



New South Wales

Teaching and Education Legislation Amendment (Employment) Bill 2017

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to enable persons to be employed on a temporary basis in the Teaching Service, or as school administrative and support staff in the Department of Education, for a period or periods of up to 3 years,
- (b) to align the employment of persons in the Teaching Service with the scheme under the *Teacher Accreditation Act 2004* by expressly authorising the Secretary of the Department of Education (the **Secretary**) to employ persons who are accredited under that Act,
- (c) to transfer to the *Teaching Service Act 1980* the existing power of the Secretary under the *Teacher Accreditation Act 2004* to terminate the employment of a person employed in the Teaching Service whose accreditation as a teacher is revoked,
- (d) to provide additional grounds for terminating the employment of persons in the Teaching Service or as school administrative and support staff (including where the person concerned has abandoned his or her employment),
- (e) to make other amendments of a minor or administrative nature relating to the employment of persons in the Teaching Service or as school administrative and support staff.

The Bill also amends the *Education Act 1990* to enable the Secretary to determine the eligibility criteria for student enrolment in a particular government school and to make it clear that requiring overseas students to pay fees to attend government schools does not contravene the *Anti-Discrimination Act 1977*.

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.

Schedule 1 Amendment of Teaching Service Act 1980

Schedule 1 [2] removes a redundant cross-reference.

Schedule 1 [3] and [4] expressly provide that the Secretary may employ persons who are accredited under the *Teacher Accreditation Act 2004* in the Teaching Service.

Schedule 1 [5] provides that the employment of persons in the Teaching Service on a temporary basis may be for a period or periods of up to 3 years instead of the current maximum period of 12 months.

Schedule 1 [6] provides that the employment of a temporary employee cannot be terminated for reasons other than misconduct unless the employee is given 4 weeks notice of the termination or 4 weeks pay. A temporary employee whose employment is terminated is not entitled to any other compensation or entitlement for the termination of employment.

Schedule 1 [7] enables the Secretary, in taking any disciplinary or other action with respect to a person employed in the Teaching Service and whose address is unknown to the Secretary, to send any instrument giving effect to that action to the address last known to the Secretary.

Schedule 1 [10] is a consequential amendment that removes a similar provision that applies only in relation to dealing with misconduct and unsatisfactory performance.

Schedule 1 [9] enables the Secretary to terminate a person's employment in the Teaching Service if the person's accreditation under the *Teacher Accreditation Act 2004* is revoked and to suspend a person's employment if the person's accreditation is suspended. The amendment replaces the existing power of the Secretary under the *Teacher Accreditation Act 2004* to terminate or suspend a person's employment for the same grounds.

Schedule 1 [9] also enables the Secretary to terminate a person's employment if the person has abandoned his or her employment or if the person refuses or fails to commence duties in a position to which the person has been appointed or transferred. **Schedule 1 [8]** removes provisions that are superseded by the amendment made by Schedule 1 [9].

Schedule 1 [11] and [12] remove the requirement for decisions relating to the employment of persons in the Teaching Service, and for the regulations made by the Governor under the Act, to be published in the Education Gazette. **Schedule 1 [1]** is a consequential amendment.

Schedule 2 Amendment of Education (School Administrative and Support Staff) Act 1987

Schedule 2 [2] provides that the employment of members of the school administrative and support staff in the Department of Education on a temporary basis may be for a period or periods of up to 3 years instead of the current maximum period of 12 months.

Schedule 2 [3] provides that the employment of any such temporary employee cannot be terminated for reasons other than misconduct unless the employee is given 4 weeks notice of the termination or 4 weeks pay. A temporary employee whose employment is terminated is not entitled to any other compensation or entitlement for the termination of employment.

Schedule 2 [5] updates a reference relating to persons employed in the Public Service.

Schedule 2 [6] enables the Secretary to terminate a person's employment as a member of the school administrative and support staff if the person has abandoned his or her employment or if the person refuses or fails to commence duties in a position to which the person has been appointed

or transferred. **Schedule 2 [1]** is a consequential amendment that removes a similar provision relating to termination of employment for refusing a transfer.

Schedule 2 [6] also enables the Secretary, in taking any disciplinary or other action with respect to a member of the school administrative and support staff and whose address is unknown to the Secretary, to send any instrument giving effect to that action to the address last known to the Secretary. **Schedule 2 [4]** is a consequential amendment that removes a similar provision that applies only in relation to dealing with misconduct and unsatisfactory performance.

