

# EDUCATION (ANCILLARY STAFF) ACT 1987 No. 240

## NEW SOUTH WALES



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**EDUCATION (ANCILLARY STAFF) ACT 1987 No. 240**

NEW SOUTH WALES



**Act No. 240, 1987**

An Act relating to the employment of ancillary staff in the Department of Education and the regulation of the conditions of their employment; and for other purposes. [Assented to 16 December 1987]

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See also Government and Related Employees Appeal Tribunal (Education Ancillary Staff) Amendment Act 1987.

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Education (Ancillary Staff) Act 1987.

**Commencement**

2. This Act shall commence on a day to be appointed by proclamation.

**Definitions**

3. (1) In this Act—  
“ancillary staff” means ancillary staff of the Department of Education;  
“classification” means a classification of ancillary staff referred to in section 5;  
“Director-General” means the Director-General of Education;  
“permanent employee” means a member of the ancillary staff employed on a permanent basis under this Act;  
“temporary employee” means a member of the ancillary staff employed on a temporary basis under this Act;  
“remuneration” includes salary and wages.  
(2) In this Act—
  - (a) a reference to a function includes a reference to a power, authority and duty; and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**PART 2—ORGANISATION OF ANCILLARY STAFF**

**Ancillary staff**

4. (1) The ancillary staff of the Department of Education consists of the permanent employees and temporary employees who are for the time being employed under this Act.

(2) The Public Service Act 1979 does not apply to or in respect of the appointment or employment of a member of the ancillary staff, and a member of the ancillary staff is not, as such a member, subject to that Act.

**Classifications and positions**

5. (1) The classifications of ancillary staff of the Department of Education are senior clerical assistant and such other classifications as the Minister may from time to time determine.

(2) The Director-General may create positions in any classification.

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(3) The Director-General may determine the number of working hours for any such position (whether on a weekly basis or on any other basis), and may vary the number so determined or any such basis from time to time (whether or not the position is occupied).

**Maximum number of ancillary staff**

6. The Minister may from time to time make determinations relating to either or both of the following:

- (a) the classes or descriptions of ancillary staff who may be employed in any classification;
- (b) the maximum number of ancillary staff who may be employed in any classification.

**Duties of ancillary staff**

7. (1) The duties of ancillary staff shall be as determined by the Director-General or as specified by the regulations.

(2) In the event of an inconsistency, the regulations prevail.

**PART 3—PERMANENT EMPLOYEES****Employment of permanent employees**

8. The Director-General may appoint persons to be employed in the service of the Crown on a permanent basis as members of the ancillary staff of the Department of Education in any classification.

**Requirements as to citizenship etc.**

9. (1) A person is not eligible to be appointed as a permanent employee unless the person is—

- (a) an Australian citizen; or
- (b) a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law,

and, if so required by or under the regulations, the person produces in accordance with the regulations such evidence with respect to any matters referred to in this section as is prescribed.

(2) A permanent employee who is not an Australian citizen and who ceases to satisfy or does not satisfy the requirements of subsection (1) (b) is not eligible to continue in employment as a permanent employee and shall be dismissed as such an employee by the Director-General.

**Medical assessment or examination**

10. A person is not eligible for appointment as a permanent employee unless the person satisfies a medical assessment or examination as to the person's health, as provided for by the regulations.

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**Appointments on probation**

11. (1) Every person appointed as a permanent employee shall, in the first instance, be appointed on probation for a period of 6 months or such longer period as the Director-General directs.

(2) The period for which a person is appointed on probation may not be in excess of 2 years, except with the concurrence of the Minister.

**Confirmation or annulment of appointments on probation**

12. (1) If a person has been appointed on probation under this Act, the Director-General may, following an appropriate inquiry and report—

- (a) after the period of probation—confirm the appointment; or
- (b) during or after the period of probation—annul the appointment.

(2) If a person's appointment is annulled, the person ceases to be a permanent employee unless appointed to another position as a permanent employee.

(3) Nothing in Part 6 (Discipline) prevents the Director-General from exercising at any time the power to annul an appointment under this section.

**Temporary appointments to permanent positions**

13. (1) A permanent employee may be temporarily appointed to a position that is vacant or the holder of which is suspended, sick or absent.

