



New South Wales

Institute of Teachers Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Institute of Teachers Act 2004* (***the principal Act***):

- (a) to enable the accreditation requirements for teachers under that Act to be extended by regulation to teachers delivering courses or programs conducted by schools for preschool children and to teachers delivering other courses that are not designed to implement the Board of Studies curriculum if those courses and programs are provided in schools, and
- (b) to extend the accreditation requirements under that Act to teachers who have been absent from classroom teaching for more than 5 years (with certain exceptions), and
- (c) to make the general grounds for revocation of accreditation under that Act consistent for both government and non-government school teachers, and
- (d) to enable suspension of accreditation under that Act on specified grounds, and
- (e) to make changes in relation to the provisions concerning members of the Quality Teaching Council established by that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Institute of Teachers Act 2004* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Amendments relating to extension of accreditation requirements to other teachers

Schedule 1 [2] and [3] replace the definitions of *teach* and *teacher* in section 3 of the principal Act with proposed section 3A. Currently, the definition of *teach* is limited to undertaking duties in a school that include the delivery of, and the assessment of a student's participation, performance and progress in, courses of study that are designed to implement the Board of Studies curriculum. Proposed section 3A also includes in that definition the courses of study and programs for primary, secondary and preschool children that are prescribed by the regulations. **Schedule 1 [1]** contains a consequential amendment.

Schedule 1 [11] amends the definition of *new scheme teacher* in section 28 of the principal Act to include a person who was the holder of a prescribed tertiary or teaching qualification and was employed as a teacher before the relevant date (as defined in that section) but who commences to teach after that date following an absence from actual classroom teaching of 5 years. Proposed clause 4 of Schedule 3 to the principal Act (to be inserted by **Schedule 1 [26]**) provides that the proposed amendment will not apply to any absence from actual classroom teaching occurring before the relevant date.

Schedule 1 [13] amends section 28 of the principal Act to provide that a person's absence from actual classroom teaching during any period is not to be taken into account for the purposes of the amendment to section 28 referred to above if a teacher accreditation authority certifies that the person was undertaking duties in an area of relevance to the professional teaching standards. A regulation-making power is included to enable regulations to be made that prescribe duties that are to be taken to be, or are to be taken not to be, in an area of relevance to the professional teaching standards.

Schedule 1 [12] amends the definition of *relevant date* in section 28 of the principal Act to enable different dates to be prescribed by the regulations as relevant dates in relation to different classes of new scheme teachers. This will enable appropriate

relevant dates to be prescribed in relation to the accreditation requirements for the additional classes of new scheme teachers to be included within the operation of the principal Act because of regulations under proposed section 3A and the amendment to the definition of *new scheme teacher* in section 28.

Schedule 1 [15] amends the definition of *relevant date* in section 34 to enable different dates to be prescribed by the regulations as relevant dates in relation to different classes of transition scheme teachers. This will enable appropriate relevant dates to be prescribed in relation to the accreditation requirements for the additional classes of transition scheme teachers to be included within the operation of the principal Act because of regulations under proposed section 3A.

Amendments relating to revocation and suspension of accreditation

Schedule 1 [8] substitutes section 24 of the principal Act to ensure that the general grounds for revocation of accreditation are the same for teachers in government and non-government schools. The general grounds for revocation of accreditation will now be that the person is a prohibited person within the meaning of the *Commission for Children and Young People Act 1998*, the person has been found guilty of an offence prescribed by the regulations as a serious offence, the person has been found guilty more than once of an offence that is prescribed by the regulations as a non-serious offence, the person has been dismissed from employment as a teacher for conduct prescribed by the regulations as serious misconduct or the person has failed to comply with a condition of the accreditation.

Schedule 1 [9] inserts proposed sections 24A, 24B and 24C into the principal Act.

Proposed section 24A enables a teacher accreditation authority to suspend the accreditation of a person on any ground on which the person's accreditation could be revoked or if there are disciplinary proceedings pending against the person for alleged serious misconduct or proceedings for an offence are pending against the person, being an offence that if proved to have been committed by the person would be grounds for revocation of accreditation.

Proposed section 24B requires a teacher accreditation authority to take account of certain matters when determining whether to revoke a person's accreditation under section 24 or suspend a person's accreditation under proposed section 24A.

Proposed section 24C requires written notice to be given to a person of a teacher accreditation authority's intention to suspend or revoke the person's accreditation to enable submissions to be made.

