



New South Wales

## Education Legislation Amendment (Staff) Bill 2006

### Explanatory note

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

### Overview of Bill

The objects of this Bill are as follows:

- (a) to create a new legislative framework for dealing with the management of conduct and performance of government school teachers and other staff employed in the public education sector that will replace the existing disciplinary scheme applying to those teachers and staff,
- (b) to provide for automatic dismissal of government school teachers and other staff employed in the public education sector who become persons who are prohibited from being employed in child-related employment.

### Management of conduct and performance

The provisions of the new scheme for dealing with conduct and performance are based on the scheme for the management of conduct and performance for officers of Departments under the *Public Sector Employment and Management Act 2002* (and, in the case of performance management for school principals, are also based on existing provisions of the *Teaching Service Act 1980*), and will apply to the following classes of persons:

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\* Amended in committee—see table at end of volume.

- (a) officers (including school principals) employed in the Teaching Service under the *Teaching Service Act 1980*,
- (b) members of staff employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the TAFE Commission Division of the Government Service,
- (c) permanent employees employed under the *Education (School Administrative and Support Staff) Act 1987*.

Under the new scheme, an allegation of misconduct against a person of a class referred to above may be dealt with as a disciplinary matter. Remedial action (eg counselling or a warning) and disciplinary action (eg dismissal) may be taken with respect to the person. The allegation is to be dealt with in accordance with procedural guidelines.

The new provisions also provide that a person's performance must be reviewed periodically. If the person is not performing his or her duties in a satisfactory manner, remedial action or disciplinary action (or both) may be taken against the person.

Remedial action and disciplinary action may be taken against a person if the person is convicted, or has been found guilty, of a serious offence. A person may be suspended from duty and his or her salary withheld while an allegation of misconduct is being dealt with or pending a decision in relation to a criminal conviction against the person.

### **Prohibited persons**

The Bill provides for the automatic dismissal of a staff member who is or becomes a prohibited person and who is employed in child-related employment in the Teaching Service, in the TAFE Commission Division of the Government Service or as a permanent or temporary employee under the *Education (School Administrative and Support Staff) Act 1987*. A person becomes a prohibited person if the person is convicted of a serious sex offence, the murder of a child, or a child-related personal violence offence or becomes subject to registration requirements under the *Child Protection (Offenders Registration) Act 2000*. The Bill will apply to persons who are currently so employed and to future employees, as well as to persons who are currently prohibited persons. There will be an obligation on a person who is charged with any such offence or who becomes a prohibited person to notify the relevant employer authority.

The Bill excludes staff members who are dismissed by operation of the Act from any right to a hearing or the requirements for procedural fairness but does not exclude the operation of review mechanisms provided for prohibited persons under other legislation. If an application is made for review of the prohibited person status of a person, the Commission for Children and Young People or the relevant tribunal to which the application is made must notify the relevant employer authority and the authority is entitled to appear and be heard in any review application. If a person ceases to be a prohibited person because a conviction is overturned, or a successful review application is made (not later than 12 months after the dismissal), the person is automatically taken to be reinstated or re-employed and taken to have been on

leave without pay during any intervening period. A person who is reinstated or re-employed may also be subject to disciplinary action under other provisions of the Acts being amended.

The Bill also excludes a person who is dismissed under the provisions from having any access to industrial or other legal remedies in relation to the dismissal and prevents the exercise of certain related protected functions by the Director-General from being open to legal challenge, including challenge on the grounds of non-compliance with the rules of procedural fairness.

### **Other amendments**

The Bill also makes other amendments of a minor or consequential nature.

## **Outline of provisions**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Teaching Service Act 1980* set out in Schedules 1.1 and 2.1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Technical and Further Education Commission Act 1990* set out in Schedules 1.2 and 2.2.

**Clause 5** is a formal provision that gives effect to the amendments to the *Education (School Administrative and Support Staff) Act 1987* set out in Schedules 1.3 and 2.3.

**Clause 6** is a formal provision that gives effect to Schedule 3, which contains consequential amendments to another Act and other instruments.

**Clause 7** repeals the *Technical and Further Education Commission (Savings and Transitional) Regulation 1993*.

**Clause 8** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1 Amendments relating to management of conduct and performance of staff**

### **Schedule 1.1 Teaching Service Act 1980 No 23**

**Schedule 1.1 [1]** provides that the protection of children is to be the paramount consideration in taking any action against an officer or temporary employee under the *Teaching Service Act 1980* and in dealing with any appeal against, or determining any claim arising from or in relation to, that action.

**Schedule 1.1 [8]** and **[9]** omit provisions dealing with the current disciplinary scheme for officers (including school principals) and temporary employees in the Teaching Service. **Schedule 1.1 [2]–[7]** and **[12]** make consequential amendments.

