

# Education (School Administrative and Support Staff) Act 1987 No 240

[1987-240]



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 (Ancillary Staff) Act 1987
- **Does not include amendments by**  
[Industrial Relations Amendment \(Public Sector Appeals\) Act 2010 No 54](#) (not commenced — to commence on 1.7.2010)

### Authorisation

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# Education (School Administrative and Support Staff) Act 1987 No 240



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# Education (School Administrative and Support Staff) Act 1987 No 240



New South Wales

An Act relating to the employment of school administrative and support staff in the Department of Education and Training and the regulation of the conditions of their employment; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Education (School Administrative and Support Staff) Act 1987*.

### 2 Commencement

This Act shall commence on a day to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**classification** means a classification of school administrative and support staff referred to in section 5.

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

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

**permanent employee** means a member of the school administrative and support staff employed on a permanent basis under this Act.

**temporary employee** means a member of the school administrative and support staff employed on a temporary basis under this Act.

**remuneration** includes salary and wages.

**school administrative and support staff** means school administrative and support staff of the Department.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

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

## **Part 2 Organisation of school administrative and support staff**

### **4 School administrative and support staff**

- (1) The school administrative and support staff of the Department consists of the permanent employees and temporary employees who are for the time being employed under this Act.
- (2) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment or employment of a member of the school administrative and support staff.

### **5 Classifications and positions**

- (1) The classifications of school administrative and support staff of the Department are such classifications as the Minister may from time to time determine.
- (2) The Director-General may create positions in any classification.
- (3) The Director-General may determine the number of working hours for any such position (whether on a weekly basis or on any other basis), and may vary the number so determined or any such basis from time to time (whether or not the position is occupied).

### **6 Maximum number of school administrative and support staff**

The Minister may from time to time make determinations relating to either or both of the following:

- (a) the classes or descriptions of school administrative and support staff who may be employed in any classification,
- (b) the maximum number of school administrative and support staff who may be employed in any classification.

### **7 Duties of school administrative and support staff**

- (1) The duties of school administrative and support staff shall be as determined by the Director-General or as specified by the regulations.
- (2) In the event of an inconsistency, the regulations prevail.

**7A Protection of children to be paramount consideration**

- (1) The protection of children is to be the paramount consideration:
  - (a) in taking any action with respect to a member of the school administrative and support staff under this Act, and
  - (b) in dealing with any appeal against, or determining any claim arising from or in relation to, that action.
- (2) This section has effect despite anything in the *Industrial Relations Act 1996* or any other Act or law.

**7B School administrative and support staff to report bankruptcy etc**

If a member of the school administrative and support staff becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the member's creditors, the member must:

- (a) immediately give to the Director-General notice of the bankruptcy, composition, arrangement or assignment, and
- (b) within such period as the Director-General specifies, provide the Director-General with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as the Director-General requires.

**7C School administrative and support staff not to undertake other paid work without permission**

- (1) A member of the school administrative and support staff is not to undertake any other paid work without the permission of the Director-General.
- (2) The Director-General may prepare guidelines with respect to the type of work that constitutes paid work for the purposes of this section.
- (3) Any such guidelines must be made available to members of the school administrative and support staff in such manner as the Director-General thinks appropriate.
- (4) This section does not apply to a temporary employee employed for less than 10 weeks.

**7D Director-General to be notified of serious offences committed by school administrative and support staff**

- (1) A member of the school administrative and support staff who:
  - (a) is charged with, or who is found guilty of, an offence that is punishable by imprisonment for 12 months or more, or
  - (b) is charged with, or who 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,

must immediately report that fact to the Director-General.

- (2) On becoming aware of the fact that a member of the school administrative and support staff has been charged with, or has been found guilty of, an offence referred to in subsection (1), the person in charge of the school or place of work in which the member is employed must also immediately report that fact to the Director-General.
- (3) The requirement to report to the Director-General under this section does not apply if the matter has already been reported to the Director-General under section 32L.

#### **7E List of persons not to be employed as school administrative and support staff**

The Director-General may prepare and maintain a list of persons who the Director-General determines are not to be employed as members of the school administrative and support staff.

### **Part 3 Permanent employees**

#### **8 Employment of permanent employees**

The Director-General may appoint persons to be employed in the service of the Crown on a permanent basis as members of the school administrative and support staff of the Department in any classification.

#### **9 Requirements as to citizenship etc**

- (1) A person is not eligible to be appointed as a permanent employee unless the person is:
  - (a) an Australian citizen, or
  - (b) a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law,and, if so required by or under the regulations, the person produces in accordance with the regulations such evidence with respect to any matters referred to in this section as is prescribed.
- (2) A permanent employee who is not an Australian citizen and who ceases to satisfy or does not satisfy the requirements of subsection (1) (b) is not eligible to continue in employment as a permanent employee and shall be dismissed as such an employee by the Director-General.

