



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:

- (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.

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.



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Education Legislation Amendment (Staff) Bill 2006

No , 2006

A Bill for

An Act to amend the *Teaching Service Act 1980*, the *Technical and Further Education Commission Act 1990* and the *Education (School Administrative and Support Staff) Act 1987* to provide for the termination of employment of educational staff who are prohibited from being employed in child-related employment and to make further provision with respect to the management of the conduct and performance of educational staff; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Education Legislation Amendment (Staff) Act 2006</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Teaching Service Act 1980 No 23	6
The <i>Teaching Service Act 1980</i> is amended as set out in Schedules 1.1 and 2.1.	7 8
4 Amendment of Technical and Further Education Commission Act 1990 No 118	9 10
The <i>Technical and Further Education Commission Act 1990</i> is amended as set out in Schedules 1.2 and 2.2.	11 12
5 Amendment of Education (School Administrative and Support Staff) Act 1987 No 240	13 14
The <i>Education (School Administrative and Support Staff) Act 1987</i> is amended as set out in Schedules 1.3 and 2.3.	15 16
6 Consequential amendment of other Act and instruments	17
The Act and instruments specified in Schedule 3 are amended as set out in that Schedule.	18 19
7 Repeal of Technical and Further Education Commission (Savings and Transitional) Regulation 1993	20 21
The <i>Technical and Further Education Commission (Savings and Transitional) Regulation 1993</i> is repealed.	22 23
8 Repeal of this Act	24
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	25 26
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	27 28

Schedule 1	Amendments relating to management of conduct and performance of staff	1
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	(Sections 3, 4 and 5)	3
1.1	Teaching Service Act 1980 No 23	4
[1]	Section 5A	5
	Insert after section 5:	6
	5A Protection of children to be paramount consideration	7
	(1) The protection of children is to be the paramount consideration:	8
	(a) in taking any action with respect to an officer or temporary employee under this Act, and	9
	(b) in dealing with any appeal against, or determining any claim arising from or in relation to, that action.	10
	(2) This section has effect despite anything in the <i>Industrial Relations Act 1996</i> or any other Act or law.	11
		12
[2]	Section 8 Delegation of functions	13
	Omit section 8 (1) (b). Insert instead:	14
	(b) the functions conferred or imposed under section 100.	15
[3]	Section 8 (3), definition of “authorised person”	16
	Omit paragraph (c). Insert instead:	17
	(c) a person employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> in the TAFE Commission Division of the Government Service.	18
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[4]	Section 48 Appointments on probation	20
	Omit section 48 (3) and (4). Insert instead:	21
	(3) If a person’s appointment is so annulled, the person ceases to be an officer, unless appointed to another position as an officer.	22
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[5]	Section 48 (5)	24
	Omit “or against any determination of the Director-General made under subsection (4)”.	25
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Schedule 1 Amendments relating to management of conduct and performance of staff

[6] Section 48 (6)	1
Omit the subsection. Insert instead:	2
(6) Action is not required to be taken under Part 4A in order to annul an appointment under subsection (2).	3 4
[7] Section 50 Temporary employees	5
Omit section 50 (6).	6
[8] Part 4, Division 3 Performance management for school principals	7
Omit the Division.	8
[9] Part 4, Division 6 Discipline and conduct	9
Omit the Division.	10
[10] Sections 92A–92C	11
Insert after section 92:	12
92A Officers and temporary employees to report bankruptcy etc	13
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:	14 15 16 17
(a) immediately give to the Director-General notice of the bankruptcy, composition, arrangement or assignment, and	18 19
(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.	20 21 22 23 24
92B Officers and temporary employees not to undertake other paid work without permission	25 26
(1) An officer or temporary employee is not to undertake any other paid work without the permission of the Director-General.	27 28
(2) The Director-General may prepare guidelines with respect to the type of work that constitutes paid work for the purposes of this section.	29 30 31
(3) Any such guidelines must be made available to officers and temporary employees in such manner as the Director-General thinks appropriate.	32 33 34

(4)	This section does not apply to a temporary employee employed on a casual basis.	1 2
92C	Director-General to be notified of serious offences committed by officers and temporary employees	3 4
(1)	An officer or temporary employee who:	5
(a)	is charged with, or who is found guilty of, an offence that is punishable by imprisonment for 12 months or more, or	6 7
(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.	8 9 10 11
(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.	12 13 14 15 16 17
(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.	18 19 20
[11] Part 4A		21
	Insert after Part 4:	22
Part 4A	Management of conduct and performance	23
Division 1	Preliminary	24
93A	Objects of Part	25
	The objects of this Part are as follows:	26
(a)	to maintain appropriate standards of conduct and work-related performance for officers in the Teaching Service,	27 28 29
(b)	to protect and enhance the integrity and reputation of the Teaching Service,	30 31
(c)	to ensure that the public interest is protected.	32

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,

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| (b) | engaging in, or having engaged in, any conduct that justifies the taking of disciplinary action, | 1
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| (c) | taking any detrimental action (within the meaning of the <i>Protected Disclosures Act 1994</i>) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act, | 3
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| (d) | taking any action against a person that is substantially in reprisal for an internal disclosure made by that person. | 7
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| (2) | For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened: | 9
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| (a) | while the officer concerned was not on duty, or | 12 |
| (b) | before the officer was appointed to his or her position. | 13 |
| (3) | In this section, internal disclosure means a disclosure made in good faith by a person regarding the alleged misconduct of another person. | 14
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| 93D | Issuing of procedural guidelines | 17 |
| (1) | The Director-General may, from time to time, issue guidelines for the purposes of: | 18
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| (a) | dealing with allegations of misconduct against officers as a disciplinary matter, and | 20
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| (b) | the taking of disciplinary action with respect to officers under this Part, including disciplinary action in relation to unsatisfactory performance, and | 22
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| (c) | any other matter referred to in this Part. | 25 |
| (2) | The procedural guidelines are to ensure that: | 26 |
| (a) | an officer to whom an allegation of misconduct relates: | 27 |
| (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 | 28
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| (ii) | is given an opportunity to respond to the allegation, and | 31
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| (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. | 33
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| (3) | The Director-General (or any other person) who takes action against an officer in accordance with the procedural guidelines is taken to have observed the rules of procedural fairness. | 37
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(4)	The Director-General may from time to time amend, revoke or replace the procedural guidelines.	1 2
(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.	3 4 5
(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.	6 7 8 9 10
93E	Requirements relating to disciplinary matters	11
(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.	12 13 14
(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.	15 16 17 18
(3)	Nothing in subsection (1) or (2) prevents the Director-General from:	19 20
(a)	conducting investigations into an allegation of misconduct, or	21 22
(b)	asking an officer a question in relation to an allegation of misconduct, or	23 24
(c)	conducting interviews with the officer to whom the allegation relates or with any other person in connection with the matter concerned, or	25 26 27
(d)	taking signed statements from the officer or any such person.	28 29
Division 2	Dealing with misconduct	30
93F	Dealing with an allegation of misconduct	31
(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:	32 33 34
(a)	deal with the allegation as a disciplinary matter in accordance with the procedural guidelines,	35 36
(b)	take remedial action with respect to the officer.	37

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| (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. | 1
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| (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. | 6
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| (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: | 10
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| | (a) decide to take remedial action with respect to the officer concerned as well as dealing with the allegation as a disciplinary matter, or | 14
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| | (b) decide to take remedial action with respect to the officer instead of dealing with the allegation as a disciplinary matter, or | 17
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| | (c) decide to dismiss the allegation, or decide that no further action is to be taken in relation to the matter. | 20
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| (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. | 22
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Division 3 Performance management for officers 28