Schedule 1 [6] amends section 18 of the principal Act to require the NSW Institute of Teachers to keep a record of the details of a decision by a teacher accreditation authority to suspend a person's accreditation.

Schedule 1 [7] amends section 20 of the principal Act to enable the professional teaching standards approved by the Minister to contain procedures and guidelines to be followed by teacher accreditation authorities in relation to the suspension of a person's accreditation.

Schedule 1 [10] amends section 27 of the principal Act to include a right to apply to the Administrative Decisions Tribunal for a review of a decision to suspend a person's accreditation.

Currently, section 29 of the principal Act makes it an offence for the employer of a new scheme teacher (within the meaning of section 28 of the principal Act) to employ or continue to employ the person as a teacher unless the person is accredited and, in the case of conditional accreditation, is supervised by another teacher. **Schedule 1 [14]** amends section 29 of the principal Act to make it clear that a person's employment as a new scheme teacher may be terminated if the person's accreditation is revoked or may be suspended if the person's accreditation is suspended.

Currently, section 35 of the principal Act makes it an offence for the employer of a transition scheme teacher (within the meaning of section 34 of the principal Act) to employ or continue to employ the person as a teacher unless the person is accredited and is supervised by another teacher. **Schedule 1 [16]** amends section 35 of the principal Act to make it clear that a person's employment as a transition scheme teacher may be terminated if the person's accreditation is revoked or may be suspended if the person's accreditation is suspended.

Schedule 1 [17] inserts proposed section 42A into the principal Act to provide that a person may be suspended without pay in relation to the person's employment as a teacher for any period during which that employment is required to be suspended under the principal Act for failure to comply with a condition of the accreditation. The proposed section also provides that any amount payable to a teacher in a government school may only be withheld under the proposed section if the Director-General of the Department of Education and Training so directs. That provision is similar to powers of the Director-General contained in the *Teaching Service Act 1980* in relation to the suspension of an officer of the teaching service from duty during disciplinary proceedings for alleged misconduct. **Schedule 1 [19]** makes a consequential amendment.

Amendments relating to the Quality Teaching Council

Currently, section 13 (1) of the principal Act requires elected members of the Quality Teaching Council to be teachers and section 13 (3) requires that after the third anniversary of the first election of elected members each such member must be accredited. **Schedule 1 [4]** amends section 13 of the principal Act to change the requirement in section 13 (3) from the third anniversary to the sixth anniversary.

Currently, section 13 (4) of the principal Act prevents a member of the Council from holding office for terms totalling more than 6 years. **Schedule 1 [5]** amends section 13 of the principal Act to take into account that the term of office of an elected member may be extended in accordance with the regulations.

Other minor amendments

Schedule 1 [21] inserts proposed section 51A into the principal Act to provide for the manner in which documents are to be served (other than on the NSW Institute of Teachers) under the principal Act.

Schedule 1 [22] amends section 52 of the principal Act to enable regulations to be made in relation to fees and charges for services provided under the principal Act.

Schedule 1 [18] and [20] contain consequential amendments.

Schedule 1 [23] and [24] amend section 55 of the principal Act to provide for a further review of the Act as soon as possible after 5 years from the date of assent to the proposed Act.

Schedule 1 [25] and [26] deal with savings and transitional matters consequent on the enactment of the proposed Act.

First print



New South Wales

Institute of Teachers Amendment Bill 2008

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New South Wales

Institute of Teachers Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Institute of Teachers Act 2004* to make further provision with respect to the accreditation of teachers; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Institute of Teachers Amendment Act 2008</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Institute of Teachers Act 2004 No 65	6
The <i>Institute of Teachers Act 2004</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert in alphabetical order in section 3 (1):	4
	<i>accreditation</i> means accreditation under Part 4, and includes provisional accreditation or conditional accreditation under that Part.	5 6 7
	<i>curriculum</i> means the curriculum for primary or secondary schools determined by the Board of Studies in accordance with the <i>Education Act 1990</i> .	8 9 10
	<i>serious misconduct</i> means conduct of a type prescribed by the regulations as serious misconduct for the purposes of this definition.	11 12 13
[2]	Section 3 (1)	14
	Omit the definitions of <i>teach</i> and <i>teacher</i> . Insert instead:	15
	<i>teach</i> —see section 3A.	16
	<i>teacher</i> —see section 3A.	17
[3]	Section 3A	18
	Insert after section 3:	19
	3A Meaning of “teach” and “teacher”	20
	(1) In this Act, <i>teach</i> means to undertake duties in a school that include (but are not limited to):	21 22
	(a) the direct delivery of courses of study that are designed to implement the curriculum and the responsibility for assessing student participation, performance and progress in those courses, or	23 24 25 26
	(b) the direct delivery of any other course or program for primary, secondary or preschool children (being a course or program prescribed by the regulations, or of a class prescribed by the regulations, for the purposes of this definition) and the responsibility for assessing the participation, performance and progress of children in that course or program.	27 28 29 30 31 32 33
	(2) A reference in this section to undertaking duties in a school is a reference to undertaking duties on the premises of a school in the course of providing services conducted by the school.	34 35 36

