

**Submissions of the Independent Education Union of Australia
in response to those filed on 30 July 2021**

INTRODUCTION

1. These submissions respond to submissions filed by the Australian Federation of Employers and Industries (AFEI) and Catholic Employment Relations Ltd (CER) on 30 July 2021.

SUBMISSIONS IN RESPONSE

Australian Federation of Employers and Industries (AFEI)

General Comments

2. The weight to be given to the assertions made by the AFEI as to the impact of the proposed award clauses is significantly affected by two matters.
3. First, the AFEI have filed no evidence to justify its factual assertions.
4. Second, at no point during its limited involvement in these proceedings has the AFEI identified if it has members who employ teachers and if so their number or nature. As such it remains entirely unclear what if any actual experience or views AFEI is drawing upon.
5. In that regard it is notable that the views expressed by the AFEI are not in accord with either the ACA, which is the primary for-profit employer representative in the ECEC industry, or CCSA, which represents a subset of community based services in NSW. Nor is it to be supposed that it has members who employ primary or secondary school teachers (certainly its submissions raise no concerns in respect of the impact on employers of such teachers).
6. A further general point to note is that the AFEI, whilst critical of various drafting proposals, has not itself proposed any particular award draft clauses which would allow the Full Bench or the parties to properly understand an alternative.

Operative Date / Phasing In

7. The AFEI contends that rates of pay should not be increased to the level that the Commission has determined are fair minimum rates either for a further 10 months (1 July 2022) or, by way of phasing, 16 months (1 January 2023).
8. Four reasons are given for this, at [15]-[20]:
 - a. In *Transitional Review - Apprentices* [2013] FWCFB 5411 a Full Bench determined any increase in rates for apprentices of more 5% should be phased-in;
 - b. The additional wage costs will either need to be absorbed or passed on to parents;
 - c. Labour costs are the largest item of expenditure, and for some employers make up 80% of operating costs;
 - d. The change is complex and employers need time to understand and apply the transition, including time to assess each employee's "documentation with a regulatory body" and each employee's performance, which would take some time.
9. As to the first argument at 8(a), the Full Bench decision in *Transitional Review – Apprentices* involved a comprehensive review of conditions of employment and rates of pay for apprentices across multiple modern awards. In that case the Full Bench in August 2013 determined to award increases and determined that increases of up to 5% would take effect on the following 1 January and increases above 5% would take effect one year later: see [505]. The Full Bench provided no reasons for delaying part of the increases, beyond noting that employers had submitted there should be phasing if the union case were granted. As such the case provides little assistance. Certainly, the AFEI does not point to any evidence or otherwise seek to identify why the Commission would proceed from the assumption that the position that applied to employers of apprentices is equivalent to that faced by employers of teachers in the early childhood education sector.
10. As to the argument at 8(b), the assertion that any increase in wage costs must either be absorbed or passed on to parents is wrong and belied by the AFEI's own submission at [23] to the effect that 90% of centres currently charge less than the hourly cap of \$12.20 (above which parents must pay any difference in full). It follows that for 90% of centres the increase in hourly rate will be mainly or to some extent paid for by the Commonwealth subsidy.
11. The CCSA's submissions (30 July 2021 at [10]) address this issue:

CCSA's analysis of the likely cost impact, included in our submission of 14 July 2021, was up to \$2.14 per enrolled child per day while ACA & ABI similarly identified in their submission that "the added cost is estimated to be in the order of \$2.30 per child per day"¹. These increases

are gross amounts, calculated before government subsidies are considered. For example, in CCS-approved services, the actual cost increase to parents / guardians will be reduced by the family's CCS percentage (for families on the maximum rate of CCS this will reduce the out-of-pocket cost increase to approximately \$0.45 per day).

12. At footnotes 23 and 24 of the AFEI submission reliance is placed on data published by the Department of Education, Skills and Employment for the December quarter 2020. A review of that data confirms that for most centres the increase in wage costs is able to be met, in whole or in part, by an increase in rates that will be covered by the Commonwealth subsidy.
- a. Table 9.1 records that of the 336 statistical areas in Australia in Dec 2020, 180 had no service that charged above the cap at that time.
 - b. Table 5.2 records the average hourly fee by State and Territory, December quarter 2020 – in terms of Centre based day care was as follows (all well below the then \$12.20 cap):

NSW	\$ 10.80
VIC	\$ 10.85
QLD	\$ 9.80
SA	\$ 10.35
WA	\$ 10.75
TAS	\$ 9.70
NT	\$ 9.60
ACT	\$ 11.85
Australia*	\$ 10.50

- c. Table 5.3 records the average hourly fee by region (December quarter 2020) which shows that all areas will benefit from Commonwealth subsidies in terms of adsorbing modest cost increases.

Major Cities of Australia	\$ 10.75
Inner Regional Australia	\$ 9.85
Outer Regional Australia	\$ 9.65
Remote & Very Remote Australia	\$ 9.35
Australia	\$ 10.50

13. Further, the AFEI provides no analysis as to whether and to what extent the small percentage of early childhood employers who are currently charging above the hourly cap currently pay their teachers at the current Award minimum. Of course, to the extent those employers are currently paying above the Award minimum there will be less, and possibly no, increase in wage costs. If the AFEI had members affected presumably it was in a position to obtain such

evidence. The absence of such evidence significantly undermines its assertions.

14. Paragraph [24] of the AFEI submission is indicative of the problematic nature of their case – there is no evidence to back up their speculative assertion the proposed structure “may require many providers, particularly in NSW” to do anything, let alone “increase fees beyond the hourly cap”.
15. The third argument at 8(c) above is made at paragraph [18(a)] of the AFEI submissions, which asserts without evidence that the increase in costs “could not have been budgeted for” and asserts that labour costs are the largest item of expenditure and that for some *not-for-profit* providers labour costs comprise 80% of operating costs.
16. It is not clear what not-for-profit providers AFEI represents or has useful knowledge about. The only evidence relied upon by the AFEI, by way of footnote 17, is Appendix H of the 2014 Productivity Commission Inquiry Report into *Childcare and Early Childhood Learning*. The Productivity Commission’s assertion sources the submission of one employer, Uniting Care Gippsland, which at the time was covered by the *Victorian Early Childhood Teachers and Assistants Agreement 2009* (AE873229).¹ The salaries paid under that instrument are significantly higher than those paid by employers of teachers under the *Educational Services (Teachers) Award 2020*.
17. More importantly, it is notable that the Productivity Commission was referring to *total wage costs* and not those that stem from the employment of teachers alone. The Commission is of course well aware that overwhelmingly the employers who pay teachers at or close to the minimum Award rate are in the early childhood sector, where teachers make up only a minority of the total workforce.
18. To that end, it is noted that in its 30 July 2021 submissions the CCSA at [9] submit:

Early childhood teachers usually make up the smallest component of an early childhood service’s employees and, even in NSW with the highest mandated teacher-to-child ratios, will rarely exceed 25% of staff. This mitigates the effects of significant wage increases for that cohort on the overall operating expenses of providers and, ultimately, on costs to parents / guardians.
19. As to 8(d) above, the AFEI’s fourth reason for an extended delay is set out at [18(b) and (c)] of the AFEI submissions. It asserts that 10 months is required for transition because of the complexity of the change and the need to examine documents and assess performance. (A submission which is somewhat at odds

¹ In the 2009 Agreement the employer was then named Kilmany Uniting Care. In the subsequent agreement, the *Victorian Early Childhood Teachers and Educators Agreement 2016* (AE419502) its name was Uniting Care Gippsland.

with the notion that it could alternatively be done by 1 January 2022, as the consent position proposes, provided the rates are phased-in).

