



New South Wales

# Teaching Services Amendment Bill 2004

## 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 *Teaching Services Act 1980* (*the Principal Act*) as follows:

- (a) to provide for merit selection in relation to the appointment of persons to senior positions in the Teaching Service,
- (b) to provide a statutory framework for managing the performance of government school principals, including annual performance reviews, implementation of performance improvement programs and streamlined procedures for dealing with unsatisfactory performance,
- (c) to make a number of amendments that are generally in the nature of statute law revision (such as updating references to reflect administrative changes, removing provisions that relate to the abolished Technical and Further Education Teaching Service and removing provisions that have been superseded by the *Public Sector Employment and Management Act 2002*, in particular provisions relating to the transfer of staff which is now done under Part 3.2 of that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 *Teaching Services Act 1980* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the Acts and the regulation set out in Schedule 2.

## **Schedule 1      Amendment of Teaching Services Act 1980**

### **Merit appointment to senior positions**

**Schedule 1 [16]** inserts proposed section 47A into the Principal Act to provide that appointments to vacant senior positions in the Teaching Service are to be made on the basis of the merit of the applicants for the position concerned. A senior position is any position to which a person employed in the Teaching Service could be promoted (see proposed section 4 as inserted by **Schedule 1 [4]**), although proposed section 47A makes it clear that persons who are not already employed in the Teaching Service can be appointed, on merit, to senior positions. The proposed section also provides that legal proceedings cannot be brought in respect of appointments to vacant senior positions. The exclusion of legal proceedings in this case is consistent with section 22 of the *Public Sector Employment and Management Act 2002* (which applies to appointments to all vacant positions in the Public Service).

### **Performance management for school principals**

**Schedule 1 [27]** replaces Division 3 of Part 4 (which currently contains obsolete provisions relating to members of the abolished Technical and Further Education Teaching Service) with provisions for dealing with unsatisfactory performance on the part of school principals. Under the new performance management regime, school principals will be subject to performance reviews at least annually. If a school principal is not performing in a satisfactory manner, the Director-General of the Department of Education and Training may implement a performance improvement program for the principal. If the principal's performance is still unsatisfactory following that program, the Director-General may decide, after giving the principal 21 days in which to make written submissions on the matter and taking into consideration those submissions, to dismiss the principal from the Teaching Service or demote the principal to a lower position.

### **Miscellaneous and consequential amendments**

The proposed Act makes a number of amendments to the Principal Act that are consequential on the reforms described in the above paragraphs. A number of miscellaneous amendments are also made to remove obsolete references and to generally bring the Principal Act up to date. Some of these miscellaneous amendments relate to administrative changes that have not yet been reflected in the Principal Act.

**Schedule 1 [3], [6], [8], [10], [19], [26], [28], [29], [35], [36], [38], [40], [41], [43]–[45], [47]–[51], [54]–[56] and [64]** remove all provisions relating to the Technical and Further Education Teaching Service (including associated references to the Department of Technical and Further Education and the Director-General of Technical and Further Education) and make a number of amendments consequent on there being only one Teaching Service and one person exercising functions as Director-General under the Principal Act. Since the establishment of the TAFE Commission in 1991, the Principal Act has ceased to apply to the Technical and Further Education Teaching Service, but the provisions relating to that Service have remained in the Principal Act. Also, as there is only one Teaching Service established under the Principal Act, the existing Education Teaching Service is to be renamed as the “Teaching Service” (see **Schedule 1 [9]**) and the long title and name of the Principal Act are amended accordingly (see **Schedule 1 [1] and [2]**).

**Schedule 1 [4]** updates the definitions used in the Principal Act as a consequence of the other amendments made by the proposed Act.

**Schedule 1 [5]** omits Parts 2 and 3 of the Principal Act and restates the provisions contained in those Parts in a new consolidated Part. Part 2 currently deals with the employment functions of the Secretary of the Ministry of Education and Youth Affairs (that position is required by administrative changes orders to be construed as a reference to the Director-General of the Department of Education and Training) and Part 3 currently specifies the other functions conferred or imposed on the Director-General in relation to the Teaching Service. The new Part 2 retains these provisions with some exceptions. For example, proposed section 7 (cf current section 38 of the Principal Act) no longer makes provision for promotions lists, and it will specifically authorise the Director-General to prepare and maintain lists of persons who are not to be employed in the Teaching Service. The definition of *industrial matters* in proposed section 10 (cf current section 4 of the Principal Act) no longer needs to translate references in the *Industrial Relations Act 1996* to “industrial unions” and “trade union” because those references do not occur in that Act. Also, section 28 of the Principal Act is not restated because the provision no longer has practical utility (mainly because the positions of Secretary and the Director-General currently comprise a single position).

**Schedule 1 [7]** omits section 42 of the Principal Act (which is to be restated as proposed section 44 (2)—see **Schedule 1 [9]**) and section 43 (which purports to exclude the *Public Sector Employment and Management Act 2002* in relation to members of the Teaching Service). Certain provisions of that Act, such as the provisions relating to staff mobility and public sector executives, do, however, currently apply to the members of the Teaching Service.

**Schedule 1 [11]** omits section 46 (which provides for the Governor to determine the staff establishment for positions above the level of staff inspector) because these positions no longer exist as such in the Teaching Service.

**Schedule 1 [12]** restates the provision that enables the Director-General to appoint persons to positions in the Teaching Service so as to make that provision subject to proposed section 47A (which provides for merit appointment to senior positions) and to remove references to separate staff establishments in the Teaching Service. Also, the notion of permanency is removed to make the Principal Act more consistent with the legislative scheme relating to the Public Service. **Schedule 1 [17] and [25]** are consequential amendments.

**Schedule 1 [13]** excludes appointments to senior positions from section 47 (1A) of the Principal Act which requires the Director-General to give preference to an Aboriginal person when making an appointment to a position in the Teaching Service.