(3)	In this Act, <i>teacher</i> means a person who is, or is to be, employed to undertake any duties referred to in subsection (1) (whether or not the person undertakes any other duties).	1 2 3
[4]	Section 13 Membership of Council	4
	Omit “third” from section 13 (3). Insert instead “sixth”.	5
[5]	Section 13 (4A)	6
	Insert after section 13 (4):	7
(4A)	If a term of office of an elected member of the Council is extended in accordance with the regulations so that the term exceeds 3 years, the part of the term that exceeds 3 years is to be disregarded for the purposes of subsection (4).	8 9 10 11
[6]	Section 18 Accreditation list	12
	Insert at the end of section 18 (2) (b):	13
	, or	14
	(c) to suspend the accreditation of any person.	15
[7]	Section 20 Matters to be dealt with by professional teaching standards	16
	Insert “or suspension” after “revocation” in section 20 (c).	17
[8]	Section 24	18
	Omit the section. Insert instead:	19
	24 General grounds for revocation of accreditation	20
(1)	Without limiting any other provision of this Part, a teacher accreditation authority may revoke the accreditation of a person in accordance with this section.	21 22 23
(2)	The accreditation of a person who is or was employed as a teacher may be revoked on any of the following grounds:	24 25
(a)	the authority is satisfied that the person is a prohibited person within the meaning of Division 1 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> ,	26 27 28
(b)	the person is found guilty of a serious offence, being an offence prescribed by the regulations, or that is of a class of offences prescribed by the regulations, for the purposes of this paragraph,	29 30 31 32
(c)	the person is found guilty more than once of a non-serious offence, being an offence prescribed by the regulations, or	33 34

	that is of a class of offences prescribed by the regulations, for the purposes of this paragraph,	1 2
(d)	the authority is satisfied that the person, because of serious misconduct, has been dismissed from employment as a teacher (whether permanent, temporary or casual) or has been included in the list of persons maintained by the Director-General under section 7 (1) (e) of the <i>Teaching Service Act 1980</i> as a person who is not to be employed in the Teaching Service,	3 4 5 6 7 8 9
(e)	the authority is satisfied that the person has failed to comply with any condition to which the person's accreditation is subject.	10 11 12
	Note. Sections 33, 38, 39 (5) and 40 (4) provide other grounds for the revocation of a person's accreditation.	13 14
[9]	Sections 24A–24C	15
	Insert after section 24:	16
24A	Suspension of accreditation	17
(1)	A teacher accreditation authority may suspend the accreditation of a person:	18 19
(a)	on any ground on which the authority may revoke the person's accreditation, or	20 21
(b)	if disciplinary proceedings against the person are pending in relation to alleged serious misconduct, or	22 23
(c)	if proceedings against the person for an offence are pending and, were the person to be found guilty of the offence, the authority would have grounds to revoke the accreditation.	24 25 26 27
	Note. Section 24 (2) (e) provides that one of the grounds for revocation of accreditation is a failure to comply with a condition of the accreditation. Section 25 (3) provides that payment of the annual fee is a condition of accreditation.	28 29 30 31
(2)	A teacher accreditation authority must review the authority's suspension of a person's accreditation at least every 3 months and must remove the suspension in the following circumstances:	32 33 34
(a)	if the suspension was imposed because of pending disciplinary proceedings and those proceedings have been finalised with no finding that the person has engaged in serious misconduct,	35 36 37 38