93G Performance reviews for officers 29

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| (1) | An officer's performance must be reviewed, at least annually, by the Director-General. | 30
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| (2) | The Director-General may review the performance of an officer on such other occasions as the Director-General considers appropriate. | 32
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| (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. | 35
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93H	Performance improvement programs	1
(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 3 4 5 6
(2)	The officer must participate in any such performance improvement program in the manner required by the program.	7 8
(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.	9 10 11
93I	Dealing with unsatisfactory performance—school principals	12
(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:	13 14 15 16 17
(a)	dismiss the school principal from the Teaching Service, or	18
(b)	demote the school principal to a lower position in the Teaching Service.	19 20
(2)	Before taking any such action with respect to a school principal, the Director-General must:	21 22
(a)	notify the principal in writing of the proposed action and the reasons for taking that action, and	23 24
(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	25 26 27
(c)	take into consideration any written submissions received from the principal during that period.	28 29
(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.	30 31 32
93J	Dealing with unsatisfactory performance—officers other than school principals	33 34
(1)	This section applies to officers other than school principals.	35
(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	36 37 38

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:	1
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(a) take remedial action with respect to the officer,	4
(b) take disciplinary action with respect to the officer.	5
(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.	6
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(4) However, the Director-General may take disciplinary action with respect to an officer under this section only if:	9
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(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	11
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(b) the Director-General is of the opinion that the officer's performance is still unsatisfactory.	15
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Division 4 Miscellaneous provisions	17
93K Disciplinary action may be taken if officer is convicted of serious offence	18
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(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:	20
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(a) take disciplinary action with respect to the officer,	26
(b) take remedial action with respect to the officer.	27
(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.	28
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(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.	32
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93L	Suspension of officers from duty pending decision in relation to misconduct or criminal conviction	1 2
(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.	3 4 5 6 7
(2)	If an officer is charged with:	8
(a)	an offence referred to in section 93K, or	9
(b)	an offence that would, on conviction, result in the officer being a prohibited person as referred to in Part 4B,	10 11
	the Director-General may suspend the officer from duty until the officer is notified by the Director-General that the suspension has been lifted.	12 13 14
(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.	15 16 17
(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.	18 19 20 21
93M	Implementation of decisions under this Part	22
	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.	23 24 25
93N	Effect of dismissal of senior executive officers	26
	If a senior executive officer is dismissed from the Teaching Service under this Part:	27 28
(a)	the term for which the officer was appointed is to be regarded as having come to an end, and	29 30
(b)	no compensation is payable in respect of the dismissal.	31
93O	Provisions relating to certain forms of disciplinary action	32
(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.	33 34 35 36

(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.	1 2 3 4 5
93P	Officers retiring or resigning before disciplinary action is taken	6
(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.	7 8 9 10
(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.	11 12 13 14
(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.	15 16 17 18
(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.	19 20 21
93Q	Officer whose address is unknown	22
	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.	23 24 25 26
[12]	Section 100 Making of regulations by Director-General	27
	Omit "discipline," from section 100 (1) (h).	28
[13]	Schedule 3 Savings and transitional provisions	29
	Insert at the end of clause 2 (1):	30
	<i>Education Legislation Amendment (Staff) Act 2006</i> , but only to the extent that it amends this Act	31 32

[14] Schedule 3, Part 4	1
Insert after Part 3:	2
Part 4 Provisions consequent on enactment of Education Legislation Amendment (Staff) Act 2006	3
	4
	5
16 Definition	6
In this Part:	7
<i>amending Act</i> means the <i>Education Legislation Amendment (Staff) Act 2006</i> .	8
	9
17 Performance management for school principals	10
(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.	11
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(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.	17
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18 Prior conduct	23
Part 4A of this Act extends to conduct occurring before the commencement of that Part.	24
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19 Existing disciplinary charges	26
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.	27
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20 Existing monitoring procedures	33
Any breach of discipline being dealt with in accordance with clause 14 (2) of the <i>Teaching Service Regulation 2001</i> before the repeal of that subclause by the amending Act is to be dealt with	34
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	under Part 4A of this Act as if the breach of discipline was the subject of an allegation of misconduct made under that Part.	1 2
1.2	Technical and Further Education Commission Act 1990 No 118	3 4
[1]	Section 3 Definitions	5
	Insert in alphabetical order in section 3 (1):	6
	<i>appropriate Division Head</i> , in relation to a member of staff, has the same meaning as in the <i>Public Sector Employment and Management Act 2002</i> .	7 8 9
	Note. At the time this definition was inserted by the <i>Education Legislation Amendment (Staff) Act 2006</i> , the appropriate Division Head for staff employed in the TAFE Commission Division of the Government Service was the Managing Director of the TAFE Commission. The functions of an appropriate Division Head under this Act may be delegated under section 4F of the <i>Public Sector Employment and Management Act 2002</i> .	10 11 12 13 14 15 16
	<i>member of staff</i> (or <i>staff member</i>) means a person employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> in the TAFE Commission Division of the Government Service.	17 18 19 20
[2]	Section 3 (3)	21
	Insert after section 3 (2):	22
	(3) Notes included in this Act do not form part of this Act.	23
[3]	Sections 8 (3) and (4) (a), 11 (2) (b) and (3), 33 (a) and Schedule 1, clause 4 (2)	24 25
	Omit “member of the staff of the TAFE Commission” wherever occurring.	26
	Insert instead “member of staff”.	27
[4]	Part 6, heading	28
	Omit “certain staff”. Insert instead “members of staff”.	29
[5]	Section 15 Application of Part	30
	Omit the section.	31

[6] Section 17 Regulations relating to members of staff	1
Omit section 17 (1). Insert instead:	2
(1) The regulations may make provision for or with respect to	3
members of staff, including the conditions of employment of any	4
such staff.	5
[7] Section 17 (2)	6
Omit “or the discipline of the staff to which this Part applies”.	7
Insert instead “of members of staff”.	8
[8] Section 18 Appointments and promotion on merit	9
Omit “any staff to which this Part applies” from section 18 (1).	10
Insert instead “members of staff”.	11
[9] Section 19 Legal proceedings not to be brought in respect of appointments etc	12
Omit “group of staff to which this Part applies” wherever occurring in section	13
19 (1) and (3).	14
Insert instead “TAFE Commission Division of the Government Service”.	15
[10] Section 20 Incapable member of staff may be retired	16
Omit “to which this Part applies” from section 20 (a).	17
[11] Section 20	18
Omit “(within the meaning of the <i>Public Sector Employment and Management Act 2002</i>)”.	19
[12] Sections 21–21C	20
Insert after section 20:	21
21 Members of staff to report bankruptcy etc	22
If a member of staff becomes bankrupt or makes a composition,	23
arrangement or assignment for the benefit of the member’s	24
creditors, the member must:	25
(a) immediately give to the appropriate Division Head notice	26
of the bankruptcy, composition, arrangement or	27
assignment, and	28
(b) within such period as the appropriate Division Head	29
specifies, provide the Division Head with such further	30
information with respect to the cause of the bankruptcy or	31
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	of the making of the composition, arrangement or assignment as the Division Head requires.	1 2
21A	Members of staff not to undertake other paid work without permission	3 4
(1)	A member of staff is not to undertake any other paid work without the permission of the appropriate Division Head.	5 6
(2)	The appropriate Division Head may prepare guidelines with respect to the type of work that constitutes paid work for the purposes of this section.	7 8 9
(3)	Any such guidelines must be made available to members of staff in such manner as the appropriate Division Head thinks appropriate.	10 11 12
(4)	This section does not apply to a member of staff employed on a casual basis.	13 14
21B	Notification of serious offences committed by members of staff	15
(1)	A member of staff who:	16
(a)	is charged with, or who is found guilty of, an offence that is punishable by imprisonment for 12 months or more, or	17 18
(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,	19 20 21
	must immediately report that fact to the appropriate Division Head.	22 23
(2)	On becoming aware of the fact that a member of staff has been charged with, or has been found guilty of, an offence referred to in subsection (1), the person in charge of the TAFE establishment at which the member is employed must also immediately report that fact to the appropriate Division Head.	24 25 26 27 28
(3)	The requirement to report to the appropriate Division Head under this section does not apply if the matter has already been reported under section 22U.	29 30 31
21C	List of persons not to be employed as a member of staff	32
	The appropriate Division Head may prepare and maintain a list of persons who the appropriate Division Head determines are not to be employed as members of staff.	33 34 35