**Schedule 1 [14]** updates references in relation to the Director-General of the Department of Education and Training and **Schedule 1 [24] and [39]** deal with obsolete references to the Secretary.

**Schedule 1 [18]** makes it clear that proposed section 54 (to be inserted by **Schedule 1 [27]** and which enables the Director-General to dismiss a school principal from the Teaching Service for unsatisfactory performance) does not, in the case of a school principal who has been appointed on probation, prevent the principal's probationary appointment from being annulled at any time.

**Schedule 1 [20]–[22]** clarify and restate the provisions relating to the employment of persons as temporary employees in the Teaching Service.

**Schedule 1 [23]** corrects a cross-reference.

**Schedule 1 [30]** omits the provisions of the Principal Act relating to the filling of vacancies in positions in the Teaching Service for which there are promotions lists. At present under the Principal Act, the Director-General may prepare lists of officers in the Teaching Service who are eligible to be promoted. If a vacancy in a position for which there is a promotions list is to be filled, only those persons whose names are on the list are eligible to be appointed unless, as section 47 (5) of the Principal Act currently provides, the Director-General certifies that there is no other person employed in the Teaching Service who is available to fill the position. These provisions restrict the class of persons who can be considered for appointment to senior positions and are inconsistent with the principle of merit appointment as provided by proposed section 47A. **Schedule 1 [15]** consequentially repeals section 47 (5) (as well as section 47 (2)–(4) as a consequence of other amendments made by the proposed Act).

**Schedule 1 [31]–[34], [59] and [61]** are consequential on the removal of the provisions relating to promotions lists and the introduction of merit appointments for senior positions. An officer will still be able to appeal against the decision of the Director-General to appoint another officer to a vacant senior position for which the applicant has unsuccessfully applied, but appeals in relation to seniority and placement on a promotions list are no longer relevant.

**Schedule 1 [37]** omits sections 71 (which relates to the transfer of staff within the Teaching Service) and 71A (which allows the Director-General to make arrangements for the use of staff of other agencies). These provisions have been superseded by Part 3.2 of the *Public Sector Employment and Management Act 2002* which provides for staff transfers between and within public sector services (which include the Teaching Service) as well as for the secondment and temporary assignment of staff. **Schedule 1 [60]** is a consequential amendment.

**Schedule 1 [42]** provides that the term “appropriate Department Head” has the meaning given to it under the *Public Sector Employment and Management Act 2002*.

**Schedule 1 [46]** is consequential on the amendment made by **Schedule 1 [27]**. It makes it clear that a school principal’s unsatisfactory performance is to be dealt with under the new performance management regime and not as a breach of discipline under Division 6 of Part 4 of the Principal Act.

**Schedule 1 [52], [58] and [63]** are consequential on the renumbering of the provisions of the existing Parts 2 and 3 and the consolidation of those Parts into the new Part 2.

**Schedule 1 [53]** updates a reference relating to the Public Employment Office.

**Schedule 1 [57]** omits section 98 as a consequence of sections 102 and 103 of the *Public Sector Employment and Management Act 2002*. Those sections, which apply to members of the Teaching Service, make provision with respect to employees who contest State elections and to the re-appointment of employees who resign to contest Commonwealth elections.

**Schedule 1 [62]** removes an obsolete reference to a public school (the term *school* in the Principal Act is to be defined as a government school established under the *Education Act 1990*).

**Schedule 1 [65]** omits section 102 which is unnecessary because of section 42 (2) of the *Interpretation Act 1987*.

**Schedule 1 [66]** enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [67]** inserts savings and transitional provisions as a consequence of the enactment of the proposed Act.

## **Schedule 2      Amendment of other legislation**

**Schedule 2** amends a number of other Acts, as well as the *Education Teaching Service Regulation 2001*, as a consequence of the miscellaneous changes to the Principal Act made by Schedule 1 (for example, updating and changing references that relate to the Teaching Service).

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Explanatory note

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New South Wales

# Teaching Services Amendment Bill 2004

No. , 2004

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## **A Bill for**

An Act to amend the *Teaching Services Act 1980* to provide for merit appointment in relation to senior positions in the Teaching Service and for performance management in relation to school principals; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Teaching Services Amendment Act 2004</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Teaching Services Act 1980 No 23</b>	6
The <i>Teaching Services Act 1980</i> is amended as set out in Schedule 1.	7
<b>4 Consequential amendment of other legislation</b>	8
The Acts and the regulation specified in Schedule 2 are amended as set out in that Schedule.	9 10

<b>Schedule 1</b>	<b>Amendment of Teaching Services Act 1980</b>	1
		2
	(Section 3)	3
<b>[1] Long title</b>		4
	Omit the long title. Insert instead:	5
	An Act to establish the Teaching Service of New South Wales and to make provision relating to the employment of persons in the Teaching Service.	6 7 8
<b>[2] Section 1 Name of Act</b>		9
	Omit “ <i>Services</i> ”. Insert instead “ <i>Service</i> ”.	10
<b>[3] Section 2A Act ceases to apply to TAFE</b>		11
	Omit the section.	12
<b>[4] Section 4</b>		13
	Omit the section. Insert instead:	14
<b>4 Definitions</b>		15
(1) In this Act:		16
	<i>appointed day</i> means 20 October 1980.	17
	<i>Department</i> means the Department of Education and Training.	18
	<i>Director-General</i> means the Director-General of the Department.	19 20
	<i>Education Gazette</i> means the document entitled <i>Education Gazette</i> published under the authority of the Minister.	21 22
	<i>exercise</i> a function includes perform a duty.	23
	<i>function</i> includes a power, authority or duty.	24
	<i>officer</i> means a person employed in the Teaching Service other than as a temporary employee.	25 26
	<i>position</i> includes office.	27
	<i>school</i> means a government school established under the <i>Education Act 1990</i> .	28 29
	<i>school principal</i> means a person appointed to the position of principal of a school.	30 31
	<i>senior executive officer</i> has the same meaning as in the <i>Public Sector Employment and Management Act 2002</i> .	32 33

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*senior position* means any position in the Teaching Service to which a person employed in the Teaching Service could be promoted.

