers or functions which may be delegated under sub-section (3) or impose conditions on the exercise of the delegated powers or functions either generally or with respect to particular schools or class of school.

5.3.4 Secretary may request criminal record check

- (1) In this section—

"relevant person" means—

- (a) a person employed by the Secretary in the teaching service under Part 2.4 or under the **Public Administration Act 2004**; or
- (b) a person employed by a school council under Part 2.3.
- (2) The Secretary may, at any time, request the Chief Commissioner of Police to give to the Secretary information concerning the criminal record, if any, of a relevant person who performs some or all of their duties in a Government school and, for that purpose, may disclose to the Chief Commissioner the information concerning the relevant person that is necessary to conduct the criminal record check.
- (3) If a request relates to a relevant person employed by a school council, the school council may disclose to the Secretary the information concerning the relevant person that is necessary to conduct the criminal record check.
- (4) The Secretary may make a request under sub-section (2) without the consent of the relevant person named in the request but must give notice of the request to that person.

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Part 5.3—Secretary's Functions and Powers

- (5) The Chief Commissioner of Police must, not more than 14 days after receiving a request under sub-section (2), enquire into and report to the Secretary on the criminal record, if any, of the relevant person named in the request.
- (6) If the report relates to a relevant person employed by a school council, the Secretary may give a copy of the report to the school council.

5.3.5 Effectiveness and efficiency review

- (1) The Secretary may appoint a person to carry out, in accordance with any Order made by the Minister under sub-section (3), an effectiveness and efficiency review of the operations, or specified operations, of a school council and to report the results of the review to the Secretary.
- (2) In sub-section (1) a reference to an effectiveness and efficiency review of operations of a council is a reference to—
 - (a) an examination of the functions performed by, and the operations carried on by, the council for the purpose of forming an opinion concerning the extent to which those operations are being carried on in an effective and efficient manner; and
 - (b) an examination of the procedures that are followed by the council for reviewing operations carried on by it and an evaluation of the adequacy of those procedures to enable the council to assess the extent to which those operations are being carried on in an effective and efficient manner.

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Part 5.3—Secretary's Functions and Powers

- (3) The Minister may make an Order for or with respect to any matter that relates to effectiveness and efficiency reviews including but not limited to—
 - (a) the nature of the reviews;
 - (b) the manner in which the reviews are to be carried out;
 - (c) the frequency and timing of reviews.
 - (4) The Secretary must ensure that written notice of the carrying out of an effectiveness and efficiency review is given before the commencement of the carrying out of that review to both the president of the school council and the principal.
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PART 5.4—WORKPLACE LEARNING

Division 1—Work Experience

5.4.1 Definitions

In this Part—

"child" means a person under the age of 15 years;

"factory" means factory within the meaning of the **Labour and Industry Act 1958**;

"law" includes employment agreement or contract of employment;

"school" means—

(a) a registered school; or

(b) a school approved by the Minister for the purposes of this Division;

"school year", in respect of any school, means that portion of the year beginning with the first school day of that year and ending with the last school day of that year;

"structured workplace learning arrangement" means an arrangement for structured workplace learning made under section 5.4.5;

"trade" includes process, trade, business and occupation and any branch or branches of a process, trade, business or occupation;

"work experience arrangement" means an arrangement made under section 5.4.3;

"young person" means a person of or over the age of 15 years and under the age of 21 years.

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5.4.2 Application

The provisions of this Division relating to work experience arrangements also apply to a student at a TAFE institute or a University with a TAFE division who is in a course of study that is or is equivalent to year 11 or year 12 of secondary education as if the student were a student at a registered school.

5.4.3 Work experience arrangements

- (1) A student at a school may be placed with an employer for work experience as part of the student's education if the principal of the school has made an arrangement in writing with the employer about the placement of the student with the employer.
- (2) A work experience arrangement may be made under sub-section (1) in respect of a child only if the principal is satisfied that—
 - (a) the health, education and moral and material welfare of the child will not suffer from the proposed arrangement; and
 - (b) the child is fit to be engaged in the proposed work experience; and
 - (c) the child will not be subjected to any form of exploitation in the course of the proposed work experience; and
 - (d) the proposed work experience is not prohibited employment within the meaning of the **Child Employment Act 2003**.

Note: Section 5.4.7 contains further restrictions on the making of work experience arrangements for certain types of employment.

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- (3) A work experience arrangement under sub-section (1) may be made with an employer in another State or Territory—
 - (a) if that State or Territory is declared by Order of the Governor in Council to be a reciprocating State or Territory for the purposes of this section; or
 - (b) if the principal is satisfied that it is appropriate that the arrangement should be made.
- (4) A work experience arrangement under sub-section (1) may be made in respect of a student of or over the age of 21 years in the circumstances set out in a Ministerial Order made under section 5.4.4.

5.4.4 Orders about work experience arrangements

- (1) The Minister may make Orders about the placement of students with employers for obtaining work experience as part of a student's education.
 - (2) Without limiting the generality of sub-section (1) an Order may provide for—
 - (a) the number of students that an employer or class of employer is permitted to employ under a work experience arrangement;
 - (b) the minimum rate of payment payable to a student employed under a work experience arrangement;
 - (c) the hours of the day in which a student can work under a work experience arrangement;
 - (d) any other terms and conditions for work experience arrangements including work experience arrangements referred to in section 5.4.3(3);
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- (e) the circumstances and terms and conditions under which the principal of a school can make work experience arrangements about the placement of students of or over the age of 21 years with an employer;
- (f) requiring that work experience arrangements cannot be made for a student who is a child unless the following persons have provided a check about any criminal record of that person to the principal—
 - (i) the employer; and
 - (ii) any other person who will have direct supervision or control of the student during the placement if the supervision or control will not be directly supervised by another person;
- (g) requiring students to undertake occupational, health and safety training before undertaking work experience;
- (h) requiring that the principal ensures that he or she or a teacher at the school contacts a student at least once during the time the student is placed with an employer for work experience.

5.4.5 Structured workplace learning arrangements

- (1) A student of a school who is of or over the age of 15 years and undertaking a course of study accredited by the Authority may be placed with an employer for training as part of that course of study if the principal of the school, the employer, the student and, if the student is under the age of 18 years, the parent of the student have made an arrangement about the placement of the student with the employer.

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- (2) A person must not make an arrangement under this section if the arrangement would include any period of placement at a skills or training centre that is not operated by the employer or is not under the direct control of the employer.
- (3) An arrangement for structured workplace learning may be made with an employer in another State or Territory—
 - (a) if that State or Territory is declared by Order of the Governor in Council to be a reciprocating State or Territory for the purposes of this section; or
 - (b) if the principal of the school is satisfied that it is appropriate that the arrangement should be made.