#### **10 Medical assessment or examination**

A person is not eligible for appointment as a permanent employee unless the person



satisfies a medical assessment or examination as to the person's health, as provided for by the regulations.

### **11 Appointments on probation**

- (1) Every person appointed as a permanent employee shall, in the first instance, be appointed on probation for a period of 6 months or such longer period as the Director-General directs.
- (2) The period for which a person is appointed on probation may not be in excess of 2 years, except with the concurrence of the Minister.

### **12 Confirmation or annulment of appointments on probation**

- (1) If a person has been appointed on probation under this Act, the Director-General may, following an appropriate inquiry and report:
  - (a) after the period of probation—confirm the appointment, or
  - (b) during or after the period of probation—annul the appointment.
- (2) If a person's appointment is annulled, the person ceases to be a permanent employee unless appointed to another position as a permanent employee.
- (3) Action is not required to be taken under Part 6 in order to annul an appointment under subsection (1).

### **13 Temporary appointments to permanent positions**

- (1) A permanent employee may be temporarily appointed to a position that is vacant or the holder of which is suspended, sick or absent.
- (2) Except with the approval of the Minister, a permanent employee may not, by way of temporary appointment, be employed for a period in excess of 6 months.

### **14 Vacation of position**

A permanent employee shall be deemed to have vacated his or her position if:

- (a) the employee dies,
- (b) the employee resigns the position by instrument in writing addressed to the Director-General and the Director-General accepts the resignation,
- (c) the employee retires or is retired,
- (d) the employee is dismissed under this Act,
- (e) the employee's appointment is annulled under this Act, or

(f) the employee's services are dispensed with as referred to in this Act.

**15 (Repealed)**

**16 Incapable permanent employee may be retired**

If:

- (a) a permanent employee is found unfit to discharge or incapable of discharging the duties of his or her position, and
- (b) the unfitness or incapacity appears likely to be of a permanent character, and has not arisen from actual misconduct on his or her part, or from causes within his or her control,

the Director-General may cause the employee to be retired.

**17 Transfer of permanent employee**

- (1) The Director-General, if of the opinion that it would be in the interests of the administration of the Department to do so, may transfer a permanent employee from one position as a permanent employee to another such position equal in remuneration to that of the firstmentioned position.
- (2) Such a transfer may be made only if the permanent employee has the necessary qualifications for the other position.

**18 Excess permanent staff or excessive remuneration**

- (1) If the Director-General is satisfied that a number of persons are employed as permanent employees in excess of the number that appears to be necessary in connection with the efficient, effective and economical management of the Department or that a person is in receipt of greater remuneration as a permanent employee than the maximum fairly appropriate to the work performed by the person, then:
  - (a) subject to paragraph (b), the Director-General shall take such steps as are practicable to transfer any such person to another position, whether in the same or a different classification, and whether in the same or a different location, and
  - (b) if any such person cannot be usefully employed in any other position as a permanent employee, the person's services shall be dispensed with by the Director-General.
- (2) The remuneration of a person transferred under this section shall be that appropriate to the position to which the person is transferred.

## **19 Permanent employee refusing transfer**

- (1) A permanent employee who refuses a transfer from one position to another under this Part may be dismissed by the Director-General.
- (2) If the Director-General is satisfied that the employee had a valid and sufficient reason for refusing the transfer, the employee may be allowed to decline the transfer without prejudice to any rights that the employee would, had he or she not declined the transfer, have had to any future promotion or appointment.

## **20 (Repealed)**

## **Part 4 Temporary employees**

### **21 Employment of temporary employees**

- (1) The Director-General may appoint persons to be employed in the service of the Crown on a temporary basis as members of the school administrative and support staff of the Department in any classification.
- (2) A temporary employee may be employed for a period not exceeding 4 months, but may, from time to time, be employed at the end of that period or any subsequent period for a further period not exceeding 4 months.
- (3) A person may not be employed under this section for:
  - (a) a continuous period 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 Minister.
- (4) The services of a temporary employee may be dispensed with at any time by the Director-General.

## **Part 5 Conditions of employment**

### **22 Conditions of employment of school administrative and support staff**

- (1) The Director-General may, where the conditions of employment of school administrative and support staff are not fixed in accordance with the provisions of any other Act or law, fix the conditions of employment of school administrative and support staff.
- (2) The regulations may make provision for or with respect to the conditions of employment of school administrative and support staff.
- (3) The regulations made for the purposes of subsection (2):

(a) shall have effect subject to any relevant award or industrial agreement, and

(b) shall have effect notwithstanding the provisions of subsection (1).