[13] Section 22 Extended or long service leave	1
Omit “all staff to which this Part applies” from section 22 (1).	2
Insert instead “members of staff”.	3
[14] Part 6A	4
Insert after Part 6:	5
Part 6A Management of conduct and performance	6
Division 1 Preliminary	7
22A Application of Part	8
This Part does not apply to those members of staff who are employed on a temporary or casual basis.	9 10
22B Objects of Part	11
The objects of this Part are as follows:	12
(a) to maintain appropriate standards of conduct and work-related performance for members of staff,	13 14
(b) to protect and enhance the integrity and reputation of the TAFE Commission and staff members,	15 16
(c) to ensure that the public interest is protected.	17
22C Protection of children to be paramount consideration	18
(1) In such cases where the conduct of a member of staff relates to or involves children, the protection of children is to be the paramount consideration:	19 20 21
(a) in taking any action with respect to a member of staff under this Part, and	22 23
(b) in dealing with any appeal against, or determining any claim arising from or in relation to, that action.	24 25
(2) This section has effect despite anything in the <i>Industrial Relations Act 1996</i> or any other Act or law.	26 27
22D Definitions	28
(1) In this Part:	29
<i>disciplinary action</i> , in relation to a member of staff, means any one or more of the following:	30 31
(a) dismissal from the Government Service,	32

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| <ul style="list-style-type: none"> (b) directing the member of staff to resign, or to be allowed to resign, from the Government Service within a specified time, (c) except in the case of a senior executive officer—reduction of the member of staff's salary or demotion to a lower position in the Government Service, (d) the imposition of a fine, (e) a caution or reprimand. <p><i>misconduct</i>—see section 22E.</p> <p><i>procedural guidelines</i> means the guidelines in force from time to time under section 22F.</p> <p><i>remedial action</i>, in relation to a member of staff, means any one or more of the following:</p> <ul style="list-style-type: none"> (a) counselling, (b) training and development, (c) monitoring the staff member's conduct or performance, (d) implementing a plan addressing unsatisfactory performance, (e) the issuing of a warning to the staff member that certain conduct is unacceptable or that the staff member's performance is not satisfactory, (f) transferring the staff member to another position in the Government Service that does not involve a reduction of salary or demotion to a lower position, (g) any other action of a similar nature. <p><i>senior executive officer</i> has the same meaning as in the <i>Public Sector Employment and Management Act 2002</i>.</p> <ul style="list-style-type: none"> (2) In this Part, a reference to an allegation that a member of staff may have engaged in misconduct includes a reference to the appropriate Division Head being made aware, or becoming aware, by any means that the staff member may have engaged in misconduct. <p>22E Meaning of “misconduct”</p> <ul style="list-style-type: none"> (1) For the purposes of this Part, <i>misconduct</i> includes, but is not limited to, any of the following: <ul style="list-style-type: none"> (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, | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> |
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- (c) taking any detrimental action (within the meaning of the *Protected Disclosures Act 1994*) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act, 1
 - (d) taking any action against a person that is substantially in reprisal for an internal disclosure made by that person. 2
 - (2) For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened: 3
 - (a) while the member of staff concerned was not on duty, or 4
 - (b) before the staff member was appointed to his or her position. 5
 - (3) In this section, **internal disclosure** means a disclosure made in good faith by a person regarding the alleged misconduct of another person. 6
 - 22F Issuing of procedural guidelines 7**
 - (1) The appropriate Division Head may, from time to time, issue guidelines for the purposes of: 8
 - (a) dealing with allegations of misconduct against members of staff as a disciplinary matter, and 9
 - (b) the taking of disciplinary action with respect to members of staff under this Part, including disciplinary action in relation to unsatisfactory performance, and 10
 - (c) any other matter referred to in this Part. 11
 - (2) The procedural guidelines are to ensure that: 12
 - (a) a member of staff to whom an allegation of misconduct relates: 13
 - (i) is advised in writing of the alleged misconduct and that the allegation may lead to disciplinary action being taken with respect to the staff member, and 14
 - (ii) is given an opportunity to respond to the allegation, and 15
 - (b) a member of staff against whom the appropriate Division Head is proposing to take disciplinary action under Division 3 is given a reasonable opportunity to make a submission in relation to that proposed action. 16

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| (3) | The appropriate Division Head (or any other person) who takes action against a member of staff in accordance with the procedural guidelines is taken to have observed the rules of procedural fairness. | 1
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| (4) | The appropriate Division Head may from time to time amend, revoke or replace the procedural guidelines. | 5
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| (5) | The procedural guidelines as in force from time to time must be made publicly available in such manner as the appropriate Division Head thinks appropriate. | 7
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| (6) | The regulations may make provision for or with respect to any matter for which the procedural guidelines can provide. In the event of any inconsistency between a provision contained in the procedural guidelines and a provision in the regulations, the regulations prevail. | 10
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| (7) | The procedural guidelines may apply, adopt or incorporate the procedural guidelines issued under Part 4A of the <i>Teaching Service Act 1980</i> with such modifications as are necessary. | 15
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| 22G | Requirements relating to disciplinary matters | 18 |
| (1) | A member of staff is not entitled to cross-examine any person in relation to an allegation of misconduct or the taking of disciplinary action against the staff member. | 19
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| (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 the member of staff. | 22
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| (3) | Nothing in subsection (1) or (2) prevents the appropriate Division Head from: | 26
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| (a) | conducting investigations into an allegation of misconduct, or | 28
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| (b) | asking a member of staff a question in relation to an allegation of misconduct, or | 30
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| (c) | conducting interviews with the member of staff to whom the allegation relates or with any other person in connection with the matter concerned, or | 32
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| (d) | taking signed statements from the member of staff or any such person. | 35
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Division 2 Dealing with misconduct**22H Dealing with an allegation of misconduct**

- (1) If an allegation is made to the appropriate Division Head that a member of staff may have engaged in any misconduct, the appropriate Division Head 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 staff member.
- (2) After dealing with an allegation of misconduct as a disciplinary matter in accordance with this Part and the procedural guidelines, the appropriate Division Head may, if the Division Head is of the opinion that the member of staff has engaged in any misconduct, decide to take disciplinary action with respect to the staff member.
- (3) Before any disciplinary action is taken with respect to a member of staff under this section, the staff member must be given an opportunity to make a submission in relation to the disciplinary action that the appropriate Division Head is considering taking.
- (4) Even though the appropriate Division Head decides to deal with an allegation of misconduct as a disciplinary matter in accordance with the procedural guidelines, the Division Head may, at any stage of the process:
 - (a) decide to take remedial action with respect to the member of staff concerned as well as dealing with the allegation as a disciplinary matter, or
 - (b) decide to take remedial action with respect to the staff member 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 appropriate Division Head to take remedial action with respect to a member of staff does not, if it appears to the Division Head that the member of staff may have engaged in any misconduct while the remedial action is being taken, prevent the Division Head from dealing with the alleged misconduct as a disciplinary matter under this section.

