

## Teaching Services Amendment Bill 2004

New South Wales

### Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Teaching Services Act 1980* (**the Principal Act**) as follows:

(a) to provide for merit selection in relation to the appointment of persons to senior positions in the Teaching Service,

(b) to provide a statutory framework for managing the performance of government school principals, including annual performance reviews, implementation of performance improvement programs and streamlined procedures for dealing with unsatisfactory performance,

(c) to make a number of amendments that are generally in the nature of statute law revision (such as updating references to reflect administrative changes, removing provisions that relate to the abolished Technical and Further Education Teaching Service and removing provisions that have been superseded by the *Public Sector Employment and Management Act 2002*, in particular provisions relating to the transfer of staff which is now done under Part 3.2 of that Act).

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 Services Act 1980* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the Acts and the regulation set out in Schedule 2.

### Schedule 1 Amendment of Teaching Services Act 1980

#### Merit appointment to senior positions

**Schedule 1 [16]** inserts proposed section 47A into the Principal Act to provide that appointments to vacant senior positions in the Teaching Service are to be made on the basis of the merit of the applicants for the position concerned. A senior position is any position to which a person employed in the Teaching Service could be promoted (see proposed section 4 as inserted by **Schedule 1 [4]**), although proposed section 47A makes it clear that persons who are not already employed in the Teaching Service can be appointed, on merit, to senior positions. The proposed section also provides that legal proceedings cannot be brought in respect of appointments to vacant senior positions. The exclusion of legal proceedings in this case is consistent with section 22 of the *Public Sector Employment and Management Act 2002* (which applies to appointments to all vacant positions in the Public Service).

#### Performance management for school principals

**Schedule 1 [27]** replaces Division 3 of Part 4 (which currently contains obsolete provisions relating to members of the abolished Technical and Further Education Teaching Service) with provisions for dealing with unsatisfactory performance on the part of school principals. Under the new performance management regime, school principals will be subject to performance reviews at least annually. If a school principal is not performing in a satisfactory manner, the Director-General of the Department of Education and Training may implement a performance improvement program for the principal. If the principal's performance is still unsatisfactory

following that program, the Director-General may decide, after giving the principal 21 days in which to make written submissions on the matter and taking into consideration those submissions, to dismiss the principal from the Teaching Service or demote the principal to a lower position.

#### **Miscellaneous and consequential amendments**

The proposed Act makes a number of amendments to the Principal Act that are consequential on the reforms described in the above paragraphs. A number of miscellaneous amendments are also made to remove obsolete references and to generally bring the Principal Act up to date. Some of these miscellaneous amendments relate to administrative changes that have not yet been reflected in the Principal Act.

**Schedule 1 [3], [6], [8], [10], [19], [26], [28], [29], [35], [36], [38], [40], [41], [43]–[45], [47]–[51], [54]–[56] and [64]** remove all provisions relating to the Technical and Further Education Teaching Service (including associated references to the Department of Technical and Further Education and the Director-General of Technical and Further Education) and make a number of amendments consequent on there being only one Teaching Service and one person exercising functions as Director-General under the Principal Act. Since the establishment of the TAFE Commission in 1991, the Principal Act has ceased to apply to the Technical and Further Education Teaching Service, but the provisions relating to that Service have remained in the Principal Act. Also, as there is only one Teaching Service established under the Principal Act, the existing Education Teaching Service is to be renamed as the “Teaching Service” (see **Schedule 1 [9]**) and the long title and name of the Principal Act are amended accordingly (see **Schedule 1 [1] and [2]**).

**Schedule 1 [4]** updates the definitions used in the Principal Act as a consequence of the other amendments made by the proposed Act.

**Schedule 1 [5]** omits Parts 2 and 3 of the Principal Act and restates the provisions contained in those Parts in a new consolidated Part. Part 2 currently deals with the employment functions of the Secretary of the Ministry of Education and Youth Affairs (that position is required by administrative changes orders to be construed as a reference to the Director-General of the Department of Education and Training) and Part 3 currently specifies the other functions conferred or imposed on the Director-General in relation to the Teaching Service. The new Part 2 retains these provisions with some exceptions. For example, proposed section 7 (cf current section 38 of the Principal Act) no longer makes provision for promotions lists, and it will specifically authorise the Director-General to prepare and maintain lists of persons who are not to be employed in the Teaching Service. The definition of **industrial matters** in proposed section 10 (cf current section 4 of the Principal Act) no longer needs to translate references in the *Industrial Relations Act 1996* to “industrial unions” and “trade union” because those references do not occur in that Act. Also, section 28 of the Principal Act is not restated because the provision no longer has practical utility (mainly because the positions of Secretary and the Director-General currently comprise a single position).

