

# Teaching Services Act 1980 No 23

[1980-23]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Education Commission Act 1980
- **Does not include amendments by**  
[Public Sector Employment and Management Act 2002 No 43](#) (not commenced)
- **See also**  
[Miscellaneous Acts Amendment \(Relationships\) Bill 2002](#)

### Authorisation

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# Teaching Services Act 1980 No 23



New South Wales

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# Teaching Services Act 1980 No 23



New South Wales

An Act to establish the Education Teaching Service and the Technical and Further Education Teaching Service; and to make provisions relating to the employment of persons within those services.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Teaching Services Act 1980*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- (3) (Repealed)

### 2A Act ceases to apply to TAFE

The provisions of this Act relating to the Technical and Further Education Teaching Service and the Director-General of Technical and Further Education cease to have effect on the commencement of section 4 of the *Technical and Further Education Commission Act 1990*.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Aboriginal** has the same meaning as it has in the *Aborigines Act 1969*.

**appointed day** means the day appointed and notified under section 2 (2).

**appropriate Department** means:

- (a) in relation to an officer or temporary employee of the Education Teaching Service—the Department of Education, and
- (b) in relation to an officer or temporary employee of the Technical and Further Education Teaching Service—the Department of Technical and Further Education.

**appropriate Department Head** has the meaning ascribed thereto by section 3 (1) of the [Public Sector Management Act 1988](#).

**appropriate Director-General** means:

- (a) in relation to the Education Teaching Service or a member of that service—the Director-General of Education, and
- (b) in relation to the Technical and Further Education Teaching Service or a member of that service—the Director-General of Technical and Further Education.

**college** means an educational institution provided and maintained by the Minister within the Department of Technical and Further Education.

**Director-General** means the Director-General of Education or the Director-General of Technical and Further Education.

**division**, in relation to a Teaching Service, means a prescribed division of that service.

**Education Gazette** means the journal entitled the Education Gazette published by the Government Printer of New South Wales under the authority of the Minister.

**Education Teaching Service** means the Education Teaching Service referred to in Division 2 of Part 4.

**functions** includes powers, authorities and duties.

**industrial matters** has the same meaning as in the [Industrial Relations Act 1996](#), subject to the following modifications:

- (a) the references to “employers” and “their employer” shall be read and construed as references to the Crown,
- (b) the references to “employees” shall be read and construed as references to members of the Teaching Services,
- (c) the references to “any industry” and “an industry” shall be read and construed as references to the Teaching Services, and
- (d) the references to “industrial unions” and “trade union” shall be read and construed as references to any association or organisation representing any group or class of members of a Teaching Service.



**officer** means:

- (a) in relation to the Education Teaching Service, a person employed in that service, other than a temporary employee, and
- (b) in relation to the Technical and Further Education Teaching Service, a person employed in that service, other than a temporary employee.

**position** includes office.

**promotions list** means:

- (a) a list prepared and maintained by the Director-General of Education under section 38 (1) (f) or (3), or
- (b) the list prepared and maintained by the Director-General of Technical and Further Education under section 40 (1) (e).

**public school** means a government school within the meaning of the [Education Act 1990](#).

**Public Service** has the meaning ascribed thereto by section 3 (1) of the [Public Sector Management Act 1988](#).

**regulations** means regulations under this Act.

**school**, in relation to the Technical and Further Education Teaching Service, means a prescribed teaching school of that service.

**Secretary** means the Secretary of the Ministry of Education and Youth Affairs.

**section**, in relation to the Technical and Further Education Teaching Service, means a prescribed section of:

- (a) a school, or
- (b) a division.

**senior executive officer** has the same meaning it has in the [Public Sector Management Act 1988](#).

**Teaching Service** means the Education Teaching Service or the Technical and Further Education Teaching Service.

**Technical and Further Education Gazette** means the journal entitled the Technical and Further Education Gazette published by the Government Printer of New South Wales under the authority of the Minister.

**Technical and Further Education Teaching Service** means the Technical and Further Education Teaching Service referred to in Division 3 of Part 4.

**temporary employee** means:

- (a) in relation to the Education Teaching Service a person employed under section 50 or deemed to be a temporary employee under section 45 (3) or 48 (3), and
- (b) in relation to the Technical and Further Education Teaching Service, a person employed under section 58 or deemed to be a temporary employee under section 53 (4) or 56 (3).

(2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.

## **5 Industrial Relations Act 1996 not affected**

Except to the extent that this Act otherwise expressly provides, nothing in this Act amends or affects the provisions of the *Industrial Relations Act 1996*.

## **Part 2 Employment functions of Secretary**

### **Division 1**

**6-21 (Repealed)**

### **Division 2 Functions of the Secretary**

**22, 23 (Repealed)**

#### **23A Secretary to act for Crown**

The Secretary, in exercising a function under this Part, acts for the Crown.

#### **24 Role of Secretary in industrial proceedings**

The Secretary shall, for the purpose of making any determination under section 25 or of any proceedings relating to members of the Teaching Services, held before a competent tribunal having power to deal with industrial matters, be deemed to be the employer of those members.

#### **25 Determination of conditions of employment**

- (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 Services shall be as may be determined from time to time by the Secretary.
- (2) This section does not apply in relation to the remuneration of, or allowances payable to, senior executive officers.

#### **26 Agreements relating to industrial matters**

- (1) The Secretary may enter into an agreement with any association or organisation

representing any group or class of officers or temporary employees as to any industrial matters.

- (2) An agreement referred to in subsection (1) shall bind 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, shall have any right of appeal against the terms of the agreement.

## **27 Determinations and agreements relating to major industrial matters**

The Secretary shall not make a determination under section 25 or enter into an agreement under section 26, being a determination or an agreement relating to an industrial matter which the Minister has determined and notified the Secretary to be a major industrial matter, unless the Secretary has notified the Minister of the determination proposed to be made or the agreement proposed to be entered into.

## **28 Exercise of Secretary's functions in relation to industrial disputes**

Where any dispute arises as a consequence of the exercise by a Director-General or by a delegate of, or person acting in accordance with an authority given to the person by, a Director-General of any function conferred or imposed on the Director-General by or under any Act, the Secretary shall not, notwithstanding the *Industrial Relations Act 1996*, exercise any function conferred or imposed on the Secretary by or under any Act as an employer in relation to the dispute until the dispute has been referred to the Secretary by the Director-General or an association of employees concerned in the dispute or the dispute has been notified to the industrial registrar under the *Industrial Relations Act 1996*.

### **28A Delegation**

The Secretary may delegate to any person any of the Secretary's functions under this Act, other than this power of delegation.

### **29-36 (Repealed)**

## **Part 3 The Directors-General**

### **Division 1 The Director-General of Education**

#### **37 General responsibility**

- (1) The Director-General of Education is responsible to the Minister for the general conduct and the efficient, effective and economical management of the functions and activities of the Education Teaching Service.
- (2) For the purpose of exercising responsibility under subsection (1), the Director-General of Education may take such action as he or she deems appropriate and as is not

inconsistent with any function of the Secretary or any function, specified in this Act, of the Public Employment Industrial Relations Authority.

- (3) Nothing in this section limits or affects the operation of section 11 of the *Public Sector Management Act 1988*.

### **38 Functions**

- (1) The Director-General of Education shall, subject to the provisions of this Act and the regulations:
- (a) classify the schools in which members of the Education Teaching Service are employed,
  - (b) determine the teaching staff establishments for those schools,
  - (c) determine the staff establishments for the positions of staff inspectors and inspectors of schools,
  - (d) determine the staff establishments for positions (other than positions within the staff establishments referred to in paragraphs (b) and (c)) which the Director-General and the Public Employment Industrial Relations Authority agree are positions:
    - (i) which are concerned with advising, controlling or supervising teachers in schools, and
    - (ii) to which members of the Education Teaching Service may be appointed,
  - (e) determine the method of classifying and grading officers employed in the Education Teaching Service,
  - (f) prepare and maintain, in respect of different classes of positions, being the positions of teachers in public schools, lists of officers eligible for appointment or promotion to those positions,
  - (g) determine the qualifications required for appointment to the Education Teaching Service or for an officer to be included on any promotions list prepared and maintained as referred to in paragraph (f),
  - (h) determine promotions and transfers of officers and transfers of temporary employees, and
  - (i) maintain discipline in the Education Teaching Service.
- (2) Before exercising any functions under subsection (1) (a), (b), (c), (d) or (e), the Director-General of Education shall, unless otherwise directed by the Secretary, consult with the Secretary and have regard to any principles recommended by the Secretary to be applied in the exercise of those functions.

- (3) The Director-General of Education may, subject to the provisions of this Act and the regulations, prepare and maintain, in respect of any class or classes of positions in the Education Teaching Service, other than the positions of teachers in public schools, lists of officers eligible for appointment or promotion to those positions.

## **Division 2 The Director-General of Technical and Further Education**

### **39 General responsibility**

- (1) The Director-General of Technical and Further Education is responsible to the Minister for the general conduct and the efficient, effective and economical management of the functions and activities of the Technical and Further Education Teaching Service.
- (2) For the purpose of exercising responsibility under subsection (1), the Director-General of Technical and Further Education may take such action as he or she deems appropriate and as is not inconsistent with any function of the Secretary or any function, specified in this Act, of the Public Employment Industrial Relations Authority.
- (3) Nothing in this section limits or affects the operation of section 11 of the *Public Sector Management Act 1988*.

