

# Teaching Service Act 1980 No 23

[1980-23]



New South Wales

## Status Information

### Currency of version

Historical version for 1 December 2011 to 14 June 2013 (accessed 27 February 2024 at 4:34)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### 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
- **Does not include amendments by**  
[Child Protection \(Working with Children\) Act 2012 No 51](#) (not commenced — to commence on 15.6.2013)

### 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](#).

File last modified 26 April 2013

# Teaching Service Act 1980 No 23



New South Wales

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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- (3) (Repealed)

### 2A, 3 (Repealed)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](#).

### **5A 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 an officer or temporary employee 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.

## **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 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) If a person's appointment is so annulled, the person ceases to be an officer, unless appointed to another position as an officer.
- (4) (Repealed)
- (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 Industrial Relations Commission against the annulment.
- (6) Action is not required to be taken under Part 4A in order 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) (Repealed)

#### **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**

### **52-58 (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 Industrial Relations Commission**

The decision of the Director-General to appoint a person to a vacant senior position is not subject to appeal under Part 7 of Chapter 2 of the [Industrial Relations Act 1996](#).

### **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, may transfer the officer:
  - (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 Part 7 of Chapter 2 of the *Industrial Relations Act 1996*.

#### **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 Schedule 3A to the *Public Sector Employment and Management Act 2002* 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 clause 7 of Schedule 3A to the *Public Sector Employment and Management Act 2002*.
- (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) An officer is not entitled to any such leave if the officer's employment is terminated by operation of Part 4B.

(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 de facto partner of the officer at the time of his or her death.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

## **Division 6**

### **82-90 (Repealed)**

## **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 Service Commissioner, 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.

### **92A Officers and temporary employees to report bankruptcy etc**

If an officer or temporary employee becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the officer's or the temporary employee's creditors, the officer or temporary employee 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.

### **92B Officers and temporary employees not to undertake other paid work without permission**

- (1) An officer or temporary employee 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 officers and temporary employees in such manner as the Director-General thinks appropriate.

(4) This section does not apply to a temporary employee employed on a casual basis.

**92C Director-General to be notified of serious offences committed by officers and temporary employees**

(1) An officer or temporary employee 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 an officer or temporary employee 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 officer 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 93U.

**93 (Repealed)**

**Part 4A Management of conduct and performance**

**Division 1 Preliminary**

**93A Objects of Part**

The objects of this Part are as follows:

- (a) to maintain appropriate standards of conduct and work-related performance for officers in the Teaching Service,
- (b) to protect and enhance the integrity and reputation of the Teaching Service,
- (c) to ensure that the public interest is protected.

**93B Definitions**

(1) In this Part:

***disciplinary action***, in relation to an officer, means any one or more of the following:

- (a) dismissal from the Teaching Service,
- (b) directing the officer to resign, or to be allowed to resign, from the Teaching

Service within a specified time,

- (c) except in the case of a senior executive officer—reduction of the officer’s salary or demotion to a lower position in the Teaching Service,
- (d) the imposition of a fine,
- (e) a caution or reprimand.

**misconduct**—see section 93C.

**procedural guidelines** means the guidelines in force from time to time under section 93D.

**remedial action**, in relation to an officer, means any one or more of the following:

- (a) counselling,
- (b) training and development,
- (c) monitoring the officer’s conduct or performance,
- (d) implementing a plan addressing unsatisfactory performance,
- (e) the issuing of a warning to the officer that certain conduct is unacceptable or that the officer’s performance is not satisfactory,
- (f) transferring the officer to another position in the Teaching Service 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 an officer may have engaged in misconduct includes a reference to the Director-General being made aware, or becoming aware, by any means that the officer may have engaged in misconduct.

### **93C 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 [Public Interest Disclosures Act 1994](#)) against a person that is substantially in reprisal for the person making a public interest 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 officer concerned was not on duty, or
  - (b) before the officer 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.

### **93D 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 officers as a disciplinary matter, and
  - (b) the taking of disciplinary action with respect to officers 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) an officer 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 officer, and
    - (ii) is given an opportunity to respond to the allegation, and
  - (b) an officer 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 under section 100 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 those regulations, the regulations prevail.



### **93E Requirements relating to disciplinary matters**

- (1) An officer is not entitled to cross-examine any person in relation to an allegation of misconduct or the taking of disciplinary action against the officer.
- (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 an officer.
- (3) Nothing in subsection (1) or (2) prevents the Director-General from:
  - (a) conducting investigations into an allegation of misconduct, or
  - (b) asking an officer a question in relation to an allegation of misconduct, or
  - (c) conducting interviews with the officer to whom the allegation relates or with any other person in connection with the matter concerned, or
  - (d) taking signed statements from the officer or any such person.