5.4.6 Orders about structured workplace learning

- (1) The Minister may make Orders about the work placement of students or any class of students with employers for training.
 - (2) Without limiting the generality of sub-section (1) an Order may provide for—
 - (a) the circumstances in which and the requirements which must be satisfied before structured workplace learning arrangements can be entered into;
 - (b) without limiting the generality of paragraph (a), requiring students to undertake training in occupational health and safety relevant to the workplace where they will be employed under a structured workplace learning arrangement before the arrangement can be entered into;
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- (c) the maximum number of structured workplace learning hours or days that a student can be employed for under a structured workplace learning arrangement;
- (d) the hours of the day in which a student can work under a structured workplace learning arrangement;
- (e) the maximum number of students who can be employed by an employer at any time;
- (f) the circumstances in which a structured workplace learning arrangement can be varied, suspended or cancelled;
- (g) the minimum rate of payment for a student employed under a structured workplace learning arrangement;
- (h) any other terms and conditions for structured workplace learning arrangements including structured workplace learning arrangements referred to in section 5.4.5 with employers in other States or Territories.

5.4.7 Conditions of employment under work experience arrangements

- (1) The employment of students under work experience arrangements is subject to the following conditions—
 - (a) a student must not be employed under this Division for more than 40 days during any school year nor more than 10 days during any school term;
 - (b) the principal of a school may make a work experience arrangement with an employer for the placement of a particular student with that employer for specified periods during a school year;
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- (c) an employer must not at any time employ more than the number of students that employers are permitted to employ by an Order made under section 5.4.4;
 - (d) the period of employment in respect of any arrangement must not exceed a total of 10 days;
 - (e) the full period in respect of the employment is to be a period falling within the school year.
- (2) A work experience arrangement—
- (a) may be varied or amended by a further arrangement; and
 - (b) may be cancelled at any time by notice in writing—
 - (i) given by the employer to the principal of the school; or
 - (ii) given by the principal of the school to the employer.
- (3) The principal of a school may suspend the operation of a condition in sub-section (1)—
- (a) to allow a student to be employed under a work experience arrangement for more than 10 days but not exceeding 15 days during any school term;
 - (b) to allow the period of employment of that student to exceed a total of 10 days but not to exceed a total of 15 days during any school term in respect of the arrangement—

if authorised to do so by Ministerial Order and subject to any terms or conditions required by Ministerial Order.

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- (4) The Minister or a person employed in the Department authorised in writing by the Minister for that purpose may suspend the operation of all or any of the conditions of employment set out in paragraphs (a), (b), (d) and (e) of sub-section (1) with respect to any student with a disability or impairment.
- (5) A suspension made under sub-section (4)—
 - (a) must be in writing signed by the Minister or the authorised officer;
 - (b) may be given with respect to any specified student or any specified group or class of students;
 - (c) may be for a specified time or indefinitely; and
 - (d) may be varied or revoked by the Minister or the authorised officer (as the case requires).

5.4.8 Conditions of employment under structured workplace learning arrangements

- (1) A structured workplace learning arrangement must—
 - (a) be in writing; and
 - (b) set out—
 - (i) details of the accredited course of study; and
 - (ii) the skills and competencies that the student is expected to obtain during the structured workplace learning; and
 - (iii) the total number of days or hours that the student will be employed by the employer; and
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- (iv) the period of employment under the structured workplace learning; and
 - (v) the name of the employer or a person authorised by the employer to make structured workplace learning arrangements, the trading or operating name of the employer and the address of the work place where the student will be employed; and
- (c) be signed by—
- (i) the principal of the student's school; and
 - (ii) the employer or a person authorised by the employer to make structured workplace learning arrangements; and
 - (iii) the student; and
 - (iv) if the student is under the age of 18 years, the parent of the student.
- (2) A structured workplace learning arrangement must not provide for any period of employment exceeding one calendar year.

5.4.9 Payment

- (1) Despite anything to the contrary in any law, the minimum rate of payment payable to a student employed under an arrangement—
- (a) in the case of a work experience arrangement, is the minimum rate of payment fixed under section 5.4.4; or
 - (b) in the case of a structured workplace learning arrangement, is the minimum rate of payment fixed under section 5.4.6.

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- (2) If—
- (a) an arrangement is for employment with an organisation that is engaged wholly or mainly in an educational, charitable, or community welfare service not conducted for profit; and
 - (b) the student determines that the whole of his or her payment will be donated back to the organisation; and
 - (c) the written consent of his or her parent is obtained to the proposed donation—
- the determination of the student to donate back the payment and the consent of his or her parent may be stated in the arrangement.
- (3) A department of the Commonwealth Government or a body established under a Commonwealth Act that employs a student under an arrangement is not required to make any payment to the student, despite anything to the contrary in this or any other Act or in any law or award.
- (4) If the Minister is satisfied that a structured workplace learning arrangement is for the employment of a student or a category of students in a skills or training centre conducted by an employer on a not for profit basis, the Minister may determine that the employer is not required to make any payment to a student or a member of the category of students referred to in the determination in respect of any period of employment in that centre.
- (5) If the Minister makes a determination under subsection (4) the employer is not required to make any payment to the student or the member of the category of students referred to in the determination in respect of any period of employment in the skills or training centre despite
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anything to the contrary in this or any other Act or in any law or award.

- (6) For the purposes of the **Accident Compensation Act 1985**, payment at the minimum rate under sub-section (1) is deemed to be payable to a student in the circumstances set out in sub-sections (3), (4) and (5).

5.4.10 Duty of care

- (1) A school or the principal or a teacher of a school does not have and is not to be deemed to have a duty relating to the care or control of a student of the school while that student is employed—
- (a) under a work experience arrangement or a structured workplace learning arrangement; or
 - (b) as an apprentice under a training contract under Part 5.5 if the training for the student under that contract has been approved or endorsed by the principal of the school.
- (2) An action does not lie against a school or the principal or a teacher of a school because of a breach of a duty referred to in sub-section (1).

5.4.11 Application of certain laws if employment is for work experience

- (1) Subject to this Division, an Act or law relating to the prohibition or regulation of the employment of children or young persons does not apply to the employment of a child or young person who—
- (a) is a student at a school; and
 - (b) is of or over 14 years of age; and
 - (c) with the written consent of a parent is employed under a work experience arrangement.
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- (2) If an Act or law prohibits the employment or regulates the working conditions in a specified occupation—
- (a) of persons of less than or not more than a specified age expressed as a number of years; or
 - (b) of females—
- then sub-section (1) must not be taken to permit the employment of a person contrary to that Act or law.
- (3) For the avoidance of doubt, a permit under Division 2 of Part 2 of the **Child Employment Act 2003** is not required for the employment of a child in accordance with a work experience arrangement, except as provided by sub-section (4).
- (4) A work experience arrangement authorising the employment of a child in a factory or in a class of employment declared to be dangerous employment under sub-section (5) cannot be made unless—
- (a) the child is of or over 14 years of age; and
 - (b) a permit has been issued under Division 2 of Part 2 of the **Child Employment Act 2003** in respect of the proposed employment.
- (5) The Minister, by Order published in the Government Gazette, may declare any class of employment to be dangerous employment if, in the Minister's opinion, there is a higher than usual risk of a child being exposed to the risk of physical injury in employment of that class.
- (6) The Minister, by Order published in the Government Gazette, may from time to time amend or revoke an order made under sub-section (5).
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- (7) If in respect of any trade the working conditions of young persons are regulated but the employment or working conditions of children are not specifically prohibited or regulated, a child may be employed in that trade pursuant to a work experience arrangement so long as the working conditions are those applicable to a young person.

