

# Teaching Service 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**  
Teaching Services Act 1980  
Education Commission Act 1980
- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2005](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Teaching Service Act 1980 No 23



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# Teaching Service Act 1980 No 23



New South Wales

An Act to establish the Teaching Service of New South Wales and to make provision relating to the employment of persons in the Teaching Service.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Teaching Service 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- (3) (Repealed)

### 2A, 3 (Repealed)

### 4 Definitions

- (1) In this Act:

**appointed day** means 20 October 1980.

**Department** means the Department of Education and Training.

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

**Education Gazette** means the document entitled *Education Gazette* published under the authority of the Minister.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**officer** means a person employed in the Teaching Service other than as a temporary

employee.

**position** includes office.

**school** means a government school established under the [Education Act 1990](#).

**school principal** means a person appointed to the position of principal of a school.

**senior executive officer** has the same meaning as in the [Public Sector Employment and Management Act 2002](#).

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

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

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

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

## 5 [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 Director-General

### Division 1 General functions and related provisions

#### 6 General responsibility

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

#### 7 General functions

- (1) The Director-General has the following functions:
  - (a) to classify the schools in which members of the Teaching Service are employed,
  - (b) to determine the staff positions in the Teaching Service (including the teaching

positions in schools),

- (c) to determine the method of classifying and grading officers employed in the Teaching Service,
- (d) to determine the qualifications required for appointment to the Teaching Service,
- (e) to prepare and maintain a list of persons who the Director-General determines are not to be employed in the Teaching Service,
- (f) to maintain discipline in the Teaching Service.

(2) Subsection (1) does not limit the functions that are conferred or imposed on the Director-General by or under this Act.

## 8 Delegation of functions

(1) The Director-General may delegate to an authorised person any of the functions of the Director-General under this Act other than:

- (a) this power of delegation, or
- (b) the functions conferred or imposed under:
  - (i) Division 6 of Part 4 (section 89 (1) excepted), or
  - (ii) section 100.

(2) A delegate may sub-delegate to an authorised person any function delegated by the Director-General if the delegate is authorised to do so by the Director-General.

(3) In this section:

**authorised person** means:

- (a) an officer or temporary employee, or
- (b) a member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*, or
- (c) a member of staff of the TAFE Commission.

## 9 Acting appointment to Director-General position

Despite section 13 of the *Public Sector Employment and Management Act 2002*, an officer of the Teaching Service or a member of staff of the TAFE Commission may be appointed under that section to act in the position of Director-General while that position is vacant or if the holder of that position is suspended, sick or absent.

## Division 2 Employment functions



## **10 Definition**

In this Division:

**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” are to be construed as references to the Crown,
- (b) the references to “employees” are to be construed as references to members of the Teaching Service,
- (c) the references to “any industry” and “an industry” are to be construed as references to the Teaching Service.

## **11 Director-General to act for Crown**

The Director-General, in exercising a function under this Division, acts for the Crown.

## **12 Role of Director-General in industrial proceedings**

The Director-General is, for the purpose of:

- (a) making any determination under section 13, or
- (b) any proceedings relating to members of the Teaching Service held before a competent tribunal having power to deal with industrial matters,

taken to be the employer of those members.

## **13 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 Service are to be determined from time to time by the Director-General.
- (2) This section does not apply in relation to the remuneration of, or allowances payable to, senior executive officers in the Teaching Service.

## **14 Agreements relating to industrial matters**

- (1) The Director-General may enter into an agreement with any association or organisation representing any group or class of officers or temporary employees as to any industrial matter.
- (2) Any such agreement binds all officers and temporary employees in the class or group affected by the agreement and no such officer or temporary employee, whether a member of the association or organisation with which the agreement was entered into or not, has any right of appeal against the terms of the agreement.

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

The Director-General may not make a determination under section 13 or enter into an agreement under section 14, being a determination or an agreement relating to an industrial matter that the Minister has determined and notified the Director-General to be a major industrial matter, unless the Director-General has notified the Minister of the determination proposed to be made or the agreement proposed to be entered into.

## **16-36 (Repealed)**

## **Part 3**

## **37-41A (Repealed)**

## **Part 4 The Teaching Service**

### **Division 1**

## **42, 43 (Repealed)**

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

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

- (1) The Teaching Service of New South Wales consists of the persons who are for the time being employed under this Division.
- (2) Those persons are taken to be employed by the Government of New South Wales in the service of the Crown, except as provided by section 12.
- (3) This Division does not affect any other method (statutory or otherwise) by which a person holds a position, or is otherwise employed, in the Teaching Service.