(4) A reference in this section to conditions of employment does not include a reference to the rates of remuneration payable to school administrative and support staff.

(5) (Repealed)

### **23 Determination of remuneration of school administrative and support staff**

(1) Except in so far as provision is otherwise made by law, the remuneration of school administrative and support staff shall be as determined from time to time by the Director-General.

(2) A member of the school administrative and support staff may sue for and recover the amount of the remuneration that is the subject of such a determination and payable to the member.

### **24 Director-General to be employer for certain purposes**

(1) The Director-General shall, for the purposes of any proceedings relating to school administrative and support staff held before a competent tribunal having power to deal with industrial matters, be deemed to be the employer of school administrative and support staff.

(2) The Director-General may enter into an agreement with any association or organisation representing any group or class of school administrative and support staff as to any industrial matters.

(3) Such an agreement shall bind all members of the school administrative and support staff in the class or group affected by the agreement and no such member, 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.

(4) (Repealed)

### **25 Right of Crown to dispense with services**

Nothing in this Act shall be construed or held to abrogate or restrict the right or power of the Crown, as existing apart from this Act, to dispense with the services of any person employed in the service of the Crown as a member of the school administrative and support staff.

### **26 No compensation**

Except as provided in this or any other Act, no member of the school administrative and support staff is entitled to any compensation by reason of any reduction in remuneration or in consequence of his or her services being dispensed with.

## Part 6 Management of conduct and performance

### Division 1 Preliminary

#### 27 Objects of Part

The objects of this Part are as follows:

- (a) to maintain appropriate standards of conduct and work-related performance for permanent employees,
- (b) to protect and enhance the integrity and reputation of the school administrative and support staff of the Department,
- (c) to ensure that the public interest is protected.

#### 28 Definitions

(1) In this Part:

**disciplinary action**, in relation to a permanent employee, means any one or more of the following:

- (a) dismissing the employee,
- (b) directing the employee to resign, or to be allowed to resign, within a specified time,
- (c) reduction of the employee's salary or demotion to a lower position,
- (d) the imposition of a fine,
- (e) a caution or reprimand.

**misconduct**—see section 29.

**procedural guidelines** means the guidelines in force from time to time under section 30.

**remedial action**, in relation to a permanent employee, means any one or more of the following:

- (a) counselling,
- (b) training and development,
- (c) monitoring the employee's conduct or performance,
- (d) implementing a plan addressing unsatisfactory performance,
- (e) the issuing of a warning to the employee that certain conduct is unacceptable or

that the employee's performance is not satisfactory,

- (f) transferring the employee to another position that does not involve a reduction of salary or demotion to a lower position,
- (g) any other action of a similar nature.

(2) In this Part, a reference to an allegation that a permanent employee may have engaged in misconduct includes a reference to the Director-General being made aware, or becoming aware, by any means that the permanent employee may have engaged in misconduct.

### 29 Meaning of "misconduct"

- (1) For the purposes of this Part, **misconduct** includes, but is not limited to, any of the following:
  - (a) a contravention of any provision of this Act or the regulations,
  - (b) engaging in, or having engaged in, any conduct that justifies the taking of disciplinary action,
  - (c) taking any detrimental action (within the meaning of the [Protected Disclosures Act 1994](#)) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act,
  - (d) taking any action against a person that is substantially in reprisal for an internal disclosure made by that person.
- (2) For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened:
  - (a) while the permanent employee concerned was not on duty, or
  - (b) before the permanent employee was appointed to his or her position.
- (3) In this section, **internal disclosure** means a disclosure made in good faith by a person regarding the alleged misconduct of another person.

### 30 Issuing of procedural guidelines

- (1) The Director-General may, from time to time, issue guidelines for the purposes of:
  - (a) dealing with allegations of misconduct against permanent employees as a disciplinary matter, and
  - (b) the taking of disciplinary action with respect to permanent employees under this Part, including disciplinary action in relation to unsatisfactory performance, and
  - (c) any other matter referred to in this Part.