5.4.12 Arrangements for students from interstate

- (1) The principal of a school lawfully conducted in a reciprocating State or Territory may in writing—
- (a) make a work experience arrangement with an employer in Victoria with a view to providing a student at the school with work experience in Victoria as part of the student's education; or
 - (b) make a structured workplace learning arrangement with an employer in Victoria with a view to providing a student of or over the age of 15 years at the school with training in Victoria as part of the student's education.
- (2) Subject to sub-section (3), the provisions of this Division apply to and in relation to—
- (a) a student in respect of whom an arrangement is made under sub-section (1) in all respects as if the student were a student at a registered school in Victoria; and
 - (b) a principal who makes an arrangement under sub-section (1) in all respects as if the principal were a principal of a registered school in Victoria.
- (3) Section 5.4.3(2) does not apply to a work experience arrangement under sub-section (1).
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- (4) For the purposes of this section, a reference in this Part to—
- (a) a **"school"** includes a reference to a school lawfully conducted in a reciprocating State or Territory;
 - (b) a **"principal"** includes a reference to the principal at such a school;
 - (c) a **"student"** includes a reference to a child or young person within the meaning of this Division who is a student at such a school;
 - (d) a **"teacher"** includes a reference to a teacher or the principal at such a school;
 - (e) a **"work experience arrangement"** includes a reference to a work experience arrangement under sub-section (1)(a);
 - (f) a **"structured workplace learning arrangement"** includes a reference to a structured workplace learning arrangement under sub-section (1)(b).
- (5) In this section, **"reciprocating State or Territory"** means another State or Territory which is declared by Order of the Governor in Council to be a reciprocating State or Territory for the purposes of this Division.

Division 2—Practical Placement

5.4.13 Definitions

In this Division—

"employer" includes a department of the Commonwealth Government or a body established under a Commonwealth Act;

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"law" includes an employment agreement and any provision which restricts the employment of persons who are not apprentices;

"post-secondary student" means a student who is enrolled in a post-secondary education course of a TAFE provider;

"practical placement agreement" means an agreement entered into under section 5.4.14(1);

"TAFE provider" means a body registered under section 4.4.2 by the Authority.

5.4.14 Practical placement agreements

- (1) A post-secondary student of a TAFE provider may be placed with an employer for work experience or training if the governing body of the TAFE provider has entered into an agreement in writing with the employer about the placement of that student.
- (2) A practical placement agreement—
 - (a) may be varied or amended by another agreement; and
 - (b) must be consistent with any determination of the Commission about placements of that kind; and
 - (c) may be cancelled at any time by notice in writing—
 - (i) given by the employer to the governing body; or
 - (ii) given by the governing body to the employer.

5.4.15 Determination about the placement of post-secondary students

- (1) The Commission may make a determination about the placement of post-secondary students or any class of post-secondary students with employers for work experience or training.
- (2) The determination may—
 - (a) fix the period of the placements to which the determination relates; and
 - (b) specify the number of students any employer or class of employers may take; and
 - (c) specify that the Commission retain the power to cancel or vary any placement; and
 - (d) specify any other conditions that are to apply to those placements.

5.4.16 Payment

- (1) The Governor in Council may, by Order published in the Government Gazette, fix a rate of payment for students employed under a practical placement agreement.
 - (2) A student employed under a practical placement agreement is entitled to receive payment at the rate that is fixed by Order of the Governor in Council.
 - (3) The minimum rate of payment payable to a student employed under a practical placement agreement, despite anything to the contrary in any Act or law, is the minimum rate of payment as fixed by Order of the Governor in Council.
 - (4) A department of the Commonwealth Government or a body established pursuant to a Commonwealth Act that employs a student under a practical placement agreement is not required to make any payment to the student, despite anything
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to the contrary in this or in any other Act or in any law or training contract.

- (5) For the purposes of the **Accident Compensation Act 1985**, a student employed under a practical placement agreement is deemed to be paid the minimum rate of payment as fixed by Order of the Governor in Council.

5.4.17 Suspension of conditions for students

- (1) The Commission may suspend the operation of all or any of the provisions of this Division for any student or class of students.
- (2) A suspension under sub-section (1) may operate for a specified time or indefinitely.

5.4.18 Duty of care

- (1) A duty which any person has relating to the care or control of a student of a TAFE provider as a student of that provider is to be taken not to apply while that student is employed under a practical placement agreement and an action does not lie against that person because of a breach of that duty.
- (2) Sub-section (1) does not extend to a duty which a person has as occupier of the premises of the TAFE provider.

5.4.19 Application of certain laws where employment is to gain work experience or training

- (1) Any Act or law relating to the prohibition of or regulation of the employment of persons of or over the age of 15 years and under the age of 21 years does not apply to the employment of such a person who is—
 - (a) a student of a TAFE provider; and
 - (b) employed under a practical placement agreement.
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- (2) If an Act or law prohibits the employment or regulates the working conditions in a specified occupation—
- (a) of persons of less than or not more than a specified age expressed as a number of years; or
 - (b) of females—
- then sub-section (1) must not be taken to permit the employment of a person contrary to that Act or law.

Division 3—Minimum Terms and Conditions for Students

5.4.20 Rates of pay for students

- (1) An employer must pay a student the relevant minimum rate of pay that would be applicable under paragraph 1(c) of Schedule 1A to the Workplace Relations Act 1996 of the Commonwealth as if the student were an employee within the meaning of Part XV of that Act.
- (2) Sub-section (1) does not apply in respect of a student—
- (a) holding a certificate of exemption under section 5.4.21; or
 - (b) to whom an exemption order under section 5.4.22 applies.

5.4.21 Certificates of exemption

- (1) The Secretary may give a student a certificate of exemption if the Secretary is satisfied that the student—
- (a) is undertaking a post-secondary education course; and
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- (b) is required to work during those studies for the purpose of gaining knowledge and skill which relates to those studies.
- (2) The Secretary may impose conditions on a certificate of exemption.
- (3) The student and any employer must comply with any condition imposed under sub-section (2).

Penalty: 10 penalty units.

5.4.22 Exemption orders

- (1) The Secretary may make an exemption order in relation to any class of students if the Secretary is satisfied that the students—
 - (a) are undertaking a post-secondary education course; and
 - (b) are required to work to satisfy the practical training and experience requirements of the course.
 - (2) The exemption order may—
 - (a) in the case of any students, provide that the students are not required to be paid for the work; and
 - (b) in the case of students required to work more than 240 hours as part of a course requirement, specify the appropriate rate of pay which may be less than the minimum rate of pay that would be the applicable rate of pay referred to in sub-section (1).
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Part 5.5—Apprentices

PART 5.5—APPRENTICES

Division 1—Preliminary

5.5.1 Definitions

In this Part—

"approved training agent" means a person or body appointed to be an approved training agent under Division 5;

"approved training scheme" means a training scheme approved under section 5.5.2.