(b)	if the suspension was imposed because of pending proceedings for an offence and the person has been found not guilty of the offence or the proceedings have been withdrawn or dismissed,	1 2 3 4
(c)	if the suspension was imposed on a ground referred to in subsection (1) (b) or (c) and a finding that the person has engaged in serious misconduct has been made against the person in the relevant disciplinary proceedings, or a finding of guilt has been made against the person in the relevant proceedings for an offence, but the authority has not taken action to revoke the person's accreditation within a reasonable period having regard to the circumstances of the case.	5 6 7 8 9 10 11 12 13
(3)	Subsection (2) does not apply to the suspension of a person's accreditation for failure to pay the annual fee required under section 25.	14 15 16
(4)	A person's accreditation is not in force during any period for which it is suspended.	17 18
24B	Criteria for determining revocation or suspension of accreditation on general grounds	19 20
	A teacher accreditation authority is to take account of the following matters (where appropriate) when determining whether to revoke a person's accreditation under section 24 or suspend a person's accreditation under section 24A:	21 22 23 24
(a)	the nature and seriousness of the conduct concerned,	25
(b)	the frequency of the conduct concerned,	26
(c)	the recency of the conduct concerned,	27
(d)	any other matter that is required to be taken into account by the procedures and guidelines in the professional teaching standards (as referred to in section 20 (c)).	28 29 30
24C	Notice to be given of intention to suspend or revoke accreditation	31
(1)	A teacher accreditation authority may suspend or revoke a person's accreditation only after having served on the person written notice of its intention to suspend or revoke the accreditation setting out its reasons.	32 33 34 35
(2)	The notice must include a statement that the person concerned may make submissions to the teacher accreditation authority in relation to the proposed suspension or revocation within 14 days after the date of the notice.	36 37 38 39

[10] Section 27 Review by Administrative Decisions Tribunal of accreditation decisions	1
	2
Insert “or suspension” after “revocation” in section 27 (1) (b).	3
[11] Section 28 Definitions	4
Insert at the end of paragraph (c) of the definition of <i>new scheme teacher</i> before the note to the definition:	5
	6
, or	7
(d) a person:	8
(i) who was, immediately before the relevant date, the holder of a tertiary or teaching qualification prescribed by the regulations, and	9
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	11
(ii) who, at any time after the relevant date, commences to teach following an absence from actual classroom teaching of 5 or more years, regardless of whether the person remained employed as a teacher during that absence.	12
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[12] Section 28, definition of “relevant date”	17
Insert “or, if the regulations prescribe a different date in respect of a class of new scheme teachers (either in relation to all of the provisions of this Division or in respect of specified provisions of this Division), the prescribed date” after “commences”.	18
	19
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	21
[13] Section 28 (2) and (3)	22
Insert at the end of section 28:	23
(2) If a teacher accreditation authority certifies in writing that it is of the opinion that a specified person has undertaken duties in an area of relevance to the professional teaching standards during a specified period, that period is taken to be a period of actual classroom teaching for the purposes of paragraph (d) (ii) of the definition of <i>new scheme teacher</i> .	24
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	29
(3) The regulations may prescribe duties that are to be taken to be, or are to be taken not to be, in an area of relevance to the professional teaching standards for the purposes of the issuing of a certificate under subsection (2).	30
	31
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	33
[14] Section 29 Employment of new scheme teachers	34
Insert after section 29 (2):	35
(3) The employment of a person as a new scheme teacher may be terminated if the person’s accreditation is revoked.	36
	37

(4)	A person who is a new scheme teacher may be suspended from employment as a teacher during any period in which the person’s accreditation is suspended.	1 2 3
(5)	For the purposes of subsection (2), a person who is suspended from employment as a teacher under this section for any period is taken not to be employed as a teacher during that period.	4 5 6
(6)	Nothing in this section requires an employer who terminates or suspends the employment of a person as a new scheme teacher in accordance with this Act to provide alternative employment to the person.	7 8 9 10
[15]	Section 34 Definitions	11
	Insert “or, if the regulations prescribe a different date in respect of a class of transition scheme teachers (either in relation to all of the provisions of this Division or in respect of specified provisions of this Division), the prescribed date” after “commences” in the definition of <i>relevant date</i> .	12 13 14 15
[16]	Section 35 Employment of transition scheme teachers	16
	Insert after section 35 (2):	17
(3)	The employment of a person as a transition scheme teacher may be terminated if the person’s accreditation is revoked.	18 19
(4)	A person who is a transition scheme teacher may be suspended from employment as a teacher during any period in which the person’s accreditation is suspended.	20 21 22
(5)	For the purposes of subsection (2), a person who is suspended from employment as a teacher under this section for any period is taken not to be employed as a teacher during that period.	23 24 25
(6)	Nothing in this section requires an employer who terminates or suspends the employment of a person as a transition scheme teacher in accordance with this Act to provide alternative employment to the person.	26 27 28 29
[17]	Section 42A	30
	Insert after section 42:	31
	42A Payment of suspended teachers	32
(1)	A person may be suspended without pay in relation to his or her employment as a teacher for any period or part of a period during which that employment is required to be suspended under	33 34 35