20. AFEI have not put on any evidence that any employer in fact needs such time or how long such steps would in fact take.
21. The transition proposed by the consent position is straightforward, requiring application of a transition table found at proposed subclause 14.4 (b) which merely requires knowledge of each teacher's current award classification.
22. Four months is a significant period of time within which employers can make the necessary adjustments to give effect to the Full Bench's determination. Should the AFEI have members affected no doubt it could assist them in that regard.
23. As to phasing-in, in the absence of any evidence that harm or detriment will be caused to any employer if the rates are not introduced more slowly, there is no valid reason to delay the already determined salary increases.
24. As the CCSA have submitted at [13]-[14] of their 30 July submission:

Given that the economic impact on employers and, ultimately, parents / guardians is relatively low, phasing in any increase resulting from this case would simply serve to unnecessarily complicate the transition to the new classification and pay structure arrangements.

[..]

Phasing in of a new classification and pay structure, as proposed by CER, as well as being unnecessary for the reasons previously given, would have the effect of further deferring the appropriate recognition of teachers' work value that the Full Bench has identified has existed since at least the commencement of the Educational Services (Teachers) Award in 2010.

Satisfactory Service

25. The AFEI submission with respect to satisfactory service is predicated on an assumption that when the Commission adopted the expression "satisfactory service" it did so in a manner intended to provide employers with a mechanism to deny a wage increase based on the employer's subjective view of performance. It is unlikely that is the case.
26. The AFEI correctly identify that the expression was taken from the NSW Teachers Award, but the AFEI seeks to give those words an effect that is entirely different to how that expression applies to those covered by that State Award. The submissions fail to appreciate the particular historical, legislative and organisational contexts that gave rise to that expression in the NSW Teachers Award that are quite distinct from those faced by employers of teachers in the early childhood sector.

27. As the statement of Carol Matthews filed with these submissions demonstrates, for teachers employed pursuant to the NSW Teachers Award:
- a. The performance and development process and standards are set out in a document agreed with the NSW Teachers Federation, which pursuant to clause 7 of the NSW Teachers Award must be applied;
 - b. That procedure has a series of detailed steps that give rise to an annual assessment;
 - c. The employer has an obligation to conduct such a process applying a consistent, carefully defined and objectively assessed process;
 - d. The assessment is made against the APST;
 - e. If a teacher is found to require improvement, the employer then engages in a 10 week program to provide support to improve performance to assist the teacher reach satisfactory status, as depicted in the flow-chart set out in the statement;
 - f. Any adverse finding at a school level is then subject to review by the Department's Professional and Ethical Standards Directorate;
 - g. Disputes as to any adverse finding can then be progressed as a dispute under the disputes procedure under the NSW Teachers Award;
 - h. In practice less than 0.1% of teachers are assessed as not reaching a satisfactory standard, making it a process that in effect deems all teachers to be satisfactory, other than a very small minority in respect of which there is a review/appeal process.
28. Such a process is entirely at odds with what the AFEI is proposing, which would require no set process or criteria nor even, it would appear, an obligation to conduct an assessment at all.
29. Further, the AFEI seeks to somehow equate the expression as equating to an assessment of work value, which clearly it is not.
30. At [36] the AFEI submits that 'satisfactory service' should be defined to mean both the maintenance of proficient accreditation and demonstration that service is satisfactory in the opinion of the employer. The first is unnecessary, since the maintenance of proficient status is a necessary pre-condition to the classification. The second is inappropriate, since it provides no objectively determinative basis as to whether the condition has been met nor, it would appear, any obligation on an employer to conduct a formal assessment.
31. As the IEU has previously submitted, a classification structure which determines rates of pay needs to be based on objectively discernable and consistent criteria. There needs to be some method by which at any point of time an employer, employee, regulator, court or tribunal can determine what is

the correct rate of pay. It cannot be a method that depends on having to discern what was the subjective view of an employer in respect of some earlier year.

32. Further, the criteria by which service is to be determined needs to be consistent, less employees are paid differently due to different subjective standards applied by employers. As Isabelle Arrabalde and Elizabeth Arrabalde in their 30 July submissions state: "What may be considered 'satisfactory' for one employer, may not be considered 'satisfactory' by another".

Progression within the new classification structure

33. The AFEI does not appear to understand the consent position. At paragraph [43] it submits that the consent position is inconsistent with the Commission's determination that qualifications, displayed competence and acquired experience and responsibility form the work value of teachers. This is simply incorrect. The consent position applies directly the Commission's approach of determining a classification based on qualification and displayed competence (obtaining proficient status) combined with acquired experience and responsibility (reflecting years of service at a proficient level).
34. The AFEI submission suggests that the consent position requiring progression based on 'three [or six] years at a proficient level' should instead be expressed as 'three years at level 2 [and 3]'. This award will take effect on a particular day and there will be teachers as at that day who will be classified at Level 2 who are, for example, only six months off from being classified as Level 3. Under AFEI's proposals at [45]-[46], such teachers would have to wait a further three years to progress to Level 3. Such a situation is clearly not reflective of any improvement in their work value. It is appropriate that teachers translate across to their level in a manner that properly recognises their years of service at a proficient level for the purposes of progression at the point of transition, lest they in effect regress.
35. The AFEI approach would also fail to appropriately classify teachers not currently teaching as at the time of transition, who return to teaching. Under its proposal such a teacher would not have had any satisfactory service at Level 2 or Level 3. A more reasonable approach, as reflected in the consent position, would be that on the first day of their return, their years of service should be recognised and they should slot into the relevant band based on those years of service and progress thereafter reflecting their years of service, not their years at a particular level.
36. The intent of the submission by the AFEI at [46(c)] is unclear. On one view it would appear to suggest that each employer should determine how and to which classification an existing employee transitions through a one-off unilateral assessment of performance, without the aid of any objective criteria on which to base such decisions. Such a submission seems entirely at odds

with a system that determines a classification based on objective work value criteria.