Division 2—Training Schemes

5.5.2 Training schemes

- (1) The Commission may determine that a specified training scheme is an approved training scheme.
 - (2) A determination under sub-section (1) may provide for all or any of the following matters—
 - (a) whether the vocation is one to which sections 5.5.15(1), 5.5.16(2), 5.5.16(3), 5.5.16(4), 5.5.17(1)(d) and 5.5.19 do not apply;
 - (b) the duration of an approved training scheme by reference to a fixed period or a maximum or minimum period;
 - (c) whether any apprentice may be engaged as a full time or part time employee;
 - (d) any requirement for a probationary period and, if so, its length;
 - (e) the nature and syllabus of the training scheme and any course of study, instruction or practical or workplace training comprising the content of that scheme;
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- (f) the requirements as to age, education, experience or any other matter to be satisfied by a person wishing to undertake the training scheme;
 - (g) the standards of skill and knowledge required to adequately perform the activities or tasks of the vocation which are to be obtained by an apprentice undertaking the training scheme;
 - (h) the credit to be given in the training scheme for any qualifications, training or experience that an apprentice undertaking the training scheme has prior to entry to that scheme;
 - (i) minimum requirements for training plans;
 - (j) minimum hours per week for employment and training.
- (3) A determination may be made so as to apply, adopt or incorporate any matter contained in any document issued or published by any person or body.
- (4) The Commission must cause a notice to be published in the Government Gazette of the making of a determination and setting out where copies of the approved training scheme can be obtained.

5.5.3 Certain provisions do not apply to certain vocations

Sections 5.5.15(1), 5.5.16(2), 5.5.16(3), 5.5.16(4), 5.5.17(1)(d) and 5.5.19 do not apply to, or in relation to, a vocation if the Commission makes a determination under section 5.5.2, that those provisions do not apply to the vocation specified in the determination.

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Division 3—State Training and Employment Provisions

5.5.4 State training and employment provisions

Schedule 7 has effect.

Note: Schedule 7 sets out training and employment conditions for trainees not covered by the National Training Wage Award.

5.5.5 Training and employment agreements to accord with Schedule 7

- (1) A provision of a training contract or an employment agreement or any other contract of employment to which an apprentice is a party is of no effect to the extent that it provides a term or condition of employment that is less favourable to the apprentice than one applicable under Schedule 7.
- (2) An employer must not enter into, or purport to enter into a training contract or an employment agreement or any other contract of employment with an apprentice that provides a term or condition of employment that is less favourable to the apprentice than one applicable under clause 6(1) of Schedule 7.

Penalty: 100 penalty units.

- (3) If a training contract or an employment agreement or any other contract of employment to which an apprentice is a party does not at any time comply with a term or condition of employment applicable under clause 6(1) of Schedule 7, it must then, for the purposes of section 160 of the **Long Service Leave Act 1992**, be taken to have effect as if it did.
 - (4) A training contract or an employment agreement or any other contract of employment entered into by an employer in contravention of sub-section (2) is not, for that reason only, illegal, void or unenforceable.
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Division 4—Training Contracts

5.5.6 Employer must have Commission's approval to enter into a training contract with an apprentice

An employer must not employ a person under a training contract unless the employer is approved by the Commission to do so.

Penalty: For a natural person, 10 penalty units;
For a body corporate, 50 penalty units.

5.5.7 Procedure for approval

- (1) In determining whether to approve an employer to employ a person under a training contract the Commission must have regard to the employer's ability to comply with the training contract.
- (2) Without limiting the generality of sub-section (1), the Commission must have regard to all of the following matters—
 - (a) the premises in which the person is to be employed;
 - (b) the equipment and methods to be used in training;
 - (c) whether any person whom the employer uses or proposes to use for the purpose of supervising the training of an apprentice under a training contract—
 - (i) has the appropriate qualifications, knowledge and skill for that purpose; and
 - (ii) is otherwise a fit and proper person for that purpose;
 - (d) whether the employer is a fit and proper person for employing an apprentice.

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- (3) An approval under sub-section (1) may be given subject to conditions—
 - (a) limiting the number of apprentices that the employer may have in the employer's employment at any one time; and
 - (b) as to any other matters that the Commission thinks fit.
- (4) The Commission may revoke an approval at any time and in any circumstances including those where a condition of the approval is breached.

5.5.8 Employer's obligations under a training contract

- (1) An employer who employs an apprentice under a training contract—
 - (a) must ensure that the apprentice is trained in accordance with an approved training scheme; and
 - (b) must allow the apprentice to comply with the approved training scheme without hindrance if that scheme or any part of that scheme is conducted during normal working hours.

Penalty: For a natural person, 10 penalty units;
For a body corporate, 50 penalty units.

- (2) If an apprentice under a training contract attends a vocational education and training course provided by a registered education and training organisation in accordance with an approved training scheme during normal working hours, that attendance is deemed to be attendance at work for the purposes of any employment agreement or any other contract of employment.

5.5.9 Apprentice's obligations under a training contract

An apprentice's obligations under a training contract include the obligation to comply with the requirements of the approved training scheme.

5.5.10 Approval of training contracts

- (1) A training contract must be in the form, and contain the particulars, approved by the Commission.
- (2) The Commission may approve a training contract for an apprenticeship or traineeship only if the agreement is substantially in the same form and has the same content as the agreement approved by the Ministerial Council.
- (3) The Commission may refuse to approve a training contract if the Commission is of the opinion that the training contract does not comply with this Part or any determination of the Commission under this Part.

5.5.11 Parties to training contract

- (1) The parties to a training contract are—
 - (a) the employer; and
 - (b) the apprentice; and
 - (c) if the apprentice is under 18 years, the parent or guardian of the apprentice.
 - (2) If an apprentice has no parent or guardian or no parent or guardian resident in Victoria and capable of acting, the Commission may approve a person to act instead of the parent or guardian.
 - (3) If an apprentice is under the age of 18 years and the Commission is satisfied that it is in the interests of the employer and the apprentice, the Commission may consent to the training contract being executed by the employer and the apprentice only.
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- (4) The Commission must endorse its consent under sub-section (3) on the original training contract and the endorsement has the effect of dispensing with the necessity of there being a parent or guardian as a party to the training contract.

5.5.12 Execution of training contract

- (1) The employer must arrange for—
- (a) the training contract to be executed by the parties and lodged with the Commission or a person or body nominated by the Commission within 14 days after the date the employment of the apprentice commences or any further time allowed by the Commission; and
 - (b) a copy of the training contract to be given to the apprentice within 14 days after the date of execution of the training contract.
- (2) An apprentice may, with the approval of the Commission, commence employment before the training contract is executed by the parties and lodged with the Commission.