Division 3	Performance management for members of staff	1
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22I	Performance reviews for members of staff	3
(1)	A staff member's performance must be reviewed periodically by the appropriate Division Head.	4
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(2)	The review of a staff member's performance is to have regard to any performance criteria determined by the appropriate Division Head and such other matters as the Division Head considers relevant.	6
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22J	Dealing with unsatisfactory performance	10
(1)	If the appropriate Division Head is of the opinion that a member of staff is not performing the staff member's duties in a satisfactory manner, the Division Head may decide to do either or both of the following:	11
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(a)	take remedial action with respect to the staff member,	15
(b)	take disciplinary action with respect to the staff member.	16
(2)	To avoid any doubt, remedial action with respect to a member of staff is not required to be taken before disciplinary action is taken under this section with respect to the staff member.	17
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(3)	However, the appropriate Division Head may take disciplinary action with respect to a member of staff under this section only if:	20
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(a)	the staff member 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	22
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(b)	the Division Head is of the opinion that the staff member's performance is still unsatisfactory.	26
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Division 4	Miscellaneous provisions	28
22K	Disciplinary action may be taken if staff member is convicted of serious offence	29
		30
(1)	If a member of staff 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 appropriate Division Head may decide to do either or both of the following:	31
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(a)	take disciplinary action with respect to the staff member,	37

	(b) take remedial action with respect to the staff member.	1
(2)	Before any disciplinary action is taken with respect to a member of staff under this section, the staff member must be given an opportunity to make a submission in relation to the disciplinary action that the appropriate Division Head is considering taking.	2 3 4 5
(3)	A reference in subsection (1) to the conviction of a member of staff for an offence punishable by imprisonment for 12 months or more includes a reference to the staff member having been found guilty by a court of such an offence but where no conviction is recorded.	6 7 8 9 10
22L	Suspension of staff members from duty pending decision in relation to misconduct or criminal conviction	11 12
(1)	If an allegation that a member of staff has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the procedural guidelines, the appropriate Division Head may suspend the staff member from duty until the allegation of misconduct has been dealt with.	13 14 15 16 17
(2)	If a member of staff is charged with:	18
	(a) an offence referred to in section 22K, or	19
	(b) an offence that would, on conviction, result in the member of staff being a prohibited person as referred to in Part 6B,	20 21
	the appropriate Division Head may suspend the staff member from duty until the staff member is notified by the Division Head that the suspension has been lifted.	22 23 24
(3)	Any salary payable to a person as a member of staff while the person is suspended from duty under this section is (if the appropriate Division Head so directs) to be withheld.	25 26 27
(4)	The salary withheld under subsection (3) is forfeited to the State unless the appropriate Division Head otherwise directs or that salary was due to the person in respect of a period before the suspension was imposed.	28 29 30 31
22M	Implementation of decisions under this Part	32
	A decision of the appropriate Division Head to take disciplinary action or remedial action under this Part with respect to a member of staff may be carried into effect at any time.	33 34 35

22N	Effect of dismissal of senior executive officers	1
	If a senior executive officer is dismissed from the Government Service under this Part:	2
		3
	(a) the term for which the staff member was appointed is to be regarded as having come to an end, and	4
		5
	(b) no compensation is payable in respect of the dismissal.	6
22O	Provisions relating to certain forms of disciplinary action	7
	(1) Any appointment required as the result of the taking of disciplinary action comprising demotion to a lower position in a Division of the Government Service is to be made by the Division Head for that Division.	8
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	(2) If a fine is imposed under this Part on a member of staff, the person responsible for paying the staff member's salary is, on receiving notice of the imposition of the fine, to deduct the amount of the fine from the salary payable (including any termination payment) to the staff member in such manner as the appropriate Division Head directs.	12
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22P	Staff members retiring or resigning before disciplinary action is taken	18
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	(1) An allegation that a member of staff has engaged in misconduct may be dealt with under this Part, and disciplinary action may be taken with respect to the member of staff, even though the staff member has retired or resigned.	20
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	(2) The taking of disciplinary action (other than a fine) with respect to the former staff member does not affect the former staff member's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.	24
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	(3) A fine imposed under any such disciplinary action may be recovered from the former staff member 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 staff member by the Crown, or both.	28
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	(4) A reference in this section to the resignation of a member of staff is a reference to a resignation that has been accepted by the appropriate Division Head.	33
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22Q	Staff member whose address is unknown	36
	If the address for the time being of a member of staff is unknown to the appropriate Division Head, any notice required to be given	37
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Education Legislation Amendment (Staff) Bill 2006

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

	to the member under this Part may be posted to the address of the member last known to the Division Head.	1 2
[15] Schedule 4 Savings, transitional and other provisions		3
Insert at the end of clause 1 (1):		4
	<i>Education Legislation Amendment (Staff) Act 2006</i> , but only to the extent that it amends this Act	5 6
[16] Schedule 4, Part 4		7
Insert after Part 3:		8
Part 4 Provisions consequent on enactment of Education Legislation Amendment (Staff) Act 2006		9 10 11
11 Prior conduct		12
	Part 6A of this Act extends to conduct occurring before the commencement of that Part.	13 14
12 Existing disciplinary matters		15
(1)	Any breach of discipline by a member of staff to whom Part 6A applies that was, immediately before the commencement of that Part, being dealt with under any disciplinary determination that applied to that member, is to continue to be dealt with as if that Part had not been enacted.	16 17 18 19 20
(2)	In this clause: <i>disciplinary determination</i> means a determination made under section 16 of this Act (as in force before its repeal by the <i>Public Sector Employment Legislation Amendment Act 2006</i>) in relation to the discipline of members of staff and continued by the operation of clause 19 of Schedule 4 to the <i>Public Sector Employment and Management Act 2002</i> .	21 22 23 24 25 26 27
1.3 Education (School Administrative and Support Staff) Act 1987 No 240		28 29
[1] Section 4 School administrative and support staff		30
Omit section 4 (2). Insert instead:		31
(2)	Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the appointment or	32 33

employment of a member of the school administrative and support staff.	1 2
[2] Sections 7A–7E	3
Insert after section 7:	4
7A Protection of children to be paramount consideration	5
(1) The protection of children is to be the paramount consideration:	6
(a) in taking any action with respect to a member of the school administrative and support staff under this Act, and	7 8
(b) in dealing with any appeal against, or determining any claim arising from or in relation to, that action.	9 10
(2) This section has effect despite anything in the <i>Industrial Relations Act 1996</i> or any other Act or law.	11 12
7B School administrative and support staff to report bankruptcy etc	13
If a member of the school administrative and support staff becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the member’s creditors, the member must:	14 15 16 17
(a) immediately give to the Director-General notice of the bankruptcy, composition, arrangement or assignment, and	18 19
(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.	20 21 22 23 24
7C School administrative and support staff not to undertake other paid work without permission	25 26
(1) A member of the school administrative and support staff is not to undertake any other paid work without the permission of the Director-General.	27 28 29
(2) The Director-General may prepare guidelines with respect to the type of work that constitutes paid work for the purposes of this section.	30 31 32
(3) Any such guidelines must be made available to members of the school administrative and support staff in such manner as the Director-General thinks appropriate.	33 34 35
(4) This section does not apply to a temporary employee employed for less than 10 weeks.	36 37

7D	Director-General to be notified of serious offences committed by school administrative and support staff	1 2
(1)	A member of the school administrative and support staff who:	3
(a)	is charged with, or who is found guilty of, an offence that is punishable by imprisonment for 12 months or more, or	4 5
(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.	6 7 8 9
(2)	On becoming aware of the fact that a member of the school administrative and support staff has been charged with, or has been found guilty of, an offence referred to in subsection (1), the person in charge of the school or place of work in which the member is employed must also immediately report that fact to the Director-General.	10 11 12 13 14 15
(3)	The requirement to report to the Director-General under this section does not apply if the matter has already been reported to the Director-General under section 32L.	16 17 18
7E	List of persons not to be employed as school administrative and support staff	19 20
	The Director-General may prepare and maintain a list of persons who the Director-General determines are not to be employed as members of the school administrative and support staff.	21 22 23
[3]	Section 12 Confirmation or annulment of appointments on probation	24
	Omit section 12 (3). Insert instead:	25
(3)	Action is not required to be taken under Part 6 in order to annul an appointment under subsection (1).	26 27
[4]	Section 20 Other employment	28
	Omit the section.	29