(2) Except with the approval of the Minister, a permanent employee may not, by way of temporary appointment, be employed for a period in excess of 6 months.

**Vacation of position**

14. A permanent employee shall be deemed to have vacated his or her position if—

- (a) the employee dies;
- (b) the employee resigns the position by instrument in writing addressed to the Director-General and the Director-General accepts the resignation;
- (c) the employee retires or is retired;
- (d) the employee is dismissed under this Act;
- (e) the employee's appointment is annulled under this Act; or
- (f) the employee's services are dispensed with as referred to in this Act.

**Retirement of permanent employees**

15. (1) A permanent employee—

- (a) may retire as a permanent employee on reaching the age of 60 years; or

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(b) may continue as a permanent employee after reaching that age, but—

(i) may retire as a permanent employee; or

(ii) the Director-General may cause the employee to be retired as a permanent employee,

at any time after the employee has reached that age and before the employee reaches the age of 65 years.

(2) A permanent employee who reaches the age of 65 years shall thereupon retire or be retired by the Director-General.

(3) If however—

(a) the Director-General is of the opinion that it is in the public interest that a permanent employee who is of or above the age of 65 years should continue to perform the duties of his or her position; and

(b) the employee agrees to continue to perform those duties,

the employee's retirement may be deferred for a period not exceeding 12 months and thereafter, so long as the employee agrees to continue to perform those duties, from time to time for such periods, not exceeding 12 months, as the Director-General may fix.

(4) Despite any such deferment, the Director-General may cause the permanent employee to be retired at any time.

**Incapable permanent employee may be retired**

16. If—

(a) a permanent employee is found unfit to discharge or incapable of discharging the duties of his or her position; and

(b) the unfitness or incapacity appears likely to be of a permanent character, and has not arisen from actual misconduct on his or her part, or from causes within his or her control,

the Director-General may cause the employee to be retired.

**Transfer of permanent employee**

17. (1) The Director-General, if of the opinion that it would be in the interests of the administration of the Department of Education to do so, may transfer a permanent employee from one position as a permanent employee to another such position equal in remuneration to that of the firstmentioned position.

(2) Such a transfer may be made only if the permanent employee has the necessary qualifications for the other position.

**Excess permanent staff or excessive remuneration**

**18. (1)** If the Director-General is satisfied that a number of persons are employed as permanent employees in excess of the number that appears to be necessary in connection with the efficient, effective and economical management of the Department of Education or that a person is in receipt of greater remuneration as a permanent employee than the maximum fairly appropriate to the work performed by the person, then—

- (a) subject to paragraph (b), the Director-General shall take such steps as are practicable to transfer any such person to another position, whether in the same or a different classification, and whether in the same or a different location; and
- (b) if any such person cannot be usefully employed in any other position as a permanent employee, the person's services shall be dispensed with by the Director-General.

**(2)** The remuneration of a person transferred under this section shall be that appropriate to the position to which the person is transferred.

**Permanent employee refusing transfer**

**19. (1)** A permanent employee who refuses a transfer from one position to another under this Part may be dismissed by the Director-General.

**(2)** If the Director-General is satisfied that the employee had a valid and sufficient reason for refusing the transfer, the employee may be allowed to decline the transfer without prejudice to any rights that the employee would, had he or she not declined the transfer, have had to any future promotion or appointment.

**Other employment**

**20. (1)** The Director-General may, by order in writing, give a direction to a permanent employee—

- (a) forbidding the employee from engaging in, or restricting the employee's engagement in, any trade, business, profession or other remunerative employment; or
- (b) requiring the employee to resign from a specified office not connected with the duties of his or her position as a permanent employee.

**(2)** A direction given to a permanent employee under this section may apply to specified matters or may apply generally.

**PART 4—TEMPORARY EMPLOYEES****Employment of temporary employees**

**21. (1)** The Director-General may appoint persons to be employed in the service of the Crown on a temporary basis as members of the ancillary staff of the Department of Education in any classification.



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(2) A temporary employee may be employed for a period not exceeding 4 months, but may, from time to time, be employed at the end of that period or any subsequent period for a further period not exceeding 4 months.