5.5.13 Apprentice to be enrolled in training

The employer must arrange for—

- (a) the apprentice to be enrolled in a vocational education and training course provided by a registered education and training organisation, as required by the approved training scheme, within 3 months after the date of commencement of the training contract; and

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- (b) a training plan to be signed by—
 - (i) the employer; and
 - (ii) the apprentice; and
 - (iii) the registered education and training organisation; and
- (c) a copy of the training plan referred to in paragraph (b) to be lodged with the Commission, a person or body nominated by the Commission or an approved training agent within 3 months after the date of commencement of the training contract.

5.5.14 Term of a training contract

- (1) The Commission may determine the term or terms or fix minimum or maximum terms of training contracts for any vocation or for any specified training contract.
- (2) If the Commission is satisfied that an apprentice has the knowledge and skills required under a training contract it may reduce the term of the agreement.
- (3) If the Commission is satisfied that an apprentice does not have the knowledge and skills required under a training contract it may extend the term of the agreement.

5.5.15 Cancellation, suspension or variation of a training contract

- (1) The parties to a training contract may by mutual consent—
 - (a) cancel the training contract; or
 - (b) suspend the training contract; or
 - (c) vary the provisions of the training contract.
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- (2) The Commission may at any time order the cancellation or suspension of a training contract if it is of the opinion that special circumstances make the cancellation or suspension desirable.
- (3) The powers of the Commission under subsection (2) are in addition to any other powers of the Commission under this Part.

5.5.16 Suspension or cancellation of a training contract if insufficient employment available

- (1) If an employer is temporarily unable to provide sufficient work to keep an apprentice fully employed under a training contract during any working week or month, the employer may—
 - (a) reduce the time of employment of the apprentice in the week or month; and
 - (b) reduce the wages of the apprentice in proportion to the reduction of the time of his or her employment in the week or month.
 - (2) If an employer cannot provide sufficient employment for an apprentice employed by the employer under a training contract because of lack of business or financial difficulties the Commission may, on the application of the employer—
 - (a) order the suspension of the training contract for any period that the Commission thinks fit; or
 - (b) order the cancellation of the training contract.
 - (3) The Commission must not make an order unless it is satisfied after due inquiry that the circumstances warrant the making of an order.
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- (4) Nothing in this section limits the powers of the employer to stand down an apprentice under a provision of the apprentice's training contract for the standing-down of apprentices who cannot usefully be employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible or the deduction of payment for any part of a day during which the apprentice is stood down.

5.5.17 Commission to determine grievances in certain circumstances

- (1) The Commission may determine any question or difference arising between an employer and an apprentice about—
- (a) the training contract or anything contained in the training contract; or
 - (b) the construction or operation of the training contract; or
 - (c) the rights, duties and liabilities of the employer or apprentice under the training contract; or
 - (d) the dismissal or threatened dismissal of an apprentice if the apprentice believes that the dismissal or threatened dismissal is harsh, unjust or unreasonable.
- (2) The Commission must not determine any question or difference about whether money is or is not due by an employer to an apprentice.
- (3) The Commission must enquire into any matter referred to it under this section and it may—
- (a) cancel, suspend or vary the training contract; or
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- (b) order all or any parties to a training contract to perform all or specified obligations or duties under or related to the agreement; or
 - (c) make any consequential orders that it thinks fit; or
 - (d) make any other order it thinks fit.
- (4) A party to a proceeding before the Commission under this section is not entitled to legal representation.
 - (5) A person must not contravene any order made by the Commission under this section.

Penalty: 5 penalty units.

5.5.18 Associations of employers may employ apprentices

- (1) An association of employers may enter into a training contract with a person.
- (2) The members of an association of employers that is not a body corporate must appoint one of their members who—
 - (a) is to be treated as the employer of the apprentice for the purposes of this Act; and
 - (b) must execute the training contract on behalf of the association; and
 - (c) is responsible for complying with this Act and the regulations.

5.5.19 Partnerships

- (1) If a person has entered into a training contract with partners, the training contract is not determined by reason only of the death or retirement of any of those partners but is to be treated as being assigned to the surviving or continuing partner or partners.
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- (2) On the transmission of the business or any part of the business of an employer, the training contract of an apprentice in any vocation which may form part of the business transmitted is to be treated as being assigned to the person to whom the business is being transmitted.
- (3) In this section "**transmission**" includes transfer, conveyance, assignment or succession whether by agreement or operation of law.

Division 5—Approved Training Agents

5.5.20 Approved training agents

The Minister may by Order published in the Government Gazette, appoint any person or body to be an approved training agent for the purposes of this Part.

5.5.21 Delegations to approved training agents

- (1) Without limiting the powers of the Commission under section 3.1.9, the Commission may, by instrument under its common seal, delegate to any person or body appointed as an approved training agent any power or function of the Commission under sections 5.5.6, 5.5.7, 5.5.11(2), (3) and (4), 5.5.14 and 5.5.16(2).
- (2) The Commission must ensure that a copy of an instrument of delegation under this section is published in the Government Gazette as soon as practicable after its making.

5.5.22 Review of decisions of approved training agents

- (1) A person who is aggrieved by any decision of an approved training agent made under section 5.5.6, 5.5.7, 5.5.11(2), (3) or (4), 5.5.14 or 5.5.16(2) acting as a delegate of the Commission under section 5.5.21 may apply to the Commission for a review of that decision within 14 days after the

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person was notified of that decision by the approved training agent or within any longer period that the Commission allows.

- (2) The Commission may exercise all the powers and discretions that it would have had in determining the matter under review and may in writing—
- (a) affirm the decision under review; or
 - (b) vary the decision under review; or
 - (c) set aside the decision under review and—
 - (i) make a decision in substitution for the decision set aside; or
 - (ii) remit the matter for reconsideration by the approved education and training agent in accordance with any directions or recommendations of the Commission.

Division 6—General

5.5.23 Register of apprentices

The Commission must establish and maintain a register of apprentices who have entered into training contracts which have been lodged under section 5.5.12.

5.5.24 Subsidies

The Commission may cause to be paid to an apprentice a subsidy towards the costs incurred in attending a vocational education and training course required by the training scheme and conducted by a registered education and training organisation at a place remote from the apprentice's home or place of work.

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5.5.25 Fees for certificates

The Commission may charge a fee fixed by the Minister for the issue of any certificate or duplicate certificate for the purposes of this Part.