### **40 Functions**

- (1) The Director-General of Technical and Further Education shall, subject to the provisions of this Act and the regulations:
  - (a) classify the schools and colleges in which members of the Technical and Further Education Teaching Service are employed,
  - (b) determine the teaching staff establishments for those schools and colleges,
  - (c) determine the staff establishments for positions (other than positions within the teaching staff establishments referred to in paragraph (b)) which the Director-General and the Public Employment Industrial Relations Authority agree are positions:
    - (i) which are concerned with advising, controlling or supervising teachers in schools and colleges, and
    - (ii) to which members of the Technical and Further Education Teaching Service may be appointed,
  - (d) determine the method of classifying and grading officers employed in the Technical and Further Education Teaching Service,
  - (e) prepare and maintain a list of officers eligible for appointment or promotion to positions in the Technical and Further Education Teaching Service,

- (f) determine the qualifications required for appointment to the Technical and Further Education Teaching Service or for an officer to be included on the promotions list prepared and maintained as referred to in paragraph (e),
  - (g) determine promotions and transfers of officers and transfers of temporary employees, and
  - (h) maintain discipline in the Technical and Further Education Teaching Service.
- (2) Before exercising any functions under subsection (1) (a), (b), (c) or (d), the Director-General of Technical and Further Education shall, unless otherwise directed by the Secretary, consult with the Secretary and have regard to any principles recommended by the Secretary to be applied in the exercise of those functions.

### **Division 3 Delegation of functions**

#### **41 Delegation of functions**

- (1) This section applies to the functions conferred or imposed on a Director-General by or under this Act other than the functions conferred or imposed by or under Part 2, by this section, by Division 6 of Part 4 (not including section 89 (1)) or by or under section 100 or 101.
- (2) A Director-General may, by instrument in writing, delegate to any officer of a Teaching Service under the Director-General's responsibility or an officer of the Public Service the exercise of such of the functions to which this section applies as may be specified in the instrument of delegation, and may, by such an instrument, revoke wholly or in part any such delegation.
- (3) Any function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation:
  - (a) by the delegate, or
  - (b) if the instrument of delegation so provides and subject to the terms of the delegation—by another person, being an officer of a Teaching Service or an officer of the Public Service authorised by instrument in writing by the delegate in that behalf either generally or in a particular case or class of cases.
- (4) A delegation or authorisation under this section may be made subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation or authorisation.
- (5) Without limiting the generality of subsection (4), where, under this section, a Director-General delegates to any person any functions relating to the promotion of any officer

of a Teaching Service (except under section 59C—appointment on merit), the delegation shall be subject to the condition that the delegate shall not exercise the function so as to promote any such officer to a position if that officer is not, according to the rules governing the seniority of officers of the Teaching Service, the most senior officer eligible for promotion to that position.

- (6) Notwithstanding any delegation under this section by a Director-General, the Director-General may continue to exercise all or any of the functions delegated.
- (7) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section or by another person duly authorised in that behalf by the delegate shall have the same force and effect as if the act or thing had been done or suffered by the Director-General who made the delegation.
- (8) A Director-General may, by an instrument in writing, revoke wholly or in part any authorisation of a person under this section pursuant to a delegation.
- (9) An authorisation under this section shall be deemed to be revoked if the relevant delegation is revoked.
- (10) Section 49 of the *Interpretation Act 1987* applies to an authorisation under this section in the same way as it applies to a delegation.

## **Division 4 Temporary appointments**

### **41A Temporary appointments**

Notwithstanding anything in the *Public Service Act 1979*, a temporary appointment of an officer of a Teaching Service to a position of Director-General, being a position which is vacant or the holder of which is suspended, sick or absent, may be made under that Act.

## **Part 4 The Teaching Services**

### **Division 1 General**

#### **42 Crown employees**

Except as provided by section 24, a member of a Teaching Service shall be deemed to be employed by the Government of New South Wales in the service of the Crown.

#### **43 Application of *Public Sector Management Act 1988***

The provisions of the *Public Sector Management Act 1988* which apply to persons in their capacity as public servants do not apply to the appointment of a person to a Teaching Service and a member of a Teaching Service is not subject to those provisions.

## **Division 2 Members of the Education Teaching Service**

### **44 The Education Teaching Service**

The Education Teaching Service shall consist of all persons employed under this Division.

### **45 Transfer of persons from Teaching Service to Education Teaching Service**

- (1) All persons who, immediately before the appointed day, were employed under the *Teaching Service Act 1970*, shall, on that day:
  - (a) cease to be employed under that Act, and
  - (b) become members of the Education Teaching Service employed under this Division.
- (2) All persons who are, at any time before the appointed day, engaged under the *Teaching Service Act 1970* to be employed on or after that day in the Teaching Service within the meaning of that Act but are not so employed immediately before that day, shall, on that day:
  - (a) cease to be so engaged,
  - (b) be deemed to be engaged under this Act to be so employed, and
  - (c) while so employed, be members of the Education Teaching Service employed under this Division.
- (3) A person who becomes a member of the Education Teaching Service under subsection (1) or (2) shall, if before becoming such a member, the person was employed, or engaged to be employed:
  - (a) as an officer under the *Teaching Service Act 1970*, be deemed to be an officer of the Education Teaching Service under this Act, or
  - (b) as an employee under that Act, be deemed to be a temporary employee of the Education Teaching Service under this Act.

### **46 Staff establishment for and appointment to certain positions**

- (1) The Governor may, from time to time, determine the staff establishment for permanent positions, above the level of staff inspector, within the Education Teaching Service and, while such a determination remains in force, those positions shall not be positions in the Public Service.
- (2) The Director-General of Education may appoint to positions within the staff establishment determined under subsection (1) persons who, in his or her opinion, have the appropriate qualifications to be employed in those positions.
- (3) Where the Governor makes a determination under subsection (1) in respect of a



permanent position for which there is a corresponding position within the Public Service and which is held by a person who held the corresponding position immediately before the appointed day, the person shall be deemed to have been appointed, under subsection (2), to the permanent position on the day on which the determination took effect.

#### **47 Appointment of permanent staff**

- (1) The Director-General of Education may appoint to permanent positions in the Education Teaching Service, other than positions within the staff establishment determined under section 46 (1):
  - (a) persons who, in his or her opinion, have the appropriate qualifications to be employed as teachers in public schools in those permanent positions, and
  - (b) other persons who, in his or her opinion, have the appropriate qualifications to be employed in the positions of:
    - (i) staff inspectors and inspectors of schools, and
    - (ii) such other positions as are determined as referred to in section 38 (1) (d),but nothing in this subsection prevents the appointment under the *Public Sector Management Act 1988* of a person to any position in the Public Service that is concerned with advising, controlling or supervising persons appointed or employed under this subsection, not being a position referred to in paragraph (b).
- (1A) Where:
  - (a) under subsection (1), an appointment of a person referred to in subsection (1) (a) is to be made to a permanent position in the Education Teaching Service, and
  - (b) an Aboriginal and a person who is not an Aboriginal, each of whom is eligible to be appointed to the position, are offering themselves for appointment to the position,the Director-General of Education shall give preference to the Aboriginal or, if there are 2 or more such Aborigines, give preference to any one of them by appointment to that position.
- (2) The Director-General of Education, with the concurrence of the Director-General of Technical and Further Education and with the written consent of the person concerned, may appoint an officer or temporary employee of the Technical and Further Education Teaching Service to a permanent position in the Education Teaching Service and that person shall thereupon cease to be employed in the Technical and Further Education Teaching Service and shall be employed in the Education Teaching Service.
- (3) The Director-General of Education, with the concurrence of:

(a) except as provided by paragraph (b), the appropriate Department Head, or

(b) in the case of:

(i) an officer or temporary employee under the *Public Sector Management Act 1988* employed in the Department of Education,

(ii) an excess person referred to in section 51 (1) of the *Public Sector Management Act 1988*, or

(iii) an officer to whom section 52 (2) of the *Public Sector Management Act 1988* applies,

the Public Employment Industrial Relations Authority,

and with the written consent of the person concerned, may appoint an officer or temporary employee under the *Public Sector Management Act 1988* to a permanent position in the Education Teaching Service and that person shall thereupon cease to be employed under that Act and shall be employed in that service.

(4) A person appointed under subsection (2) or (3) shall be appointed subject to such conditions of employment, including salary, wages and other remuneration, as may be determined by the Secretary after consultation with the Director-General of Education and such other conditions as may be determined by the Director-General.

(5) An appointment may be made under this section to a position to which Subdivision 1 of Division 4 applies (vacant position for which there is a promotions list) but only if the appointment is under subsection (2) or (3) or if:

(a) the Director-General:

(i) certifies in writing that an appointment to the position is necessary and that there is no officer employed in that service who is available to fill the position and is as qualified and capable of filling the position as the person proposed to be appointed, and

(ii) is satisfied that the person proposed to be appointed is a fit and proper person to be employed in the position, and

(b) the person proposed to be appointed has undergone a medical examination approved by the Director-General and the Director-General is satisfied that the person is suitable to fill the position having regard to the person's health and physical fitness.

#### **48 Appointments on probation**

(1) Unless the Director-General of Education, in a particular case or class of cases, otherwise determines, a person who is not an officer of the Education Teaching Service

when the person is appointed by the Director-General to a permanent position in that service shall be appointed on probation, which shall be for a period of 12 months or such longer period as the Director-General may in any particular case or class of cases determine.

- (2) The Director-General of Education may:
  - (a) after the expiration of the period of probation for which a person is so appointed, confirm or annul the appointment, or
  - (b) during the period of probation for which a person is so appointed, extend the period of probation or annul the appointment.
- (3) Where the appointment of a person is so annulled, the person shall thereupon cease to be employed under this Division as an officer of the Education Teaching Service and shall, unless the Director-General of Education makes a determination under subsection (4), be deemed to be a temporary employee of the Education Teaching Service under this Act.
- (4) Where the appointment of a person is so annulled, the Director-General of Education may determine that the person shall cease to be employed in the Education Teaching Service upon a day specified in the determination and the person shall cease to be so employed on that day.
- (5) A person who, by reason of the annulment of an appointment, ceases to be a member of the Education Teaching Service under this section is not entitled to appeal to the Government and Related Employees Appeal Tribunal against the annulment or against any determination of the Director-General made under subsection (4).
- (6) Nothing in section 85 prevents the Director-General of Education from exercising, at any time, the power to annul an appointment under subsection (2).
- (7) This section does not apply to the appointment of a senior executive officer to a position in the Education Teaching Service.