- (2) The procedural guidelines must be consistent with the rules of procedural fairness.
- (3) Without limiting subsection (2), the procedural guidelines are to ensure that:
  - (a) a permanent employee to whom an allegation of misconduct relates:
    - (i) is advised in writing of the alleged misconduct and that the allegation may lead to disciplinary action being taken with respect to the permanent employee, and
    - (ii) is given an opportunity to respond to the allegation, and
  - (b) a permanent employee against whom the Director-General is proposing to take disciplinary action under Division 3 is given a reasonable opportunity to make a submission in relation to that proposed action.
- (4) The Director-General may from time to time amend, revoke or replace the procedural guidelines.
- (5) The procedural guidelines as in force from time to time must be made publicly available in such manner as the Director-General thinks appropriate.
- (6) The regulations may make provision for or with respect to any matter for which the procedural guidelines can provide. In the event of any inconsistency between a provision contained in the procedural guidelines and a provision in the regulations, the regulations prevail.
- (7) The procedural guidelines may apply, adopt or incorporate the procedural guidelines issued under Part 4A of the *Teaching Service Act 1980* with such modifications as are necessary.

### **31 Requirements relating to disciplinary matters**

- (1) A permanent employee is not entitled to cross-examine any person in relation to an allegation of misconduct or the taking of disciplinary action against the permanent employee.
- (2) A hearing involving the legal representation of parties and the calling of witnesses is not to be held in relation to an allegation of misconduct or the taking of disciplinary action against a permanent employee.
- (3) Nothing in subsection (1) or (2) prevents the Director-General from:
  - (a) conducting investigations into an allegation of misconduct, or
  - (b) asking a permanent employee a question in relation to an allegation of misconduct, or
  - (c) conducting interviews with the permanent employee to whom the allegation

relates or with any other person in connection with the matter concerned, or

(d) taking signed statements from the permanent employee or any such person.

## **Division 2 Dealing with misconduct**

### **32 Dealing with an allegation of misconduct**

- (1) If an allegation is made to the Director-General that a permanent employee may have engaged in any misconduct, the Director-General may decide to do either or both of the following:
  - (a) deal with the allegation as a disciplinary matter in accordance with the procedural guidelines,
  - (b) take remedial action with respect to the permanent employee.
- (2) After dealing with an allegation of misconduct as a disciplinary matter in accordance with this Part and the procedural guidelines, the Director-General may, if the Director-General is of the opinion that the permanent employee has engaged in any misconduct, decide to take disciplinary action with respect to the permanent employee.
- (3) Before any disciplinary action is taken with respect to a permanent employee under this section, the permanent employee must be given an opportunity to make a submission in relation to the disciplinary action that the Director-General is considering taking.
- (4) Even though the Director-General decides to deal with an allegation of misconduct as a disciplinary matter in accordance with the procedural guidelines, the Director-General may, at any stage of the process:
  - (a) decide to take remedial action with respect to the permanent employee concerned as well as dealing with the allegation as a disciplinary matter, or
  - (b) decide to take remedial action with respect to the employee instead of dealing with the allegation as a disciplinary matter, or
  - (c) decide to dismiss the allegation, or decide that no further action is to be taken in relation to the matter.
- (5) A decision under this section by the Director-General to take remedial action with respect to a permanent employee does not, if it appears to the Director-General that the employee may have engaged in any misconduct while the remedial action is being taken, prevent the Director-General from dealing with the alleged misconduct as a disciplinary matter under this section.

## **Division 3 Performance management for permanent employees**



### **32A Performance reviews for permanent employees**

- (1) A permanent employee's performance must be reviewed periodically by the Director-General.
- (2) The review of a permanent employee's performance is to have regard to any performance criteria determined by the Director-General and such other matters as the Director-General considers relevant.

### **32B Dealing with unsatisfactory performance**

- (1) If the Director-General is of the opinion that a permanent employee is not performing the employee's duties in a satisfactory manner, the Director-General may decide to do either or both of the following:
  - (a) take remedial action with respect to the employee,
  - (b) take disciplinary action with respect to the employee.
- (2) To avoid any doubt, remedial action with respect to a permanent employee is not required to be taken before disciplinary action is taken under this section with respect to the employee.
- (3) However, the Director-General may take disciplinary action with respect to a permanent employee under this section only if:
  - (a) the employee has been placed on a performance improvement plan in accordance with the procedural guidelines and been given a reasonable opportunity to improve his or her performance, and
  - (b) the Director-General is of the opinion that the employee's performance is still unsatisfactory.

## **Division 4 Miscellaneous provisions**

### **32C Disciplinary action may be taken if permanent employee is convicted of serious offence**

- (1) If a permanent employee is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or is convicted 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 decide to do either or both of the following:
  - (a) take disciplinary action with respect to the employee,
  - (b) take remedial action with respect to the employee.
- (2) Before any disciplinary action is taken with respect to a permanent employee under

this section, the employee must be given an opportunity to make a submission in relation to the disciplinary action that the Director-General is considering taking.