(3) A person may not be employed under this section for—

(a) a continuous period of 12 months; or

(b) 2 or more periods that together are in excess of 12 months in any period of 2 years,

except with the concurrence of the Minister.

(4) The services of a temporary employee may be dispensed with at any time by the Director-General.

#### PART 5—CONDITIONS OF EMPLOYMENT

##### **Conditions of employment of ancillary staff**

22. (1) The Public Service Board may, where the conditions of employment of ancillary staff are not fixed in accordance with the provisions of any other Act or law, fix the conditions of employment of ancillary staff.

(2) The regulations may make provision for or with respect to the conditions of employment of ancillary staff.

(3) The regulations made for the purposes of subsection (2)—

(a) shall have effect subject to any relevant award or industrial agreement; and

(b) shall have effect notwithstanding the provisions of subsection (1).

(4) A reference in this section to conditions of employment does not include a reference to the rates of remuneration payable to ancillary staff.

(5) The references in section 20A (1) of the Industrial Arbitration Act 1940 to the dismissal or proposed dismissal of an employee are, in relation to a person employed under this Act, references to the termination or proposed termination of the employment of the person under section 21, 29 or 30 or as referred to in section 25, including the termination or proposed termination of the person under section 29 or 30 pursuant to a direction that the person resign or be allowed to resign.

##### **Determination of remuneration of ancillary staff**

23. (1) Except in so far as provision is otherwise made by law, the remuneration of ancillary staff shall be as determined from time to time by the Public Service Board.

(2) A member of the ancillary staff may sue for and recover the amount of the remuneration that is the subject of such a determination and payable to the member.

**Public Service Board to be employer for certain purposes**

24. (1) The Public Service Board shall, for the purposes of any proceedings relating to ancillary staff held before a competent tribunal having power to deal with industrial matters, be deemed to be the employer of ancillary staff.

(2) The Public Service Board may enter into an agreement with any association or organisation representing any group or class of ancillary staff as to any industrial matters.

(3) Such an agreement shall bind all members of the ancillary staff in the class or group affected by the agreement and no such member, whether a member of the association or organisation with which the agreement was entered into or not, shall have any right of appeal against the terms of the agreement.

(4) Nothing in this section authorises—

- (a) the Public Service Board to act as an employer; or
- (b) any function to be exercised by or in relation to the Board,

otherwise than for the purposes of and in accordance with this section.

**Right of Crown to dispense with services**

25. Nothing in this Act shall be construed or held to abrogate or restrict the right or power of the Crown, as existing apart from this Act, to dispense with the services of any person employed in the service of the Crown as a member of the ancillary staff.

**No compensation**

26. Except as provided in this or any other Act, no member of the ancillary staff is entitled to any compensation by reason of any reduction in remuneration or in consequence of his or her services being dispensed with.

**PART 6—DISCIPLINE****Breaches of discipline**

27. A permanent employee who—

- (a) commits any breach of this Act or the regulations;
- (b) engages in any misconduct;
- (c) uses intoxicating beverages or drugs to excess;
- (d) wilfully disobeys, or wilfully disregards, any lawful order made or given by a person having authority to make or give the order;
- (e) is negligent, careless, inefficient or incompetent in the discharge of his or her duties; or

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(f) engages in any disgraceful or improper conduct,  
is guilty of a breach of discipline.

**Procedure for dealing with breaches of discipline**

28. (1) A breach of discipline alleged to have been committed by a permanent employee shall be dealt with by the Director-General.

(2) Subject to this Act, the regulations may—

- (a) make provision for or with respect to the manner of dealing with alleged breaches of discipline; and
- (b) prescribe all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

**Punishment for breaches of discipline**

29. (1) If an alleged breach of discipline is dealt with in accordance with the regulations and the permanent employee charged is found to have committed the breach or admits to the person or persons dealing with the breach that he or she committed the breach, the Director-General—

- (a) may decide to impose on the employee any one or more of the following punishments:
  - (i) a caution;
  - (ii) a reprimand;
  - (iii) a fine;
  - (iv) a reduction in remuneration;
  - (v) a reduction to a lower classification or position as a permanent employee;
- (b) may decide to dismiss the employee or to direct that the employee resign, or be allowed to resign, within such period as may be specified in the direction; or
- (c) in the case of a permanent employee on probation—may decide to annul the appointment.