	section 29 or 35 as a result of the suspension of the person’s accreditation for a failure to comply with any condition to which the person’s accreditation is subject.	1 2 3
	(2) Any amount payable to a person in relation to his or her employment as a teacher in a government school:	4 5
	(a) may only be withheld under this section if the Director-General so directs, and	6 7
	(b) if so withheld, is forfeited to the State unless the Director-General otherwise directs.	8 9
[18]	Section 43 Institute of Teachers Fund	10
	Insert “and charges” after “fees” in section 43 (1) (a).	11
[19]	Section 47 Relationship of Act with other instruments	12
	Omit section 47 (2). Insert instead:	13
	(2) No contract, agreement or industrial instrument operates to annul, vary or exclude any of the provisions of this Act or the regulations.	14 15 16
[20]	Section 50 Recovery of money	17
	Omit “fee due to the Institute”.	18
	Insert instead “fee or charge due and payable under this Act”.	19
[21]	Section 51A	20
	Insert after section 51:	21
	51A Service of documents generally	22
	(1) A document that is authorised or required by this Act or the regulations to be served on any person (other than the Institute) may be served by:	23 24 25
	(a) in the case of a natural person:	26
	(i) delivering it to the person personally, or	27
	(ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or	28 29 30 31 32
	(iii) sending it by facsimile transmission to the facsimile number of the person, or	33 34

	(b) in the case of a body corporate:	1
	(i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or	2 3 4 5 6 7
	(ii) sending it by facsimile transmission to the facsimile number of the body corporate.	8 9
	(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	10 11 12
[22]	Section 52 Regulations	13
	Insert after section 52 (1):	14
	(1A) In particular, the regulations may make provision for or with respect to the following:	15 16
	(a) fees and charges for services provided under this Act, including prescribing the basis on which any such fee or charge is to be determined and the waiver of any such fee or charge,	17 18 19 20
	(b) without limiting paragraph (a), fees and charges in relation to the assessment by the Institute, on application, of a course, program, person or body for the purpose of providing advice to the Minister under section 7 (3).	21 22 23 24
[23]	Section 55 Review of Act	25
	Omit “The” from section 55 (2). Insert instead “A”.	26
[24]	Section 55 (4) and (5)	27
	Insert after section 55 (3):	28
	(4) A further review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the <i>Institute of Teachers Amendment Act 2008</i> .	29 30 31
	(5) A report on the outcome of the further review is to be tabled within 12 months after the end of that period of 5 years.	32 33
[25]	Schedule 3 Savings and transitional provisions	34
	Insert at the end of clause 1 (1):	35
	<i>Institute of Teachers Amendment Act 2008</i>	36

[26] Schedule 3, Part 3	1
Insert after Part 2:	2
Part 3 Provisions consequent on enactment of Institute of Teachers Amendment Act 2008	3 4
3 Definition	5
In this Part, <i>amending Act</i> means the <i>Institute of Teachers Amendment Act 2008</i> .	6 7
4 Application of amendments to existing teachers	8
Paragraph (d) of the definition of <i>new scheme teacher</i> (as inserted by the amending Act) in section 28 does not apply to a person's absence from actual classroom teaching during any period occurring before the relevant date (within the meaning of section 28 as amended by that Act) if the person was still employed as a teacher during that period.	9 10 11 12 13 14
5 Suspension and revocation of accreditation	15
A provision of section 24 or 24A (as inserted by the amending Act) extends to offences committed before the commencement of the provision and conduct occurring before that commencement.	16 17 18
6 Contracts, agreements and industrial instruments	19
Section 47 (2) (as substituted by the amending Act) applies to a contract, agreement or industrial instrument whether made or entered into before, on or after the substitution of that subsection.	20 21 22