- (3) A reference in subsection (1) to the conviction of a permanent employee for an offence punishable by imprisonment for 12 months or more includes a reference to the employee having been found guilty by a court of such an offence but where no conviction is recorded.

### **32D Suspension of permanent employees from duty pending decision in relation to misconduct or criminal conviction**

- (1) If an allegation that a permanent employee has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the procedural guidelines, the Director-General may suspend the employee from duty until the allegation of misconduct has been dealt with.
- (2) If a permanent employee is charged with:
  - (a) an offence referred to in section 32C, or
  - (b) an offence that would, on conviction, result in the employee being a prohibited person as referred to in Part 6A,

the Director-General may suspend the employee from duty until the employee is notified by the Director-General that the suspension has been lifted.

- (3) Any salary payable to a person as a permanent employee while the person is suspended from duty under this section is (if the Director-General so directs) to be withheld.
- (4) The salary withheld under subsection (3) is forfeited to the State unless the Director-General otherwise directs or that salary was due to the person in respect of a period before the suspension was imposed.

### **32E Implementation of decisions under this Part**

A decision of the Director-General to take disciplinary action or remedial action under this Part with respect to a permanent employee may be carried into effect at any time.

### **32F Provisions relating to certain forms of disciplinary action**

- (1) Any appointment required as the result of the taking of disciplinary action comprising demotion to a lower position is to be made by the Director-General.
- (2) If a fine is imposed under this Part on a permanent employee, the person responsible for paying the employee's salary is, on receiving notice of the imposition of the fine, to deduct the amount of the fine from the salary (including any termination payment) payable to the permanent employee in such manner as the Director-General directs.

### **32G Permanent employees retiring or resigning before disciplinary action is taken**

- (1) An allegation that a permanent employee has engaged in misconduct may be dealt with under this Part, and disciplinary action may be taken with respect to the employee, even though the employee has retired or resigned.
- (2) The taking of disciplinary action (other than a fine) with respect to the former permanent employee does not affect the former employee's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.
- (3) A fine imposed under any such disciplinary action may be recovered from the former permanent employee as a debt due to the Crown in any court of competent jurisdiction, or out of any money payable to or in respect of the former employee by the Crown, or both.
- (4) A reference in this section to the resignation of a permanent employee is a reference to a resignation that has been accepted by the Director-General.

### **32H Permanent employee whose address is unknown**

If the address for the time being of a permanent employee is unknown to the Director-General, any notice required to be given to the employee under this Part may be posted to the address of the employee last known to the Director-General.

## **Part 6A Termination of employment of prohibited persons**

### **32I Definitions**

In this Part:

**child-related employment** means child-related employment to which Part 7 of the *Commission for Children and Young People Act 1998* applies.

**Commission** means the Commission for Children and Young People.

**prohibited person** has the same meaning as in Division 2 of Part 7 of the *Commission for Children and Young People Act 1998*.

**Note—**

A "prohibited person" is a person convicted of a serious sex offence, the murder of a child or a child-related personal violence offence (as defined in section 33B of the *Commission for Children and Young People Act 1998*) or who is a registrable person under the *Child Protection (Offenders Registration) Act 2000*. It is an offence under the 1998 Act for a person who becomes a prohibited person to enter or remain in child-related employment (such as teaching) and it is also an offence for an employer to employ a prohibited person in child-related employment.

### **32J Operation of this Part**

- (1) This Part has effect despite any other provision of this Act or the provisions of any other Act or law (including the *Industrial Relations Act 1996*). Accordingly, a provision

of this Part prevails to the extent of any inconsistency between it and any other provision of this Act or of any other Act or law.

- (2) Without limiting subsection (1), this Part operates to terminate the employment of a prohibited person without any disciplinary action having been taken in respect of the person under Part 6 of this Act.

### **32K Termination of employment of prohibited persons**

- (1) A permanent or temporary employee who is or becomes a prohibited person and who is employed in child-related employment is, by operation of this section, dismissed as a member of the school administrative and support staff.
- (2) The dismissal takes effect:
  - (a) if the person becomes a prohibited person after being appointed as a member of the school administrative and support staff—when the person becomes such a prohibited person, or
  - (b) if the person was a prohibited person immediately before the commencement of this section—on the commencement of this section, or
  - (c) if the person became a prohibited person after the commencement of this section and before being appointed as a member of the school administrative and support staff—when the Director-General becomes aware that the person is such a prohibited person.
- (3) The dismissal takes effect immediately without any right to a hearing or any requirement to comply with the rules of procedural fairness.
- (4) A reference in this section to a prohibited person who is employed in child-related employment as a member of the school administrative and support staff includes a reference to a prohibited person whose substantive position as such a member involves child-related employment but who is, for the time being, performing other duties that do not involve child-related employment.
- (5) The regulations may make provision for or with respect to the entitlements of a person whose employment is terminated by operation of this section and who has received any payment in respect of a leave, superannuation or other employment-related entitlement in respect of a period following the date of the termination.
- (6) Any regulation made under subsection (5) has effect despite any other Act or law.