Jurisdictions without accreditation

37. At [45], [46] and [53], AFEI appears to propose that in jurisdictions that do not currently have accreditation for ECTs and/or highly accomplished/lead teachers, such teachers should remain on the existing classification scheme. In other words, that in addition to the new classification structure the Award should retain the current classification structure, with the question of which structure applies one that depends on which State or Territory they are in. It is not clear what rates of pay AFEI propose would apply to those that continue to be classified under the old structure.
38. This proposal of a bifurcated classification system with different rates of pay dependent on the State in which the employer is operating cannot be adopted: s.154 of the Fair Work Act 2009.
39. At [50], AFEI criticise the consent position of 'deemed proficiency after 2 years service'. The Victorian Institute of Teachers allows Provisionally registered teachers / early childhood teachers up to 2 years to achieve proficiency.² In NSW, the maximum period of time allowed under the *Teacher Accreditation Act 2004* for a full time teacher to achieve proficiency is 3 years, however NESAs states that "As a guide, 160 - 180 days of teaching would typically enable the teacher to meet accreditation requirements at Proficient Teacher."³
40. AFEI opposes at [52] the consent position proposal for a dispute mechanism to address a dispute about whether an employee meets the requirements of the APST standards, stating that they "do not agree that the Commission should take the place of *the body that is responsible for the assessment of employees* in lieu of the APST." The submission seems to miss the point. The dispute mechanism will not apply where there *is* a body that is responsible for the assessment of employees. The point of the consent position is to establish a method to resolve a dispute in the absence of such a body.

Other matters

41. At [61], AFEI criticise proposed clause 14.11 in the consent position because "the obligation for "reasonable release from duties" may not be "operationally practicable"." The proposed clause as drafted recognises that if that were genuinely the case, an employer is not required to provide such release (see 14.11 (a) of the proposed consent award variation).

² VIT, Supporting Provisionally Registered Teachers - A guide to the (full) registration process – found as Attachment CN-1 to Cara Nightingales statement, p.13 of statement.

³ [Exhibit 76, Document 115](#), p.4.

42. At [63], AFEI expresses confusion as to the rate calculated in the consent position for the Educational Leader allowance. In [658] of its decision, the Full Bench stated that it considered *“that the Level 1 allowance for schools in the smallest category (category C) should also be payable to early childhood teachers who are required to discharge the responsibilities of the education leader under reg 118 of the National Regulations. This allowance is currently \$3,302.46 per annum.”* Paragraphs [67] and [68] of the IEU’s 14 July submissions explain how the Level 1 (C) allowance and others were recalculated to apply the Commission’s decision and the subsequent increase resulting from the July 2021 National Wage Case. The calculations in the consent position have been rechecked and, contrary to the AFEI submission, are correct.
43. The AFEI at [64] queries why the educational leadership allowance is not paid on a pro rata basis for part-time teachers. As noted, the Full Bench determined the educational leadership allowance based on the Level 1 (C) leadership allowance (in schools). That allowance is not paid on a pro-rata basis. As acknowledged by CER in its 30 July submissions at [12]:
- ... regardless of the employment status of a teacher so designated (that is full-time or part-time) the responsibilities of an educational leader remain the same.
44. The AFEI point to directors being paid on a pro rata basis – yet do not give a reason why directors are paid that way or the relevance to educational leaders. In any case, given the nature of the role of the director, they are almost invariably appointed full-time unless they job share the position.

Catholic Employment Relations Ltd (CER)

45. As the IEU anticipated, CER has reconsidered its position in light of the 14 July submissions and the consent position.
46. While it has not abandoned its previous submissions on operative date and phasing in, CER have not added anything to its previous submissions, nor produced any evidence to demonstrate why or how the consent position would in fact adversely impact those described as “a number of [unspecified] operators of Catholic agencies operating Catholic Early Learning Centres” whose “views” the initial CER submissions of 14 July reflected.
47. It is to be noted that CER now accepts at [8] that *“alignment between satisfactory service and the APST is appropriate”*.
48. Further, as noted above, CER accepts at [12] that the role of educational leader has responsibilities that do not change regardless of whether the teacher is full time or part time.

Conclusion

49. In conclusion, as the ACA/ABI submissions of 30 July state at [38] – [40]:
- a. the parties with the principal interest in regard to the employment of teachers in the child care industry across Australia have worked to form a consent position on the implementation of the Decision;
 - b. The consent position does not alter the classification structure of minimum rates set by the Full Bench – rather it seeks to facilitate the Commission’s changes in a practical way that avoids unintended consequences;
 - c. The consent position is supported by a consideration of s134 and s138 of the *Fair Work Act 2009* and the setting of a fair and relevant minimum safety net for employees and employers.
50. Most of the parties from the ECEC sector are, at the very least, broadly supportive of the consent position and no school or organisation representing schools have raised any objections to the consent position.

INGMAR TAYLOR SC
GREENWAY CHAMBERS

13 AUGUST 2021

IN THE FAIR WORK COMMISSION

Fair Work Act 2009 s.158 - Application to vary or revoke a modern award

Matter Number: AM2018/9

Applicant: Independent Education Union of Australia

STATEMENT OF CAROL MATTHEWS

1. My name is Carol Matthews and my address is [REDACTED].
2. I have provided a number of previous statements in the associated matter C2013/6333 (Exhibits 1 & 2).
3. I am now the Deputy Secretary of the NSW/ ACT Branch of Independent Education Union Australia ('the IEUA').
4. I make this Statement arising from assertions made in the Submissions of the Australian Federation of Employers and Industries (AFEI) Submissions dated 30 July 2021 as to the meaning and purpose of the expression 'satisfactory service'.
5. My statement proceeds as follows:
 - a. at [6]-[12], an analysis of the provisions of *Crown Employees (Teachers in Schools and Related Employees) Salaries And Conditions Award 2020* (the "NSW Teachers Award 2020") with respect to progression and satisfactory service; and
 - b. at [13]-[45], an overview of how the Department of Education's manages satisfactory service.

The NSW Government Teachers Award - satisfactory service and progression

6. I have read the Submissions of the Australian Federation of Employers and Industries (AFEI) Submissions dated 30 July 2021 regarding Satisfactory Service (paragraphs 27-38). As AFEI note in their Submissions at paragraph 29, "*The satisfactory service requirement appears to be adopted from the NSW Teachers Award which require the demonstration of 'satisfactory performance of duties' for progression to occur.*"
7. The *NSW Teachers Award 2020* requirements for progression from Band 1 (Graduate) to Band 2 (Proficient) are contained in subclause 3.6:

Salary progression from Band 1 to Band 2 will take effect from the first full pay period after confirmation of proficient accreditation by the Teacher Accreditation Authority for teachers who have been employed for a minimum of two years full time and subject to the satisfactory performance of their duties. [..]