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Part 5.6—Volunteer Workers Compensation

PART 5.6—VOLUNTEER WORKERS COMPENSATION

5.6.1 Definitions

(1) In this Part—

"approved community work" means community work engaged in by a student of a registered school and approved by the principal of the school as school community work;

"Authority" means the Victorian WorkCover Authority under the **Accident Compensation Act 1985**;

"child" of a volunteer school worker or volunteer student worker means a child of the worker or of the worker's partner who—

- (a) is under the age of 16 years; or
- (b) is 16 years or more but under the age of 21 years and is a full-time student;

"dependant" of a volunteer school worker or volunteer student worker means a person who was at the date of the worker's death wholly, mainly or partially dependent on the worker for financial support;

"domestic partner" of a person means a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

"partner" of a volunteer school worker or volunteer student worker means—

- (a) in relation to a person who died before 23 August 2001—the person's spouse at the time of death;

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- (b) in relation to a person who dies on or after 23 August 2001—the person's spouse or domestic partner at the time of death;

"school work" means—

- (a) the carrying out of the functions of the school council of any Government school;
 - (b) the carrying on of any activities for the welfare of any Government school—
 - (i) by the school council of that school; or
 - (ii) by any parents' club or association or other body organised to promote the welfare of the school; or
 - (iii) at the request of the principal or the school council of the school or of any body referred to in subparagraph (ii);
 - (c) the giving of any assistance in the work of any Government school or the provision of a preschool program by the school council of any Government school;
 - (d) attendance at meetings in relation to Government schools convened at a State or regional level by any body receiving financial support from the Government; or
 - (e) attendance at meetings in relation to Government schools in any region being meetings convened by the Secretary;
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"spouse" of a person means a person to whom the person is married;

"volunteer school worker" means a person who without remuneration or reward voluntarily engages in school work;

"volunteer student worker" means a person who, without remuneration or reward, voluntarily engages in approved community work.

- (2) For the purposes of the definition of "domestic partner" in sub-section (1), in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case.

5.6.2 Compensation for personal injuries

- (1) If a volunteer school worker suffers personal injury arising out of, or in the course of engaging in, school work or travelling to or from a place where school work is to be or has been engaged in—
- (a) the worker is entitled to be paid compensation; or
 - (b) if the worker dies, the worker's partner or any child or dependant of the worker is entitled to be paid compensation.
- (2) If a volunteer student worker suffers personal injury arising out of or in the course of approved community work—
- (a) the worker is entitled to be paid compensation; or
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- (b) if the worker dies, the worker's partner or any child or dependant of the worker is entitled to be paid compensation.
- (3) The compensation must, in respect of personal injury suffered before 4 p.m. on 31 August 1985 be paid in accordance with and subject to the provisions of the **Workers Compensation Act 1958** as if within the meaning of that Act at the time the person so suffered the personal injury—
 - (a) the person was a worker employed by the Crown; and
 - (b) the person suffered a personal injury arising out of or in the course of employment with the Crown.
- (4) The compensation shall, in respect of personal injury suffered on or after 4 p.m. on 31 August 1985, be paid in accordance with and subject to that Act as if within the meaning of that Act at the time the person so suffered the personal injury—
 - (a) the person was a worker employed by the Crown; and
 - (b) the person suffered a personal injury arising out of or in the course of employment with the Crown.

5.6.3 Compensation for damage to property

- (1) Subject to sub-section (2), if a volunteer school worker or a volunteer student worker suffers damage to or destruction of any property that belongs to the worker or that is in the worker's possession or under the worker's control and the damage or destruction arises—
 - (a) in the case of a volunteer school worker—out of or in the course of the carrying out of school work; and
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- (b) in the case of a volunteer student worker—
out of or in the course of the carrying out of
approved community work—

the Minister may authorise the payment to the
owner of the property of any compensation for the
damage or destruction that the Minister thinks
reasonable in the circumstances..

- (2) A person is not entitled to recover both damages
in respect of damage or destruction to any
property referred to in sub-section (1) and
compensation under this section for that damage
and destruction.
- (3) If a person recovers both damages and
compensation in respect of damage or destruction
to any property referred to in sub-section (1), the
amount of the compensation may be recovered
from the person by the Minister by proceedings in
a court of competent jurisdiction as a debt due by
that person to the Crown.

5.6.4 Jurisdiction

Without limiting the generality of section 5.6.2, if
any question or matter arises under that section,
including any question as to the amount of any
compensation payable or the existence and extent
of dependency—

- (a) the County Court, the Magistrates' Court and
the Victorian Civil and Administrative
Tribunal have under this Act the same
jurisdiction to hear and determine the
question or matter as though it were a
question or matter that arose under the
Workers Compensation Act 1958 or the
Accident Compensation Act 1985 (as the
case requires); and

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- (b) where the County Court, the Magistrates' Court or the Victorian Civil and Administrative Tribunal exercises that jurisdiction such of the provisions of those Acts as are applicable shall with the necessary adaptations and modifications apply.

5.6.5 Authority to represent Crown

In all proceedings before the County Court, the Magistrates' Court or the Victorian Civil and Administrative Tribunal and generally in regard to claims for compensation and the payment of compensation under section 5.6.2, the Authority—

- (a) represents the Crown; and
- (b) has the same powers, rights and authorities as an employer has under the **Workers Compensation Act 1958** or as an authorised insurer has under the **Accident Compensation Act 1985** (as the case requires) in regard to the corresponding matter relating to a worker under that Act.

5.6.6 Payments

- (1) The Authority is entitled to the reimbursement of its reasonable costs and expenses incurred in representing the Crown under section 5.6.5.
- (2) The Authority must make any payment of compensation under section 5.6.2 out of the WorkCover Authority Fund under the **Accident Compensation Act 1985**.
- (3) There is to be paid into the WorkCover Authority Fund out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly—

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- (a) the amounts to be reimbursed under subsection (1); and
- (b) the amount of any payments under subsection (2).

5.6.7 Recovery from third parties

If compensation has been paid pursuant to section 5.6.2 or 5.6.3 and the personal injury, damage or destruction in respect of which compensation has been paid was caused under circumstances creating a liability on the part of some person other than the volunteer school worker or volunteer student worker to pay damages in respect of that injury, damage or destruction, the Minister may take proceedings against that person in a court of competent jurisdiction to recover from that person the amount of the compensation paid under this Part.

5.6.8 Compensation for property damage and expenses to be paid from Consolidated Fund

The amount of any compensation paid under section 5.6.3 and any expenses incurred in the administration of this Part are to be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

5.6.9 Offence

A person in or in connection with any claim for compensation under this Part must not wilfully make any false statement to or otherwise wilfully mislead or attempt to mislead the Minister, the County Court, the Magistrates' Court or any other person.

Penalty: 5 penalty units or 3 months imprisonment or both.

PART 5.7—SCHOLARSHIPS

5.7.1 Scholarships at Government schools

If a person by subscription, gift or will founds or assists in founding a scholarship or exhibition in connection with any Government school—

- (a) any money so provided must be invested in any manner in which money may be invested under the **Trustee Act 1958** or in any other manner permitted by the deed of gift or will;
- (b) the scholarship when founded must be open to any student on the roll of a Government school unless the deed of gift or will otherwise provides;
- (c) if the Government school is discontinued the Minister may direct that the scholarship is to attach to another Government school;
- (d) if the scholarship enabled the student to attend another education institution or undertake a course at another education institution and the institution is discontinued or no longer offers the course, the Minister may direct that the scholarship is to be used to enable the student to undertake a course at another institution;
- (e) if circumstances at the school are or become such as not to justify the provision of the scholarship for the purposes for which it was founded, the Minister may direct that it is to be available for some other appropriate purpose.