### **32L Offences and prohibited person status to be notified to Director-General**

- (1) A permanent or temporary employee who:
  - (a) is charged with a serious sex offence, the murder of a child or a child-related

personal violence offence, or

(b) who becomes a prohibited person,

must immediately report that fact to the Director-General.

- (2) On becoming aware of the fact that a permanent or temporary employee has been charged with an offence referred to in subsection (1), or is a prohibited person, the person in charge of the school or place of work in which the permanent or temporary employee is employed must also immediately report that fact to the Director-General.
- (3) The requirement to report to the Director-General under this section does not apply if the matter has already been reported to the Director-General under section 7D.
- (4) In this section, **serious sex offence** and **child-related personal violence offence** have the same meanings as in Division 2 of Part 7 of the *Commission for Children and Young People Act 1998*.

### **32M Review of prohibited person status**

- (1) If a review application is made by a prohibited person under section 33H or 33I of the *Commission for Children and Young People Act 1998*, the Commission or relevant tribunal to which the application is made is to notify the Director-General of the application if it appears to the Commission or relevant tribunal that the prohibited person is a member (or former member) of the school administrative and support staff.
- (2) The Director-General is entitled:
  - (a) to appear and be represented at any proceedings arising out of an application under section 33I of the *Commission for Children and Young People Act 1998*, and
  - (b) in the case of an application under section 33H of the *Commission for Children and Young People Act 1998*—to make written submissions to the Commission.

### **32N Effect of person ceasing to be prohibited person**

- (1) This section applies to a person who is dismissed under section 32K and who subsequently ceases to be a prohibited person.

**Note—**

A person ceases to be a prohibited person in relation to an offence if an order is made under the *Commission for Children and Young People Act 1998* that the relevant provisions of that Act do not apply in respect of the offence or if the relevant conviction is overturned on appeal.

- (2) If the person ceases to be a prohibited person because the conviction for the offence in respect of which the person is a prohibited person is overturned by a court on appeal, the person is entitled to be reinstated to, or re-employed in, a staff position that is similar to the position that the person held when the person's employment was

terminated under section 32K.

(3) If:

- (a) the person ceases to be a prohibited person because of an order under Subdivision 2 of Division 2 of Part 7 of the *Commission for Children and Young People Act 1998*, and
- (b) a period of not more than 12 months has elapsed since the date on which the person's employment was terminated under section 32K,

the person is entitled to be reinstated to, or re-employed in, a staff position that is similar to the position that the person held when his or her employment was terminated.

(4) A person, on being reinstated or re-employed under this section, is taken:

- (a) to have never been dismissed as a member of the school administrative and support staff, and
- (b) to have been on leave without pay during the period between dismissal and reinstatement or re-employment.

(5) The regulations may make provision for or with respect to the entitlements of a person who is reinstated or re-employed under this section after the person's employment is terminated by operation of this Part and who has received any payment in respect of a leave, superannuation or other employment-related entitlement as a result of the termination.

(6) Any regulation made under subsection (5) has effect despite any other Act or law.

(7) For the purposes of this section, a person does not cease to be a prohibited person if a stay of the operation of the prohibition is granted under section 33K of the *Commission for Children and Young People Act 1998*.

### **32O Disciplinary action may be taken against person who ceases to be prohibited person**

Nothing in this Part prevents a person who ceases to be a prohibited person, and who is reinstated or re-employed under this Part, from being dealt with under any other provision of this Act in relation to any matter related to the reasons why the person was a prohibited person.

### **32P Protection of persons relating to this Part**

Anything done or omitted by the Director-General or any other person in good faith and with reasonable care for the purposes of this Part does not subject the Director-General or other person to any action, liability, claim or demand.

### **32Q No compensation or other industrial remedies**

The Industrial Relations Commission or any other court or tribunal does not have jurisdiction under any Act or law to order the reinstatement or re-employment of a person contrary to a termination of employment by this Part or order the payment of damages or compensation (on any ground) for any such termination or other related matter done or omitted in accordance with this Part.

