



New South Wales

# Education (Ancillary Staff) Regulation 1998

under the

Education (Ancillary Staff) Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Education (Ancillary Staff) Act 1987*.

JOHN AQUILINA, M.P.,

Minister for Education and Training

## Explanatory note

The object of this Regulation is to repeal and remake, with no changes in substance, the *Education (Ancillary Staff) Regulation 1992*. The Regulation deals with the following matters:

- (a) disciplinary matters with respect to permanent ancillary staff at schools (clause 5),
- (b) disciplinary matters with respect to temporary ancillary staff at schools (clauses 6 and 7),
- (c) health assessments for the appointment of permanent ancillary staff at schools (clause 8),
- (d) the power of the Director-General of the Department of Education and Training to give directions to temporary ancillary staff regarding outside employment (clause 9),
- (e) other matters of a minor, consequential or ancillary nature (clauses 1, 2, 3, 4 and 10).

This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

## 1998 No 94

Education (Ancillary Staff) Regulation 1998

Explanatory note

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This Regulation is made under the *Education (Ancillary Staff) Act 1987*, including section 38 (the general regulation making power) and sections 10, 28 and 30.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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## Education (Ancillary

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Education (Ancillary Staff) Regulation 1998*.

#### 2 Commencement

This Regulation commences on 1 March 1998.

#### 3 Definitions

In this Regulation:

*Department* means the Department of Education and Training.

*Director-General* means the Director-General of the Department.

*the Act* means the *Education (Ancillary Staff) Act 1987*.

#### 4 Notes

The explanatory note and table of contents do not form part of this Regulation.

## **1998 No 94**

Clause 5 Education (Ancillary Staff) Regulation 1998

Part 2 Discipline

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## **Part 2 Discipline**

### **5 Procedure: breaches of discipline by permanent employees**

For the purposes of section 28 of the Act, alleged breaches of discipline by permanent employees are to be dealt with by the Director-General in the same way as alleged breaches of discipline by officers and temporary employees of the Education Teaching Service are dealt with under the *Teaching Services Act 1980*.

### **6 Suspension of temporary employees**

- (1) It is a condition of employment of a temporary employee that, if the employee is charged with having committed an offence referred to in section 30 (1) of the Act, 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 temporary employee at any time.

### **7 Remuneration of temporary employees during suspension**

- (1) It is a condition of employment of a temporary employee that, if the employee is suspended, any remuneration payable to the employee is to be withheld during the period of suspension unless the Director-General otherwise directs.
- (2) It is a further condition of employment that any remuneration payable to a suspended temporary employee is, unless the Director-General otherwise directs, to be forfeited if the employee is convicted of the offence, unless it was due before the employee was suspended or was paid in accordance with a direction under subclause (1).
- (3) This clause has effect subject to the *Government and Related Employees Appeal Tribunal Act 1980*.

## **Part 3      Miscellaneous**

### **8    Health assessments**

- (1) For the purposes of section 10 of the Act, a person satisfies a medical assessment of the person's health if the person is found to be fit to carry out the duties of the position after a health assessment under this clause.
- (2) Fitness to carry out duties includes the ability to carry out those duties without endangering the health and safety of the public, of other persons employed within the Department and of the person concerned.
- (3) The health assessment is to be in the form considered necessary by the Director-General.
- (4) That form may include (but is not limited to) any one or more of the following:
  - (a) a declaration (which may be a statutory declaration if required) provided by the person concerning any illness, disability or condition of which the person is aware that might make the person unfit to carry out the duties of the position,
  - (b) a medical examination by a medical practitioner approved by the Director-General,
  - (c) an examination by a medical practitioner, an optometrist or other appropriately qualified health care professional, approved by the Director-General, of a particular aspect of the person's health likely to detrimentally affect the person's capacity to carry out the duties of the position.
- (5) The Director-General is to give the health care professional providing an assessment referred to in subclause (4) (c) any requested information about the duties of the position concerned that is reasonably required for the purpose of providing the assessment.

### **9    Other employment: temporary employees**

- (1) It is a condition of employment of a temporary employee that the employee must obey any written direction given to the employee by the Director-General:

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Clause 9 Education (Ancillary Staff) Regulation 1998

Part 3 Miscellaneous

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- (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 temporary employee.
- (2) The direction may apply to specified matters or may apply generally.
- (3) The direction does not apply to a temporary employee whose employment under the Act is part-time (whether for less than the whole of a working day or for less than 5 working days each week):
- (a) during those times when the employee is not required to be engaged in that employment, and
  - (b) if the discharge of the duties of the employee under the Act is not adversely affected and if no conflict of interests arises

## 10 Repeal

- (1) The *Education (Ancillary Staff) Regulation 1992* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Education (Ancillary Staff) Regulation 1992*, had effect under that Regulation continues to have effect under this Regulation.