#### **Note—**

For example, Parts 3.2 (Staff mobility) and 3.3 (Miscellaneous provisions relating to public sector staff) of the [Public Sector Employment and Management Act 2002](#) apply to the Teaching Service (which is a “public sector service” within the meaning of that Act). In particular, sections 86–88 of that Act provide for external and internal transfers (including secondments and temporary assignments) of public sector staff.

#### **45 Transfer of persons from former 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 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 Teaching Service employed under this Division.
- (3) A person who becomes a member of the 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 Teaching Service under this Act, or
  - (b) as an employee under that Act, be deemed to be a temporary employee of the Teaching Service under this Act.

#### **46 (Repealed)**

#### **47 Appointments to positions generally**

- (1) The Director-General may, subject to section 47A, appoint to positions in the Teaching Service such persons who, in the opinion of the Director-General, have the appropriate qualifications to be employed in the Teaching Service.

(1A) Where:

- (a) an appointment to a position in the Teaching Service (other than a senior position) is to be made under subsection (1), 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 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)–(5) (Repealed)

#### **47A Appointment on merit to senior positions**

- (1) **Application of section** This section applies to and in respect of appointments under section 47 to senior positions in the Teaching Service.
- (2) **Appointments to senior positions** Appointments to vacant senior positions are to be made by the Director-General. It does not matter whether the person appointed to such a position is or is not already an officer.

- (3) **Advertising vacancies** If it is proposed to make an appointment to a vacant senior position, the Director-General must advertise the vacancy in such manner as the Director-General thinks appropriate. Without limiting the manner in which the vacancy is advertised, the advertisement is to be in a form that is accessible to persons who are not employed in the Teaching Service.
- (4) **Merit appointment** Appointments to vacant senior positions are to be made by the Director-General on the basis of the merit of the applicants for appointment.
- (5) **Determining merit of applicants** For the purpose of determining the merit of persons eligible for appointment to a vacant senior position, the Director-General is to have regard to:
- (a) the nature and duties of the position, and
  - (b) the abilities, qualifications, experience, standards of work performance and personal qualities of those persons that are relevant to the performance of those duties.
- (6) **Selection process** In deciding to appoint a person to a vacant senior position:
- (a) the Director-General may only select a person who has applied for appointment to the vacant position, and
  - (b) the Director-General must, from among the applicants eligible for appointment to the vacant position, select the applicant who has, in the opinion of the Director-General, the greatest merit.
- (7) **Appointment from eligibility list** Despite subsection (3), the Director-General need not advertise a vacant senior position if the Director-General proposes to make an appointment to the position from an eligibility list created by the Director-General in relation to the position (being of a list of those persons who applied for appointment to the position and who are eligible for appointment but not selected for appointment, as arranged in order of merit as determined in accordance with subsection (5)).
- (8) Any such eligibility list is applicable not only to the position in relation to which it was created but also to any other position that the Director-General determines it should be applicable to on the basis that the position is substantially the same as the position in relation to which the list was created.
- (9) **Industrial relations jurisdiction excluded** The appointment or failure to appoint a person to a vacant senior position, or any matter, question or dispute relating to such an appointment or failure, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*. This subsection applies whether or not any person has been appointed to the vacant senior position.
- (10) **Other legal proceedings excluded** No proceedings, whether for an order in the nature

of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment or failure to appoint a person to a senior position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.

(11) Subsection (10) does not affect the operation of section 60.

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

- (1) Unless the Director-General, in a particular case or class of cases, otherwise determines, a person who is not an officer of the Teaching Service when the person is appointed by the Director-General to a 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 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 Teaching Service and shall, unless the Director-General makes a determination under subsection (4), be deemed to be a temporary employee of the Teaching Service under this Act.
- (4) Where the appointment of a person is so annulled, the Director-General may determine that the person shall cease to be employed in the 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 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 54 or 85 prevents the Director-General 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 Teaching Service.

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

- (1) The Director-General may appoint an officer who has been retired from the Teaching Service or whose services have been dispensed with under section 72 to a vacant

position in the Teaching Service.

- (2) An appointment under this section may be made without examination or probation.
- (3) (Repealed)

#### **50 Temporary employees**

- (1) The Director-General may employ a person who, in the opinion of the Director-General, has the appropriate qualifications to carry out work in the Teaching Service for a particular period.
- (2) A person employed under this section may be employed on a full-time, casual or part-time basis.
- (3) A temporary employee is a member of, but does not hold a position in, the Teaching Service.
- (4) (Repealed)
- (5) A person employed under this section:
  - (a) shall not be employed for a period exceeding 12 months 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 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 from exercising, at any time, the power to dismiss a temporary employee under subsection (5).

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

- (1) Subject to subsections (2) and (3), an officer of the Teaching Service may be temporarily appointed by the Director-General 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.
- (3) The Director-General shall not make a temporary appointment under subsection (1) 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 the Teaching Service.