*Teaching Service* means the Teaching Service of New South Wales referred to in section 44.

*temporary employee* means a person employed under section 50 or deemed to be a temporary employee under section 48 (3).

- (2) Notes included in this Act do not form part of this Act.

[5] **Part 2**

Omit Parts 2 and 3. Insert instead:

**Part 2 Director-General**

**Division 1 General functions and related provisions**

**6 General responsibility**

- (1) The Director-General is responsible to the Minister for the general conduct and the efficient, effective and economical management of the functions and activities of the Teaching Service.
- (2) For the purpose of exercising that responsibility, the Director-General may take such action as the Director-General considers appropriate in the circumstances.
- (3) Nothing in this section limits or affects the operation of section 14 of the *Public Sector Employment and Management Act 2002*.

**7 General functions**

- (1) The Director-General has the following functions:
- (a) to classify the schools in which members of the Teaching Service are employed,
- (b) to determine the staff positions in the Teaching Service (including the teaching positions in schools),
- (c) to determine the method of classifying and grading officers employed in the Teaching Service,
- (d) to determine the qualifications required for appointment to the Teaching Service,
- (e) to prepare and maintain a list of persons who the Director-General determines are not to be employed in the Teaching Service,

(f)	to maintain discipline in the Teaching Service.	1
(2)	Subsection (1) does not limit the functions that are conferred or imposed on the Director-General by or under this Act.	2 3
<b>8</b>	<b>Delegation of functions</b>	4
(1)	The Director-General may delegate to an authorised person any of the functions of the Director-General under this Act other than:	5 6
(a)	this power of delegation, or	7
(b)	the functions conferred or imposed under:	8
(i)	Division 6 of Part 4 (section 89 (1) excepted), or	9
(ii)	section 100.	10
(2)	A delegate may sub-delegate to an authorised person any function delegated by the Director-General if the delegate is authorised to do so by the Director-General.	11 12 13
(3)	In this section:	14
	<i>authorised person</i> means:	15
(a)	an officer or temporary employee, or	16
(b)	a member of staff of a Department within the meaning of the <i>Public Sector Employment and Management Act 2002</i> , or	17 18 19
(c)	a member of staff of the TAFE Commission.	20
<b>9</b>	<b>Acting appointment to Director-General position</b>	21
	Despite section 13 of the <i>Public Sector Employment and Management Act 2002</i> , an officer of the Teaching Service or a member of staff of the TAFE Commission may be appointed under that section to act in the position of Director-General while that position is vacant or if the holder of that position is suspended, sick or absent.	22 23 24 25 26 27
<b>Division 2</b>	<b>Employment functions</b>	28
<b>10</b>	<b>Definition</b>	29
	In this Division:	30
	<i>industrial matters</i> has the same meaning as in the <i>Industrial Relations Act 1996</i> , subject to the following modifications:	31 32
(a)	the references to “employers” and “their employer” are to be construed as references to the Crown,	33 34

	(b) the references to “employees” are to be construed as references to members of the Teaching Service,	1 2
	(c) the references to “any industry” and “an industry” are to be construed as references to the Teaching Service.	3 4
<b>11</b>	<b>Director-General to act for Crown</b>	5
	The Director-General, in exercising a function under this Division, acts for the Crown.	6 7
<b>12</b>	<b>Role of Director-General in industrial proceedings</b>	8
	The Director-General is, for the purpose of:	9
	(a) making any determination under section 13, or	10
	(b) any proceedings relating to members of the Teaching Service held before a competent tribunal having power to deal with industrial matters,	11 12 13
	taken to be the employer of those members.	14
<b>13</b>	<b>Determination of conditions of employment</b>	15
	(1) Except in so far as provision is otherwise made by law, the conditions of employment, including salaries, wages or other remuneration, of members of the Teaching Service are to be determined from time to time by the Director-General.	16 17 18 19
	(2) This section does not apply in relation to the remuneration of, or allowances payable to, senior executive officers in the Teaching Service.	20 21 22
<b>14</b>	<b>Agreements relating to industrial matters</b>	23
	(1) The Director-General may enter into an agreement with any association or organisation representing any group or class of officers or temporary employees as to any industrial matter.	24 25 26
	(2) Any such agreement binds all officers and temporary employees in the class or group affected by the agreement and no such officer or temporary employee, whether a member of the association or organisation with which the agreement was entered into or not, has any right of appeal against the terms of the agreement.	27 28 29 30 31 32

<b>15</b>	<b>Determinations and agreements relating to major industrial matters</b>	1 2
	The Director-General may not make a determination under section 13 or enter into an agreement under section 14, being a determination or an agreement relating to an industrial matter that the Minister has determined and notified the Director-General to be a major industrial matter, unless the Director-General has notified the Minister of the determination proposed to be made or the agreement proposed to be entered into.	3 4 5 6 7 8 9
<b>[6]</b>	<b>Part 4, heading</b>	10
	Omit “Services”. Insert instead “Service”.	11
<b>[7]</b>	<b>Part 4, Division 1 General</b>	12
	Omit the Division.	13
<b>[8]</b>	<b>Part 4, Division 2, heading</b>	14
	Omit “Education”.	15
<b>[9]</b>	<b>Section 44</b>	16
	Omit the section. Insert instead:	17
	<b>44 The Teaching Service</b>	18
	(1) The Teaching Service of New South Wales consists of the persons who are for the time being employed under this Division.	19 20
	(2) Those persons are taken to be employed by the Government of New South Wales in the service of the Crown, except as provided by section 12.	21 22 23
	(3) This Division does not affect any other method (statutory or otherwise) by which a person holds a position, or is otherwise employed, in the Teaching Service.	24 25 26
	<b>Note.</b> For example, Parts 3.2 (Staff mobility) and 3.3 (Miscellaneous provisions relating to public sector staff) of the <i>Public Sector Employment and Management Act 2002</i> apply to the Teaching Service (which is a “public sector service” within the meaning of that Act). In particular, sections 86–88 of that Act provide for external and internal transfers (including secondments and temporary assignments) of public sector staff.	27 28 29 30 31 32 33
<b>[10]</b>	<b>Sections 45 (Transfer of persons from former Teaching Service), 48 (1), (3)–(5) and (7), 49 (1), 51 (1), 95 (1) (a) and 100 (1)</b>	34 35
	Omit “Education Teaching Service” wherever occurring.	36
	Insert instead “Teaching Service”.	37