8. The relevant extract of the *NSW Teachers Award 2020* is annexed and marked “Annexure 1” (commences p.11).
9. The *NSW Teachers Award 2020* requirements for progression within Band 2 are contained in subclauses 3.6 & 3.7. Each progression requires a specified period of full time service at a sub-band and requires a teacher to “*continue to meet the requirements of proficient accreditation, including maintenance and subject to the satisfactory performance of their duties.*”
10. These particular clauses were introduced into a predecessor award to the *NSW Teachers Award 2020*, when teachers employed by the NSW Government moved to a standards based classification structure. In the *Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2014* (the “*NSW Teachers Award 2014*”), the current provisions were introduced by consent between the NSW Teachers Federation and the NSW Government. The older progression provisions were preserved for transition purposes in that instrument.
11. The older progression provisions referred to in paragraph 10 were the main provisions in awards that predate the *NSW Teachers Award 2014*. The *Crown Employees (Teachers in Schools and Related Employees) Salaries And Conditions Award* made in 2012 [“*NSW Teachers Award 2012*”], contained the following provisions in subclause 6.1 with respect to service and progression:

An officer shall be entitled to progress along or be maintained on the common incremental salary scale or the salary level for a promotions position after each 12 months of service subject to the officer demonstrating by means of an annual review, continuing efficiency in teaching practice, satisfactory performance and professional growth. Salary progression may also occur in accordance with the provisions of subclauses 3.7, 3.8, 3.9, 3.10 and 3.11 of clause 3, Salaries. [Subclauses 3.7, 3.8, 3.9, 3.10 and 3.11 relate particularly to 2 & 3 year trained teachers].

12. The relevant extract of the *NSW Teachers Award 2012* is annexed and marked “Annexure 2”. (commences p.28)

Satisfactory service in NSW Government Schools

13. Satisfactory service in NSW Government schools was historically determined by a complex internal inspection system dating from the 19th Century.¹

¹ See Bruce Mitchell, *A History of Public School Teachers' Organisations in New South Wales, 1855 to 1945*, PhD Thesis, 1969, pp.5-6. Extract annexed and marked “Annexure 3” (commences p.38)

14. As Mitchell (1969) states:

The inspectors, usually men of academic achievement as well as great practical experience, were figures to instil apprehension and even terror into the most diligent of teachers. [...] Inspectors may have behaved like martinets or like sympathetic friends but possessing the powers they did to advance, delay or destroy a teacher's career, and to reward or condemn by a word a teacher's labours, it was only to be expected that all inspectors and the whole inspectorial system became major subjects of teachers' myths and legends. Stories about inspectors, based upon truth, or at least on possibility, became one of the main ingredients of communication between teachers whenever they met.²

15. The current approach no longer relies on internal inspections. Nonetheless, it is still an intricate and regulated space.

16. The NSW Department of Education has published their *Guidelines for the Management of Conduct and Performance* (the "Guidelines") that govern misconduct and performance matters for teachers and support staff. The *Guidelines*, which were implemented in May 2020 are annexed and marked "Annexure 4" (commences p.54).

17. The Guidelines are part of the Department's *Performance and Development Framework for Principals, Executives and Teachers In NSW Public Schools* (the "Framework"). The Framework is annexed and marked "Annexure 5" (commences p.92).

18. Related to the Guidelines is the *Teacher Improvement Program* which was implemented in 2014 and updated in 2020. The *Teacher Improvement Program* (the "TIP") is annexed and marked "Annexure 6" (commences p.102). The *Teacher Improvement Program* supports the Guidelines "for maintaining appropriate standards of work-related performance for those employed in the Teaching Service."

The Framework

19. As the *Performance and Development Framework for Principals, Executives and Teachers In NSW Public Schools* (the "Framework") notes, it emerged from the consent agreement reached between the NSW Teachers Federation and the NSW Government in late 2013 titled the *Terms of Settlement (27 November 2013) for the Salaries and Conditions Award 2014-2016 for teachers in the NSW Teaching Service*. The Terms of Settlement also reference the APST as forming "the basis for guiding development and assessing [teacher] performance". (p.1 of the Framework).

20. The Framework document was not only a consent position - clause 7 of the *NSW Teachers Award 2020* mandates that the process to be applied is the Framework document reached by consent. In other words, the system by which teachers'

² Ibid.

performance and development are assessed is by a process that the NSW Teachers Federation agreed to and which cannot be unilaterally altered by the employer.

21. The three phase Framework requires each teacher, in Phase 1, to develop an annual individual Performance and Development Plan through collaboration and the professional dialogue based on a number of documents, including the APST. The teacher is required to identify up to five professional goals that they plan to meet and consider what professional learning is required. The PDP is finalised with the teacher's supervisor or sometimes through a process that also includes other colleagues. (pp.3-4).

22. Once the teacher implements their plan in Phase 2, they are required to provide evidence *"sourced from the everyday work of the teacher and when considered holistically, [that] will demonstrate the teacher's progress towards the professional goals."* Such evidence may include:

- a. data on student learning and development outcomes;
- b. feedback from direct observation of teaching, through agreed, collaborative lesson observations (supervisor or suitable peer);
- c. results of collaborative practices with colleagues; and
- d. self-reflection on the impact of professional learning.

23. The APST are central to the collection of evidence:

The types and sources of evidence will align to the Professional Standards for Teachers at the appropriate career stage and should form the basis of accreditation and maintenance requirements. These processes should be aligned, not duplicated. (page 5).