Schedule 3 Amendment of Teacher Accreditation Act 2004

The amendments made by Schedule 3 are consequential on the amendment made by Schedule 1 [9].

Schedule 4 Amendment of Education Act 1990

Schedule 4 [1] makes it clear that the Secretary may determine the eligibility criteria for student enrolment in a particular government school. At present, the eligibility criteria for enrolment is determined by the Secretary for different classes of government schools only.

Schedule 4 [2] makes it clear that the *Anti-Discrimination Act 1977* does not prevent overseas students from being charged fees to attend government schools.



New South Wales

Teaching and Education Legislation Amendment (Employment) Bill 2017

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New South Wales

Teaching and Education Legislation Amendment (Employment) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Teaching Service Act 1980*, the *Education (School Administrative and Support Staff) Act 1987* and the *Teacher Accreditation Act 2004* to make further provision with respect to the employment of persons in the Teaching Service and the employment of school administrative and support staff in the Department of Education; to amend the *Education Act 1990*; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Teaching and Education Legislation Amendment (Employment) Act 2017*.

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2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

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| Schedule 1 | Amendment of Teaching Service Act 1980 No 23 | 1 |
| [1] Section 4 Definitions | | 2 |
| | Omit the definition of <i>Education Gazette</i> from section 4 (1). | 3 |
| [2] Section 4 (1), definition of “temporary employee” | | 4 |
| | Omit “or deemed to be a temporary employee under section 48 (3)”. | 5 |
| [3] Section 47 Appointment to positions generally | | 6 |
| | Omit section 47 (1). Insert instead: | 7 |
| | (1) The Secretary may, subject to section 47A, appoint to positions in the Teaching Service: | 8 |
| | (a) persons who are accredited under the <i>Teacher Accreditation Act 2004</i> , or | 9 |
| | (b) persons who have, in the opinion of the Secretary, the appropriate qualifications to be employed in the Teaching Service. | 10 |
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| [4] Section 50 Temporary employees | | 14 |
| | Omit section 50 (1). Insert instead: | 15 |
| | (1) The Secretary may employ on a temporary basis: | 16 |
| | (a) persons who are accredited under the <i>Teacher Accreditation Act 2004</i> to carry out work in the Teaching Service, or | 17 |
| | (b) persons who have, in the opinion of the Secretary, the appropriate qualifications to carry out work in the Teaching Service. | 18 |
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| [5] Section 50 (5) (a) | | 21 |
| | Omit the paragraph. Insert instead: | 22 |
| | (a) may be employed for a period or periods of up to 3 years, and | 23 |
| [6] Section 50 (6) and (7) | | 24 |
| | Insert after section 50 (5): | 25 |
| | (6) The Secretary may not terminate the employment of a temporary employee for reasons other than for misconduct unless the employee: | 26 |
| | (a) is given at least 4 weeks notice of the proposed termination, or | 27 |
| | (b) is paid, at or before the termination, an amount equal to 4 weeks pay. | 28 |
| | (7) A temporary employee whose employment is terminated is not, despite any other Act or law, entitled to any other compensation or entitlement for the termination of employment other than superannuation entitlements. | 29 |
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| [7] Section 51B | | 33 |
| | Insert after section 51A: | 34 |
| 51B Dealing with member of Teaching Service whose address is unknown | | 35 |
| | If: | 36 |
| | (a) the Secretary takes any action under this Act with respect to a person who is an officer or temporary employee (including any disciplinary action under Part 4A or the termination of the person’s employment), and | 37 |
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| | (b) the person's address is unknown to the Secretary, | 1 |
| | any instrument for giving effect to that action or for notifying the person of that | 2 |
| | action may be sent to the address of the person last known to the Secretary. | 3 |
| [8] | Sections 74 and 75 | 4 |
| | Omit the sections. | 5 |
| [9] | Sections 77 and 77A | 6 |
| | Insert after section 76: | 7 |
| | 77 Termination or suspension of employment if accreditation is revoked or suspended | 8 9 |
| | (1) The Secretary may terminate a person's employment as an officer or temporary employee if the person's accreditation is revoked under the <i>Teacher Accreditation Act 2004</i> . | 10 11 12 |
| | (2) An officer or temporary employee who is required to be accredited under the <i>Teacher Accreditation Act 2004</i> may be suspended from employment by the Secretary during any period in which the person's accreditation under that Act is suspended. Any such suspension may be without pay. | 13 14 15 16 |
| | (3) An officer or temporary employee who is suspended from employment under subsection (2) for any period is, for the purposes of section 28 (2) of the <i>Teacher Accreditation Act 2004</i> , taken not to be employed as a teacher during that period. | 17 18 19 20 |
| | (4) The Secretary is not required to provide alternative employment to a person whose employment is terminated or suspended under this section. | 21 22 |
| | 77A Miscellaneous grounds for terminating employment | 23 |
| | (1) The Secretary may terminate: | 24 |
| | (a) a person's employment as an officer or temporary employee if the person has abandoned his or her employment, and | 25 26 |
| | (b) a person's employment as an officer if the person refuses or fails to commence duties in a position to which the person has been appointed or transferred under this Act. | 27 28 29 |
| | (2) This section does not limit the grounds on which the Secretary may terminate a person's employment under this Act. | 30 31 |
| [10] | Section 93Q Officer whose address is unknown | 32 |
| | Omit the section. | 33 |
| [11] | Sections 95 and 96 | 34 |
| | Omit the sections. | 35 |
| [12] | Section 100 Regulations | 36 |
| | Omit section 100 (2). | 37 |