#### **49 Appointment of retired officers**

- (1) The Director-General of Education may appoint an officer who has been retired from a Teaching Service or whose services have been dispensed with under section 72 to a vacant position in the Education Teaching Service.
- (2) An appointment under this section may be made without examination or probation.
- (3) (Repealed)

#### **50 Appointment of temporary staff**

- (1) The Director-General of Education may, if of the opinion that it is necessary to do so,

appoint temporarily, on a full-time, casual or part-time basis, to any position to which he or she is entitled to make an appointment under section 47 a person who, in the opinion of the Director-General, has the appropriate qualifications.

(2) The Director-General of Education, with the concurrence of the Director-General of Technical and Further Education and with the written consent of the person concerned, may appoint temporarily to any position to which the Director-General of Education is entitled to make an appointment under section 47 an officer or temporary employee of the Technical and Further Education Teaching Service and that person shall thereupon cease to be employed in the Technical and Further Education Teaching Service and shall be employed in the Education Teaching Service.

(3) The Director-General of Education, with the concurrence of:

(a) except as provided by paragraph (b), the appropriate Department Head, or

(b) in the case of:

(i) an officer or temporary employee under the *Public Sector Management Act 1988* employed in the Department of Education,

(ii) an excess person referred to in section 51 (1) of the *Public Sector Management Act 1988*, or

(iii) an officer to whom section 52 (2) of the *Public Sector Management Act 1988* applies,

the Public Employment Industrial Relations Authority,

and with the written consent of the person concerned, may appoint temporarily to any position to which the Director-General is entitled to make an appointment under section 47 an officer or temporary employee under the *Public Sector Management Act 1988*, and that person shall thereupon cease to be employed under that Act and shall be employed in the Education Teaching Service.

(4) Subject to subsection (5), a person appointed under subsection (2) or (3) shall be appointed subject to such conditions of employment, including salary, wages and other remuneration, as may be determined by the Secretary after consultation with the Director-General of Education and such other conditions as may be determined by the Director-General.

(5) A person appointed under subsection (1), (2) or (3):

(a) shall not be employed for a period exceeding 12 months from the date of the appointment but the employment may be extended from time to time for a further period not exceeding 12 months on each occasion if the Director-General of Education certifies that the extension is necessary in the public interest, and

(b) may be dismissed at any time.

(6) Nothing in section 85 prevents the Director-General of Education from exercising, at any time, the power to dismiss a temporary employee under subsection (5).

### **51 Temporary appointments of officers**

- (1) Subject to subsection (2), an officer of the Education Teaching Service may be temporarily appointed by the Director-General of Education to a position within that service which is vacant or the holder of which is suspended, sick or absent.
- (2) An appointment under subsection (1) shall not be made except in accordance with such conditions of employment as are determined by the Director-General of Education with the concurrence of the Secretary.
- (3) The Director-General of Education shall not make a temporary appointment under subsection (1) of an officer of the Education Teaching Service to carry out the duties of a permanent position for a period in excess of 6 months unless satisfied that an appointment in excess of that period should be made having regard to the exigencies of that service.

## **Division 3 Members of the Technical and Further Education Teaching Service**

### **52 The Technical and Further Education Teaching Service**

The Technical and Further Education Teaching Service shall consist of all persons employed under this Division.

### **53 Transfer of persons from Public Service to Technical and Further Education Teaching Service**

- (1) This section applies to:
  - (a) a position in the Education Division of the Public Service of or below the level of Principal, Grade I (but not including the position of Regional Director), or
  - (b) such positions as the Director-General of Technical and Further Education and the Public Service Board agree:
    - (i) are concerned with advising, controlling or supervising persons (other than those occupying the position of Regional Director) referred to in paragraph (a), and
    - (ii) should be occupied by members of the Technical and Further Education Teaching Service.
- (2) All persons who, immediately before the appointed day, were employed under the

*Public Service Act 1979* in the Department of Technical and Further Education in a position to which this section applies shall, on that day:

- (a) cease to be employed under that Act, and
  - (b) become members of the Technical and Further Education Teaching Service employed under this Division.
- (3) All persons who are, at any time before the appointed day, engaged under the *Public Service Act 1979* to be employed on or after that day in the Department of Technical and Further Education in a position to which this section applies but are not so employed immediately before that day, shall, on that day:
- (a) cease to be so engaged,
  - (b) be deemed to be engaged under this Division to be so employed, and
  - (c) while so employed, be members of the Technical and Further Education Teaching Service employed under this Division.
- (4) A person who becomes a member of the Technical and Further Education Teaching Service under subsection (2) or (3) shall, if before becoming such a member, the person was employed, or engaged to be employed:
- (a) as an officer under the *Public Service Act 1979*, be deemed to be an officer of the Technical and Further Education Teaching Service under this Act, or
  - (b) as a temporary employee under that Act, be deemed to be a temporary employee of the Technical and Further Education Teaching Service under this Act.

#### **54 Staff establishment for and appointment to certain positions**

- (1) The Governor may, from time to time, determine the staff establishment for permanent positions, above the level of Principal, Grade I and including the position of Regional Director, within the Technical and Further Education Teaching Service and, while such a determination remains in force, those positions shall not be positions in the Public Service.
- (2) The Director-General of Technical and Further Education may appoint to positions within the staff establishment determined under subsection (1) persons who, in his or her opinion, have the appropriate qualifications to be employed in those positions.
- (3) Where the Governor makes a determination under subsection (1) in respect of a permanent position for which there is a corresponding position within the Public Service and which is held by a person who held the corresponding position immediately before the appointed day, the person shall be deemed to have been appointed, under subsection (2), to the permanent position on the day on which the determination took effect.

## 55 Appointment of permanent staff

- (1) The Director-General of Technical and Further Education may appoint to permanent positions in the Technical and Further Education Teaching Service, other than positions within the staff establishment determined under section 54 (1):
- (a) persons who, in his or her opinion, have the appropriate qualifications to be employed as teachers in schools or colleges, and
  - (b) other persons who, in his or her opinion, have the appropriate qualifications to be employed to carry out the duties of such positions as are determined as referred to in section 40 (1) (c),

but nothing in this subsection prevents the appointment under the *Public Sector Management Act 1988* of a person to any position in the Public Service that is concerned with advising, controlling or supervising persons appointed or employed under this subsection, not being a position referred to in paragraph (b).

- (2) Notwithstanding the provisions of section 64, the Director-General of Technical and Further Education, with the concurrence of the Director-General of Education and with the written consent of the person concerned, may appoint an officer or temporary employee of the Education Teaching Service to a permanent position in the Technical and Further Education Teaching Service and that person shall thereupon cease to be employed in the Education Teaching Service and shall be employed in the Technical and Further Education Teaching Service.
- (3) Notwithstanding the provisions of section 64, the Director-General of Technical and Further Education, with the concurrence of:
- (a) except as provided by paragraph (b), the appropriate Department Head, or
  - (b) in the case of:
    - (i) an officer or temporary employee under the *Public Sector Management Act 1988* employed in the Department of Technical and Further Education,
    - (ii) an excess person referred to in section 51 (1) of the *Public Sector Management Act 1988*, or
    - (iii) an officer to whom section 52 (2) of the *Public Sector Management Act 1988* applies,

the Public Employment Industrial Relations Authority,

and with the written consent of the person concerned, may appoint an officer or temporary employee under the *Public Sector Management Act 1988* to a permanent position in the Technical and Further Education Teaching Service and that person shall thereupon cease to be employed under that Act and shall be employed in that service.

- (4) A person appointed under subsection (2) or (3) shall be appointed subject to such conditions of employment, including salary, wages and other remuneration, as may be determined by the Secretary after consultation with the Director-General of Technical and Further Education and such other conditions as may be determined by the Director-General.
- (5) Notwithstanding the provisions of section 64, the Director-General of Technical and Further Education may appoint to a permanent position in the Technical and Further Education Teaching Service a person who is not an officer of that service if:
  - (a) the Director-General:
    - (i) certifies in writing that an appointment to the position is necessary and that there is no officer employed in that service who is available to fill the position and is as qualified and capable of filling the position as the person proposed to be appointed, and
    - (ii) is satisfied that the person proposed to be appointed is a fit and proper person to be employed in the position, and
  - (b) the person proposed to be appointed has undergone a medical examination approved by the Director-General and the Director-General is satisfied that the person is suitable to fill the position having regard to the person's health and physical fitness.

## **56 Appointments on probation**

- (1) Unless the Director-General of Technical and Further Education, in a particular case or class of cases, otherwise determines, a person who is not an officer of the Technical and Further Education Teaching Service when the person is appointed by the Director-General to a permanent position in that service shall be appointed on probation, which shall be for a period of 12 months or such longer period as the Director-General may in any particular case or class of cases determine.
- (2) The Director-General of Technical and Further Education may:
  - (a) after the expiration of the period of probation for which a person is so appointed, confirm or annul the appointment, or
  - (b) during the period of probation for which a person is so appointed, extend the period of probation applicable to the person or annul the appointment.
- (3) Where the appointment of a person is so annulled, the person shall thereupon cease to be employed under this Division as an officer of the Technical and Further Education Teaching Service and shall, unless the Director-General of Technical and Further Education makes a determination under subsection (4), be deemed to be a temporary employee of the Technical and Further Education Teaching Service under this Act.



- (4) Where the appointment of a person is so annulled, the Director-General of Technical and Further Education may determine that the person shall cease to be employed in the Technical and Further Education Teaching Service upon a day specified in the determination and the person shall cease to be so employed on that day.
- (5) A person who, by reason of the annulment of the person's appointment, ceases to be a member of the Technical and Further Education Teaching Service under this section is not entitled to appeal to the Government and Related Employees Appeal Tribunal against the annulment or against any determination of the Director-General made under subsection (4).
- (6) Nothing in section 85 prevents the Director-General of Technical and Further Education from exercising, at any time, the power to annul an appointment under subsection (2).
- (7) This section does not apply to the appointment of a senior executive officer to a position in the Technical and Further Education Teaching Service.