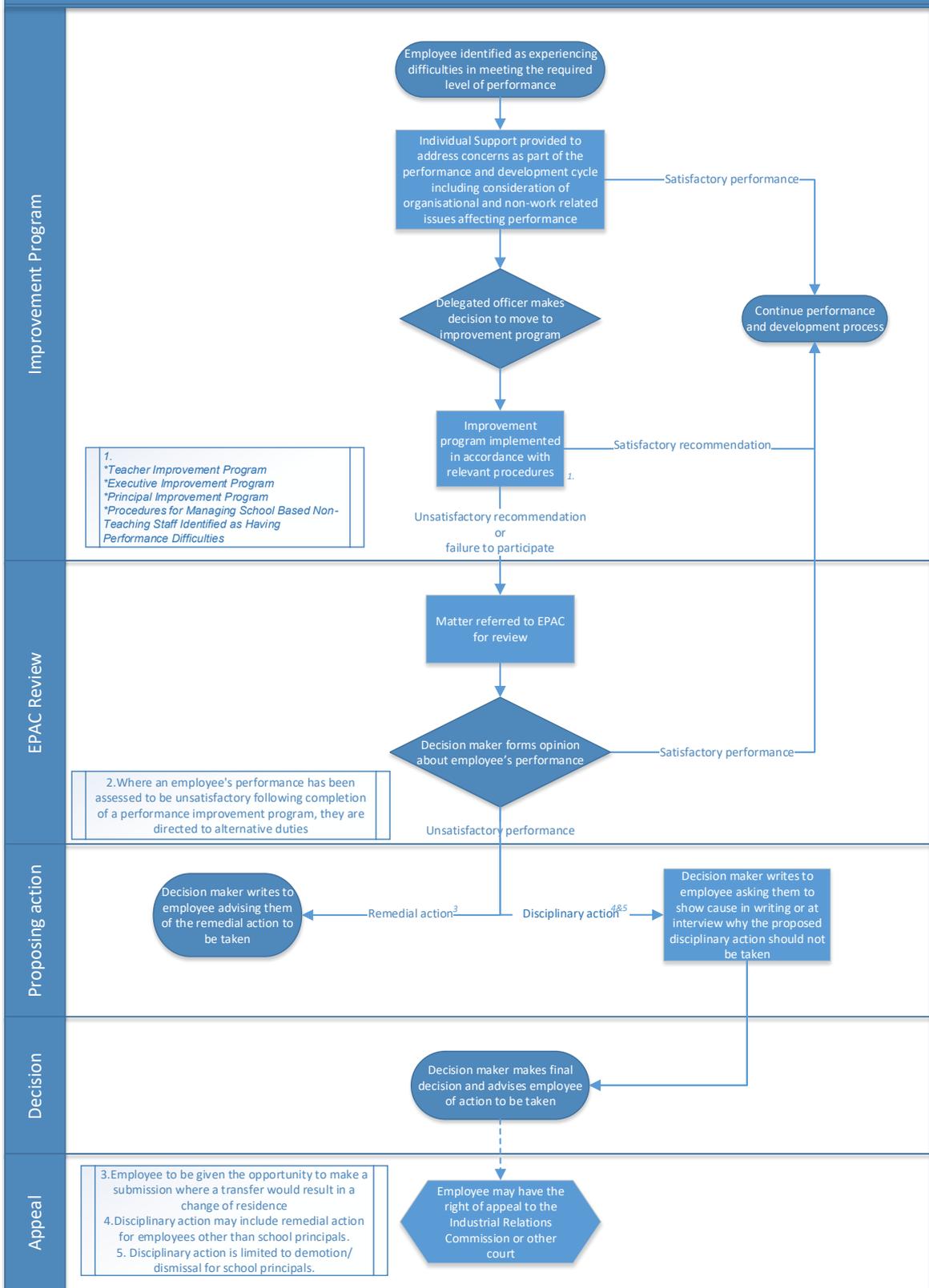
24. Phase 3 of the Framework requires the teacher to participate in two formal review processes: a self-assessment review half way through the school year and an annual review towards the end of each year. The annual review is *"a structured discussion with their supervisor to facilitate the provision of a review on progress towards the goals and formal written feedback, informing the next performance and development cycle."* It requires a written assessment of the teacher's performance against the goals set and is collaboratively written by the teacher and their supervisor.

The Guidelines

25. The Policy Statement at 3.1 notes that *"The Department of Education has responsibility to deal appropriately and expediently with the small number of employees whose conduct or work performance is not of a satisfactory standard."* (p.5 of the Guidelines).

26. The reference to the small number of employees affected by the provisions is borne out in the NSW Auditor-General's Report to Parliament, *Ensuring teaching quality in NSW public schools*. A copy of the report is annexed and marked "Annexure 7" (commences p.118). The report identifies that out "of 49,000 permanent and over 39,000 casual and temporary teachers, 53 were involved in teacher improvement programs in 2018. The program provides hands-on support and guidance in managing teacher underperformance and improvement." (p.22). That is, 0.06% of teachers were found to be underperforming.
27. The principles underlying the Guidelines are timeliness, procedural fairness, matters are decided on their merits and support (pp.5-7). Section 8 of the Guidelines deal explicitly with the handling of unsatisfactory performance. It explains that the Teaching Service Act allows the Department to undertake a review of a teacher's performance annually against established criteria/standards.
28. Unsatisfactory performance is dealt with in a staged process. Initially, performance issues are identified and individualised targeted support is provided through supervisory performance and development discussions (p. 26).
29. An extract from the Guidelines shows the process for dealing with unsatisfactory service (p.31):

Process for dealing with unsatisfactory performance



30. The Guidelines identify that:

While performance and development is a shared responsibility between an employee and their supervisor, the supervisor has the primary responsibility for performance management. Early identification and provision of individualised targeted support in most cases should address an unsatisfactory performance problem. Performance feedback and appraisal should be ongoing and part of supervisory performance discussions with employees. It is only if action at this stage has failed to rectify the unsatisfactory performance that consideration needs be given to involving the subsequent stages. (p.27)

31. The subsequent stage referred to in paragraph 30 for teaching staff is the Teacher Improvement Program.

Teacher Improvement Program

32. The Teacher Improvement Program (TIP) (see Annexure 6) places an emphasis on procedural fairness, particularly the right of the teacher to be informed of the processes involved and to be able to have their views properly considered. It also emphasises impartial decision making including impartiality and “an absence of bias in the decision maker(s)”.

33. There are a number of important steps before the Department implements a TIP:

- a. Underperformance is about “cumulative pattern[s] of practice” rather than single events or incidents. (p.6);
- b. Prior to the implementation of a TIP the principal is required to clearly explain the performance concerns with the teacher and provide the teacher with support to address the specific concerns. During this time, the teacher is provided the opportunity to improve and to put their performance issues in the context of any “personal difficulties, health problems or school organisation issues”. (p.6)
- c. The TIP is only implemented after the abovementioned reasonable support has not led to sufficient improvement in the teacher’s performance. (p.6)

34. A TIP occurs over 10 school weeks in total, comprising of five school weeks of support, guidance and assessment followed by an additional five weeks if required to meet all identified areas for improvement. (p.7)

35. A teacher who is subject to the TIP is provided with a Teacher Improvement Program plan (“TIP plan”) that includes the APSTs and areas requiring improvement, the teachers proposed actions, the support to be provided, what constitutes proficient teaching practice and a schedule of activities associated with the program. (p.7)