[5] Part 6	1
Omit the Part. Insert instead:	2
Part 6 Management of conduct and performance	3
Division 1 Preliminary	4
27 Objects of Part	5
The objects of this Part are as follows:	6
(a) to maintain appropriate standards of conduct and work-related performance for permanent employees,	7
(b) to protect and enhance the integrity and reputation of the school administrative and support staff of the Department,	8
(c) to ensure that the public interest is protected.	9
28 Definitions	10
(1) In this Part:	11
<i>disciplinary action</i> , in relation to a permanent employee, means any one or more of the following:	12
(a) dismissing the employee,	13
(b) directing the employee to resign, or to be allowed to resign, within a specified time,	14
(c) reduction of the employee's salary or demotion to a lower position,	15
(d) the imposition of a fine,	16
(e) a caution or reprimand.	17
<i>misconduct</i> —see section 29.	18
<i>procedural guidelines</i> means the guidelines in force from time to time under section 30.	19
<i>remedial action</i> , in relation to a permanent employee, means any one or more of the following:	20
(a) counselling,	21
(b) training and development,	22
(c) monitoring the employee's conduct or performance,	23
(d) implementing a plan addressing unsatisfactory performance,	24

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| <ul style="list-style-type: none"> (e) the issuing of a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory, (f) transferring the employee to another position that does not involve a reduction of salary or demotion to a lower position, (g) any other action of a similar nature. <p>(2) In this Part, a reference to an allegation that a permanent employee may have engaged in misconduct includes a reference to the Director-General being made aware, or becoming aware, by any means that the permanent employee may have engaged in misconduct.</p> <p>29 Meaning of "misconduct"</p> <p>(1) For the purposes of this Part, <i>misconduct</i> includes, but is not limited to, any of the following:</p> <ul style="list-style-type: none"> (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 <i>Protected Disclosures Act 1994</i>) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act, (d) taking any action against a person that is substantially in reprisal for an internal disclosure made by that person. <p>(2) For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened:</p> <ul style="list-style-type: none"> (a) while the permanent employee concerned was not on duty, or (b) before the permanent employee was appointed to his or her position. <p>(3) In this section, <i>internal disclosure</i> means a disclosure made in good faith by a person regarding the alleged misconduct of another person.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> |
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30 Issuing of procedural guidelines

- (1) The Director-General may, from time to time, issue guidelines for the purposes of:
- (a) dealing with allegations of misconduct against permanent employees as a disciplinary matter, and
 - (b) the taking of disciplinary action with respect to permanent employees under this Part, including disciplinary action in relation to unsatisfactory performance, and
 - (c) any other matter referred to in this Part.
- (2) The procedural guidelines are to ensure that:
- (a) a permanent employee to whom an allegation of misconduct relates:
 - (i) is advised in writing of the alleged misconduct and that the allegation may lead to disciplinary action being taken with respect to the permanent employee, and
 - (ii) is given an opportunity to respond to the allegation, and
 - (b) a permanent employee against whom the Director-General is proposing to take disciplinary action under Division 3 is given a reasonable opportunity to make a submission in relation to that proposed action.
- (3) The Director-General (or any other person) who takes action against a permanent employee in accordance with the procedural guidelines is taken to have observed the rules of procedural fairness.
- (4) The Director-General may from time to time amend, revoke or replace the procedural guidelines.
- (5) The procedural guidelines as in force from time to time must be made publicly available in such manner as the Director-General thinks appropriate.
- (6) The regulations may make provision for or with respect to any matter for which the procedural guidelines can provide. In the event of any inconsistency between a provision contained in the procedural guidelines and a provision in the regulations, the regulations prevail.
- (7) The procedural guidelines may apply, adopt or incorporate the procedural guidelines issued under Part 4A of the *Teaching Service Act 1980* with such modifications as are necessary.

31	Requirements relating to disciplinary matters	1
(1)	A permanent employee is not entitled to cross-examine any person in relation to an allegation of misconduct or the taking of disciplinary action against the permanent employee.	2 3 4
(2)	A hearing involving the legal representation of parties and the calling of witnesses is not to be held in relation to an allegation of misconduct or the taking of disciplinary action against a permanent employee.	5 6 7 8
(3)	Nothing in subsection (1) or (2) prevents the Director-General from:	9 10
(a)	conducting investigations into an allegation of misconduct, or	11 12
(b)	asking a permanent employee a question in relation to an allegation of misconduct, or	13 14
(c)	conducting interviews with the permanent employee to whom the allegation relates or with any other person in connection with the matter concerned, or	15 16 17
(d)	taking signed statements from the permanent employee or any such person.	18 19
Division 2	Dealing with misconduct	20
32	Dealing with an allegation of misconduct	21
(1)	If an allegation is made to the Director-General that a permanent employee may have engaged in any misconduct, the Director-General may decide to do either or both of the following:	22 23 24 25
(a)	deal with the allegation as a disciplinary matter in accordance with the procedural guidelines,	26 27
(b)	take remedial action with respect to the permanent employee.	28 29
(2)	After dealing with an allegation of misconduct as a disciplinary matter in accordance with this Part and the procedural guidelines, the Director-General may, if the Director-General is of the opinion that the permanent employee has engaged in any misconduct, decide to take disciplinary action with respect to the permanent employee.	30 31 32 33 34 35
(3)	Before any disciplinary action is taken with respect to a permanent employee under this section, the permanent employee must be given an opportunity to make a submission in relation to	36 37 38

the disciplinary action that the Director-General is considering taking.	1 2
(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:	3 4 5 6
(a) decide to take remedial action with respect to the permanent employee concerned as well as dealing with the allegation as a disciplinary matter, or	7 8 9
(b) decide to take remedial action with respect to the employee instead of dealing with the allegation as a disciplinary matter, or	10 11 12
(c) decide to dismiss the allegation, or decide that no further action is to be taken in relation to the matter.	13 14
(5) A decision under this section by the Director-General to take remedial action with respect to a permanent employee does not, if it appears to the Director-General that the employee may have engaged in any misconduct while the remedial action is being taken, prevent the Director-General from dealing with the alleged misconduct as a disciplinary matter under this section.	15 16 17 18 19 20
Division 3 Performance management for permanent employees	21 22
32A Performance reviews for permanent employees	23
(1) A permanent employee's performance must be reviewed periodically by the Director-General.	24 25
(2) The review of a permanent employee's performance is to have regard to any performance criteria determined by the Director-General and such other matters as the Director-General considers relevant.	26 27 28 29
32B Dealing with unsatisfactory performance	30
(1) If the Director-General is of the opinion that a permanent employee is not performing the employee's duties in a satisfactory manner, the Director-General may decide to do either or both of the following:	31 32 33 34
(a) take remedial action with respect to the employee,	35
(b) take disciplinary action with respect to the employee.	36