**Schedule 1 [7]** omits section 42 of the Principal Act (which is to be restated as proposed section 44 (2)—see **Schedule 1 [9]**) and section 43 (which purports to exclude the *Public Sector Employment and Management Act 2002* in relation to members of the Teaching Service). Certain provisions of that Act, such as the provisions relating to staff mobility and public sector executives, do, however, currently apply to the members of the Teaching Service.

**Schedule 1 [11]** omits section 46 (which provides for the Governor to determine the staff establishment for positions above the level of staff inspector) because these positions no longer exist as such in the Teaching Service.

**Schedule 1 [12]** restates the provision that enables the Director-General to appoint persons to positions in the Teaching Service so as to make that provision subject to

proposed section 47A (which provides for merit appointment to senior positions) and to remove references to separate staff establishments in the Teaching Service. Also, the notion of permanency is removed to make the Principal Act more consistent with the legislative scheme relating to the Public Service. **Schedule 1 [17] and [25]** are consequential amendments.

**Schedule 1 [13]** excludes appointments to senior positions from section 47 (1A) of the Principal Act which requires the Director-General to give preference to an Aboriginal person when making an appointment to a position in the Teaching Service.

**Schedule 1 [14]** updates references in relation to the Director-General of the Department of Education and Training and **Schedule 1 [24] and [39]** deal with obsolete references to the Secretary.

**Schedule 1 [18]** makes it clear that proposed section 54 (to be inserted by **Schedule 1 [27]** and which enables the Director-General to dismiss a school principal from the Teaching Service for unsatisfactory performance) does not, in the case of a school principal who has been appointed on probation, prevent the principal's probationary appointment from being annulled at any time.

**Schedule 1 [20]–[22]** clarify and restate the provisions relating to the employment of persons as temporary employees in the Teaching Service.

**Schedule 1 [23]** corrects a cross-reference.

**Schedule 1 [30]** omits the provisions of the Principal Act relating to the filling of vacancies in positions in the Teaching Service for which there are promotions lists. At present under the Principal Act, the Director-General may prepare lists of officers in the Teaching Service who are eligible to be promoted. If a vacancy in a position for which there is a promotions list is to be filled, only those persons whose names are on the list are eligible to be appointed unless, as section 47 (5) of the Principal Act currently provides, the Director-General certifies that there is no other person employed in the Teaching Service who is available to fill the position. These provisions restrict the class of persons who can be considered for appointment to senior positions and are inconsistent with the principle of merit appointment as provided by proposed section 47A. **Schedule 1 [15]** consequentially repeals section 47 (5) (as well as section 47 (2)–(4) as a consequence of other amendments made by the proposed Act).

**Schedule 1 [31]–[34], [59] and [61]** are consequential on the removal of the provisions relating to promotions lists and the introduction of merit appointments for senior positions. An officer will still be able to appeal against the decision of the Director-General to appoint another officer to a vacant senior position for which the applicant has unsuccessfully applied, but appeals in relation to seniority and placement on a promotions list are no longer relevant.

**Schedule 1 [37]** omits sections 71 (which relates to the transfer of staff within the Teaching Service) and 71A (which allows the Director-General to make arrangements for the use of staff of other agencies). These provisions have been superseded by Part 3.2 of the *Public Sector Employment and Management Act 2002* which provides for staff transfers between and within public sector services (which include the Teaching Service) as well as for the secondment and temporary assignment of staff. **Schedule 1 [60]** is a consequential amendment.

**Schedule 1 [42]** provides that the term “appropriate Department Head” has the meaning given to it under the *Public Sector Employment and Management Act 2002*.

**Schedule 1 [46]** is consequential on the amendment made by **Schedule 1 [27]**. It makes it clear that a school principal's unsatisfactory performance is to be dealt with under the new performance management regime and not as a breach of discipline under Division 6 of Part 4 of the Principal Act.

**Schedule 1 [52], [58] and [63]** are consequential on the renumbering of the provisions of the existing Parts 2 and 3 and the consolidation of those Parts into the

new Part 2.

**Schedule 1 [53]** updates a reference relating to the Public Employment Office.

**Schedule 1 [57]** omits section 98 as a consequence of sections 102 and 103 of the *Public Sector Employment and Management Act 2002*. Those sections, which apply to members of the Teaching Service, make provision with respect to employees who contest State elections and to the re-appointment of employees who resign to contest Commonwealth elections.

**Schedule 1 [62]** removes an obsolete reference to a public school (the term **school** in the Principal Act is to be defined as a government school established under the *Education Act 1990*).

**Schedule 1 [65]** omits section 102 which is unnecessary because of section 42 (2) of the *Interpretation Act 1987*.

**Schedule 1 [66]** enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [67]** inserts savings and transitional provisions as a consequence of the enactment of the proposed Act.

**Schedule 2 Amendment of other legislation**

**Schedule 2** amends a number of other Acts, as well as the *Education Teaching Service Regulation 2001*, as a consequence of the miscellaneous changes to the Principal Act made by Schedule 1 (for example, updating and changing references that relate to the Teaching Service).