### **Division 3 Performance management for school principals**

## **52 Performance reviews for school principals**

- (1) A school principal's performance must be reviewed, at least annually, by the Director-General.
- (2) The Director-General may review the performance of a school principal on such other occasions as the Director-General considers appropriate.
- (3) The review of a school principal's performance is to have regard to the performance criteria determined by the Director-General and such other matters as the Director-General considers relevant.

## **53 Performance improvement programs**

- (1) If, following completion of the review of a school principal's performance, the Director-General is of the opinion that the principal is not performing his or her duties in a satisfactory manner, the Director-General may implement a performance improvement program for the principal.
- (2) The school principal must participate in any such performance improvement program in the manner required by the program.
- (3) A performance improvement program is to be on such terms, and is to be implemented for such period, as the Director-General considers appropriate.

## **54 Dealing with unsatisfactory performance**

- (1) If the Director-General is of the opinion that a school principal's performance is still unsatisfactory following the completion of a performance improvement program for the principal or following the principal's failure to participate in, or to satisfactorily complete, such a program, the Director-General may:
  - (a) dismiss the school principal from the Teaching Service, or
  - (b) demote the school principal to a lower position in the Teaching Service.
- (2) Before taking any such action with respect to a school principal, the Director-General must:
  - (a) notify the principal in writing of the proposed action and the reasons for taking that action, and
  - (b) give the principal at least 21 days in which to make written submissions to the Director-General in relation to the proposed action, and
  - (c) take into consideration any written submissions received from the principal during that period.
- (3) The Director-General's decision to take action under subsection (1) with respect to a

school principal may, subject to subsection (2), be carried into effect at any time.

- (4) An appointment to a position in the Teaching Service that is required as the result of taking action under subsection (1) (b) is to be made by the Director-General.
- (5) The Director-General may take action under this section with respect to a school principal even though any of the steps for dealing with a breach of discipline under Division 6 have been taken with respect to the principal, but may do so only if no finding has been made in relation to the alleged breach of discipline.
- (6) This section does not limit or otherwise affect any power under this or any other Act to dismiss or demote a school principal or to suspend a school principal from duty.

**55-58 (Repealed)**

**Division 4 Miscellaneous provisions relating to the Teaching Service**

**59-59G (Repealed)**

**60 Promotion appeals**

- (1) An officer (***the appellant***) may appeal to the Director-General against the decision to appoint another officer to a vacant senior position for which the appellant has unsuccessfully applied.
- (2) Any such appeal must be made no later than 10 days after the day on which the appellant is notified (orally or in writing) of the decision concerned.
- (3) An appeal may only be made on the ground that the whole or any part of the selection process for the position was irregular or improper.
- (4) After considering the appeal and such other information as the Director-General considers appropriate, the Director-General may:
  - (a) allow or disallow the appeal, and
  - (b) make such determination with respect to the appeal as the Director-General thinks fit.
- (5) The decision of the Director-General under subsection (4) is final.

**61 (Repealed)**

**62 No appeal to GREAT**

- (1) The decision of the Director-General to appoint a person to a vacant senior position is not subject to appeal under the [Government and Related Employees Appeal Tribunal Act 1980](#).
- (2), (3) (Repealed)



### **63-71A (Repealed)**

#### **72 Excess persons**

Where the Director-General is satisfied:

- (a) that a number of persons is employed in the Teaching Service, or any part of the 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 Director-General is satisfied that an officer of the 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 Director-General 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, at that salary.
- (2) If a reduction of salary of an officer under this section is certified by the 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 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 the Teaching Service refuses to comply with a direction of the 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 Director-General determines:

- (a) that an officer of the 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, or
    - (ii) if the appropriate Department Head (within the meaning of the *Public Sector Employment and Management Act 2002*) so approves, to some position in the Public Service,
    - (iii) (Repealed)
- with salary and other conditions of the officer's employment appropriate to that position.

(2) A decision or determination of the 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 the 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 Director-General and the officer's resignation is accepted by the 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 the 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 the Teaching Service with at least 5 years' service and less than 10 years' service are terminated by the Crown or the 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 the 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 the 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 spouse of the officer,
- (b) if there is no such spouse, the children of the officer, or
- (c) if there is no such spouse or children, the person who, in the opinion of the 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 the Teaching Service with at least 5 years' service and less than 10 years' service as referred to in section 79 (3) dies:

- (a) the spouse of the officer,
- (b) if there is no such spouse, the children of the officer, or
- (c) if there is no such spouse or children, the person who, in the opinion of the 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.
- (4A) If it appears to the Director-General that more than one person is entitled as a spouse to payment of the money value of leave under this section, the Director-General must pay the amount to the deceased officer's personal representatives.
- (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 the Director-General for payment of any amount in respect of that leave.
- (7) In this section, **spouse** of an officer includes a person with whom the officer had a de

facto relationship (within the meaning of the *Property (Relationships) Act 1984*) at the time of his or her death.