#### **57 Appointment of retired officers**

- (1) The Director-General of Technical and Further Education may appoint an officer who has been retired from a Teaching Service or whose services have been dispensed with under section 72 to a vacant position in the Technical and Further Education Teaching Service.
- (2) An appointment under this section may be made without examination or probation.
- (3) (Repealed)

#### **58 Appointment of temporary staff**

- (1) The Director-General of Technical and Further Education may, if of the opinion that it is necessary to do so, appoint temporarily, on a full-time, casual or part-time basis, to any position to which he or she is entitled to make an appointment under section 55 a person who, in the opinion of the Director-General, has the appropriate qualifications.
- (2) The Director-General of Technical and Further Education, with the concurrence of the Director-General of Education and with the written consent of the person concerned, may appoint temporarily, on a full-time basis, to any position to which the Director-General of Technical and Further Education is entitled to make an appointment under section 55 an officer or temporary employee of the Education Teaching Service and that person shall thereupon cease to be employed in the Education Teaching Service and shall be employed in the Technical and Further Education Teaching Service.
- (3) The Director-General of Technical and Further Education, with the concurrence of:
  - (a) except as provided by paragraph (b), the appropriate Department Head, or

(b) in the case of:

- (i) an officer or temporary employee under the *Public Sector Management Act 1988* employed in the Department of Technical and Further Education,
- (ii) an excess person referred to in section 51 (1) of the *Public Sector Management Act 1988*, or
- (iii) an officer to whom section 52 (2) of the *Public Sector Management Act 1988* applies,

the Public Employment Industrial Relations Authority,

and with the written consent of the person concerned, may appoint temporarily, on a full-time basis, to any position to which the Director-General is entitled to make an appointment under section 55 an officer or temporary employee under the *Public Sector Management Act 1988*, and that person shall thereupon cease to be employed under that Act and shall be employed in the Technical and Further Education Teaching Service.

- (4) Subject to subsection (5), a person appointed under subsection (2) or (3) shall be appointed subject to such conditions of employment, including salary, wages and other remuneration, as may be determined by the Secretary after consultation with the Director-General of Technical and Further Education and such other conditions as may be determined by the Director-General.
- (5) A person appointed under subsection (1), (2) or (3):
  - (a) shall not be employed for a period exceeding 12 months from the date of the appointment but the employment may be extended from time to time for a further period not exceeding 12 months on each occasion if the Director-General of Technical and Further Education certifies that the extension is necessary in the public interest, and
  - (b) may be dismissed at any time.
- (6) Nothing in section 85 prevents the Director-General of Technical and Further Education from exercising, at any time, his or her power to dismiss a temporary employee under subsection (5).

## **Division 4 Service in the Teaching Services**

### **Subdivision 1 Filling vacancies in the Education Teaching Service**

#### **59 Application of Subdivision**

This Subdivision applies to a position in the Education Teaching Service for which there is a promotions list.

### **59A Meaning of “fitness”**

In this Subdivision:

**fitness** means qualifications and aptitude for the discharge of the duties of a position or class of positions.

### **59B Power of Director-General to fill vacancies**

- (1) If there is a vacancy in a position to which this Subdivision applies, the Director-General of Education may, if of the opinion that the vacancy should be filled, appoint a person to fill the vacancy.
- (2) A vacancy to be filled shall be filled in accordance with this Subdivision, unless the vacancy is filled by the transfer of an officer under section 71.

### **59C Appointment on merit—certain vacancies**

- (1) This section applies to positions of teachers in public schools which are positions of a class declared by the Minister by order published in the Education Gazette to be a class of positions to which this section applies.
- (2) If a vacancy in such a position is to be filled, the person appointed to fill the vacancy must be a person who is eligible under section 59D to be considered for the position.
- (3) Of the eligible persons who apply and are prepared to accept the appointment, the person appointed must be the person whose fitness for the position is greater than that of any other applicant.
- (4) Despite subsection (3), a person may be appointed to fill such a vacancy on the basis of the person’s special fitness for the position.

### **59D Eligibility for appointment on merit**

- (1) A person is eligible to be considered for a position under section 59C on the basis of fitness only if:
  - (a) the person’s name is on the promotions list appropriate to the position, or
  - (b) the person is an officer in the Education Teaching Service and the Director-General of Education has determined that the person is, or persons of a class of which that person is a member are, fit for the position.
- (2) A person is eligible to be considered for the position on the basis of special fitness only if:
  - (a) the person’s name is on a promotions list (whether or not appropriate to the position), or
  - (b) the person is an officer in the Education Teaching Service and the Director-General

of Education has determined that the person is, or persons of a class of which the person is a member are, specially fit for the position.

**59E Vacancies in other positions**

- (1) This section applies to a vacancy in a position to which this Subdivision applies, other than a position to which section 59C applies.
- (2) The person appointed to fill a vacancy to which this section applies shall be:
  - (a) an officer whose name is on the appropriate promotions list for the position, regard being had to the relative seniority and fitness respectively of officers whose names are on that promotions list, or
  - (b) an officer of another division of the Education Teaching Service whom the Director-General of Education considers it desirable to appoint on the ground of the officer's special fitness to fill the vacant position.
- (3) In making an appointment under subsection (2) (a), seniority shall be subordinate to considerations of special fitness.

**59F (Repealed)**

**59G Principal of boys' or girls' high school**

- (1) The person appointed to fill a vacancy in the position of principal of a single sex high school must be a person of that sex unless no person of that sex who is eligible for the position applies for and accepts appointment to the position.
- (2) This section applies no matter which provision of this Subdivision the vacancy is filled under.

**60 Appeals in respect of seniority etc**

- (1) Any officer of the Education Teaching Service dissatisfied with any decision or determination of the Director-General of Education, whether particular or general, or a failure to make such a decision or determination, in regard to:
  - (a) seniority,
  - (b) the placing of the officer's name, within a period determined as prescribed, on a promotions list relating to officers employed in the division in which the officer is employed,
  - (c) the classification of the work performed by or assigned to the officer, or
  - (d) the filling of a vacant position in the Education Teaching Service to which section 59C applies for which the officer has unsuccessfully applied,

may appeal to the Director-General against the decision, determination or failure by forwarding to the Director-General, within a period determined as prescribed, a notice of appeal setting forth the grounds of the appeal.

- (1A) The only ground for an appeal under subsection (1) (d) is that the whole or any part of the selection process for the position was irregular or improper.
- (2) Where an appeal under subsection (1) is made:
- (a) by a teacher in a public school, or
  - (b) by any other member of the Education Teaching Service,
- by reason of the refusal or failure of the Director-General to place the teacher's or member's name on a promotions list, the appeal shall, where it is made by such a teacher, and may, where it is made by any such other member, be referred, for inquiry and report to the Director-General, to a promotions committee constituted under section 61.
- (3) The Director-General shall, after considering the appeal and such other information as he or she thinks proper, and, where the appeal has been referred to a promotions committee, after having regard to any report made by the committee with respect to the appeal, allow or disallow the appeal and make such determination with respect to the appeal as he or she thinks fit.
- (4) The decision of the Director-General under subsection (3) shall be final.
- (5) Where there is no promotions list in respect of a division, and the Director-General proposes to appoint or promote any person to a position in that division, the Director-General may refer the proposed appointment or promotion to a promotions committee for inquiry and report.

## **61 Promotions committees**

- (1) A promotions committee shall be constituted for each division and shall consist of:
- (a) an officer of the Education Teaching Service, or an officer of the Public Service, nominated by the Director-General of Education,
  - (b) where the committee is to sit pursuant to a reference made:
    - (i) under section 60 (2), an officer whose name is on a promotions list for the division in which the appellant is employed, and who is selected by or on behalf of the officers of that division in the manner prescribed, and
    - (ii) under section 60 (5), an officer who is employed in the division in which is included the position to which the appointment or promotion is proposed to be made, and who is selected by or on behalf of the officers of that division in the

manner prescribed, and

- (c) a person nominated by the members of the promotions committee holding office as such under paragraphs (a) and (b) or, in default of their agreement, by the Director-General.
- (2) The promotions committee to which an appeal is referred under section 60 shall inquire into the grounds of the appeal and report to the Director-General whether or not the committee recommends that the appeal be allowed.
- (3) The promotions committee to which a proposed appointment or promotion is referred under section 60 (5) shall inquire into the proposed appointment or promotion and report to the Director-General whether or not the committee recommends that the proposed appointment or promotion be made.

## **62 Appeals under the [Government and Related Employees Appeal Tribunal Act 1980](#)**

- (1) A decision or determination, under this Subdivision, of the Director-General of Education is not subject to appeal under the [Government and Related Employees Appeal Tribunal Act 1980](#).
- (2) Nothing in subsection (1) prevents an officer from making an appeal under the [Government and Related Employees Appeal Tribunal Act 1980](#) against a decision, made pursuant to section 59E, of the Director-General of Education to appoint an officer to a vacant position in a division of the Education Teaching Service where the name of the firstmentioned officer:
  - (a) is on the promotions list for that division, and
  - (b) is higher in order on that promotions list than the name of the secondmentioned officer.
- (3) (Repealed)

## **Subdivision 2 Filling vacancies in the Technical and Further Education Teaching Service**

### **63 Seniority**

- (1) This section has effect for the purpose of determining seniority within the Technical and Further Education Teaching Service.
- (2) Except as provided in subsections (3) and (4), an officer of the Technical and Further Education Teaching Service is senior to every other officer of that service on a lower salary than the firstmentioned officer.
- (3) The relative seniority of officers of the Technical and Further Education Teaching Service who are within a group of officers prescribed for the purposes of this

subsection shall be determined in accordance with the regulations made under section 101.