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| Schedule 2 | Amendment of Education (School Administrative and Support Staff) Act 1987 No 240 | 1 |
| | | 2 |
| [1] Section 19 Permanent employee refusing transfer | | 3 |
| Omit the section. | | 4 |
| [2] Section 21 Employment of temporary employees | | 5 |
| Omit section 21 (2) and (3). Insert instead: | | 6 |
| (2) A person employed under this section may be employed for a period or periods of up to 3 years. | | 7 8 |
| [3] Section 21 (5) and (6) | | 9 |
| Insert after section 21 (4): | | 10 |
| (5) The Secretary may not terminate the employment of a temporary employee for reasons other than for misconduct unless the employee: | | 11 12 |
| (a) is given at least 4 weeks notice of the proposed termination, or | | 13 |
| (b) is paid, at or before the termination, an amount equal to 4 weeks pay. | | 14 |
| (6) A temporary employee whose employment is terminated is not, despite any other Act or law, entitled to any other compensation or entitlement for the termination of employment other than superannuation entitlements. | | 15 16 17 |
| [4] Section 32H Permanent employee whose address is unknown | | 18 |
| Omit the section. | | 19 |
| [5] Section 34 Delegation by Secretary | | 20 |
| Omit “public servant” from section 34 (1). Insert instead “Public Service employee”. | | 21 |
| [6] Sections 34A and 34B | | 22 |
| Insert after section 34: | | 23 |
| 34A Miscellaneous grounds for terminating employment | | 24 |
| (1) The Secretary may: | | 25 |
| (a) terminate a person’s employment as a permanent or temporary employee if the person has abandoned his or her employment, and | | 26 27 |
| (b) terminate a person’s employment as a permanent employee if the person refuses or fails to commence duties in a position to which the person has been appointed or transferred under this Act. | | 28 29 30 |
| (2) This section does not limit the grounds on which the Secretary may terminate a person’s employment under this Act. | | 31 32 |
| 34B Dealing with permanent or temporary employee whose address is unknown | | 33 |
| If: | | 34 |
| (a) the Secretary takes any action under this Act with respect to a person who is a permanent or temporary employee (including any disciplinary action under Part 6 or the termination of the person’s employment), and | | 35 36 37 |
| (b) the person’s address is unknown to the Secretary, | | 38 |
| any instrument for giving effect to that action or for notifying the person of that action may be sent to the address of the person last known to the Secretary. | | 39 40 |

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| Schedule 3 | Amendment of Teacher Accreditation Act 2004 | 1 |
| | No 65 | 2 |
| [1] | Section 29 Provisions relating to employment | 3 |
| | Insert after section 29 (4): | 4 |
| | (5) This section does not apply in relation to a person who is employed as a teacher in a government school. | 5 |
| | Note. The Secretary may, under section 77 of the <i>Teaching Service Act 1980</i> , suspend or terminate a person's employment in the Teaching Service if the person's accreditation is suspended or revoked. | 6 |
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| [2] | Section 29, note | 10 |
| | Omit the note at the end of the section. | 11 |

Schedule 4 Amendment of Education Act 1990 No 8

[1] Section 29 Kinds of government schools

Insert “Any such determination may, without limiting the generality of this subsection, be made in relation to a particular school that is of a kind referred to in this section.” after “Minister.” in section 29 (3).

[2] Section 31A Overseas students

Insert after section 31A (6):

(7) This section has effect despite anything to the contrary in the *Anti-Discrimination Act 1977*.