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<b>[11] Section 46 Staff establishment for and appointment to certain positions</b>	1
Omit the section.	2
<b>[12] Section 47 Appointments to positions generally</b>	3
Omit section 47 (1). Insert instead:	4
(1) The Director-General may, subject to section 47A, appoint to positions in the Teaching Service such persons who, in the opinion of the Director-General, have the appropriate qualifications to be employed in the Teaching Service.	5 6 7 8
<b>[13] Section 47 (1A) (a)</b>	9
Omit the paragraph. Insert instead:	10
(a) an appointment to a position in the Teaching Service (other than a senior position) is to be made under subsection (1), and	11 12 13
<b>[14] Sections 47 (1A), 48, 49 (1), 50 (5) (a) and (6), 51 and 100</b>	14
Omit “of Education” wherever occurring.	15
<b>[15] Section 47 (2)–(5)</b>	16
Omit the subsections.	17
<b>[16] Section 47A</b>	18
Insert after section 47:	19
<b>47A Appointment on merit to senior positions</b>	20
(1) <b>Application of section</b>	21
This section applies to and in respect of appointments under section 47 to senior positions in the Teaching Service.	22 23
(2) <b>Appointments to senior positions</b>	24
Appointments to vacant senior positions are to be made by the Director-General. It does not matter whether the person appointed to such a position is or is not already an officer.	25 26 27
(3) <b>Advertising vacancies</b>	28
If it is proposed to make an appointment to a vacant senior position, the Director-General must advertise the vacancy in such manner as the Director-General thinks appropriate. Without limiting the manner in which the vacancy is advertised, the advertisement is to be in a form that is accessible to persons who are not employed in the Teaching Service.	29 30 31 32 33 34



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- (4) **Merit appointment** 1  
 Appointments to vacant senior positions are to be made by the 2  
 Director-General on the basis of the merit of the applicants for 3  
 appointment. 4
- (5) **Determining merit of applicants** 5  
 For the purpose of determining the merit of persons eligible for 6  
 appointment to a vacant senior position, the Director-General is 7  
 to have regard to: 8
- (a) the nature and duties of the position, and 9  
 (b) the abilities, qualifications, experience, standards of work 10  
 performance and personal qualities of those persons that 11  
 are relevant to the performance of those duties. 12
- (6) **Selection process** 13  
 In deciding to appoint a person to a vacant senior position: 14
- (a) the Director-General may only select a person who has 15  
 applied for appointment to the vacant position, and 16  
 (b) the Director-General must, from among the applicants 17  
 eligible for appointment to the vacant position, select the 18  
 applicant who has, in the opinion of the Director-General, 19  
 the greatest merit. 20
- (7) **Appointment from eligibility list** 21  
 Despite subsection (3), the Director-General need not advertise a 22  
 vacant senior position if the Director-General proposes to make 23  
 an appointment to the position from an eligibility list created by 24  
 the Director-General in relation to the position (being of a list of 25  
 those persons who applied for appointment to the position and 26  
 who are eligible for appointment but not selected for 27  
 appointment, as arranged in order of merit as determined in 28  
 accordance with subsection (5)). 29
- (8) Any such eligibility list is applicable not only to the position in 30  
 relation to which it was created but also to any other position that 31  
 the Director-General determines it should be applicable to on the 32  
 basis that the position is substantially the same as the position in 33  
 relation to which the list was created. 34
- (9) **Industrial relations jurisdiction excluded** 35  
 The appointment or failure to appoint a person to a vacant senior 36  
 position, or any matter, question or dispute relating to such an 37  
 appointment or failure, is not an industrial matter for the purposes 38  
 of the *Industrial Relations Act 1996*. This subsection applies 39
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	whether or not any person has been appointed to the vacant senior position.	1 2
<b>(10)</b>	<b>Other legal proceedings excluded</b>	3
	No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment or failure to appoint a person to a senior position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.	4 5 6 7 8 9
<b>(11)</b>	Subsection (10) does not affect the operation of section 60.	10
<b>[17]</b>	<b>Section 48 Appointments on probation</b>	11
	Omit “permanent” from section 48 (1).	12
<b>[18]</b>	<b>Section 48 (6)</b>	13
	Insert “54 or” after “section”.	14
<b>[19]</b>	<b>Sections 49 (1), 72 (a), 73 (1), 75, 76 (1) (a), 78, 79 (1) and (3), 80 (1), 81 (1) and (2), 82, 83, 84 (1), 85 (3), (5) and (6), 86, 87 (1) and (2), 88, 89 (1) and (2), 90 (1), 91, 92, 93 (1) and 97</b>	15 16 17
	Omit “a Teaching” wherever occurring. Insert instead “the Teaching”.	18
<b>[20]</b>	<b>Section 50 Temporary employees</b>	19
	Omit section 50 (1)–(4). Insert instead:	20
	(1) The Director-General may employ a person who, in the opinion of the Director-General, has the appropriate qualifications to carry out work in the Teaching Service for a particular period.	21 22 23
	(2) A person employed under this section may be employed on a full-time, casual or part-time basis.	24 25
	(3) A temporary employee is a member of, but does not hold a position in, the Teaching Service.	26 27
<b>[21]</b>	<b>Section 50 (5)</b>	28
	Omit “appointed under subsection (1), (2) or (3)”.	29
	Insert instead “employed under this section”.	30
<b>[22]</b>	<b>Section 50 (5) (a)</b>	31
	Omit “from the date of the appointment”.	32