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- (2) To avoid any doubt, remedial action with respect to a permanent employee is not required to be taken before disciplinary action is taken under this section with respect to the employee. 1
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- (3) However, the Director-General may take disciplinary action with respect to a permanent employee under this section only if: 4
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- (a) the employee has been placed on a performance improvement plan in accordance with the procedural guidelines and been given a reasonable opportunity to improve his or her performance, and 6
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- (b) the Director-General is of the opinion that the employee's performance is still unsatisfactory. 10
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- Division 4 Miscellaneous provisions** 12
- 32C Disciplinary action may be taken if permanent employee is convicted of serious offence** 13
14
- (1) If a permanent employee is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or is convicted elsewhere than in New South Wales of an offence that, if it were committed in New South Wales, would be an offence so punishable, the Director-General may decide to do either or both of the following: 15
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- (a) take disciplinary action with respect to the employee, 21
- (b) take remedial action with respect to the employee. 22
- (2) Before any disciplinary action is taken with respect to a permanent employee under this section, the employee must be given an opportunity to make a submission in relation to the disciplinary action that the Director-General is considering taking. 23
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- (3) A reference in subsection (1) to the conviction of a permanent employee for an offence punishable by imprisonment for 12 months or more includes a reference to the employee having been found guilty by a court of such an offence but where no conviction is recorded. 28
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- 32D Suspension of permanent employees from duty pending decision in relation to misconduct or criminal conviction** 33
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- (1) If an allegation that a permanent employee has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the procedural guidelines, the Director-General may suspend the employee from duty until the allegation of misconduct has been dealt with. 35
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(2)	If a permanent employee is charged with:	1
(a)	an offence referred to in section 32C, or	2
(b)	an offence that would, on conviction, result in the employee being a prohibited person as referred to in Part 6A,	3
	the Director-General may suspend the employee from duty until the employee is notified by the Director-General that the suspension has been lifted.	4
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(3)	Any salary payable to a person as a permanent employee while the person is suspended from duty under this section is (if the Director-General so directs) to be withheld.	6
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(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.	9
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32E	Implementation of decisions under this Part	16
	A decision of the Director-General to take disciplinary action or remedial action under this Part with respect to a permanent employee may be carried into effect at any time.	17
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32F	Provisions relating to certain forms of disciplinary action	20
(1)	Any appointment required as the result of the taking of disciplinary action comprising demotion to a lower position is to be made by the Director-General.	21
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(2)	If a fine is imposed under this Part on a permanent employee, the person responsible for paying the employee's salary is, on receiving notice of the imposition of the fine, to deduct the amount of the fine from the salary (including any termination payment) payable to the permanent employee in such manner as the Director-General directs.	24
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32G	Permanent employees retiring or resigning before disciplinary action is taken	30
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(1)	An allegation that a permanent employee has engaged in misconduct may be dealt with under this Part, and disciplinary action may be taken with respect to the employee, even though the employee has retired or resigned.	32
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(2)	The taking of disciplinary action (other than a fine) with respect to the former permanent employee does not affect the former employee's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.	36
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(3)	A fine imposed under any such disciplinary action may be recovered from the former permanent employee as a debt due to the Crown in any court of competent jurisdiction, or out of any money payable to or in respect of the former employee by the Crown, or both.	1 2 3 4 5
(4)	A reference in this section to the resignation of a permanent employee is a reference to a resignation that has been accepted by the Director-General.	6 7 8
32H	Permanent employee whose address is unknown	9
	If the address for the time being of a permanent employee is unknown to the Director-General, any notice required to be given to the employee under this Part may be posted to the address of the employee last known to the Director-General.	10 11 12 13
[6]	Section 39 and Schedule 1	14
	Omit section 39. Insert instead:	15
39	Savings, transitional and other provisions	16
	Schedule 1 has effect.	17
Schedule 1	Savings, transitional and other provisions	18 19
	(Section 39)	20
Part 1	General	21
1	Regulations	22
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	23 24 25
	<i>Education Legislation Amendment (Staff) Act 2006</i> , but only to the extent that it amends this Act	26 27
(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.	28 29
(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:	30 31 32

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- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Education Legislation Amendment (Staff) Act 2006

2 Definition

In this Part:

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

3 Prior conduct

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

4 Existing disciplinary charges

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

5 Existing monitoring procedures

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

Schedule 2	Amendments relating to termination of employment of prohibited persons	1
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	(Sections 3, 4 and 5)	3
2.1	Teaching Service Act 1980 No 23	4
[1]	Section 79 Leave of absence after years of service	5
	Insert after 79 (3):	6
	(4) An officer is not entitled to any such leave if the officer's employment is terminated by operation of Part 4B.	7
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[2]	Part 4B	9
	Insert as Part 4B:	10
	Part 4B Termination of employment of prohibited persons	11
		12
93R	Definitions	13
	In this Part:	14
	<i>child-related employment</i> means child-related employment to which Part 7 of the <i>Commission for Children and Young People Act 1998</i> applies.	15
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		17
	<i>Commission</i> means the Commission for Children and Young People.	18
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	<i>prohibited person</i> has the same meaning as in Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> .	20
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	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 <i>Commission for Children and Young People Act 1998</i>) or who is a registrable person under the <i>Child Protection (Offenders Registration) Act 2000</i> . 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.	23
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93S	Operation of this Part	32
	(1) This Part has effect despite any other provision of this Act or the provisions of any other Act or law (including the <i>Industrial Relations Act 1996</i>). Accordingly, a provision of this Part	33
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	prevails to the extent of any inconsistency between it and any other provision of this Act or of any other Act or law.	1 2
(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.	3 4 5 6
93T	Termination of employment of prohibited persons	7
(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.	8 9 10 11
(2)	The dismissal takes effect:	12
	(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	13 14 15
	(b) if the person was a prohibited person immediately before the commencement of this section—on the commencement of this section, or	16 17 18
	(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.	19 20 21 22 23
(3)	The dismissal takes effect immediately without any right to a hearing or any requirement to comply with the rules of procedural fairness.	24 25 26
(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.	27 28 29 30 31 32
(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.	33 34 35 36 37 38
(6)	Any regulation made under subsection (5) has effect despite any other Act or law.	39 40

93U	Offences and prohibited person status to be notified to Director-General	1
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(1)	An officer or temporary employee who:	3
(a)	is charged with a serious sex offence, the murder of a child or a child-related personal violence offence, or	4
		5
(b)	who becomes a prohibited person,	6
	must immediately report that fact to the Director-General.	7
(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.	8
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(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.	14
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(4)	In this section, <i>serious sex offence</i> and <i>child-related personal violence offence</i> have the same meanings as in Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> .	17
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93V	Review of prohibited person status	21
(1)	If a review application is made by a prohibited person under section 33H or 33I of the <i>Commission for Children and Young People Act 1998</i> , 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.	22
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(2)	The Director-General is entitled:	29
(a)	to appear and be represented at any proceedings arising out of an application under section 33I of the <i>Commission for Children and Young People Act 1998</i> , and	30
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(b)	in the case of an application under section 33H of the <i>Commission for Children and Young People Act 1998</i> —to make written submissions to the Commission.	33
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93W	Effect of person ceasing to be prohibited person	1
(1)	This section applies to a person who is dismissed under section 93T and who subsequently ceases to be a prohibited person.	2
	Note. A person ceases to be a prohibited person in relation to an offence if an order is made under the <i>Commission for Children and Young People Act 1998</i> that the relevant provisions of that Act do not apply in respect of the offence or if the relevant conviction is overturned on appeal.	3
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(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.	9
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(3)	If:	16
	(a) the person ceases to be a prohibited person because of an order under Subdivision 2 of Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> , and	17
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	(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,	20
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	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.	23
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(4)	A person, on being reinstated or re-employed under this section, is taken:	26
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	(a) to have never been dismissed from the Teaching Service, and	28
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	(b) to have been on leave without pay during the period between dismissal and reinstatement or re-employment.	30
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(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.	32
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(6)	Any regulation made under subsection (5) has effect despite any other Act or law.	38
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(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 <i>Commission for Children and Young People Act 1998</i> .	1 2 3 4
93X	Disciplinary action may be taken against person who ceases to be prohibited person	5 6
	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.	7 8 9 10 11
93Y	Protection of persons relating to this Part	12
	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.	13 14 15 16
93Z	No compensation or other industrial remedies	17
	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.	18 19 20 21 22 23 24
93ZA	Protection for exercise of functions in connection with this Part	25
(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 <i>protected function</i>).	26 27 28 29 30
(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.	31 32 33 34
(3)	Except as provided by this section, the exercise by a person of a protected function may not be:	35 36
(a)	challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or	37 38 39

(b)	restrained, removed or otherwise affected by any proceedings.	1 2
(4)	Without limiting subsection (3):	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	4 5 6 7
(b)	the exercise of a protected function is not an industrial matter for the purposes of the <i>Industrial Relations Act 1996</i> .	8 9 10
(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.	11 12 13 14 15
(6)	However, nothing in this section prevents any person who is expressly authorised or permitted by a provision of the <i>Commission for Children and Young People Act 1998</i> to bring proceedings from bringing such proceedings or being granted such relief in those proceedings as may be authorised or permitted by this Part.	16 17 18 19 20 21
(7)	In this section:	22
	<i>exercise</i> of functions includes:	23
(a)	the purported exercise of functions, and	24
(b)	the non-exercise or improper exercise of functions, and	25
(c)	the proposed, apprehended or threatened exercise of functions.	26 27
	<i>proceedings</i> includes:	28
(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	29 30 31
(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 <i>Supreme Court Act 1970</i> .	32 33 34 35
93ZB	Transitional provision	36
	A reference in this Part to a provision of the <i>Commission for Children and Young People Act 1998</i> is, until such time as Schedule 1 [31] to the <i>Commission for Children and Young</i>	37 38 39

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*.

