

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 Institute of Teachers Act 2004 (the principal Act):

(a) to enable the accreditation requirements for teachers under that Act to be extended by regulation to teachers delivering courses or programs conducted by schools for preschool children and to teachers delivering other courses that are not designed to implement the Board of Studies curriculum if those courses and programs are provided in schools, and

(b) to extend the accreditation requirements under that Act to teachers who have been absent from classroom teaching for more than 5 years (with certain exceptions), and

(c) to make the general grounds for revocation of accreditation under that Act consistent for both government and non-government school teachers, and

(d) to enable suspension of accreditation under that Act on specified grounds, and

(e) to make changes in relation to the provisions concerning members of the Quality Teaching Council established by 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 Institute of Teachers Act 2004 set out in Schedule 1.

Clause 4 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

Amendments relating to extension of accreditation requirements to other teachers

Schedule 1 [2] and [3] replace the definitions of teach and teacher in section 3 of the principal Act with proposed section 3A. Currently, the definition of teach is limited to undertaking duties in a school that include the delivery of, and the assessment of a student's participation, performance and progress in, courses of study that are designed to implement the Board of Studies curriculum. Proposed section 3A also includes in that definition the courses of study and programs for primary, secondary and preschool children that are prescribed by the regulations. Schedule 1 [1] contains a consequential amendment.

Schedule 1 [11] amends the definition of new scheme teacher in section 28 of the principal Act to include a person who was the holder of a prescribed tertiary or teaching qualification and was employed as a teacher before the relevant date (as defined in that section) but who commences to teach after that date following an absence from actual classroom teaching of 5 years. Proposed clause 4 of Schedule 3 to the principal Act (to be inserted by Schedule 1 [26]) provides that the proposed amendment will not apply to any absence from actual classroom teaching occurring before the relevant date.

Schedule 1 [13] amends section 28 of the principal Act to provide that a person's absence from actual classroom teaching during any period is not to be taken into account for the purposes of the amendment to section 28 referred to above if a teacher accreditation authority certifies that the person was undertaking duties in an area of relevance to the professional teaching standards. A regulation-making power is included to enable regulations to be made that prescribe duties that are to be taken to be, or are to be taken not to be, in an area of relevance to the professional teaching

standards.

Schedule 1 [12] amends the definition of relevant date in section 28 of the principal Act to enable different dates to be prescribed by the regulations as relevant dates in relation to different classes of new scheme teachers. This will enable appropriate relevant dates to be prescribed in relation to the accreditation requirements for the additional classes of new scheme teachers to be included within the operation of the principal Act because of regulations under proposed section 3A and the amendment to the definition of new scheme teacher in section 28.

Schedule 1 [15] amends the definition of relevant date in section 34 to enable different dates to be prescribed by the regulations as relevant dates in relation to different classes of transition scheme teachers. This will enable appropriate relevant dates to be prescribed in relation to the accreditation requirements for the additional classes of transition scheme teachers to be included within the operation of the principal Act because of regulations under proposed section 3A.

Amendments relating to revocation and suspension of accreditation

Schedule 1 [8] substitutes section 24 of the principal Act to ensure that the general grounds for revocation of accreditation are the same for teachers in government and non-government schools. The general grounds for revocation of accreditation will now be that the person is a prohibited person within the meaning of the Commission for Children and Young People Act 1998, the person has been found guilty of an offence prescribed by the regulations as a serious offence, the person has been found guilty more than once of an offence that is prescribed by the regulations as a non-serious offence, the person has been dismissed from employment as a teacher for conduct prescribed by the regulations as serious misconduct or the person has failed to comply with a condition of the accreditation.

Schedule 1 [9] inserts proposed sections 24A, 24B and 24C into the principal Act. Proposed section 24A enables a teacher accreditation authority to suspend the accreditation of a person on any ground on which the person's accreditation could be revoked or if there are disciplinary proceedings pending against the person for alleged serious misconduct or proceedings for an offence are pending against the person, being an offence that if proved to have been committed by the person would be grounds for revocation of accreditation.

Proposed section 24B requires a teacher accreditation authority to take account of certain matters when determining whether to revoke a person's accreditation under section 24 or suspend a person's accreditation under proposed section 24A.

Proposed section 24C requires written notice to be given to a person of a teacher accreditation authority's intention to suspend or revoke the person's accreditation to enable submissions to be made.

Schedule 1 [6] amends section 18 of the principal Act to require the NSW Institute of Teachers to keep a record of the details of a decision by a teacher accreditation authority to suspend a person's accreditation.

Schedule 1 [7] amends section 20 of the principal Act to enable the professional teaching standards approved by the Minister to contain procedures and guidelines to be followed by teacher accreditation authorities in relation to the suspension of a person's accreditation.

Schedule 1 [10] amends section 27 of the principal Act to include a right to apply to the Administrative Decisions Tribunal for a review of a decision to suspend a person's accreditation.

Currently, section 29 of the principal Act makes it an offence for the employer of a new scheme teacher (within the meaning of section 28 of the principal Act) to employ or continue to employ the person as a teacher unless the person is accredited and, in the case of conditional accreditation, is supervised by another teacher.

Schedule 1 [14] amends section 29 of the principal Act to make it clear that a person's employment as a new scheme teacher may be terminated if the person's

accreditation is revoked or may be suspended if the person's accreditation is suspended.

Currently, section 35 of the principal Act makes it an offence for the employer of a transition scheme teacher (within the meaning of section 34 of the principal Act) to employ or continue to employ the person as a teacher unless the person is accredited and is supervised by another teacher. Schedule 1 [16] amends section 35 of the principal Act to make it clear that a person's employment as a transition scheme teacher may be terminated if the person's accreditation is revoked or may be suspended if the person's accreditation is suspended.

Schedule 1 [17] inserts proposed section 42A into the principal Act to provide that a person may be suspended without pay in relation to the person's employment as a teacher for any period during which that employment is required to be suspended under the principal Act for failure to comply with a condition of the accreditation.

The proposed section also provides that any amount payable to a teacher in a government school may only be withheld under the proposed section if the Director-General of the Department of Education and Training so directs. That provision is similar to powers of the Director-General contained in the Teaching Service Act 1980 in relation to the suspension of an officer of the teaching service from duty during disciplinary proceedings for alleged misconduct. Schedule 1 [19] makes a consequential amendment.

Amendments relating to the Quality Teaching Council

Currently, section 13 (1) of the principal Act requires elected members of the Quality Teaching Council to be teachers and section 13 (3) requires that after the third anniversary of the first election of elected members each such member must be accredited. Schedule 1 [4] amends section 13 of the principal Act to change the requirement in section 13 (3) from the third anniversary to the sixth anniversary.

Currently, section 13 (4) of the principal Act prevents a member of the Council from holding office for terms totalling more than 6 years. Schedule 1 [5] amends section 13 of the principal Act to take into account that the term of office of an elected member may be extended in accordance with the regulations.

Other minor amendments

Schedule 1 [21] inserts proposed section 51A into the principal Act to provide for the manner in which documents are to be served (other than on the NSW Institute of Teachers) under the principal Act.

Schedule 1 [22] amends section 52 of the principal Act to enable regulations to be made in relation to fees and charges for services provided under the principal Act.

Schedule 1 [18] and [20] contain consequential amendments.

Schedule 1 [23] and [24] amend section 55 of the principal Act to provide for a further review of the Act as soon as possible after 5 years from the date of assent to the proposed Act.

Schedule 1 [25] and [26] deal with savings and transitional matters consequent on the enactment of the proposed Act.