### **32R Protection for exercise of functions in connection with this Part**

- (1) This section applies to a function exercised by the Director-General, or a person authorised by the Director-General, in connection with the termination of employment of a person, or the reinstatement or re-employment of a person, under this Part (a **protected function**).
- (2) Without limiting the functions that are protected functions under this Part, a decision by the Director-General not to accept the resignation of a person or not to permit the retirement of a person is a protected function.
- (3) Except as provided by this section, the exercise by a person of a protected function may not be:
  - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
  - (b) restrained, removed or otherwise affected by any proceedings.
- (4) Without limiting subsection (3):
  - (a) that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by any such person, with the provisions of this Part or the rules of procedural fairness, and
  - (b) the exercise of a protected function is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (5) Accordingly (and except as provided by this section), no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by any such person, with those provisions or those rules so far as they apply to the exercise of any protected function.
- (6) However, nothing in this section prevents any person who is expressly authorised or permitted by a provision of the *Commission for Children and Young People Act 1998* to bring proceedings from bringing such proceedings or being granted such relief in those proceedings as may be authorised or permitted by this Part.
- (7) In this section:

**exercise** of functions includes:

- (a) the purported exercise of functions, and
- (b) the non-exercise or improper exercise of functions, and
- (c) the proposed, apprehended or threatened exercise of functions.

**proceedings** includes:

- (a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the *Supreme Court Act 1970*.

### **32S Transitional provision**

A reference in this Part to a provision of the *Commission for Children and Young People Act 1998* is, until such time as Schedule 1 [31] to the *Commission for Children and Young People Amendment Act 2005* commences, to be construed as a reference to the corresponding provision of the *Child Protection (Prohibited Employment) Act 1998*.

**Note—**

The *Commission for Children and Young People Amendment Act 2005* repeals the *Child Protection (Prohibited Employment) Act 1998* and re-enacts its provisions in the *Commission for Children and Young People Act 1998*.

## **Part 7 Miscellaneous**

### **33 Eligibility for appointment to Public Service**

- (1) A permanent employee may apply for a position as an officer in the Public Service as if the employee were an officer of the Public Service.
- (2) A permanent employee who applies for such a position, or is appointed as an officer in the Public Service, shall be deemed (for the purposes of the *Public Service Act 1979*, the *Government and Related Employees Appeal Tribunal Act 1980* and the *Industrial Relations Act 1996* and for any other purposes) to be an officer of the Public Service in relation to the application or appointment.
- (3) There is no right of appeal under the *Government and Related Employees Appeal Tribunal Act 1980*:
  - (a) for a person against the filling of a position in the Public Service by a permanent employee, or
  - (b) for a permanent employee against the filling of a position in the Public Service by another person.



- (4) For the purposes of this section, service is not satisfactory if it is of a kind prescribed by the regulations for the purposes of this section.

### **34 Delegation by Director-General**

- (1) The Director-General may delegate to a public servant, a member of the Teaching Service or a permanent employee the exercise of any of the Director-General's functions under this Act.
- (2) If:
- (a) a function of the Director-General is delegated to a person in accordance with subsection (1), and
  - (b) the instrument of delegation authorises the sub-delegation of the function,
- then, subject to any conditions to which the delegation is subject, the person to whom the function is delegated may sub-delegate the function to any other person to whom the function may be delegated under subsection (1).

### **35 Attachment of remuneration**

- (1) If judgment has been entered in any court against any member of the school administrative and support staff for the payment of any sum of money, the person in whose favour the judgment is entered may serve on the Director-General:
- (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 on the Director-General of a copy of a judgment and a statutory declaration under this section, the Director-General shall:
- (a) notify the judgment debtor in writing of the service of the copy of the judgment and statutory declaration, and
  - (b) require the judgment debtor to state in writing within a time to be specified by the Director-General whether the judgment has been satisfied, and, if so, to furnish evidence in support, and if the judgment has not been satisfied, to state the amount then due under the judgment.
- (3) If the member of the school administrative and support staff fails to prove to the satisfaction of the Director-General that the judgment has been satisfied, the Director-General may:
- (a) from time to time cause to be deducted from any money due to the member such

sums as are, in the Director-General's opinion, necessary to enable the judgment to be satisfied, and