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<b>[23] Section 51 Temporary appointments of officers</b>	1
Omit “subsection (2)” from section 51 (1).	2
Insert instead “subsections (2) and (3)”.	3
<b>[24] Section 51 (2)</b>	4
Omit “with the concurrence of the Secretary”.	5
<b>[25] Section 51 (3)</b>	6
Omit “of an officer of the Education Teaching Service to carry out the duties of a permanent position”.	7
	8
<b>[26] Section 51 (3)</b>	9
Omit “that service”. Insert instead “the Teaching Service”.	10
<b>[27] Part 4, Division 3</b>	11
Omit the Division. Insert instead:	12
<b>Division 3 Performance management for school principals</b>	13
	14
<b>52 Performance reviews for school principals</b>	15
(1) A school principal’s performance must be reviewed, at least annually, by the Director-General.	16
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(2) The Director-General may review the performance of a school principal on such other occasions as the Director-General considers appropriate.	18
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(3) The review of a school principal’s performance is to have regard to the performance criteria determined by the Director-General and such other matters as the Director-General considers relevant.	21
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<b>53 Performance improvement programs</b>	25
(1) If, following completion of the review of a school principal’s performance, the Director-General is of the opinion that the principal is not performing his or her duties in a satisfactory manner, the Director-General may implement a performance improvement program for the principal.	26
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(2) The school principal must participate in any such performance improvement program in the manner required by the program.	31
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- (3) A performance improvement program is to be on such terms, and is to be implemented for such period, as the Director-General considers appropriate. 1  
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**54 Dealing with unsatisfactory performance** 4

- (1) If the Director-General is of the opinion that a school principal's performance is still unsatisfactory following the completion of a performance improvement program for the principal or following the principal's failure to participate in, or to satisfactorily complete, such a program, the Director-General may: 5  
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- (a) dismiss the school principal from the Teaching Service, or 10
  - (b) demote the school principal to a lower position in the Teaching Service. 11  
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- (2) Before taking any such action with respect to a school principal, the Director-General must: 13  
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- (a) notify the principal in writing of the proposed action and the reasons for taking that action, and 15  
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  - (b) give the principal at least 21 days in which to make written submissions to the Director-General in relation to the proposed action, and 17  
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19
  - (c) take into consideration any written submissions received from the principal during that period. 20  
21
- (3) The Director-General's decision to take action under subsection (1) with respect to a school principal may, subject to subsection (2), be carried into effect at any time. 22  
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- (4) An appointment to a position in the Teaching Service that is required as the result of taking action under subsection (1) (b) is to be made by the Director-General. 25  
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27
- (5) The Director-General may take action under this section with respect to a school principal even though any of the steps for dealing with a breach of discipline under Division 6 have been taken with respect to the principal, but may do so only if no finding has been made in relation to the alleged breach of discipline. 28  
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- (6) This section does not limit or otherwise affect any power under this or any other Act to dismiss or demote a school principal or to suspend a school principal from duty. 34  
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<b>[28] Part 4, Division 4, heading</b>	1
Omit “Service in the Teaching Services”.	2
Insert instead “Miscellaneous provisions relating to the Teaching Service”.	3
<b>[29] Part 4, Division 4, Subdivision 1, heading</b>	4
Omit the heading.	5
<b>[30] Sections 59–59G</b>	6
Omit the sections.	7
<b>[31] Section 60</b>	8
Omit the section. Insert instead:	9
<b>60 Promotion appeals</b>	10
(1) An officer ( <i>the appellant</i> ) may appeal to the Director-General against the decision to appoint another officer to a vacant senior position for which the appellant has unsuccessfully applied.	11 12 13
(2) Any such appeal must be made no later than 10 days after the day on which the appellant is notified (orally or in writing) of the decision concerned.	14 15 16
(3) An appeal may only be made on the ground that the whole or any part of the selection process for the position was irregular or improper.	17 18 19
(4) After considering the appeal and such other information as the Director-General considers appropriate, the Director-General may:	20 21 22
(a) allow or disallow the appeal, and	23
(b) make such determination with respect to the appeal as the Director-General thinks fit.	24 25
(5) The decision of the Director-General under subsection (4) is final.	26 27
<b>[32] Section 61 Promotions committees</b>	28
Omit the section.	29

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<b>[33] Section 62 No appeal to GREAT</b>	1
Omit “A decision or determination, under this Subdivision, of the Director-General of Education” from section 62 (1).	2 3
Insert instead “The decision of the Director-General to appoint a person to a vacant senior position”.	4 5
<b>[34] Section 62 (2)</b>	6
Omit the subsection.	7
<b>[35] Part 4, Division 4, Subdivision 2 Filling vacancies in the Technical and Further Education Teaching Service</b>	8 9
Omit the Subdivision.	10
<b>[36] Part 4, Division 4, Subdivision 3, heading</b>	11
Omit the heading.	12
<b>[37] Sections 71 and 71A</b>	13
Omit the sections.	14
<b>[38] Sections 72–76, 78 (b), 79 (3), 81 (1) (c), (2) (c) and (4A), 84 (1), 85 (1) and (6), 86, 87 (1) and (2), 88, 89 (1) and (3), 90, 92 (1) and 93 (3) (a)</b>	15 16
Omit “appropriate Director-General” wherever occurring.	17
Insert instead “Director-General”.	18
<b>[39] Section 73 Excessive salaries</b>	19
Omit “Secretary” from section 73 (1) (b) (i).	20
Insert instead “Director-General”.	21
<b>[40] Section 73 (1) (b) (ii)</b>	22
Omit “of which the officer is a member”.	23
<b>[41] Section 76 Retirement or transfer of officers through invalidity or incapacity</b>	24 25
Insert “or” after “Service,” in section 76 (1) (e) (i).	26