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Part 5.7—Scholarships

5.7.2 Minister's powers to grant scholarships

- (1) The Minister may grant to a person a scholarship at any school, university or other educational institution subject to any terms or conditions prescribed by the regulations.
 - (2) A scholarship granted by the Minister entitles the holder to the benefits and allowances that are prescribed by the regulations.
 - (3) If the Minister grants to a person a scholarship at any school, university or other educational institution that is discontinued after the grant of the scholarship, the Minister may direct that the scholarship attaches instead to some other school, university or other educational institution.
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PART 5.8—ENFORCEMENT

5.8.1 Authorised officers

- (1) The Secretary may appoint any of the following persons as an authorised officer for the purposes of this Act—
 - (a) a person employed under the **Public Administration Act 2004** in the administration of Part 3.1, 3.2 or 5.5; or
 - (b) a person employed by a TAFE board or a University with a TAFE division;
 - (c) a person employed by an approved training agent.
- (2) The Institute may appoint a person employed under section 2.6.64 as an authorised officer for the purposes of this Act.
- (3) The Authority may appoint a person employed under the **Public Administration Act 2004** in the administration of Chapter 4 as an authorised officer for the purposes of this Act.

5.8.2 Identification

- (1) The person who appoints an authorised officer must furnish the authorised officer with an identification card bearing a recent photograph of the officer.
- (2) An authorised officer must produce his or her identity card for inspection—
 - (a) before exercising a power under this Act; and
 - (b) at any time during the exercise of a power under this Act, if asked to do so.

Penalty: 10 penalty units.

5.8.3 Powers of authorised officers

- (1) An authorised officer appointed by the Secretary—
 - (a) with any necessary help, may enter, at any time during ordinary working hours on any day, any premises where an apprentice is employed or where the officer has reasonable cause to believe that an apprentice is employed; and
 - (b) in the case of a place referred to in paragraph (a)—
 - (i) may require the production of any documents relating to the employment of any apprentice required to be kept under this or any other Act or under the National Training Wage Interim Award 1994 made by the Australian Industrial Relations Commission as varied from time to time, and inspect and examine them and take copies or extracts from them; and
 - (ii) may make any inquiries that appear to be necessary to ascertain whether the provisions of Part 5.5 are being or have been complied with.
 - (2) An authorised officer appointed by the Institute with any necessary help, may enter, at any time during ordinary working hours on any day, any premises—
 - (a) where a person is undertaking teaching duties or where the officer has reasonable cause to believe that a person is undertaking teaching duties; and
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Part 5.8—Enforcement

- (b) may make any inquiries or inspect and examine any documents relating to the matters referred to in Part 2.6 and take copies or extracts from those documents.
 - (3) An authorised officer appointed by the Authority with any necessary help, may enter, at any time during ordinary working hours on any day, any premises—
 - (a) where, or where the officer has reasonable cause to believe that a school registered or required to be registered under Part 4.3 is being carried on or conducted; and
 - (b) where, or where the officer has reasonable cause to believe that, a person, body or school registered under section Part 4.3 is providing a course or part of a course; and
 - (c) where, or where the officer has reasonable cause to believe that, an institution approved or deemed to be approved to operate as a University under Part 4.3 is so operating; and
 - (d) where, or where the officer has reasonable cause to believe that an institution is conducting a course of study accredited under Part 4.4; and
 - (e) where, or where the officer has reasonable cause to believe that, a person or body approved under Part 4.5 is providing a course or part of a course to overseas students; and
 - (f) in the case of a place referred to in paragraph (a), may make any inquiries or inspect and examine the attendance register of a school and any documents relating to the prescribed standards for registered schools and take copies or extracts from those documents; and
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- (g) in the case of a place referred to in paragraph (b), may make any inquiries or inspect and examine any documents relating to the matters referred to in section 4.3.11 or 4.3.32 and take copies or extracts from those documents; and
 - (h) in the case of a place referred to in paragraph (c), may make any inquiries or inspect and examine any documents relating to the matters referred to in section 4.3.30 or 4.3.32 or guidelines made under those sections and take copies or extracts from those documents; and
 - (i) in the case of a place referred to in paragraph (d), may make any inquiries or inspect and examine any documents relating to the matters referred to in section 4.4.2 or guidelines made under that section about those matters and take copies or extracts from those documents; and
 - (j) in the case of a place referred to in paragraph (e), may make any inquiries or inspect and examine any documents relating to the matters referred to in section 4.5.1 or guidelines made under that section about those matters and take copies or extracts from those documents; and
 - (k) in the case of a place referred to in paragraph (b), (c), (d) or (e), may make any inquiries or inspect and examine any documents relating to the matters that are specified in a notice under section 4.5.4(3) that have not been produced to the Authority or any person or committee appointed by the Authority and take copies or extracts from those documents.
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5.8.4 Exercise of powers by authorised officers

- (1) An authorised officer may not exercise any power under section 5.8.3—
 - (a) in relation to premises if the occupier of the premises has required the officer to produce his or her identification card for inspection by the occupier and the officer fails to comply with the requirement; or
 - (b) in relation to premises used as or mainly as residential premises, except with the consent of the occupier.
- (2) A person must not obstruct delay or intimidate an authorised officer when the officer is exercising or attempting to exercise his or her functions as an authorised officer.

Penalty: 60 penalty units.

5.8.5 Authority to provide information to school attendance officers

The Authority must, on the request of a school attendance officer, provide the officer with any information relating to the registration of students for home schooling that the officer may reasonably require for carrying out the officer's functions and powers under Part 2.1.

5.8.6 Proceedings for offences

- (1) Proceedings for an offence against Part 5.5 may only be taken by a person employed for the purposes of Part 3.1 who is authorised by the Secretary either generally or in a particular case to take those proceedings.
 - (2) Proceedings for an offence against Part 2.6 may only be taken by a person employed under section 2.6.64 who is authorised by the Institute either generally or in a particular case to take those proceedings.
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Part 5.8—Enforcement

- (3) Proceedings for an offence against Chapter 4 may only be taken by a person employed for the purposes of Chapter 4 who is authorised by the Authority either generally or in a particular case to take those proceedings.
- (4) Proceedings for offences against a provision of this Act other than Part 2.6 or 5.5 or Chapter 4 may be taken by a person authorised by the Minister generally or in any particular case.
- (5) All courts must take judicial notice of the fact that a person referred to in this section has valid authority to take proceedings referred to in this section.