2.2 Technical and Further Education Commission Act 1990 No 118

[1] Section 22 Extended or long service leave

Insert after 22 (3):

- (4) However, a member of staff is not entitled to any leave under clause 3 of that Schedule if the member's employment is terminated by operation of Part 6B.

[2] Part 6B

Insert as Part 6B:

Part 6B Termination of employment of prohibited persons

22R 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.

22S	Operation of this Part	1
(1)	This Part has effect despite any other provision of this Act or the provisions of any other Act or law (including the <i>Industrial Relations Act 1996</i>). 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 3 4 5 6
(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 6A or any other law.	7 8 9 10
22T	Termination of employment of prohibited persons	11
(1)	A member of staff who is or becomes a prohibited person and who is employed in child-related employment at a TAFE establishment is, by operation of this section, dismissed from the Government Service.	12 13 14 15
(2)	The dismissal takes effect:	16
(a)	if the person becomes a prohibited person after being appointed as a member of staff—when the person becomes such a prohibited person, or	17 18 19
(b)	if the person was a prohibited person immediately before the commencement of this section—on the commencement of this section, or	20 21 22
(c)	if the person became a prohibited person after the commencement of this section and before being appointed as a member of staff—when the appropriate Division Head becomes aware that the person is such a prohibited person.	23 24 25 26
(3)	The dismissal takes effect immediately without any right to a hearing or any requirement to comply with the rules of procedural fairness.	27 28 29
(4)	A reference in this section to a prohibited person who is employed in child-related employment at a TAFE establishment includes a reference to a prohibited person whose substantive position as a member of staff involves child-related employment but who is, for the time being, performing other duties that do not involve child-related employment.	30 31 32 33 34 35
(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	36 37 38 39

	entitlement in respect of a period following the date of the termination.	1 2
(6)	Any regulation made under subsection (5) has effect despite any other Act or law.	3 4
22U	Offences and prohibited person status to be notified to appropriate Division Head	5 6
(1)	A member of staff who:	7
(a)	is charged with a serious sex offence, the murder of a child or a child-related personal violence offence, or	8 9
(b)	who becomes a prohibited person,	10
	must immediately report that fact to the appropriate Division Head.	11 12
(2)	On becoming aware of the fact that a member of staff has been charged with an offence referred to in subsection (1), or is a prohibited person, the person in charge of the TAFE establishment at which the member is employed must also immediately report that fact to the appropriate Division Head.	13 14 15 16 17
(3)	The requirement to report to the appropriate Division Head under this section does not apply if the matter has already been reported under section 21B.	18 19 20
(4)	In this section, <i>child-related personal violence offence</i> and <i>serious sex offence</i> have the same meanings as in Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> .	21 22 23 24
22V	Review of prohibited person status	25
(1)	If a review application is made by a prohibited person under section 33H or 33I of the <i>Commission for Children and Young People Act 1998</i> , the Commission or relevant tribunal to which the application is made is to notify the appropriate Division Head of the application if it appears to the Commission or relevant tribunal that the prohibited person is a member of staff or former member of staff.	26 27 28 29 30 31 32
(2)	The appropriate Division Head is entitled:	33
(a)	to appear and be represented at any proceedings arising out of an application under section 33I of the <i>Commission for Children and Young People Act 1998</i> , and	34 35 36
(b)	in the case of an application under section 33H of the <i>Commission for Children and Young People Act 1998</i> —to make written submissions to the Commission.	37 38 39

22W Effect of person ceasing to be prohibited person

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| (1) This section applies to a person who is dismissed under section 22T and who subsequently ceases to be a prohibited person. | 2 |
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| Note. A person ceases to be a prohibited person in relation to an offence if an order is made under the <i>Commission for Children and Young People Act 1998</i> that the relevant provisions of that Act do not apply in respect of the offence or if the relevant conviction is overturned on appeal. | 4 |
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| (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 TAFE Commission Division of the Government Service that is similar to the position that the person held when the person's employment was terminated under section 22T. | 9 |
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| (3) If: | 16 |
| (a) the person ceases to be a prohibited person because of an order under Subdivision 2 of Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> , and | 17 |
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| (b) a period of not more than 12 months has elapsed since the date on which the person's employment was terminated under section 22T, | 20 |
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| the person is entitled to be reinstated to, or re-employed in, a position in the TAFE Commission Division of the Government Service that is similar to the position that the person held when his or her employment was terminated. | 23 |
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| (4) A person, on being reinstated or re-employed under this section, is taken: | 27 |
| | 28 |
| (a) to have never been dismissed from the Government Service, and | 29 |
| | 30 |
| (b) to have been on leave without pay during the period between dismissal and reinstatement or re-employment. | 31 |
| | 32 |
| (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. | 33 |
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| (6) Any regulation made under subsection (5) has effect despite any other Act or law. | 39 |
| | 40 |

(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 <i>Commission for Children and Young People Act 1998</i> .	1 2 3 4
22X	Disciplinary action may be taken against person who ceases to be prohibited person	5 6
	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.	7 8 9 10 11
22Y	Protection of persons relating to this Part	12
	Anything done or omitted by the appropriate Division Head or any other person in good faith and with reasonable care for the purposes of this Part does not subject the Division Head or other person to any action, liability, claim or demand.	13 14 15 16
22Z	No compensation or other industrial remedies	17
	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.	18 19 20 21 22 23 24
22ZA	Protection for exercise of functions in connection with this Part	25
(1)	This section applies to a function exercised by the appropriate Division Head, or a person authorised by the appropriate Division Head, in connection with the termination of employment of a person, or the reinstatement or re-employment of a person, under this Part (a <i>protected function</i>).	26 27 28 29 30
(2)	Without limiting the functions that are protected functions under this Part, a decision by the appropriate Division Head not to accept the resignation of a person or not to permit the retirement of a person is a protected function.	31 32 33 34
(3)	Except as provided by this section, the exercise by a person of a protected function may not be:	35 36
(a)	challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or	37 38 39

(b)	restrained, removed or otherwise affected by any proceedings.	1 2
(4)	Without limiting subsection (3):	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	4 5 6 7
(b)	the exercise of a protected function is not an industrial matter for the purposes of the <i>Industrial Relations Act 1996</i> .	8 9 10
(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.	11 12 13 14 15
(6)	However, nothing in this section prevents any person who is expressly authorised or permitted by a provision of the <i>Commission for Children and Young People Act 1998</i> to bring proceedings from bringing such proceedings or being granted such relief in those proceedings as may be authorised or permitted by this Part.	16 17 18 19 20 21
(7)	In this section:	22
	exercise of functions includes:	23
(a)	the purported exercise of functions, and	24
(b)	the non-exercise or improper exercise of functions, and	25
(c)	the proposed, apprehended or threatened exercise of functions.	26 27
	proceedings includes:	28
(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	29 30 31
(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 <i>Supreme Court Act 1970</i> .	32 33 34 35
22ZB	Transitional provision	36
	A reference in this Part to a provision of the <i>Commission for Children and Young People Act 1998</i> is, until such time as Schedule 1 [31] to the <i>Commission for Children and Young</i>	37 38 39

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*.