- (4) An officer of the Technical and Further Education Teaching Service:
  - (a) who is within a group referred to in subsection (3) is senior to any other officer who is within any other such group or who is not within any such group if that other officer is on a lower salary than the firstmentioned officer, and
  - (b) who is not within any group referred to in subsection (3) is senior to any officer within any such group who is on a lower salary than the firstmentioned officer.
- (5) Where, pursuant to this section, the relative seniority of officers is to be determined according to their salaries and 2 or more officers are on equal salaries, the relative seniority of those officers shall be determined in accordance with the regulations made under section 101.

#### **64 Filling of vacancies in the Technical and Further Education Teaching Service**

Where there is a vacancy in any position in the Technical and Further Education Teaching Service and the Director-General of Technical and Further Education decides it is expedient to fill the vacancy, the position may be filled:

- (a) by the appointment, by way of transfer or promotion, of an officer of that service, or
- (b) by the appointment of a person who, immediately before the person's appointment, was not an officer of that service,

subject to and in accordance with this Subdivision.

#### **65 Appointments from within the Technical and Further Education Teaching Service**

- (1) In this section, **efficiency**, in relation to an officer of the Technical and Further Education Teaching Service eligible for appointment to a vacant position within that service, means:
  - (a) the possession by that officer of qualifications, determined by the Director-General of Technical and Further Education in respect of that position, for the discharge of the duties of that position and the officer's aptitude for the discharge of those duties, and
  - (b) the merit, diligence and good conduct of that officer.
- (2) In deciding to make an appointment of an officer to a vacant position, the Director-General of Technical and Further Education shall, out of the group of officers eligible for appointment to the vacant position, prefer:
  - (a) the officer whose efficiency is, in the opinion of the Director-General, greater than that of any other officer in that group, or

(b) where, in the opinion of the Director-General, there is no officer in that group entitled to preference under paragraph (a), the officer who, under section 63, is senior to any other officer in that group.

(3) An appointment referred to in subsection (2) shall not take effect until the expiration of the time for lodging a notice of appeal under the *Government and Related Employees Appeal Tribunal Act 1980*, against the Director-General's decision to make the appointment or, where such a notice of appeal is lodged within that time, until the appeal is determined under that Act.

## **66 Publication of appointments**

- (1) The Director-General of Technical and Further Education shall cause to be published in the Technical and Further Education Gazette, at intervals of not more than one month, brief particulars, in a form determined by the Director-General, of decisions under section 65, particulars of which have not previously been published in that Gazette in accordance with this subsection.
- (2) Any officer of the Technical and Further Education Teaching Service who is proceeding on duty outside the State for a period exceeding 6 weeks or on leave for a period exceeding 6 weeks, and who has made application, in a form approved by the Director-General of Technical and Further Education, to the Director-General, is entitled to be sent during that period by the Director-General, by pre-paid post addressed to the officer at the address specified in the application, a copy of all Technical and Further Education Gazettes published during that period.

## **67 Temporary appointments of officers**

- (1) Notwithstanding section 65 (3) but subject to subsection (2), an officer of the Technical and Further Education Teaching Service may be temporarily appointed by the Director-General of Technical and Further Education to a position within that service which is vacant or the holder of which is suspended, sick or absent.
- (2) An appointment under subsection (1) shall not be made except in accordance with such conditions of employment as are determined by the Director-General of Technical and Further Education with the concurrence of the Secretary.
- (3) The Director-General of Technical and Further Education shall not make a temporary appointment under subsection (1) of an officer of the Technical and Further Education Teaching Service to carry out the duties of a permanent position for a period in excess of 6 months unless the Director-General is satisfied that an appointment in excess of that period should be made having regard to the exigencies of that service.

## **68 Appeals in respect of salary etc**

- (1) Any officer of the Technical and Further Education Teaching Service dissatisfied with any decision or determination (whether particular or general) of the Director-General



of Technical and Further Education, being a decision or determination:

- (a) in regard to salary, seniority (not being a refusal referred to in section 69 (1)) or grade affecting the officer, or to the classification of the work performed by or assigned to the officer, or
- (b) against which the officer would, but for section 21 (1) (d) of the *Government and Related Employees Appeal Tribunal Act 1980*, have been entitled to appeal under that Act,

may forward to the Director-General, within 30 days:

- (c) after the date of publication of the issue of the Technical and Further Education Gazette in which the decision or determination was notified, or
- (d) if the decision or determination was not notified in that Gazette—after being officially notified in writing of the decision or determination,

a notice of appeal setting forth the grounds of the officer's dissatisfaction.

- (2) The Director-General of Technical and Further Education, after considering the appeal and such other information as the Director-General thinks proper, shall allow or disallow the appeal or make such other determination with respect to the appeal as the Director-General thinks fit.
- (3) The decision of the Director-General under subsection (2) shall be final.
- (4) An officer who is entitled to appeal to the Government and Related Employees Appeal Tribunal against any decision or determination of the nature referred to in subsection (1) is not entitled to appeal to the Director-General in respect of that decision or determination.

## **69 Appeals in respect of the promotions list**

- (1) Any officer of the Technical and Further Education Teaching Service, being a teacher employed in a school or college, who is dissatisfied with the failure or refusal of the Director-General of Technical and Further Education to place the officer's name, within a period determined as prescribed, on the promotions list may forward to the Director-General, within 30 days after the expiration of that period, a notice of appeal setting forth the grounds of the officer's dissatisfaction.
- (2) The Director-General of Technical and Further Education shall refer the appeal for inquiry and determination to a promotions committee constituted under section 70.

## **70 Promotions committees**

- (1) A promotions committee shall consist of:
  - (a) an officer of the Technical and Further Education Teaching Service, or an officer of

the Public Service, nominated by the Director-General of Technical and Further Education,

- (b) an officer of the Technical and Further Education Teaching Service whose name is on the promotions list and who is nominated by the Council of the New South Wales Teachers Federation, and
  - (c) a person nominated by the members of the promotions committee holding office as such under paragraphs (a) and (b) or, in default of their agreement, by the Director-General of Technical and Further Education.
- (2) The promotions committee to which an appeal is referred under section 69:
- (a) is entitled to inspect any documents or other records within the Department of Technical and Further Education relating to the appellant,
  - (b) may, if it thinks fit, interview the appellant, and
  - (c) shall, within one month after the date on which the appeal is referred to it, consider and allow or disallow the appeal or make such other determination with respect to the appeal as it thinks fit.
- (3) Questions arising at a meeting of a promotions committee shall be determined by a majority of votes of the members of the committee present and voting.
- (4) A promotions committee shall give reasons for its decisions and shall indicate whether a decision was unanimous or by majority.
- (5) Where a member of a promotions committee who is in a minority with respect to a decision of the committee wishes the member's minority decision to be recorded, the record of the decision of the committee shall include the minority decision.
- (6) The decision of a promotions committee under subsection (2) (c) shall be final and shall, as soon as practicable after it is made, be notified to the Director-General of Technical and Further Education.
- (7) The Director-General shall do all such things as are necessary to give effect to a decision notified under subsection (6) and shall, within 14 days after the decision is notified, inform the appellant of the decision.

### **Subdivision 3 Other provisions relating to service in the Teaching Services**

#### **71 Transfers within a Teaching Service**

- (1) Where the appropriate Director-General considers it to be in the interests of a Teaching Service to do so, that Director-General may direct the transfer of an officer from one position in the Teaching Service to another position in the Teaching Service

equivalent in classification and salary to the firstmentioned position provided the officer possesses the qualifications determined by the appropriate Director-General in respect of that other position for the discharge of the duties of that other position and the Director-General is satisfied as to the aptitude of the officer for the discharge of those duties.

- (2) This section empowers the transfer of an officer to a position even if it is a vacant position to which Subdivision 1 or 2 applies.

#### **71A Arrangements for use of certain staff**

- (1) The Director-General of Education may, with the approval of the Director-General of Technical and Further Education and on such terms and conditions as may be arranged, make use of the services of an officer or temporary employee of the Technical and Further Education Teaching Service.
- (2) The Director-General of Technical and Further Education may, with the approval of the Director-General of Education and on such terms and conditions as may be arranged, make use of the services of an officer or temporary employee of the Education Teaching Service.
- (3) The Director-General of Education or the Director-General of Technical and Further Education may, with the approval of the appropriate Department Head within the meaning of the *Public Sector Management Act 1988* of a government department or administrative office and on such terms and conditions as may be arranged, make use of the services of any staff of the department or office.
- (4) The services of a person may not be made use of under subsection (3) for:
- (a) a continuous period in excess of 12 months, or
  - (b) 2 or more periods that together are in excess of 12 months in any period of 2 years,

except with the concurrence of the Secretary and the Public Employment Industrial Relations Authority.

#### **72 Excess persons**

Where the appropriate Director-General is satisfied:

- (a) that a number of persons is employed in a Teaching Service, or any part of a Teaching Service, in excess of a number that appears to be necessary for the efficient, effective and economical management of the Teaching Service or part, and
  - (b) that any such person cannot be usefully employed in the Teaching Service,
- the Director-General may dispense with the services of that person.

### **73 Excessive salaries**

- (1) Where the appropriate Director-General is satisfied that an officer of a Teaching Service is in receipt of a greater salary than the maximum fairly appropriate to the work performed by the officer:
  - (a) subject to paragraph (b), the Director-General shall take such steps as are practicable to assign the officer work of a class appropriate to the salary, and
  - (b) if the officer cannot be assigned sufficient work of the kind referred to in paragraph (a) or is unfitted for or incapable of performing work appropriate to the salary, the Director-General:
    - (i) shall reduce the salary to the maximum determined by the Secretary to be appropriate to the work performed by the officer, and
    - (ii) may take such steps as are practicable to secure the officer's transfer, to a vacant position in the Teaching Service of which the officer is a member, at that salary.
- (2) If a reduction of salary of an officer under this section is certified by the appropriate Director-General to have been made on the ground only that appropriate work or an appropriate position is not available, the officer:
  - (a) remains eligible for promotion as if the salary had not been reduced, and
  - (b) is entitled to employment on the class of work to which the previous salary was appropriate, or transfer to a position to which that class of work is attached, as soon as the appropriate work or an appropriate position becomes available, in preference to any other officer whose salary has not been reduced.