5.8.7 Offences by corporations etc.

- (1) If a corporation contravenes any provision of this Act, the person who is the principal executive officer (however described) of the corporation is deemed to have contravened the same provision if that person knowingly authorised or permitted the contravention.
 - (2) A person may be proceeded against and convicted under a provision pursuant to sub-section (1) whether or not the corporation has been proceeded against or convicted under that provision.
 - (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act.
 - (4) If a provision of this Act is contravened in respect of an unincorporated body of persons—
 - (a) the person who is the principal executive officer (however described) of the body at the time of the contravention is deemed to have contravened the same provision at that time; and
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- (b) if there was a governing body of the unincorporated body at the time of the contravention, each person who is a member of the governing body of that unincorporated body at that time is also deemed to have contravened the provision at that time.

5.8.8 Evidentiary

- (1) In any proceedings for an offence under Part 2.6 a certificate signed by or on behalf of the Institute and stating that on any specified date a person is or is not or was or was not registered or registered with specific limitations or restrictions under Part 2.6 is admissible in evidence in the proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.
- (2) In any proceedings for an offence under this Act a certificate signed by or on behalf of the Director of the Authority and stating that on any specified date a person or body is or is not or was or was not registered, approved or authorised or registered, approved or authorised with specific limitations or restrictions under Chapter 4 is admissible in evidence in the proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.
- (3) In any proceedings for an offence under Part 5.5 a certificate signed by or on behalf of the Secretary and stating that—
- (a) on any specified date a person is or is not or was or was not registered under section 5.5.23 as an apprentice who has entered a training contract lodged under section 5.5.8; or

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(b) on any specified date a person or body did or did not have the approval of the Commission under section 5.5.6 to employ a person under a training contract—

is admissible in evidence in the proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

- (4) A certificate signed by or on behalf of the Secretary purporting to record a determination, resolution or decision of the Commission is evidence of the making of that determination, resolution or decision by the Commission.
- (5) A certificate signed by or on behalf of the Director of the Authority purporting to record a determination, resolution or decision of the Authority is evidence of the making of that determination, resolution or decision by the Authority.

5.8.9 Evidence

The provisions of sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to and in relation to an investigation or proceedings which the Authority, the Secretary, the delegate of the Authority or Secretary, a Merit Protection Board, a Disciplinary Appeals Board, a review committee established under Part 2.5 or a formal hearing panel under Part 2.6 is authorised to conduct under this Act as if the Authority, Secretary, delegate, Merit Protection Board or Disciplinary Appeals Board, review committee or panel were a board or the chairman of a board appointed by the Governor in Council.

PART 5.9—GENERAL

5.9.1 Delegation

A person may delegate a power or function even though the person may only exercise the power or perform the function after receiving the report, recommendation, opinion or advice or after consulting the person to whom the power or function is delegated.

5.9.2 Disposal of land of non-vested schools

- (1) This section applies to land which on 1 January 1873 had been—
 - (a) granted by the Crown to or for the benefit of a denominational body for school purposes without receiving any purchase money; or
 - (b) reserved by the Crown permanently or temporarily for school purposes for the benefit of a denominational body.
- (2) Land to which this section applies may be disposed of by the denominational body to or for the benefit of which the land has been granted or reserved, subject to the provisions for the disposal of land in Act No. 391.
- (3) The proceeds of disposition of the land may be applied for the purposes of the denominational body in the manner that the body deems most beneficial.

5.9.3 Supreme Court—limitation of jurisdiction

It is the intention of sections 2.2.2, 2.3.31 and 2.4.22 to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from entertaining an application for an order in the nature of prohibition, certiorari or mandamus or for a

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Part 5.9—General

declaration or injunction or for any other relief in respect of a decision or purported decision of the Minister to discontinue or continue any Government school or if those applications are prohibited by this Act.

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Part 5.10—Delegated Legislation

PART 5.10—DELEGATED LEGISLATION

Division 1—Regulations

5.10.1 Regulations

- (1) The Governor in Council may make regulations generally prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting any power of the Governor in Council to make regulations under this Act, the Governor in Council may make regulations for or with respect to any of the matters set out in Schedule 8 including the heading to an item in the Schedule.

5.10.2 Scope of regulations

- (1) Regulations made under this Act—
 - (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances;
 - (c) may confer a discretionary authority or impose a duty on, or leave any matter to be determined or approved by, a specified person or class of persons.
- (2) A power conferred by this Act to make regulations providing for fees may be exercised by prescribing different fees for different classes of applications or investigations.

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Part 5.10—Delegated Legislation

- (3) A power to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case;
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (4) Regulations may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) to all schools or to a specified school or a specified class of school; or
 - (iii) as specified in both sub-paragraphs (i) and (ii);
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
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- (iii) as specified in both sub-paragraphs (i) and (ii);
- (c) so as to apply, adopt or incorporate any matter contained in any document issued or published by any person or body whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as issued or published at the time the regulations are made or at any time before then;
- (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons;
- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

Division 2—Ministerial Orders

5.10.3 Ministerial orders—general provisions

- (1) The Minister may make Orders which are required or permitted to be made for carrying out or giving effect to this Act.
- (2) Without limiting any power of the Minister to make Orders under this Act, the Minister may make Orders for or with respect to any of the matters set out in Schedule 9 including the heading to an item in the Schedule.

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Part 5.10—Delegated Legislation

- (3) An Order or a provision of an Order comes into operation at the beginning of the day on which the Order is made or at the beginning of any later day that is expressed in the Order as the day on which the Order or provision (as the case requires) comes into operation.
 - (4) The Minister must ensure that an Order is published as soon as practicable after it is made.
 - (5) A power conferred by this Act to make an Order may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case;
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
 - (6) An Order may be made—
 - (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) to all persons, schools, bodies or institutions or to specified persons, schools, bodies or institutions or a specified class of person, school, body or institution; or
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- (iii) as specified in both sub-paragraphs (i) and (ii);
- (b) so as to require a matter affected by the Order to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
 - (iii) as specified in both sub-paragraphs (i) and (ii);
- (c) so as to apply, adopt or incorporate any matter contained in any document issued or published by any person or body whether—
 - (i) wholly or partially or as amended by the Order; or
 - (ii) as issued or published at the time the Order is made or at any time before then;
- (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons;
- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the Order, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

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Part 5.10—Delegated Legislation

5.10.4 Ministerial Orders—special provisions

Despite section 5.10.3, an Order providing for or in respect of any matter relating to employment in the teaching service may provide that it shall take effect on and from a day earlier than the day on which it is made.

5.10.5 Ministerial Orders—disallowance

- (1) The power to make an Order for or with respect to the discipline of students in Government schools is subject to the Order being disallowed by Parliament.
 - (2) A copy of every Order made under this section must be laid before both Houses of Parliament on or before the 6th sitting day after the publication of the Order in accordance with section 5.10.3.
 - (3) Section 15 and Part 5 of the **Subordinate Legislation Act 1994** apply to an Order made under this section as if the Order were a statutory rule within the meaning of that Act, notice of the making of which had been published in the Government Gazette on the day on which the Order was published in accordance with this Part.
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