36. Support is a fundamental part of the TIP: *“Support, guidance and assessment may be provided by the principal, executives from within the school and from another school and/or personnel with specialist knowledge.”* (p.8) There is an expectation that affected teachers will be released from their normal work to enable the teacher to address the Program requirements (p.10 section 6.1).
37. Multiple observations of practice are a key part of the TIP whereby the aim is not only to review performance but also to *“provide support and advice to the teacher and focus on the Standards identified as requiring improvement.”* Each observation generates a report that is provided to the teacher. (p.8)
38. The timeline for implementing a TIP is as follows:
- a. Initial meeting: at this meeting the teacher is provided information as to the processes involved and is invited to utilise a support person. They are explicitly informed that they can utilise the NSW Teachers Federation and that Federation officers can attend any meeting in the TIP process. At this meeting (which is minuted) the principal provides the teacher with a copy of the draft TIP plan, which the principal drafts in consultation with the Department’s Professional and Ethical Standards Directorate (“PES”). (pp.7-8)
 - b. At a subsequent meeting, the TIP plan is finalised following feedback from the teacher. The TIP states that the teacher should be released from teaching to seek advice prior to providing such feedback. (p.8)
 - c. Weekly review meetings – every week in the 10 week process, a review meeting is held where the teacher (and support person where requested), the principal, the teacher’s supervisor, a minute taker (and where applicable Departmental specialists) attend each meeting. The main purpose of the weekly review meetings is to *“provide feedback to the teacher on their progress, the opportunity for the teacher to provide feedback on support received and to raise any issues, and for any adjustments to be made to the TIP plan by the principal in consultation with the teacher. Changes should be documented.”* (pp.8-9).
 - d. Week 5 review meeting – at this meeting, following consultation with the Department’s Employee Performance and Conduct Unit (EPAC), the principal advises the teacher that the program has ended if their performance has improved to the required level. Otherwise, it continues for another 5 school weeks, with necessary amendments made to the TIP plan to *“reflect the ongoing needs of the teacher in one or more of the areas for improvement”*. (p.9)
 - e. Week 10 review meeting – following seeking advice from PES, the principal meets with the teacher to evaluate progress and shortly thereafter arranges a meeting to deliver the outcome of the intervention. (p.9)
39. Following this process, if the required level of improvement is met the teacher is provided with documentation confirming same and the process ceases. (p.9)

40. In the event that the teacher is assessed as not reaching the level of performance required to meet the Standards, the principal provides the teacher a copy of the report and all associated documentation and advises them that they have 14 days to respond in writing to the report. (p.9)
41. The teacher's response, together with the Principal's report/recommendation and all documentation is then formally reviewed by the PES *"to address procedural fairness, the educational aspects of the improvement program and issues raised in the teacher's response that may require clarification from the principal."* (p.10)
42. Whilst the process outlined in paragraph 41 takes place (usually within 21 days) the teacher undertakes alternative duties. (p.10)
43. Where the PES does not uphold the principal's recommendation then the teacher returns a to a teaching position. (p.10)
44. If the PES does uphold the recommendation then the teacher is informed that remedial or disciplinary action may be taken against them. The teacher is given the opportunity to respond to any such proposed action in writing. (p.10)
45. As the Teacher Improvement Program documentation notes, disputes about the Program are subject to the disputes procedure under the *NSW Teachers Award*. (p.11)



Signature of Carol Matthews
Date: 16 August 2021

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SERIAL C9078

CROWN EMPLOYEES (TEACHERS IN SCHOOLS AND RELATED EMPLOYEES) SALARIES AND CONDITIONS AWARD 2020

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Board of Studies, Teaching and Educational Standards.

(Case No. 60926 of 2020)

Before Commissioner Webster

3 March 2020

AWARD

1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Dictionary
3.	Salaries
4.	Deduction of Union Membership Fees
5.	Allowances
6.	Salary Progression and Maintenance
7.	Performance and Development Processes for Teachers
8.	Salary Packaging
9.	Initial Appointments
10.	Teaching in More Than One Location
11.	Deferred Salary Scheme
12.	Compensation for Travel on Department Business
13.	Assessment and Reporting and Quality of Educational Outcomes
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17.	Teaching Outside Normal School Hours
18.	Alternative Work Organisation
19.	Teachers Appointed to More than One School
20.	Qualifications, Recruitment and Training
21.	Calculation of Service
22.	Temporary Teachers
23.	Casual Teachers
24.	Relief in TP1 or AP1 position or Principal - Environmental Education Centre or Hospital School Grade
25.	Training and Development
26.	Multi-skilling
27.	Duties as Directed
28.	Other Part Time Rates of Pay
29.	Home School Liaison Officers and Aboriginal Student Liaison Officers - Special Conditions
30.	Teachers in Residential Agricultural High Schools - Special Conditions
31.	Dispute Resolution Procedures
32.	No Further Claims
33.	Anti-discrimination
34.	Work Health & Safety

- 35. Saturday School of Community Languages
- 35A. Saturday School of Community Languages – Operative for the period 1 January 2020 to 31 December 2020
- 35B. Saturday School of Community Languages – Operative for the period 1 January 2021 to 31 December 2021
- 36. Educational Paraprofessionals
- 37. Australian Professional Standards for Teachers
- 38. Area, Incidence and Duration

SCHEDULES

- Schedule 1A - Teacher Salaries - Standards Based Remuneration - 2020 to 2021
- Schedule 1B - Teacher Salaries - Common Incremental Salary Scale - 1 January 2020 to 30 June 2020
- Schedule 1C - Salaries - School Counsellor Salaries - Standards Based Remuneration – From 1 July 2020 onwards
- Schedule 1D - Salaries - Education Officers/Home School Liaison Officers/ Aboriginal Student Liaison Officers - From 1 July 2020 onwards
- Schedule 2A - Salaries - Principals - New Classification Structure - 2020 to 2021
- Schedule 2B - Salaries - Principals - Former Principal Classification Structure - 2020 to 2021
- Schedule 3 - Salaries - Other Promotion Classifications in the Teaching Service
- Schedule 4 - Rates of Pay - Casual Teachers - 2020 to 2021
- Schedule 5 - Other Rates of Pay - 2020 to 2021
- Schedule 6 - Rates of Pay - Educational Paraprofessionals
- Schedule 7 - Allowances
- Schedule 8 - Locality Allowances
- Schedule 9 - Excess Travel and Compensation for Travel on Official Business
- Schedule 10 - Special Conditions Covering Home School Liaison Officers and Aboriginal Student Liaison Officers
- Schedule 11 - Special Conditions Covering Teachers at Residential Agricultural High Schools
- Schedule 12A - Saturday School of Community Languages - Operative for the period from 1 January 2020 to 31 December 2020
- Schedule 12B - Saturday School of Community Languages - Operative for the period from 1 January 2021 to 31 December 2021.
- Schedule 13 - Australian Professional Standards for Teachers

2. Dictionary

- 2.1 "Aboriginal Student Liaison Officer" means a person or teacher who has been temporarily appointed to the position of Aboriginal student liaison officer.
- 2.2 "Accredited" means a teacher who has demonstrated the Professional Teaching Standards at the level of Proficient, Highly Accomplished or Lead and has been accredited as such by a Teacher Accreditation Authority.
- 2.3 "Alternate Period" means a period taught by a teacher being a period other than a period which the teacher is normally timetabled to teach and where the need for the period to be taught arises from the absence from duty on leave of another teacher.