- (b) apply those sums in the manner provided by the following provisions of this section.
- (4) In no case shall a deduction be made which will reduce the amount to be received by the member of the school administrative and support staff to less than a sum per week equivalent to the amount ascertained in accordance with subsection (5).
- (5) The amount which is to be ascertained in accordance with this subsection is to be ascertained by deducting \$8 from the basic wage in force under clause 15 of Schedule 4 to the *Industrial Relations Act 1996* immediately before the deduction is made.
- (6) If copies of more than one judgment and statutory declaration are served on the Director-General in respect of one judgment debtor, the judgment shall be dealt with under this section in the order in which copies of the judgments are served on the Director-General.
- (7) Any deductions made under subsection (3) from money due to a member of the school administrative and support staff shall, as between the State and the member, be deemed to be a payment by the State to the member.
- (8) If a person to whom a payment has been made under this section fails to notify the Director-General immediately the judgment debt is satisfied, or is deemed to be satisfied, the person is liable, on conviction before the Local Court, to a penalty not exceeding 1 penalty unit.
- (9) If any deduction made under 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 Director-General to the judgment debtor, and in default of payment may be recovered by the judgment debtor from the Director-General in any court of competent jurisdiction.
- (10) This section does not apply in relation to any member of the school administrative and support staff who is an undischarged bankrupt.
- (11) Out of the sums deducted under subsection (3), there shall be retained by the Director-General, to be paid to the Treasurer for credit of the Consolidated Fund, an amount equal to 5 per cent (or such other amount 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.
- (12) If a payment is made to a judgment creditor under subsection (11), the Director-General shall forward to the judgment creditor a statement showing:
- (a) the sums deducted under subsection (3) in respect of the judgment from money

due to the member of the school administrative and support staff concerned,

(b) the amount retained by the Director-General under subsection (11) out of those sums, and

(c) the balance of those sums paid to the judgment creditor under subsection (11).

(13) On payment being made under subsection (11) to the judgment creditor:

(a) the judgment creditor shall credit the member of the school administrative and support staff concerned with the sums referred to in subsection (12) (a), as shown in the statement forwarded to the judgment creditor, and

(b) the judgment shall for all purposes be deemed to be satisfied to the extent of those sums, as so shown.

(14) In this section, **judgment** includes a judgment against joint defendants.

### **36 Proceedings for offences**

Proceedings for an offence against this Act or the regulations shall be dealt with summarily before the Local Court.

### **37 Existing employees**

(1) This section applies to persons who, immediately before the commencement of this Act, were temporary employees under the *Public Service Act 1979* and employed in the Department of Education in any of the classifications referred to in section 5 or in any similar classifications.

(2) Section 10 (Medical assessment or examination) and section 11 (Appointments on probation) do not apply to or in relation to the appointment of such a person as a permanent employee under this Act made within the period of 6 months after the commencement of this Act, except in so far as the Director-General otherwise directs within that period.

(3) For the purposes of section 33 (Eligibility for appointment to Public Service), service by such a person before the commencement of this Act in employment referred to in subsection (1) shall be regarded as service as a permanent employee.

### **38 Regulations**

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

(2) In particular, the regulations may make provision for or with respect to:

(a) the procedures to be adopted for selecting, appointing and promoting, and

- terminating the employment of, school administrative and support staff,
- (b) the procedures to be adopted consequent on the appointment or promotion of school administrative and support staff,
  - (c) the transfer of school administrative and support staff between positions,
  - (d) the hours of attendance of school administrative and support staff,
  - (e) the leave which may be granted to school administrative and support staff,
  - (f) travelling and subsistence allowances for school administrative and support staff, allowances for the increased cost of living in distant parts of the State, and other allowances for school administrative and support staff, and
  - (g) the exercise of functions of suspended, sick or absent school administrative and support staff by other school administrative and support staff, and the exercise by school administrative and support staff of the functions attached to vacant positions.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

### **39 Savings, transitional and other provisions**

Schedule 1 has effect.

## **Schedule 1 Savings, transitional and other provisions**

(Section 39)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
- Education Legislation Amendment (Staff) Act 2006*, but only to the extent that it amends this Act
- (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 on enactment of [Education Legislation Amendment \(Staff\) Act 2006](#)**

### **2 Definition**

In this Part:

**amending Act** means the [Education Legislation Amendment \(Staff\) Act 2006](#).

### **3 Prior conduct**

Part 6 of this Act (as substituted by the amending Act) extends to conduct occurring before the commencement of that Part.

### **4 Existing disciplinary charges**

If a member of the school administrative and support staff has been charged with a breach of discipline under Part 6 of this Act (as in force before the substitution of that Part by the amending Act) that has not been finally determined before that substitution, the breach of discipline is to continue to be dealt with under the provisions of that Part as if it had not been substituted.

### **5 Existing monitoring procedures**

Any breach of discipline by a member of the school administrative and support staff being dealt with in accordance with clause 14 (2) of the [Teaching Service Regulation 2001](#) (as applied by clause 5 of the [Education \(School Administrative and Support Staff\) Regulation 2003](#)) before the repeal of clause 14 (2) by the amending Act is to be dealt with under Part 6 of this Act (as substituted by the amending Act) as if the breach of discipline was the subject of an allegation of misconduct made under that Part.