### **74 Declining of promotion or appointment**

The appropriate Director-General may allow any officer of the Teaching Service who has been offered a promotion or appointment in the Teaching Service to decline the promotion or appointment without prejudice to any rights that the officer would, had the officer not declined the promotion or appointment, have had to any future promotion or appointment.

### **75 Refusal to comply with directions**

Where an officer of a Teaching Service refuses to comply with a direction of the appropriate Director-General for the officer's removal from one position in the Teaching Service to another, the Director-General shall, unless satisfied that the officer had a valid and sufficient reason for so refusing, dismiss that officer from the Teaching Service.

### **76 Retirement or transfer of officers through invalidity or incapacity**

- (1) Where the appropriate Director-General determines:

- (a) that an officer of a Teaching Service is, because of invalidity or physical or mental incapacity, unable to perform the duties of his or her position,
- (b) that the invalidity or incapacity is likely to be of a permanent character, and
- (c) that the invalidity or incapacity has not arisen from actual misconduct on the officer's part or from causes within the officer's control,

the Director-General:

- (d) may cause the officer to be retired from the Teaching Service, or
- (e) with the consent of the officer, transfer him:
  - (i) to some other position in the Teaching Service,
  - (ii) if the appropriate Department Head so approves, to some position in the Public Service, or
  - (iii) if the other Director-General so approves, to some position in the other Teaching Service,

with salary and other conditions of the officer's employment appropriate to that position.

- (2) A decision or determination of the appropriate Director-General under subsection (1) is not subject to appeal under the *Government and Related Employees Appeal Tribunal Act 1980*.

#### **77 (Repealed)**

#### **78 Vacation of position**

An officer of a Teaching Service shall be deemed to have vacated the officer's position if:

- (a) the officer dies, or
- (b) the officer resigns the officer's position by writing signed by the officer and delivered to the appropriate Director-General and the officer's resignation is accepted by that Director-General.

#### **78A Sections 72-78 not to apply to senior executive officers**

Sections 72-78 do not apply to senior executive officers.

### **Division 5 Extended leave**

#### **79 Leave of absence after years of service**

- (1) Subject to this section, an officer of a Teaching Service is entitled:

- (a) after service for 10 years, to leave for 2 months on full pay or 4 months on half pay, and
  - (b) after service in excess of 10 years, to:
    - (i) leave pursuant to paragraph (a), and
    - (ii) in addition, an amount of leave proportionate to the officer's length of service after 10 years, calculated on the basis of 5 months on full pay, or 10 months on half pay, for 10 years served after service for 10 years.
- (2) For the purpose of calculating the entitlement of a person to extended leave under this section at any time:
- (a) service referred to in this section includes service before the appointed day,
  - (b) there shall be deducted from the amount of extended leave to which, but for this paragraph, that person would be entitled:
    - (i) any extended leave, or leave in the nature of extended leave, and
    - (ii) the equivalent, in extended leave, of any benefit instead of extended leave or leave in the nature of extended leave,  
  
taken or received by that person before that time, including any such leave taken, or benefit received, by that person pursuant to the [Public Service \(Amendment\) Act 1919](#), as in force at any time, the [Teaching Service Act 1970](#), as in force at any time, or the [Public Service Act 1979](#), and
  - (c) the provisions of the [Transferred Officers Extended Leave Act 1961](#) shall have effect,  
  
but nothing in this subsection shall be construed as authorising, in respect of the same period of leave taken or the same benefit received, a deduction under both paragraph (b) and section 3 (7) of the [Transferred Officers Extended Leave Act 1961](#).
- (3) Where the services of an officer of a Teaching Service with at least 5 years' service and less than 10 years' service are terminated by the Crown or the appropriate Director-General for any reason other than the officer's serious and wilful misconduct or by the officer on account of illness, incapacity or domestic or other pressing necessity, the officer shall be entitled for 5 years' service to 1 month's leave on full pay and for service after 5 years to a proportionate amount of leave on full pay calculated on the basis of 3 months' leave for 15 years' service.
- (4) (Repealed)
- (5) For the purposes of:
- (a) subsection (1), **service** includes:

- (i) service under the *Public Service Act 1902*, the *Teaching Service Act 1970*, the *Public Service Act 1979*, or this Act,
  - (ii) any period of leave without pay taken before the commencement of the *Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963*, and
  - (iii) in the case of an officer who has completed at least 10 years' service (any period of leave without pay taken before that commencement being included therein, and any period of leave without pay taken after that commencement being excluded therefrom)—any period of leave without pay, not exceeding 6 months, taken after that commencement, and
- (b) subsection (3), **service** does not include any period of leave without pay whether taken before or after the commencement of the *Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963*.

#### **80 Gratuity instead of extended leave**

- (1) An officer of a Teaching Service who has acquired a right to extended leave with pay under section 79, shall, on the termination of the officer's services, be paid forthwith instead of that leave the money value thereof as a gratuity in addition to any gratuity to which the officer may be otherwise entitled.
- (2) Any pension to which any such officer is entitled under the *Superannuation Act 1916* shall commence from the date on which the officer's extended leave, if taken, would have commenced.

#### **81 Payment of money value of leave not taken or completed**

- (1) Where an officer of a Teaching Service has acquired a right under section 79 to extended leave with pay and dies before entering upon it, or after entering upon it dies before its termination:
  - (a) the widow or widower of the officer,
  - (b) if there is no such widow or widower, the children of the officer, or
  - (c) if there is no such widow, widower or children, the person who, in the opinion of the appropriate Director-General, was, at the time of the death of the officer, a dependent relative of the officer,

is entitled to receive the money value of the leave not taken, or not completed, computed at the rate of salary that the officer received at the time of his or her death less any amount paid to the officer in respect of the leave not taken, or not completed.

- (2) Where an officer of a Teaching Service with at least 5 years' service and less than 10 years' service as referred to in section 79 (3) dies:

- (a) the widow or widower of the officer,
- (b) if there is no such widow or widower, the children of the officer, or
- (c) if there is no such widow, widower or children, the person who, in the opinion of the appropriate Director-General, was, at the time of the death of the officer, a dependent relative of the officer,

is entitled to receive the money value of the leave which would have accrued to the officer had his or her services terminated as referred to in section 79 (3), computed at the rate of salary that the officer received at the time of his or her death.

- (3) Where there is a guardian of any children entitled under subsection (1) or (2), the payment to which those children are entitled may be made to that guardian for their maintenance, education and advancement.
- (4) Where there is no person entitled under subsection (1) or (2) to receive the money value of any leave not taken or not completed by an officer or which would have accrued to an officer, payment in respect thereof shall be made to the personal representatives of the officer.
- (5) Any payment under this section shall be in addition to any payment under the [Superannuation Act 1916](#).
- (6) Where payment of the money value of leave has been made under this Act, no proceedings may be brought against the Crown or a Director-General for payment of any amount in respect of that leave.

## **Division 6 Discipline and conduct**

### **82 Definition**

In this Division, **prescribed officer** means:

- (a) a person who is the holder of, or is acting in, any position in a Teaching Service or in the Public Service that is prescribed as a position for the purposes of this Division, and
- (b) an officer of a Teaching Service or the Public Service who is prescribed as an officer for the purposes of this Division.

### **83 Breaches of discipline**

An officer or temporary employee of a Teaching Service who:

- (a) commits any breach of this Act or the regulations,
- (b) engages in any misconduct,
- (c) uses intoxicating beverages or drugs to excess,



- (d) wilfully disobeys, or wilfully disregards, any lawful order made or given by a person having authority to make or give the order,
  - (e) is negligent, careless, inefficient or incompetent in the discharge of his or her duties, or
  - (f) engages in any disgraceful or improper conduct,
- is guilty of a breach of discipline.

#### **84 Procedure for dealing with breaches of discipline**

- (1) A breach of discipline alleged to have been committed by an officer or temporary employee of a Teaching Service shall be dealt with by the appropriate Director-General or a prescribed officer.
- (2) Subject to this Division, the regulations made under section 100 or 101 may:
  - (a) make provision for or with respect to the manner of dealing with alleged breaches of discipline, and
  - (b) prescribe all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Division.