## **Division 2 Dealing with misconduct**

### **93F Dealing with an allegation of misconduct**

- (1) If an allegation is made to the Director-General that an officer may have engaged in any misconduct, the Director-General may 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 officer.
- (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 officer has engaged in any misconduct, decide to take disciplinary action with respect to the officer.
- (3) Before any disciplinary action is taken with respect to an officer under this section, the officer 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 officer concerned as well as dealing with the allegation as a disciplinary matter, or
  - (b) decide to take remedial action with respect to the officer 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 an officer does not, if it appears to the Director-General that the officer 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 officers**

#### **93G Performance reviews for officers**

- (1) An officer's performance must be reviewed, at least annually, by the Director-General.
- (2) The Director-General may review the performance of an officer on such other occasions as the Director-General considers appropriate.
- (3) The review of an officer'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.

#### **93H Performance improvement programs**

- (1) If, following completion of the review of an officer's performance, the Director-General is of the opinion that the officer is not performing his or her duties in a satisfactory manner, the Director-General may implement a performance improvement program for the officer.
- (2) The officer 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.

#### **93I Dealing with unsatisfactory performance—school principals**

- (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) 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.

### **93J Dealing with unsatisfactory performance—officers other than school principals**

- (1) This section applies to officers other than school principals.
- (2) If the Director-General is of the opinion that an officer's performance is still unsatisfactory following the completion of a performance improvement program for the officer or following the officer's failure to participate in, or to satisfactorily complete, such a program, the Director-General may do either or both of the following:
  - (a) take remedial action with respect to the officer,
  - (b) take disciplinary action with respect to the officer.
- (3) To avoid any doubt, remedial action with respect to an officer is not required to be taken before disciplinary action is taken under this section with respect to the officer.
- (4) However, the Director-General may take disciplinary action with respect to an officer under this section only if:
  - (a) the officer 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 officer's performance is still unsatisfactory.

## **Division 4 Miscellaneous provisions**

### **93K Disciplinary action may be taken if officer is convicted of serious offence**

- (1) If an officer 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 officer,
  - (b) take remedial action with respect to the officer.
- (2) Before any disciplinary action is taken with respect to an officer under this section, the officer 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 an officer for an offence punishable by imprisonment for 12 months or more includes a reference to the officer having been found guilty by a court of such an offence but where no conviction is recorded.

**93L Suspension of officers from duty pending decision in relation to misconduct or criminal conviction**

- (1) If an allegation that an officer has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the procedural guidelines, the Director-General may suspend the officer from duty until the allegation of misconduct has been dealt with.
- (2) If an officer is charged with:
- (a) an offence referred to in section 93K, or
  - (b) an offence that would, on conviction, result in the officer being a prohibited person as referred to in Part 4B,
- the Director-General may suspend the officer from duty until the officer is notified by the Director-General that the suspension has been lifted.
- (3) Any salary payable to a person as an officer 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.

**93M Implementation of decisions under this Part**

A decision of the Director-General to take any action under this Part with respect to an officer may be carried into effect at any time.

**93N Effect of dismissal of senior executive officers**

If a senior executive officer is dismissed from the Teaching Service under this Part:

- (a) the term for which the officer was appointed is to be regarded as having come to an end, and

(b) no compensation is payable in respect of the dismissal.

### **93O Provisions relating to certain forms of disciplinary action**

- (1) Any appointment required as the result of the taking of disciplinary action (or any other action under this Part) comprising demotion to a lower position in the Teaching Service is to be made by the Director-General.
- (2) If a fine is imposed under this Part on an officer, the person responsible for paying the officer'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 officer in such manner as the Director-General directs.

### **93P Officers retiring or resigning before disciplinary action is taken**

- (1) An allegation that an officer has engaged in misconduct may be dealt with under this Part, and disciplinary action may be taken with respect to the officer, even though the officer has retired or resigned.
- (2) The taking of disciplinary action (other than a fine) with respect to the former officer does not affect the former officer'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 officer 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 officer by the Crown, or both.
- (4) A reference in this section to the resignation of an officer is a reference to a resignation that has been accepted by the Director-General.