## **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 the Teaching Service or in the Public Service that is prescribed as a position for the purposes of this Division, and
- (b) an officer of the Teaching Service, or a member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*, who is prescribed as an officer for the purposes of this Division.

### **83 Breaches of discipline**

- (1) An officer or temporary employee of the 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.
- (2) Subsection (1) does not apply in relation to a school principal to the extent that the principal is inefficient or incompetent in the discharge of his or her duties.

**Note—**

A school principal's unsatisfactory performance may be dealt with under Division 3 of this Part.

### **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 the Teaching Service shall be dealt with by the Director-General or a prescribed officer.
- (2) Subject to this Division, the regulations made under section 100 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 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,

- (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, 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 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 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 the Director-General, in the exercise of the powers under this section, directs:
- (a) that an officer or temporary employee resign from the Teaching Service within a period specified in the direction, or
  - (b) that the resignation from the 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) A decision of the 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 the Director-General decides to direct an officer to resign from the 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 Department, upon receiving notice of any fine imposed by the Director-General or a prescribed officer on an officer or temporary employee of the 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 the 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 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 the 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 Director-General or a prescribed officer until the charge has been dealt with.

(2) Any salary, wages or other remuneration payable to a person as an officer or temporary employee of the Teaching Service during suspension under this section shall, if the Director-General so directs, 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 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 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 the 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 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 Director-General, which may be

withdrawn at any time, an officer or temporary employee of the Teaching Service (other than a temporary employee employed on a casual 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 the 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 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 the Teaching

Service is unknown to the 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 the 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 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 the 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 13.

### **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 the 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 Office, after consultation with the 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 the 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 the 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 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 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 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 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 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 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 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 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 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 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 Service and work.

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

- (1) All notices of appointments, promotions, retirements, dismissals and annulments of appointments of:
  - (a) officers of the Teaching Service shall be published in the Education Gazette, and
  - (b) (Repealed)
- (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 Education Gazette**

A document purporting to be an issue of the Education Gazette is admissible in evidence in any proceedings, including proceedings before the Government and Related Employees Appeal Tribunal, and is, until the contrary is proved, taken to be a copy of an issue of the Education Gazette.

### **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 the Teaching Service.
- (2) An officer or temporary employee of the 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 the Teaching Service.

### **98 (Repealed)**

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

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by 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 Schedule 3.

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

- (1) The Director-General 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 a position in the Teaching Service,
  - (b) the appointment, powers, duties and responsibilities of officers and temporary employees of the Teaching Service,
  - (c) the arrangement of positions in the Teaching Service into divisions,
  - (d) (Repealed)
  - (e) appeals to the Director-General,
  - (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 Teaching Service,
  - (h) the maintenance of discipline, order, economy and efficiency in the Teaching Service,
  - (i) the classification, general management and inspection of schools, and
  - (j) any matter that by this Act (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 (Schedule 3 excepted) concerning the Teaching Service.
- (2) The Director-General 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, 102 (Repealed)**

### **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*

*Teaching Services Amendment Act 2004*

(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.

## **Part 3 Provisions consequent on enactment of [Teaching Services Amendment Act 2004](#)**

### **11 Definition**

In this Part:

**amending Act** means the [Teaching Services Amendment Act 2004](#).

### **12 References to Education Teaching Service**

On and from the substitution of section 44 by the amending Act, a reference in any Act, or in any instrument made under any Act, or in any other instrument, or in any contract or agreement, to the Education Teaching Service (however expressed) is to be construed as a reference to the Teaching Service.

### **13 Continuation of existing determinations and agreements**

- (1) Any determination of conditions of employment under section 25 made by the Director-General and in force immediately before the repeal of that section by the amending Act is taken to be, after that repeal, a determination made under section 13 as inserted by the amending Act.
- (2) Any agreement between the Director-General and an association or organisation made under section 26 and in force immediately before the repeal of that section by the amending Act is taken to be, after that repeal, an agreement made under section 14 as inserted by the amending Act.

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

Division 3 of Part 4 (as substituted by the amending Act) extends to a school principal holding office before the commencement of the substitution of that Division, but only in relation to the school principal's performance after that commencement.

### **15 General savings**

Anything done by the Director-General that, immediately before the substitution of Part 2 by the amending Act, had effect under (or was done for the purposes of) this Act continues to have effect under (or is taken to have been done for the purposes of) this Act as amended by the amending Act.