- 2.4 "Assistant Principal" means a teacher who is appointed as such to assist a principal of a school in the management of the school.
- 2.5 "Associate Principal" means a teacher appointed as such to be responsible for the management, organisation, administration, supervision and efficiency of a school, other than P1-P5, where the school has been linked to a larger school in reasonable proximity and the administrative workload of the Associate Principal has been reduced.
- 2.6 "Australian Professional Standards for Teachers" means the seven Standards which outline what teachers should know and be able to do prescribed by the Australian Institute for Teaching and School Leadership as attached at Schedule 13.
- 2.7 "Authority" means the NSW Education Standards Authority to oversee accreditation and recognition of a teacher's professional capacity against the Australian Professional Standards under the Teacher Accreditation Act.
- 2.8 "Band 1 salary" means the salary which applies to teachers who have undertaken an approved initial teacher education program and met the Australian Professional Standards for Teachers at the Graduate level. It is mandatory for new teachers to be provisionally or conditionally accredited at Graduate teacher level to be approved for teaching in NSW.
- 2.9 "Band 2 salary" means the salaries which apply to teachers who are accredited at the level of Proficient. A Band 2 teacher has demonstrated the Australian Professional Standards for Teachers at the Proficient level and has been accredited as such by a Teacher Accreditation Authority.
- 2.10 "Band 3 salary" means the salary which applies to teachers who are accredited at the level of Highly Accomplished or Lead. A Band 3 teacher has demonstrated the Australian Professional Standards for Teachers at the Highly Accomplished or Lead level and has been accredited as such by a Teacher Accreditation Authority.
- 2.11 "Casual Teacher" means a teacher engaged, other than at the Saturday School of Community Languages, on an hourly or daily rate of pay in the Teaching Service.
- 2.12 "Conditionally accredited" means a teacher who has been conditionally accredited at the Graduate level who may have a degree, or is in the process of obtaining further education or subject qualifications.
- 2.13 "Core Hours" means the normal daily hours of operation of a school during which classes are conducted and in a high or central school includes a daily core timetable of eight periods, or the time equivalent.
- 2.14 "Degree" means a course of study in a higher education institution leading to a degree as described in the Australian Qualifications Framework as at 1 January 1995.
- 2.15 "Department" means the Department of Education.
- 2.16 "Deputy Principal" means a teacher appointed as such who is the deputy to the principal in a school and who acts as substitute in the absence of the principal, and is required to assist generally in the management of the school and, as required, in the special duties of the principal.
- 2.17 "Diploma" means a course of study in a higher education institution leading to a diploma as described in the Australian Qualifications Framework as at 1 January 1995.
- 2.18 "Distance Education Centre" means a school established to provide full time or part time programs of secondary or primary courses to students who cannot normally attend on a daily basis. Provided that distance education centres can be either stand alone schools or centres attached and integrated into an existing school.
- 2.19 "District Guidance Officer" means an officer appointed as such in a group of schools who is responsible to the Secretary or nominee for the guidance service within that group of schools.

- 2.20 "Education Officer" means an officer appointed as such, provided that for appointment the officer shall have an appropriate degree from a higher education institution or other qualifications and experience which the Secretary determines as satisfying requirements.
- 2.21 "Educational Paraprofessional" means a person or officer employed permanently or temporarily under the provisions of the Teaching Service Act to work under the guidance of a teacher in the classroom.
- 2.22 "Employee" means a person employed in a classification covered by this award by the Secretary or delegate under the provisions of the Teaching Service Act on a permanent or temporary basis.
- 2.23 "Environmental Education Centre" means a teaching and learning facility operated by the Department which students attend to participate in educational programs relevant to all primary and secondary key learning areas and/or to receive specific instruction in field work, and which provides support to schools in implementing environmental education.
- 2.24 "Equivalent" when referring to qualifications means those qualifications deemed by the Secretary to be equivalent to specified qualifications.
- 2.25 "Executive Principal, Connected Communities" means a person or officer employed temporarily under the provisions of the *Teaching Service Act* 1980 to lead the schools selected by the Department to participate in the Connected Communities strategy for the period of the operation of that strategy.
- 2.26 "Executive Director Connected Communities" means a person who is responsible for leadership and implementation of the Connected Communities strategy in the Department.
- 2.27 "Federation" means the Australian Education Union NSW Teachers Federation Branch.
- 2.28 "Five Year Trained Teacher (5YT)" means a teacher still remunerated on the common incremental salary scale who has obtained a degree and teaching qualifications from a higher education institution which together require a minimum of five years full time study. Any period of training in excess of that normally required to complete such a course shall not be deemed to be a training period for the purposes of any other definition.
- 2.29 "Four Year Trained Teacher (4YT)" means a teacher still remunerated on the common incremental salary scale who has:
- 2.29.1 Obtained a degree from a higher education institution and has, in addition, satisfactorily completed a teacher education qualification of at least one year's duration at a higher education institution; or
- 2.29.2 Completed a four year teacher education degree from a higher education institution; or
- 2.29.3 Completed such other course(s) which the Secretary determines as satisfying requirements for classification as a teacher.
- 2.30 "General Secretary" means the General Secretary of the Australian Education Union NSW Teachers Federation Branch.
- 2.31 "Graduate" means a person who has obtained a degree from a higher education institution or possesses qualifications determined by the Secretary to be equivalent to such a degree.
- 2.32 "Graduate Diploma" means a course of study in a higher education institution leading to a graduate diploma as described in the Australian Qualifications Framework as at 1 January 1995.
- 2.33 "Head Teacher" means a teacher who is appointed as such in a high school, distance education centre or central school, and is responsible to the principal for the program of work in a designated subject or learning area and the coordination of the work of classes in that area. The head teacher also exercises supervision over and gives advice and direction, when necessary, to other teachers in the subject or

learning area in addition to their teaching duties. Provided that head teachers may be appointed with specific designated responsibilities, including:

- 2.33.1 Head teacher (female students) advises female school students and promotes their interests in a high school or a secondary department of a central school where the enrolment of female school students in the school or department exceeds 500.
- 2.33.2 Head teacher (welfare) assists the principal and or deputy principal in the area of student welfare. Head teacher (welfare) includes head teacher (welfare) - residential agricultural high schools.
- 2.33.3 Head teacher (administration) is responsible for assigned duties associated with the general administration of the school.
- 2.34 "Higher Education Institution" means a university or other tertiary institution recognised by the Secretary which offers degrees, diplomas or teacher education courses.
- 2.35 "Home School Liaison Officer" means a person or teacher who has been temporarily appointed to the position of home school liaison officer.
- 2.36 "Industrial Relations Commission" means the Industrial Relations Commission of New South Wales, established by the *Industrial Relations Act 1996*.
- 2.37 "In Lieu of Duties" means duties undertaken by a teacher for a teacher absent from the classroom on duty elsewhere or performing other duties when that teacher is relieved of part of their regular face to face teaching load through variations in school organisation.
- 2.38 "Leader, Psychology Practice" means a person appointed to lead a team of Senior Psychologists, Education to implement professional practices consistent with the standards of the Department and the Psychology Board of Australia. The Leader, Psychology Practice develops and implements strategies to enhance psychology services in schools, including professional development and support for the school counselling workforce.
- 2.39 "Network" means a group of principals with a Director Educational Leadership.
- 2.40 "Non-school based teacher" means a person or officer who is employed in a full time or part time position, either temporarily or permanently, under the provisions of the Teaching Service Act and the Teacher Accreditation Act, in the classification of Senior Education Officer Class 1, Senior Education Officer Class 2 or Principal Education Officer.
- 2.41 "Officer" means and includes all persons permanently employed in the Teaching Service under the provisions of the Teaching Service Act and who, on the date of commencement of the award, were occupying one of the positions covered by the award or who, after that date, are appointed to one of these positions.
- 2.42 "Parties" means the Department and the Federation.
- 2.43 "Performance and development process" is a process for the continuous development of a skilled and effective workforce.
- 2.44 "Period" means, in a high or central school, a 40 minute teaching period.
- 2.45 "Principal" means a teacher appointed as such to be responsible for the management, organisation, administration, supervision and efficiency of a school and all departments in a school. A principal does not include a teacher in charge of a school.
- 2.46 "Professional Practice Framework" means the core capabilities which outline what school counsellors should know and be able to do to guide their professional practice as a psychologist.