(2) If the Director-General, in the exercise of powers under this section, decides to direct that a permanent employee resign, or be allowed to resign, within a period specified in the direction, and the employee does not resign within that period, the Director-General may decide to dismiss the employee.

(3) Subject to Part III of the Government and Related Employees Appeal Tribunal Act 1980, a decision of the Director-General under this section may be given effect to at any time.

**Punishment where permanent employee guilty of offence**

30. (1) This section applies where a permanent employee is—

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- (a) convicted in New South Wales of an offence that is punishable, whether on indictment or on summary conviction, by penal servitude or imprisonment for a term of 12 months or more; or
- (b) convicted elsewhere of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Director-General may impose on the permanent employee any one or more of the punishments that may be imposed under section 29 (1) as if the employee had, in accordance with that subsection, been dealt with for a breach of discipline and were liable to those punishments.

**Suspension of permanent employees**

**31. (1)** If a permanent employee—

- (a) is, in accordance with the regulations charged with a breach of discipline; or
- (b) is charged with having committed an offence referred to in section 30 (1),

the Director-General may suspend the employee from duty until the charge has been dealt with.

(2) The Director-General may lift the suspension of a permanent employee at any time.

**Remuneration during suspension**

**32. (1)** Any remuneration payable to a suspended permanent employee shall be withheld during the period of suspension, unless the Director-General otherwise directs.

(2) Any such remuneration shall, unless the Director-General otherwise directs, be forfeited if—

- (a) the person is found, as referred to in section 29 (1), to have committed the breach of discipline or admits, as referred to in that subsection, having committed the breach; or
- (b) the person is convicted of the offence,

unless it was due before the suspension or was paid pursuant to a direction under subsection (1).

(3) This section has effect subject to the Government and Related Employees Appeal Tribunal Act 1980.

**PART 7—MISCELLANEOUS****Eligibility for appointment to Public Service**

**33. (1)** A permanent employee with at least 5 years' satisfactory service as such may apply for a position as an officer in the Public Service as if the employee were an officer of the Public Service.

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(2) A permanent employee who applies for such a position, or is appointed as an officer in the Public Service, shall be deemed (for the purposes of the Public Service Act 1979, the Government and Related Employees Appeal Tribunal Act 1980 and the Industrial Arbitration Act 1940 and for any other purposes) to be an officer of the Public Service in relation to the application or appointment.

(3) There is no right of appeal under the Government and Related Employees Appeal Tribunal Act 1980—

- (a) for a person against the filling of a position in the Public Service by a permanent employee; or
- (b) for a permanent employee against the filling of a position in the Public Service by another person.

(4) For the purposes of this section, service is not satisfactory if it is of a kind prescribed by the regulations for the purposes of this section.

**Delegation by Director-General**

34. The Director-General may delegate to a public servant, a member of the Teaching Service or a permanent employee the exercise of any of the Director-General's functions under this Act, other than this power of delegation.

**Attachment of remuneration**

35. (1) If judgment has been entered in any court against any member of the ancillary staff for the payment of any sum of money, the person in whose favour the judgment is entered may serve on the Director-General—

- (a) a copy of the judgment certified under the hand of the registrar or other proper officer of the court in which the judgment is entered; and
- (b) a statutory declaration stating that the judgment has not been satisfied by the judgment debtor, and setting out the amount due by the judgment debtor under the judgment.

(2) As soon as practicable after the service on the Director-General of a copy of a judgment and a statutory declaration under this section, the Director-General shall—

- (a) notify the judgment debtor in writing of the service of the copy of the judgment and statutory declaration; and
- (b) require the judgment debtor to state in writing within a time to be specified by the Director-General whether the judgment has been satisfied, and, if so, to furnish evidence in support, and if the judgment has not been satisfied, to state the amount then due under the judgment.