### **93Q Officer whose address is unknown**

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

## **Part 4B Termination of employment of prohibited persons**

### **93R 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.

**93S 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 4A or any other provision of this Act.

**93T Termination of employment of prohibited persons**

- (1) An officer or temporary employee who is or becomes a prohibited person and who is employed in child-related employment in the Teaching Service is, by operation of this section, dismissed from the Teaching Service.
- (2) The dismissal takes effect:
  - (a) if the person becomes a prohibited person after being appointed as an officer or temporary employee—when the person becomes 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 an officer or temporary employee—when the Director-General becomes aware that the person is 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 in the Teaching Service includes a reference to a prohibited person whose substantive position in the Teaching Service 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.

### **93U Offences and prohibited person status to be notified to Director-General**

- (1) An officer 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 an officer 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 officer 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 92C.
- (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*.

### **93V 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 an officer or temporary employee or former officer or temporary employee.
- (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.

### **93W Effect of person ceasing to be prohibited person**

- (1) This section applies to a person who is dismissed under section 93T 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 position in the Teaching Service that is similar to the position that the person held when the person's employment was terminated under section 93T.
- (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 93T,the person is entitled to be reinstated to, or re-employed in, a position in the Teaching Service 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 from the Teaching Service, 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*.

### **93X 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.



### **93Y 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.

### **93Z 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.

### **93ZA 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*.

### **93ZB 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 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 Industrial Relations Commission under Part 7 of Chapter 2 of the *Industrial Relations Act 1996*, 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, 99 (Repealed)**

#### **100 Regulations**

- (1) The Governor may 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 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 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 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 on the NSW legislation website.

### **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*

*Education Legislation Amendment (Staff) Act 2006*, but only to the extent that it amends this Act

*Education Legislation Amendment Act 2006*

- (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 1A Effect of repeal of Act**

### **2A Repeal of Act does not affect operation of savings and transitional provisions**

- (1) Despite the repeal of the *Miscellaneous Acts (Education Commission) Repeal and Amendment Act 1980*, clauses 4–6 and 16 of Schedule 3 to that Act continue to have effect and are taken to have been transferred to this Act.
- (2) Clauses 4–6 and 16 of Schedule 3 to the *Miscellaneous Acts (Education Commission) Repeal and Amendment Act 1980* are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

## **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.

## Part 4 Provisions consequent on enactment of **Education Legislation Amendment (Staff) Act 2006**

### 16 Definition

In this Part:

**amending Act** means the *Education Legislation Amendment (Staff) Act 2006*.

### 17 Performance management for school principals

- (1) Any performance improvement program implemented (but not completed) in relation to a school principal under Division 3 of Part 4 of this Act (as in force immediately before the repeal of that Division by the amending Act) is to be completed under Part 4A of this Act as if the program had been implemented under that Part.
- (2) Any action pending, or any process leading up to the taking of any action, in relation

to a school principal under Division 3 of Part 4 of this Act (as in force immediately before the repeal of that Division by the amending Act) is to be completed under Part 4A of this Act as if the action or process was initiated under that Part.

### **18 Prior conduct**

Part 4A of this Act extends to conduct occurring before the commencement of that Part.

### **19 Existing disciplinary charges**

If an officer or temporary employee has been charged with a breach of discipline under Division 6 of Part 4 of this Act that has not been finally determined before the repeal of that Division by the amending Act, the breach of discipline is to continue to be dealt with under the provisions of that Division as if it had not been repealed.

### **20 Existing monitoring procedures**

Any breach of discipline being dealt with in accordance with clause 14 (2) of the *Teaching Service Regulation 2001* before the repeal of that subclause by the amending Act is to be dealt with under Part 4A of this Act as if the breach of discipline was the subject of an allegation of misconduct made under that Part.

## **Part 5 Provisions consequent on enactment of *Education Legislation Amendment Act 2006***

### **21 Existing regulations**

- (1) Any regulation under this Act that was made, or that purports to have been made, before the date of assent to the *Education Legislation Amendment Act 2006*, whether by the Governor or by the Director-General:
  - (a) in relation to matters arising before that date, is taken to have been validly made and always to have had effect regardless of by whom it was made, and
  - (b) in relation to matters arising on or after that date, is taken to have been validly made and has effect, and may be repealed or amended, as if it had been made by the Governor.
- (2) Anything done or omitted to be done in accordance with, or in contravention of, a regulation referred to in subclause (1) has the same effect, and is taken always to have had the same effect, as it would have had were this clause to have been in force when it was done or omitted to be done.
- (3) Any reference in this clause to making a regulation includes a reference to approving the making of a regulation.