<b>[42] Section 76 (1) (e) (ii)</b>	1
Omit the subparagraph. Insert instead:	2
(ii) if the appropriate Department Head (within the	3
meaning of the <i>Public Sector Employment and</i>	4
<i>Management Act 2002</i> ) so approves, to some	5
position in the Public Service,	6
<b>[43] Section 76 (1) (e) (iii)</b>	7
Omit the subparagraph.	8
<b>[44] Sections 78 (b) and 90 (1)</b>	9
Omit “that Director-General” wherever occurring.	10
Insert instead “the Director-General”.	11
<b>[45] Sections 81 (6) and 85 (3)–(5)</b>	12
Omit “a Director-General” wherever occurring.	13
Insert instead “the Director-General”.	14
<b>[46] Section 83 Breaches of discipline</b>	15
Insert at the end of the section:	16
(2) Subsection (1) does not apply in relation to a school principal to	17
the extent that the principal is inefficient or incompetent in the	18
discharge of his or her duties.	19
<b>Note.</b> A school principal’s unsatisfactory performance may be dealt with	20
under Division 3 of this Part.	21
<b>[47] Sections 84 (2) and 87 (4)</b>	22
Omit “or 101” wherever occurring.	23
<b>[48] Section 85 Punishment for breaches of discipline</b>	24
Omit “of which he or she is a member” from section 85 (1) (a) (v) and (b)	25
wherever occurring.	26
<b>[49] Section 85 (2)</b>	27
Omit “to whom the recommendation is made”.	28
<b>[50] Sections 85 (6) and 93</b>	29
Omit “appropriate Department” wherever occurring.	30
Insert instead “Department”.	31

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<b>[51] Section 89 Officers and temporary employees prohibited from engaging in employment except under this Act</b>	1 2
Omit “of the Education Teaching Service employed on a casual basis or a temporary employee of the Technical and Further Education Teaching Service employed on a part-time basis” from section 89 (1).	3 4 5
Insert instead “employed on a casual basis”.	6
<b>[52] Section 91 Recovery of salary etc</b>	7
Omit “section 25”. Insert instead “section 13”.	8
<b>[53] Section 92 Deduction from salary or wages for use of building or provision of services</b>	9 10
Omit “Public Employment Industrial Relations Authority” from section 92 (1).	11 12
Insert instead “Public Employment Office”.	13
<b>[54] Section 94 Saving as to Minister’s authority</b>	14
Omit “Services”. Insert instead “Service”.	15
<b>[55] Section 95 Appointments etc to be notified in Education Gazette</b>	16
Omit section 95 (1) (b).	17
<b>[56] Section 96</b>	18
Omit the section. Insert instead:	19
<b>96 Evidence as to Education Gazette</b>	20
A document purporting to be an issue of the Education Gazette is admissible in evidence in any proceedings, including proceedings before the Government and Related Employees Appeal Tribunal, and is, until the contrary is proved, taken to be a copy of an issue of the Education Gazette.	21 22 23 24 25
<b>[57] Section 98 Certain Acts apply to officers and temporary employees</b>	26
Omit the section.	27
<b>[58] Section 99 Making of regulations by Governor</b>	28
Omit “Part 2 or” wherever occurring.	29
<b>[59] Section 100 Making of regulations by Director-General</b>	30
Omit “or promotion to” from section 100 (1) (a).	31



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<b>[60]</b>	<b>Section 100 (1) (b)</b>	1
	Omit “transfer.”	2
<b>[61]</b>	<b>Section 100 (1) (d)</b>	3
	Omit the paragraph.	4
<b>[62]</b>	<b>Section 100 (1) (i)</b>	5
	Omit “public”.	6
<b>[63]</b>	<b>Section 100 (1) (j)</b>	7
	Omit “Part 2 and” wherever occurring.	8
<b>[64]</b>	<b>Section 101 Making of regulations by the Director-General of Technical and Further Education</b>	9
	Omit the section.	10
<b>[65]</b>	<b>Section 102 Application etc of regulations</b>	12
	Omit the section.	13
<b>[66]</b>	<b>Schedule 3 Savings and transitional provisions</b>	14
	Insert at the end of clause 2 (1):	15
	<i>Teaching Services Amendment Act 2004</i>	16
<b>[67]</b>	<b>Schedule 3, Part 3</b>	17
	Insert after Part 2:	18
	<b>Part 3 Provisions consequent on enactment of Teaching Services Amendment Act 2004</b>	19
		20
	<b>11 Definition</b>	21
	In this Part:	22
	<i>amending Act</i> means the <i>Teaching Services Amendment Act 2004</i> .	23
		24
	<b>12 References to Education Teaching Service</b>	25
	On and from the substitution of section 44 by the amending Act,	26
	a reference in any Act, or in any instrument made under any Act,	27
	or in any other instrument, or in any contract or agreement, to the	28
	Education Teaching Service (however expressed) is be construed	29
	as a reference to the Teaching Service.	30

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<b>13</b>	<b>Continuation of existing determinations and agreements</b>	1
(1)	Any determination of conditions of employment under section 25 made by the Director-General and in force immediately before the repeal of that section by the amending Act is taken to be, after that repeal, a determination made under section 13 as inserted by the amending Act.	2 3 4 5 6
(2)	Any agreement between the Director-General and an association or organisation made under section 26 and in force immediately before the repeal of that section by the amending Act is taken to be, after that repeal, an agreement made under section 14 as inserted by the amending Act.	7 8 9 10 11
<b>14</b>	<b>Performance management for school principals</b>	12
	Division 3 of Part 4 (as substituted by the amending Act) extends to a school principal holding office before the commencement of the substitution of that Division, but only in relation to the school principal's performance after that commencement.	13 14 15 16
<b>15</b>	<b>General savings</b>	17
	Anything done by the Director-General that, immediately before the substitution of Part 2 by the amending Act, had effect under (or was done for the purposes of) this Act continues to have effect under (or is taken to have been done for the purposes of) this Act as amended by the amending Act.	18 19 20 21 22