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(3) If the member of the ancillary staff fails to prove to the satisfaction of the Director-General that the judgment has been satisfied, the Director-General may—

- (a) from time to time cause to be deducted from any money due to the member such sums as are, in the Director-General's opinion, necessary to enable the judgment to be satisfied; and
- (b) apply those sums in the manner provided by the following provisions of this section.

(4) In no case shall a deduction be made which will reduce the amount to be received by the member of the ancillary staff to less than a sum per week equivalent to the amount ascertained in accordance with subsection (5).

(5) The amount which is to be ascertained in accordance with this subsection shall be ascertained by deducting \$8—

- (a) in the case of a male employee—from the basic wage for adult males; and
- (b) in the case of a female employee—from the basic wage for adult females,

in force within the meaning of Part V of the Industrial Arbitration Act 1940 immediately before the deduction is made.

(6) If copies of more than one judgment and statutory declaration are served on the Director-General in respect of one judgment debtor, the judgment shall be dealt with under this section in the order in which copies of the judgments are served on the Director-General.

(7) Any deductions made under subsection (3) from money due to a member of the ancillary staff shall, as between the State and the member, be deemed to be a payment by the State to the member.

(8) If a person to whom a payment has been made under this section fails to notify the Director-General immediately the judgment debt is satisfied, or is deemed to be satisfied, the person is liable, on conviction before a Local Court, to a penalty not exceeding 1 penalty unit.

(9) If any deduction made under subsection (3) from money due to a judgment debtor exceeds the amount due under the judgment against the judgment debtor, the excess shall be repayable by the Director-General to the judgment debtor, and in default of payment may be recovered by the judgment debtor from the Director-General in any court of competent jurisdiction.

(10) This section does not apply in relation to any member of the ancillary staff who is an undischarged bankrupt.

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(11) Out of the sums deducted under subsection (3), there shall be retained by the Director-General, to be paid to the Treasurer for credit of the Consolidated Fund, an amount equal to 5 per cent (or such other amount as the Governor may, by order, notify in the Gazette, which order the Governor is hereby authorised to make) of those sums, and the balance of those sums shall be paid to the judgment debtor.

(12) If a payment is made to a judgment creditor under subsection (11), the Director-General shall forward to the judgment creditor a statement showing—

- (a) the sums deducted under subsection (3) in respect of the judgment from money due to the member of the ancillary staff concerned;
- (b) the amount retained by the Director-General under subsection (11) out of those sums; and
- (c) the balance of those sums paid to the judgment creditor under subsection (11).

(13) On payment being made under subsection (11) to the judgment creditor—

- (a) the judgment creditor shall credit the member of the ancillary staff concerned with the sums referred to in subsection (12) (a), as shown in the statement forwarded to the judgment creditor; and
- (b) the judgment shall for all purposes be deemed to be satisfied to the extent of those sums, as so shown.

(14) In this section, “judgment” includes a judgment against joint defendants.

**Proceedings for offences**

36. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Existing employees**

37. (1) This section applies to persons who, immediately before the commencement of this Act, were temporary employees under the Public Service Act 1979 and employed in the Department of Education in any of the classifications referred to in section 5 or in any similar classifications.

(2) Section 10 (Medical assessment or examination) and section 11 (Appointments on probation) do not apply to or in relation to the appointment of such a person as a permanent employee under this Act made within the period of 6 months after the commencement of this Act, except in so far as the Director-General otherwise directs within that period.

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(3) For the purposes of section 33 (Eligibility for appointment to Public Service), service by such a person before the commencement of this Act in employment referred to in subsection (1) shall be regarded as service as a permanent employee.

**Regulations**

38. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to—

- (a) the procedures to be adopted for selecting, appointing and promoting, and terminating the employment of, ancillary staff;
- (b) the procedures to be adopted consequent on the appointment or promotion of ancillary staff;
- (c) the transfer of ancillary staff between positions;
- (d) the hours of attendance of ancillary staff;
- (e) the leave which may be granted to ancillary staff;
- (f) travelling and subsistence allowances for ancillary staff, allowances for the increased cost of living in distant parts of the State, and other allowances for ancillary staff; and
- (g) the exercise of functions of suspended, sick or absent ancillary staff by other ancillary staff, and the exercise by ancillary staff of the functions attached to vacant positions.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.