#### **85 Punishment for breaches of discipline**

- (1) Where a breach of discipline is dealt with by the appropriate Director-General or a prescribed officer in accordance with the regulations and the Director-General or prescribed officer, as the case may be, finds that the officer or temporary employee charged has committed the breach or the officer or temporary employee admits to the Director-General or prescribed officer that he or she committed the breach, the Director-General or prescribed officer:
  - (a) may decide to impose on the officer or temporary employee any one or more of the following punishments, that is to say, may decide to:
    - (i) caution the officer or temporary employee,
    - (ii) reprimand him or her,
    - (iii) fine him or her,
    - (iv) except in the case of a senior executive officer, reduce his or her rate of salary or wages, or
    - (v) except in the case of a senior executive officer, reduce him or her to a lower classification or position in the Teaching Service of which he or she is a member,

- (b) may decide to impose any one of the following punishments, that is to say:
- (i) where the breach is dealt with by the Director-General, the Director-General may decide to dismiss him or her from the Teaching Service of which he or she is a member, direct that he or she resign from that service within such period as may be specified in the direction or direct that his or her resignation from that service, if tendered within a period specified in the direction, be accepted, or
  - (ii) where the breach is dealt with by a prescribed officer, the prescribed officer may decide to recommend to the Director-General that the officer or temporary employee be dismissed from the Teaching Service of which he or she is a member or that he or she be required or allowed to resign, or
- (c) in the case of an officer on probation—may decide to annul his or her appointment.
- (2) Where a prescribed officer makes a recommendation referred to in subsection (1) (b) (ii), the Director-General to whom the recommendation is made may decide to:
- (a) impose any one of the punishments referred to in subsection (1) (b) (i), or
  - (b) impose any one or more of the punishments that may be imposed under subsection (1) (a).
- (3) Where a Director-General, in the exercise of the powers under this section, directs:
- (a) that an officer or temporary employee resign from a Teaching Service within a period specified in the direction, or
  - (b) that the resignation from a Teaching Service of an officer or temporary employee, if tendered within a period specified in the direction, be accepted,
- and the officer or temporary employee does not resign or tender his or her resignation, as the case may be, within the period specified in the direction, the Director-General may decide to dismiss that officer or temporary employee from the Teaching Service.
- (4) Subject to section 26 of the *Government and Related Employees Appeal Tribunal Act 1980*, a decision of a Director-General under subsection (1), (2) or (3) or of a prescribed officer under subsection (1) (a) may be given effect to at any time.
- (5) Without limiting the operation of section 24 of the *Government and Related Employees Appeal Tribunal Act 1980*, where a Director-General decides to direct an officer to resign from a Teaching Service, as referred to in subsection (1) (b) (i) or (2), that decision shall be deemed to be a decision of the nature referred to in section 23 (1) (g) of that Act.

- (6) The accountant of the appropriate Department, upon receiving notice of any fine imposed by the appropriate Director-General or a prescribed officer on an officer or temporary employee of a Teaching Service, shall deduct the amount of the fine from the salary, wages or other remuneration payable to that officer or temporary employee.

**86 Punishment where officer or temporary employee guilty of a serious offence**

Where an officer or temporary employee of a Teaching Service is found guilty in New South Wales of an offence that is punishable, either on indictment or on summary conviction by imprisonment for a term of 12 months or more, or is found guilty elsewhere than in New South Wales of an offence that if it were committed in New South Wales would be an offence so punishable, the appropriate Director-General may impose on that officer or temporary employee any one or more of the punishments that may be imposed under section 85 (1) as if that officer or temporary employee had, in accordance with that subsection, been dealt with by the Director-General for a breach of discipline and were liable to those punishments.

**87 Suspension of officers or temporary employees charged with breaches of discipline or serious offences**

- (1) Where an officer or temporary employee of a Teaching Service:
- (a) is, in accordance with the regulations, charged with a breach of discipline, or
  - (b) is charged with having committed an offence referred to in section 86,
- that officer or temporary employee may be suspended from duty by the appropriate Director-General or a prescribed officer until the charge has been dealt with.
- (2) Subject to the *Government and Related Employees Appeal Tribunal Act 1980*, any salary, wages or other remuneration payable to a person as an officer or temporary employee of a Teaching Service during suspension under this section shall be withheld and if:
- (a) he or she is found, as referred to in section 85 (1), to have committed the breach of discipline or admits, as referred to in that subsection, that he or she committed the breach, or
  - (b) he or she is convicted of the offence,
- as the case may be, shall, unless the appropriate Director-General otherwise directs, be forfeited unless the salary, wages or other remuneration were due to him or her before his or her suspension.
- (3) The suspension of an officer or temporary employee under this section may be removed by the Director-General at any time and may, where it was imposed by a prescribed officer, be removed by that officer at any time.

- (4) The regulations made under section 100 or 101 may:
- (a) provide that a prescribed officer may only exercise the powers under this section in respect of officers or temporary employees of such class as may be specified or described in the regulations, and
  - (b) require a suspension imposed by a prescribed officer under this section to be reported in such manner as may be prescribed.

**88 Officers and temporary employees to report bankruptcy etc**

Where an officer or temporary employee of a Teaching Service becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration or allowances for their benefit, he or she shall forthwith give to the appropriate Director-General notice thereof, accompanied by an explanation in writing of the cause of the bankruptcy or of the application, compounding or assignment, and shall, within such period as may be specified by the Director-General, furnish to the Director-General such further information with respect to the cause of the bankruptcy or of the application, compounding or assignment as may be required by the Director-General.

**89 Officers and temporary employees prohibited from engaging in employment except under this Act**

- (1) Except with the permission in writing of the appropriate Director-General, which may be withdrawn at any time, an officer or temporary employee of a Teaching Service (other than a temporary employee 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) shall not:
- (a) accept or continue to hold or discharge the duties of or be employed in any paid office in connection with any banking, insurance, mining, mercantile or other commercial business, whether it is carried on by any corporation, company, firm or individual,
  - (b) engage in or undertake any such business, whether as principal or agent,
  - (c) engage in or continue in the private practice of any profession, occupation or trade, or enter into any employment, whether remunerative or not, with any corporation, company, firm or individual so engaged,
  - (d) accept or continue to hold office in or under the Government of a State or of the Commonwealth, otherwise than under this Act,
  - (e) accept or engage in any remunerative employment other than in connection with the duties of his or her position under this Act, or
  - (f) accept, engage in or undertake any prescribed work or activity or any work or

activity of a prescribed class or description.

- (2) Nothing in this section prevents an officer or temporary employee of a Teaching Service:
  - (a) from becoming a member or shareholder of a corporation or company or of a society of persons registered under the law of any State or elsewhere, but an officer or temporary employee shall not take any part in the conduct of the business of the corporation, company or society otherwise than in the exercise of his or her right to vote as a member or shareholder, or
  - (b) from accepting and continuing to hold any office in any friendly society established for the benefit only of public servants or persons employed under this Act or of both public servants and persons so employed.
- (3) If any officer or temporary employee does any thing referred to in subsection (1) (a), (b), (c), (d), (e) or (f) without the permission of the appropriate Director-General, he or she shall at once notify the fact to the Director-General who may thereupon impose on the officer or temporary employee any of the punishments referred to in section 85 (1) or may direct the officer or temporary employee to abstain from doing that thing within such period as may be specified in the direction and, in default of his or her so abstaining, the Director-General may impose on the officer or temporary employee any of those punishments.

#### **90 Officer or temporary employee whose address is unknown**

- (1) If the address for the time being of an officer or temporary employee of a Teaching Service is unknown to the appropriate Director-General, all notices, orders or communications relating to any charges against the officer or temporary employee shall be posted to the address of the officer or temporary employee last known to that Director-General and compliance with this subsection shall be deemed a sufficient service on the officer or temporary employee of any such notices, orders or communications.
- (2) If within any time specified in any such notice, order or communication no answer is received by the appropriate Director-General to an inquiry asking whether the officer or temporary employee admits the truth of the charges brought against him or her, the officer or temporary employee shall be deemed to deny the truth of those charges, and the Director-General may inquire into and deal with those charges in the absence of the officer or temporary employee.

### **Division 7 Miscellaneous**

#### **91 Recovery of salary etc**

A member of a Teaching Service may sue for and recover the amount of his or her salary, wages or other remuneration the subject of a determination under section 25.

## **92 Deduction from salary or wages for use of building or provision of services**

- (1) Except as provided in subsection (2), where an officer or temporary employee of a Teaching Service is allowed to use, for the purpose of residence, any building or part of a building, or any land, belonging to the Government of New South Wales, or is provided by that Government with any service, there shall be deducted from his or her salary, wages or other remuneration such amount as the Public Employment Industrial Relations Authority, after consultation with the appropriate Director-General, fixes as being fair and reasonable for the use of the building, part or land or the provision of the service, as the case may be.
- (2) Where an officer or temporary employee of a Teaching Service is allowed to use, for the purpose of residence, any building or part of a building or any land vested in or managed by the Teacher Housing Authority of New South Wales, an amount fixed by that Authority in respect of rent shall be deducted from the salary of that officer or temporary employee and paid to that Authority.

## **93 Attachment of salary or wages of officers and temporary employees**

- (1) Where judgment has been entered in any court against any officer or temporary employee of a Teaching Service for the payment of any sum of money, the person in whose favour the judgment is entered may serve on the accountant of the appropriate Department:
  - (a) a copy of the judgment certified under the hand of the registrar or other proper officer of the court in which the judgment is entered, and
  - (b) a statutory declaration stating that the judgment has not been satisfied by the judgment debtor, and setting out the amount due by the judgment debtor under the judgment.
- (2) As soon as practicable after the service of a copy of a judgment and a statutory declaration in pursuance of this section, the accountant of the appropriate Department shall notify the judgment debtor in writing of the service of the copy of the judgment and statutory declaration, and require the judgment debtor to state in writing within a time to be specified by the accountant whether the judgment has been satisfied, and, if so, to furnish evidence in support thereof, and if the judgment has not been satisfied, to state the amount then due under the judgment.
- (3) If the officer or temporary employee fails to prove to the satisfaction of the accountant of the appropriate Department that the judgment has been satisfied, the accountant shall:
  - (a) from time to time, deduct from any money due to the officer or temporary employee such sums as are fixed by the appropriate Director-General and are in the Director-General's opinion necessary to enable the judgment to be satisfied, and

(b) apply to those sums in the manner hereinafter in this section provided,

but in no case shall a deduction be fixed or made which will reduce the amount to be received by the officer or temporary employee to less than a sum per week equivalent to the amount ascertained in accordance with subsection (4).

(4) The amount which, pursuant to subsection (3), is to be ascertained in accordance with this subsection shall be ascertained by deducting \$8:

(a) in the case of a male officer or temporary employee, from the basic wage for adult males, and

(b) in the case of a female officer or temporary employee, from the basic wage for adult females,

in force within the meaning of Part 5 of the *Industrial Arbitration Act 1940* immediately before the deduction under subsection (3) is made.

(5) Where copies of more than one judgment and statutory declaration relating thereto are served upon the accountant of the appropriate Department in respect of one judgment debtor, the judgments shall be dealt with under this section in the order in which copies of the judgments are served upon the accountant.