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

[1] Section 3 Definitions

Insert after section 3 (2):

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

[2] Part 6A

Insert after Part 6:

Part 6A Termination of employment of prohibited persons

32I Definitions

In this Part:

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

Commission means the Commission for Children and Young People.

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

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

32J Operation of this Part

- (1) This Part has effect despite any other provision of this Act or the provisions of any other Act or law (including the *Industrial*

	<i>Relations Act 1996</i>). 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.	1 2 3
(2)	Without limiting subsection (1), this Part operates to terminate the employment of a prohibited person without any disciplinary action having been taken in respect of the person under Part 6 of this Act.	4 5 6 7
32K	Termination of employment of prohibited persons	8
(1)	A permanent or temporary employee who is or becomes a prohibited person and who is employed in child-related employment is, by operation of this section, dismissed as a member of the school administrative and support staff.	9 10 11 12
(2)	The dismissal takes effect:	13
(a)	if the person becomes a prohibited person after being appointed as a member of the school administrative and support staff—when the person becomes such a prohibited person, or	14 15 16 17
(b)	if the person was a prohibited person immediately before the commencement of this section—on the commencement of this section, or	18 19 20
(c)	if the person became a prohibited person after the commencement of this section and before being appointed as a member of the school administrative and support staff—when the Director-General becomes aware that the person is such a prohibited person.	21 22 23 24 25
(3)	The dismissal takes effect immediately without any right to a hearing or any requirement to comply with the rules of procedural fairness.	26 27 28
(4)	A reference in this section to a prohibited person who is employed in child-related employment as a member of the school administrative and support staff includes a reference to a prohibited person whose substantive position as such a member involves child-related employment but who is, for the time being, performing other duties that do not involve child-related employment.	29 30 31 32 33 34 35
(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.	36 37 38 39 40 41

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- (6) Any regulation made under subsection (5) has effect despite any other Act or law. 1
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- 32L Offences and prohibited person status to be notified to Director-General** 3
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- (1) A permanent or temporary employee who: 5
- (a) is charged with a serious sex offence, the murder of a child or a child-related personal violence offence, or 6
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- (b) who becomes a prohibited person, 8
must immediately report that fact to the Director-General. 9
- (2) On becoming aware of the fact that a permanent or temporary employee has been charged with an offence referred to in subsection (1), or is a prohibited person, the person in charge of the school or place of work in which the permanent or temporary employee is employed must also immediately report that fact to the Director-General. 10
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- (3) The requirement to report to the Director-General under this section does not apply if the matter has already been reported to the Director-General under section 7D. 16
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- (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*. 19
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- 32M Review of prohibited person status** 23
- (1) If a review application is made by a prohibited person under section 33H or 33I of the *Commission for Children and Young People Act 1998*, the Commission or relevant tribunal to which the application is made is to notify the Director-General of the application if it appears to the Commission or relevant tribunal that the prohibited person is a member (or former member) of the school administrative and support staff. 24
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- (2) The Director-General is entitled: 31
- (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 32
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- (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. 35
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32N Effect of person ceasing to be prohibited person

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| | 1 |
| (1) This section applies to a person who is dismissed under section 32K and who subsequently ceases to be a prohibited person. | 2 |
| | 3 |
| Note. A person ceases to be a prohibited person in relation to an offence if an order is made under the <i>Commission for Children and Young People Act 1998</i> that the relevant provisions of that Act do not apply in respect of the offence or if the relevant conviction is overturned on appeal. | 4 |
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| (2) If the person ceases to be a prohibited person because the conviction for the offence in respect of which the person is a prohibited person is overturned by a court on appeal, the person is entitled to be reinstated to, or re-employed in, a staff position that is similar to the position that the person held when the person's employment was terminated under section 32K. | 9 |
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| (3) If: | 15 |
| (a) the person ceases to be a prohibited person because of an order under Subdivision 2 of Division 2 of Part 7 of the <i>Commission for Children and Young People Act 1998</i> , and | 16 |
| | 17 |
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| (b) a period of not more than 12 months has elapsed since the date on which the person's employment was terminated under section 32K, | 19 |
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| the person is entitled to be reinstated to, or re-employed in, a staff position that is similar to the position that the person held when his or her employment was terminated. | 22 |
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| | 24 |
| (4) A person, on being reinstated or re-employed under this section, is taken: | 25 |
| | 26 |
| (a) to have never been dismissed as a member of the school administrative and support staff, and | 27 |
| | 28 |
| (b) to have been on leave without pay during the period between dismissal and reinstatement or re-employment. | 29 |
| | 30 |
| (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. | 31 |
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| (6) Any regulation made under subsection (5) has effect despite any other Act or law. | 37 |
| | 38 |

(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 <i>Commission for Children and Young People Act 1998</i> .	1 2 3 4
32O	Disciplinary action may be taken against person who ceases to be prohibited person	5 6
	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.	7 8 9 10 11
32P	Protection of persons relating to this Part	12
	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.	13 14 15 16
32Q	No compensation or other industrial remedies	17
	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.	18 19 20 21 22 23 24
32R	Protection for exercise of functions in connection with this Part	25
(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 <i>protected function</i>).	26 27 28 29 30
(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.	31 32 33 34
(3)	Except as provided by this section, the exercise by a person of a protected function may not be:	35 36
(a)	challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or	37 38 39

(b) restrained, removed or otherwise affected by any proceedings.	1 2
(4) Without limiting subsection (3):	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	4 5 6 7
(b) the exercise of a protected function is not an industrial matter for the purposes of the <i>Industrial Relations Act 1996</i> .	8 9 10
(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.	11 12 13 14 15
(6) However, nothing in this section prevents any person who is expressly authorised or permitted by a provision of the <i>Commission for Children and Young People Act 1998</i> to bring proceedings from bringing such proceedings or being granted such relief in those proceedings as may be authorised or permitted by this Part.	16 17 18 19 20 21
(7) In this section:	22
exercise of functions includes:	23
(a) the purported exercise of functions, and	24
(b) the non-exercise or improper exercise of functions, and	25
(c) the proposed, apprehended or threatened exercise of functions.	26 27
proceedings includes:	28
(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	29 30 31
(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 <i>Supreme Court Act 1970</i> .	32 33 34 35
32S Transitional provision	36
A reference in this Part to a provision of the <i>Commission for Children and Young People Act 1998</i> is, until such time as Schedule 1 [31] to the <i>Commission for Children and Young</i>	37 38 39

Education Legislation Amendment (Staff) Bill 2006

Schedule 2 Amendments relating to termination of employment of prohibited persons

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*.

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Schedule 3	Consequential amendment of other Act and instruments	1
		2
	(Section 6)	3
3.1	Education (School Administrative and Support Staff) Regulation 2003	4
		5
[1]	Part 2 Discipline	6
	Omit the Part.	7
[2]	Clause 9 Other employment: temporary employees	8
	Omit the clause.	9
3.2	Government and Related Employees Appeal Tribunal Act 1980 No 39	10
		11
	Section 4 Definitions	12
	Omit paragraph (b) of the definition of <i>employer</i> in section 4 (1).	13
	Insert instead:	14
	(b) in relation to an employee of the class referred to in paragraph (b) of that definition—the Director-General of the Department of Education and Training,	15
		16
		17
3.3	Teaching Service Regulation 2001	18
	Part 3 Breaches of discipline by members of staff	19
	Omit the Part.	20