<b>Schedule 2</b>	<b>Amendment of other legislation</b>	1
	(Section 4)	2
<b>2.1</b>	<b>Anti-Discrimination Act 1977 No 48</b>	3
<b>[1]</b>	<b>Section 4B References to certain employers</b>	4
	Omit section 4B (1) (c). Insert instead:	5
	(c) in relation to employment in the Teaching Service, is a reference to the Director-General of the Department of Education and Training.	6 7 8
<b>[2]</b>	<b>Sections 4B (2), 49ZU (3) (paragraph (a) of the definition of “employed in the public sector”) and 122B (1) (a1)</b>	9 10
	Omit “Education Teaching Service” wherever occurring.	11
	Insert instead “Teaching Service”.	12
<b>[3]</b>	<b>Section 4B (2)</b>	13
	Omit “School Education”. Insert instead “Education and Training”.	14
<b>2.2</b>	<b>Education Act 1990 No 8</b>	15
	<b>Section 104 Staff of the Board</b>	16
	Omit “a teaching service” from section 104 (2).	17
	Insert instead “the Teaching Service”.	18
<b>2.3</b>	<b>Education Teaching Service Regulation 2001</b>	19
<b>[1]</b>	<b>Clause 1 Name of Regulation</b>	20
	Omit “ <i>Education</i> ”.	21
<b>[2]</b>	<b>Clause 3 Definitions</b>	22
	Omit “Education” from the definition of <i>member of staff</i> in clause 3 (1).	23
<b>[3]</b>	<b>Clauses 3 (1) (paragraph (c) of the definition of “statutory conditions of service”) and 5 (2) (c)</b>	24 25
	Omit “section 25” wherever occurring. Insert instead “section 13”.	26
<b>[4]</b>	<b>Clause 3 (1), definition of “the Act”</b>	27
	Omit “ <i>Services</i> ”. Insert instead “ <i>Service</i> ”.	28

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<b>[5] Clause 13 “Prescribed officers” for purposes of Division 6 of Part 4 of the Act</b>	1 2
Omit “in its application to the Education Teaching Service” wherever occurring.	3 4
<b>2.4 Energy Administration Act 1987 No 103</b>	5
<b>Schedule 1 Superannuation and other rights of employees of the Corporation</b>	6 7
Omit “a Teaching” from clauses 3 (1) (a) and 4 (1) (b) (i) wherever occurring. Insert instead “the Teaching”.	8 9
<b>2.5 Freedom of Information Act 1989 No 5</b>	10
<b>[1] Section 6 Definitions</b>	11
Omit paragraph (e) of the definition of <i>responsible Minister</i> in section 6 (1). Insert instead:	12 13
(e) in relation to the Teaching Service—the Minister administering the <i>Teaching Service Act 1980</i> , or	14 15
<b>[2] Section 6 (1), definition of “Teaching Service”</b>	16
Omit the definition.	17
<b>[3] Section 7 Public authorities</b>	18
Omit section 7 (1) (e). Insert instead:	19
(e) the Teaching Service, or	20
<b>2.6 Government and Related Employees Appeal Tribunal Act 1980 No 39</b>	21 22
<b>[1] Section 4 Definitions</b>	23
Omit paragraph (b) of the definition of <i>employee</i> in section 4 (1). Insert instead:	24 25
(b) a person who is an officer, or a temporary employee, within the meaning of the <i>Teaching Service Act 1980</i> ,	26 27

<b>[2] Section 4 (1), definition of “employer”</b>	1
Omit paragraph (b). Insert instead:	2
(b) in relation to an employee of the class referred to in paragraph (b) of that definition:	3
(i) for the purposes of those provisions of this Act relating to the membership and constitution of the Tribunal—the Director-General of the Department of Education and Training, and	4
(ii) for the purposes of those provisions of this Act relating to the making of appeals and the hearing of appeals—the person against whose decision the appeal is made (being, as the case may require, the Director-General of the Department of Education and Training or a prescribed officer within the meaning of section 82 of the <i>Teaching Service Act 1980</i> ),	5
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<b>[3] Section 21 Excluded circumstances</b>	17
Omit section 21 (1) (j) (ii). Insert instead:	18
(ii) a temporary employee within the meaning of the <i>Teaching Service Act 1980</i> , or	19
	20
<b>[4] Schedule 2 Provisions relating to the nomination of employers’ representatives and employees’ representatives</b>	21
	22
Omit clause 4 (b). Insert instead:	23
(b) a member of the Teaching Service, or	24
<b>2.7 Guardianship Act 1987 No 257</b>	25
<b>Schedule 1 Provisions relating to the Tribunal</b>	26
Omit “a Teaching” from clauses 5 (1) (a) and 6 (1) (b) (i) wherever occurring.	27
Insert instead “the Teaching”.	28
<b>2.8 Health Records and Information Privacy Act 2002 No 71</b>	29
<b>Section 4 Definitions</b>	30
Omit “Education” from the definitions of <i>public sector agency</i> and <i>public sector official</i> wherever occurring in section 4 (1).	31
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<b>2.9 Independent Commission Against Corruption Act 1988 No 35</b>	1 2
<b>[1] Section 3 Definitions</b>	3
Omit paragraph (a) of the definition of <i>public authority</i> in section 3 (1).	4
Insert instead:	5
(a) a Government Department or the Teaching Service,	6
<b>[2] Section 3 (1) (paragraph (g) of the definition of “public official”) and clauses 2 (1) (a) and 3 (b) (i) of Schedule 3</b>	7 8
Omit “a Teaching” wherever occurring. Insert instead “the Teaching”.	9
<b>2.10 Industrial Relations Act 1996 No 17</b>	10
<b>[1] Dictionary</b>	11
Omit “Education” from the definition of <i>public sector employee</i> .	12
<b>[2] Dictionary, definition of “public sector industrial agreement”</b>	13
Omit “section 26 of the <i>Teaching Services Act 1980</i> ”.	14
Insert instead “section 14 of the <i>Teaching Service Act 1980</i> ”.	15
<b>2.11 Interpretation Act 1987 No 15</b>	16
<b>Section 21 Meaning of commonly used words and expressions</b>	17
Insert in alphabetical order in section 21 (1):	18
<i>Teaching Service</i> means the Teaching Service of New South Wales referred to in the <i>Teaching Service Act 1980</i> .	19 20
<b>2.12 Judicial Officers Act 1986 No 100</b>	21
<b>Schedule 5 Provisions relating to the rights of certain staff of the Commission</b>	22 23
Omit “a Teaching” from clauses 2 (1) (a) and 3 (b) (i) wherever occurring.	24
Insert instead “the Teaching”.	25