**Schedule 1.1 [11]** inserts a new Part 4A into the *Teaching Service Act 1980* that provides for the management of conduct and performance (as described in the above Overview) of officers in the Teaching Service.

**Schedule 1.1 [10]** inserts updated provisions dealing with the reporting of bankruptcy, undertaking other paid work and the notification of serious offences in relation to officers and temporary employees.

**Schedule 1.1 [13]** enables savings and transitional regulations to be made as a consequence of the proposed Act.

**Schedule 1.1 [14]** inserts savings and transitional provisions as a consequence of the enactment of the proposed Act.

### **Schedule 1.2 Technical and Further Education Commission Act 1990 No 118**

**Schedule 1.2 [14]** inserts a new Part 6A into the *Technical and Further Education Commission Act 1990* that provides for the management of conduct and performance (as described in the above Overview) of members of staff in the TAFE Commission Division. The proposed Part also provides that the protection of children is to be the paramount consideration in taking any action against a member of staff (in matters relating to children) under that Act and in dealing with any appeal against, or determining any claim arising from or in relation to, that action. **Schedule 1.2 [1], [3]–[11]** and **[13]** make consequential amendments.

**Schedule 1.2 [2]** provides that notes in the Act do not form part of the Act.

**Schedule 1.2 [12]** inserts provisions dealing with the reporting of bankruptcy, undertaking other paid work and the notification of serious offences in relation to members of staff. Provision is also included to enable the appropriate Division Head of the TAFE Commission Division to prepare and maintain a list of persons not to be employed as members of staff.

**Schedule 1.2 [15]** enables savings and transitional regulations to be made as a consequence of the proposed Act.

**Schedule 1.2 [16]** inserts savings and transitional provisions as a consequence of the enactment of the proposed Act.

### **Schedule 1.3 Education (School Administrative and Support Staff) Act 1987 No 240**

**Schedule 1.3 [2]** provides that the protection of children is to be the paramount consideration in taking any action against a member of the school administrative and support staff under the *Education (School Administrative and Support Staff) Act 1987* and in dealing with any appeal against, or determining any claim arising from or in relation to, that action. The amendment also inserts provisions dealing with the reporting of bankruptcy, undertaking other paid work and the notification of serious

offences in relation to members of the school administrative and support staff. Provision is also included to enable the Director-General of the Department of Education and Training to prepare and maintain a list of persons not to be employed as members of the school administrative and support staff. **Schedule 1.3 [4]** is a consequential amendment.

**Schedule 1.3 [5]** substitutes the Part dealing with the current disciplinary scheme for permanent employees with a new Part 6 providing for the new management of conduct and performance scheme described in the above Overview. **Schedule 1.3 [1]** and **[3]** make consequential amendments.

**Schedule 1.3 [6]** enables savings and transitional regulations to be made and inserts savings and transitional provisions, as a consequence of the proposed Act.

## **Schedule 2 Amendments relating to termination of employment of prohibited persons**

### **Schedule 2.1 Teaching Service Act 1980 No 23**

**Schedule 2.1 [2]** inserts a new Part 4B into the *Teaching Service Act 1980* that provides for the automatic dismissal of staff employed in child-related employment who are or become prohibited persons and for related provisions (as described in the above Overview).

**Schedule 2.1 [1]** prevents a teacher who is dismissed by operation of the new Part 4B from being entitled to long service leave, in the same way as a teacher who is otherwise dismissed for misconduct.

### **Schedule 2.2 Technical and Further Education Commission Act 1990 No 118**

**Schedule 2.2 [2]** inserts a new Part 6B into the *Technical and Further Education Commission Act 1990* that provides for the automatic dismissal of staff employed in child-related employment who are or become prohibited persons and for related provisions (as described in the above Overview).

**Schedule 2.2 [1]** prevents a member of staff who is dismissed by operation of the new Part 6B from being entitled to long service leave, in the same way as a member of staff who is otherwise dismissed for misconduct.

### **Schedule 2.3 Education (School Administrative and Support Staff) Act 1987 No 240**

**Schedule 2.3 [2]** inserts a new Part 6A into the *Education (School Administrative and Support Staff) Act 1987* that provides for the automatic dismissal of staff employed in child-related employment who are or become prohibited persons and for related provisions (as described in the above Overview).

**Schedule 2.3 [1]** provides that notes in the Act do not form part of the Act.

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### **Schedule 3      Consequential amendment of other Act and instruments**

**Schedule 3** amends the *Government and Related Employees Appeal Tribunal Act 1980* and other instruments as a consequence of the new provisions dealing with conduct and performance.