(6) Any deductions made under the provisions of subsection (3) from money due to an officer or temporary employee shall, as between the Government of New South Wales and the officer or temporary employee, be deemed to be a payment by that Government to the officer or temporary employee.

(7) Any person to whom a payment has been made in pursuance of this section who fails to notify the accountant of the appropriate Department immediately the judgment debt in respect of which the payment was made is satisfied, or is deemed to be satisfied, is liable, upon conviction before a Local Court, to a penalty not exceeding 1 penalty unit.

(8) If any deduction made in pursuance of the provisions of subsection (3) from money due to a judgment debtor exceeds the amount due under the judgment against the judgment debtor, the excess shall be repayable by the appropriate Department to the judgment debtor and, in default of payment, may be recovered by the judgment debtor from the Crown in any court of competent jurisdiction.

(9) This section does not apply in relation to any officer or temporary employee who is an undischarged bankrupt.

(10) Out of the sums deducted under the provisions of subsection (3) there shall be retained by the accountant of the appropriate Department, to be paid by the accountant to the Treasurer for credit of the Consolidated Revenue Fund, an amount equal to 5 per cent (or such other percentage as the Governor may, by order, notify in

the Gazette, which order the Governor is hereby authorised to make) of those sums, and the balance of those sums shall be paid to the judgment creditor.

- (11) When the accountant makes a payment to a judgment creditor under the provisions of subsection (10), the accountant of the appropriate Department shall forward to the judgment creditor a statement showing:
- (a) the sums deducted under the provisions of subsection (3) in respect of the judgment from money due to the officer or temporary employee concerned,
  - (b) the amount retained by the accountant under the provisions of subsection (10) out of those sums, and
  - (c) the balance of those sums paid to the judgment creditor under the provisions of subsection (10).
- (12) Upon payment being made under the provisions of subsection (10) to the judgment creditor, the judgment creditor shall credit the officer or temporary employee concerned with the sums referred to in subsection (11) (a), as shown in the statement forwarded by the accountant of the appropriate Department to the judgment creditor, and the judgment in respect of which the payment was made shall for all purposes be deemed to be satisfied to the extent of those sums, as so shown.
- (13) In this section, **judgment** includes a judgment against joint defendants.

## **Part 5 General**

### **94 Saving as to Minister's authority**

Nothing in this Act shall be construed as restricting the ordinary and necessary departmental authority of the Minister with respect to the direction and control of members of the Teaching Services and work.

### **95 Appointments etc to be notified in appropriate Gazette**

- (1) All notices of appointments, promotions, retirements, dismissals and annulments of appointments of:
- (a) officers of the Education Teaching Service shall be published in the Education Gazette, and
  - (b) officers of the Technical and Further Education Teaching Service shall be published in the Technical and Further Education Gazette.
- (2) A notice so published shall be conclusive evidence of the appointment, promotion, retirement, dismissal or annulment of appointment specified in the notice.



## **96 Evidence as to Gazettes**

A document purporting to be an issue of the Education Gazette or the Technical and Further Education Gazette, as the case may be, is admissible in evidence in any proceedings, including proceedings before the Government and Related Employees Appeal Tribunal, and shall, until the contrary is proved, be deemed to be a copy of an issue of the Education Gazette or the Technical and Further Education Gazette, as the case may be.

## **97 Crown's right to dismiss not abrogated**

- (1) Subject to subsection (3), nothing in this Act shall be construed or held to abrogate or restrict the right or power of the Crown to dispense with the services of any person employed in a Teaching Service.
- (2) An officer or temporary employee of a Teaching Service shall not be entitled to any compensation by reason of any reduction in salary or of his or her services being dispensed with, whether under this section or otherwise.
- (3) Subsections (1) and (2) do not apply so as to affect the rights, under any other Act, of any person whose salary has been reduced or whose services have been dispensed with to appeal against the decision or determination reducing the person's salary or dispensing with the person's services or to be reinstated to a Teaching Service.

## **98 Certain Acts apply to officers and temporary employees**

The provisions of section 2 (1) of the [Constitution \(Public Service\) Amendment Act 1916](#) apply to officers and temporary employees of a Teaching Service as if they were holders of offices of profit in the Public Service and the remaining provisions of that Act and the provisions of the [Public Service \(Commonwealth Elections\) Act 1943](#) apply to officers as if they were officers within the meaning of the [Public Service Act 1979](#).

## **99 Making of regulations by the Governor**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by Part 2 or Schedule 3 is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to Part 2 or Schedule 3.

## **100 Making of regulations by the Director-General of Education**

- (1) The Director-General of Education may, with the approval of the Governor, make regulations, not inconsistent with this Act, for or with respect to:
  - (a) the examinations to be held and qualifications required for appointment to or promotion to a position in the Education Teaching Service,
  - (b) the appointment, transfer, powers, duties and responsibilities of officers and

temporary employees of the Education Teaching Service,

- (c) the arrangement of positions in the Education Teaching Service into divisions,
- (d) the order and conditions of promotion and the grading and seniority of members of the Education Teaching Service,
- (e) appeals to the Director-General of Education,
- (f) the employment of persons under section 50,
- (g) the training, certification, classification, resignation, retirement, punishment, dismissal or leave of absence of officers and temporary employees of the Education Teaching Service,
- (h) the maintenance of discipline, order, economy and efficiency in the Education Teaching Service,
- (i) the classification, general management and inspection of public schools, and
- (j) any matter that by this Act (Part 2 and Schedule 3 excepted) is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act (Part 2 and Schedule 3 excepted) concerning the Education Teaching Service.

- (2) The Director-General of Education shall cause a copy of each Regulation made under subsection (1) to be published in the Education Gazette as soon as practicable after it has been published in the Government Gazette under section 39 of the *Interpretation Act 1987*.

#### **101 Making of regulations by the Director-General of Technical and Further Education**

- (1) The Director-General of Technical and Further Education may, with the approval of the Governor, make regulations, not inconsistent with this Act, for or with respect to:
  - (a) the examinations to be held and qualifications required for appointment to or promotion to a position in the Technical and Further Education Teaching Service,
  - (b) the appointment, transfer, powers, duties and responsibilities of officers and temporary employees of the Technical and Further Education Teaching Service,
  - (c) the arrangement of positions in the Technical and Further Education Teaching Service into schools, divisions and sections,
  - (d) the grading and seniority of members of the Technical and Further Education Teaching Service,
  - (e) the preparation and maintenance of a promotions list, the conditions for placement on the list, the positions for which placement on the list is an essential

prerequisite for promotion and appeals against non-placement on the list,

- (f) appeals to the Director-General of Technical and Further Education,
- (g) the employment of persons under section 58,
- (h) the training, certification, classification, resignation, retirement, punishment, dismissal or leave of absence of officers and temporary employees of the Technical and Further Education Teaching Service,
- (i) the maintenance of discipline, order, economy and efficiency in the Technical and Further Education Teaching Service,
- (j) the classification, general management and inspection of schools and colleges, and
- (k) any matter that by this Act (Part 2 and Schedule 3 excepted) is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act (Part 2 and Schedule 3 excepted) concerning the Technical and Further Education Teaching Service.

(2) The Director-General of Technical and Further Education shall cause a copy of each regulation made under subsection (1) to be published in the Technical and Further Education Gazette as soon as practicable after it has been published in the Government Gazette under section 39 of the [Interpretation Act 1987](#).

### **102 Application etc of regulations**

A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

### **103 Savings and transitional provisions**

Schedule 3 has effect.

### **Schedules 1, 2 (Repealed)**

## Schedule 3 Savings and transitional provisions

(Section 103)

### Part 1 General

#### 1 Definitions

In this Schedule:

**Commission** means the Education Commission of New South Wales as constituted in accordance with this Act immediately before the relevant commencement.

**relevant commencement** means the commencement of Schedule 1 (7) to the 1988 Act.

**the 1988 Act** means the *Education Commission (Amendment) Act 1988*.

#### 2 Savings and transitional regulations

(1) The regulations made by the Governor may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

The 1988 Act

*Miscellaneous Acts (Education Commission) Amendment Act 1988*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent of the **Education Commission (Amendment) Act 1988**

#### 3 Abolition of the Commission

On the relevant commencement, the Commission is abolished.

#### 4 Members of the Commission

(1) A person who, immediately before the relevant commencement, held office as a

member of the Commission:

- (a) ceases to hold office as such on that commencement, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

(2) Nothing in this clause affects any arrangement for the appointment of any such person to a position in the service of the Government.

## **5 References to the Commission etc**

On and from the relevant commencement, a reference in any other Act, or in any instrument made under any Act or in any other instrument of any kind, to the Commission, to the Chairman of the Commission or to a member of the Commission shall be read as a reference to the Secretary.

## **6 Transfer of assets, liabilities etc of Commission**

On and from the relevant commencement, any assets, rights, liabilities or obligations of the Commission shall become assets, rights, liabilities or obligations of the Crown.

## **7 Agreements**

Any agreement between the Commission and an association or organisation made under section 26 and in force immediately before the relevant commencement shall be taken to be, after that commencement, an agreement between the Secretary and the association or organisation made under that section, as amended by the 1988 Act.

## **8 Determination of conditions of employment by the Commission**

Any determination of conditions of employment under section 25, 47 (4), 50 (4), 55 (4) or 58 (4) made by the Commission and in force immediately before the relevant commencement shall be taken to be, after that commencement, a determination made by the Secretary under the section concerned, as amended by the 1988 Act.

## **9 Delegations by Commission of functions as an employer**

Any delegation under section 34 made by the Commission and in force immediately before the relevant commencement shall (if the function delegated is exercisable by the Secretary) be taken to be, after that commencement, a delegation made by the Secretary under section 28A, as inserted by the 1988 Act.

## **10 Repeal of Education Commission (Teaching Services Elections) Regulation 1980**

On the relevant commencement, the *Education Commission (Teaching Services Elections) Regulation 1980* is repealed.