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<b>2.13 Mental Health Act 1990 No 9</b>	1
<b>Schedule 6 Provisions relating to members of the Tribunal</b>	2
Omit “a Teaching” from clauses 10 (2) (a) and 11 (2) (b) (i) wherever occurring.	3 4
Insert instead “the Teaching”.	5
<b>2.14 Parking Space Levy Act 1992 No 32</b>	6
<b>Section 17 Obligations of persons in public sector positions</b>	7
Omit “Education” from paragraph (b) of the definition of <i>public sector position</i> in section 17 (7).	8 9
<b>2.15 Police Act 1990 No 47</b>	10
<b>Section 48 Definitions</b>	11
Omit “a Teaching” from section 48 (a). Insert instead “the Teaching”.	12
<b>2.16 Privacy and Personal Information Protection Act 1998 No 133</b>	13 14
<b>Section 3 Definitions</b>	15
Omit “Education” from the definitions of <i>public sector agency</i> and <i>public sector official</i> wherever occurring in section 3 (1).	16 17
<b>2.17 Public Finance and Audit Act 1983 No 152</b>	18
<b>[1] Section 4 Definitions</b>	19
Omit “School Education” from the definitions of <i>authority</i> and <i>officer of an authority</i> wherever occurring in section 4 (1).	20 21
<b>[2] Section 4 (1), definition of “Head of an authority”</b>	22
Omit paragraph (b). Insert instead:	23
(b) in relation to the Teaching Service—the Director-General of the Department of Education and Training,	24 25
<b>[3] Schedule 1 The Auditor-General</b>	26
Omit “a Teaching” from clause 7 (2) (a). Insert instead “the Teaching”.	27

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<b>2.18 Public Sector Employment and Management Act 2002 No 43</b>	1
<b>[1] Section 3 Definitions</b>	2
Omit the definition of <i>Education Teaching Service</i> from section 3 (1).	3
<b>[2] Sections 3 (1) (paragraph (b) of the definition of “public sector service”), 19 (5), 63 (1) (definition of “public authority”), 63 (2) (c), 65 (1) (a), 67 (d), 77 (6), 78 (9) (a), 101 (1) (Arrangements for use of Teaching Service staff by Departments) and 114 (3) (a) and clause 11 (16) (a) of Schedule 4</b>	4
Omit “Education Teaching Service” wherever occurring.	5
Insert instead “Teaching Service”.	6
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	9
<b>2.19 Residential Tenancies Act 1987 No 26</b>	10
<b>Schedule 1 Provisions relating to the members of the Tribunal</b>	11
Omit “a Teaching” from clauses 8 (1) (a) and 9 (1) (b) (i) wherever occurring.	12
Insert instead “the Teaching”.	13
<b>2.20 State Sports Centre Trust Act 1984 No 68</b>	14
<b>Schedule 3 Provisions applicable to a person designated as Director</b>	15
Omit “a Teaching” from clauses 4 (2) (a) and 5 (2) (b) (i) wherever occurring.	16
Insert instead “the Teaching”.	17
<b>2.21 Teacher Housing Authority Act 1975 No 27</b>	18
<b>[1] Section 4 Definitions</b>	19
Omit “a Teaching” from the definition of <i>teacher</i> .	20
Insert instead “the Teaching”.	21
<b>[2] Section 4, definition of “Teaching Service”</b>	22
Omit the definition.	23
<b>2.22 Technical and Further Education Commission Act 1990 No 118</b>	24
	25
<b>Section 21 Use of staff or facilities of Departments etc</b>	26
Omit “Education”.	27



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<b>2.23 Transferred Officers Extended Leave Act 1961 No 13</b>	1
<b>Section 2 Definitions</b>	2
Omit paragraph (c) of the definition of <i>State employer</i> in section 2 (1).	3
Insert instead:	4
(c) in relation to persons employed in the Teaching Service— the Director-General of the Department of Education and Training.	5 6 7
<b>2.24 Treasury Corporation Act 1983 No 75</b>	8
<b>Schedule 2 Provisions relating to the rights of certain staff of the Corporation</b>	9 10
Omit “a Teaching” from clauses 3 (1) (a) and 4 (1) (b) (i) wherever occurring.	11
Insert instead “the Teaching”.	12
<b>2.25 Zoological Parks Board Act 1973 No 34</b>	13
<b>Schedule 1 Preservation of rights of certain employees</b>	14
Omit “a Teaching” from clauses 2 (1) (a) and 3 (1) (b) (i) wherever occurring.	15
Insert instead “the Teaching”.	16