- 2.47 "Provisionally accredited" means a teacher who has been provisionally accredited at the Graduate level who has successfully completed an initial teacher education program endorsed by the Board.
- 2.48 "Psychology Board" means the Psychology Board of Australia or successor organisation.
- 2.49 "Purpose of Funding for the Principal Classification" means the funding model consisting of a base student allocation, equity loadings and targeted (individual student) funding. The amount of funding allocated to a school determines the level of school complexity.
- 2.50 "Residential Agricultural High School" means a school classified as such by the Secretary.
- 2.51 "School" means a Department school or other centre, where instruction is provided by the Department, excluding an institute and including any place designated as part of, or as an annex to, such school.
- 2.52 "School Counsellor" means a teacher with an equivalent of four years training and a major in psychology who has responsibility for providing schools with advice and support in matters relating to student academic and personal development, welfare and discipline and provides psychological and other testing as required.
- 2.53 "Schools for Specific Purposes" (SSPs) for the purpose of the award are schools which are classified as such by the Secretary and are established under the Education Act 1990 to provide education for students with disabilities as listed in subclause 2.62.
- 2.54 "Secretary" means the Secretary, Department of Education.
- 2.55 "Senior Psychologist, Education" means an officer appointed to provide professional leadership and clinical supervision to a school counselling team and who has a leadership role as part of the networked specialist centres.
- 2.56 "Service" means continuous service, unless otherwise specified in the award.
- 2.57 "Supervisor of Female Students" means a female teacher appointed as such to advise female students and to promote their interests in a high school or secondary department of a central school where the school or department does not qualify for the appointment of a head teacher (female students).
- 2.58 "Teacher" means a person or officer employed permanently or temporarily in a full time or part time teaching position, other than at the Saturday School of Community Languages, under the provisions of the Teaching Service Act and appointed to a school. Unless otherwise specified in the award, a teacher shall include a school teacher in training.
- 2.59 "Teacher Accreditation Act" means the *Teacher Accreditation Act 2004*.
- 2.60 "Teacher Accreditation Authority" means the person or body delegated by the Secretary of the Department of Education under the Teacher Accreditation Act to accredit in government schools.
- 2.61 "Teacher in Charge (Schools)" means a teacher in charge of a centre not designated as a school determined by the Secretary where a principal is not appointed.
- 2.62 "Teacher in Charge of Residential Supervision of Agricultural High Schools" means a teacher selected by the principal to be responsible for the supervision and administration of additional duties relating to school student residence in residential agricultural high schools.
- 2.63 "Teachers of Students with Disabilities" means school teachers appointed to schools for specific purposes, or support classes in primary or high schools established to provide education for students with disabilities and including appointments as itinerant support teacher, as follows:
- 2.63.1 students with: mild intellectual disabilities (IM); moderate intellectual disabilities (IO); severe intellectual disabilities (IS); behaviour disorders (BD); emotional disabilities (ED); hearing

impairments (H); language disabilities (L); physical disabilities (P); severe reading (R), vision impairments (V); and

2.63.2 students in: an early childhood intervention program (EC); hospital schools, Royal Far West School, Stewart House (W); and community care programs (CT).

- 2.64 "Teaching Principal" means a teacher appointed as such to be responsible for the management, organisation, administration, supervision and efficiency of a school, other than P1-P5, whose duties include classroom teaching.
- 2.65 "Teaching Service Act" means the *Teaching Service Act* 1980.
- 2.66 "Temporary Teacher" means a person employed, other than at the Saturday School of Community Languages, in one engagement full time for four weeks or more or in one engagement for one to four days per week for two terms or more.
- 2.67 "Temporary Employee" means and includes all persons employed on a temporary basis, other than on a casual or part time casual basis under the Teaching Service Act.
- 2.68 "Trained Teacher" means a teacher who has satisfactorily completed a prescribed course of training at a higher education institution, or such other course or courses which the Secretary determines as satisfying requirements for classification as a teacher.
- 2.69 "Year Adviser" means a teacher appointed to assist Year 7-12 students in every high school or every central school which has a secondary department.
- 2.70 "Year 12 Relieving Period" means a relieving period required to be undertaken by a teacher when that school teacher has been relieved of their timetabled Year 12 face to face teaching duties after Year 12 students leave school to sit for the Higher School Certificate Examination in Term 4 of each year.

3. Salaries

Teachers

- 3.1 Salaries and rates of pay for teachers and teachers at the Saturday School, education officers, home school liaison officers, Aboriginal student liaison officers and counsellors shall be paid in accordance with this clause and Schedules 1A, 1B, 1C, 1D, 4, 5, 12A and 12B. These salaries will be increased by:
- 3.1.1 2.5% from the first pay period commencing on or after 1 January 2020; and
- 3.1.2 2.28% from the first pay period commencing on or after 1 January 2021.

Principals

- 3.2 Salaries and rates of pay for principals shall be paid in accordance with this clause and Schedules 2A and 2B. These salaries will be increased by:
- 3.2.1 2.5% from the first pay period commencing on or after 1 January 2020; and
- 3.2.2 2.28%% from the first pay period commencing on or after 1 January 2021.

Other Promotions Classifications in the Teaching Service

- 3.3 Salaries and rates of pay for the officers and temporary employees shall be paid in accordance with this clause and Schedule 3. These salaries will be increased by:
- 3.3.1 2.5% from the first pay period commencing on or after 1 January 2020; and
- 3.3.2 2.28% from the first pay period commencing on or after 1 January 2021.

Allowances

- 3.4 Allowances under this award will be increased by:
 - 3.4.1 2.5% from the first pay period commencing on or after 1 January 2020; and
 - 3.4.2 2.28%% from the first pay period commencing on or after 1 January 2021.

Teachers - Standards Based Remuneration

- 3.5 The rates of pay for teachers on the standards based remuneration structure will be in accordance with the teacher’s level of accreditation on commencement of employment.
 - 3.5.1 A teacher with accreditation at Graduate will commence on the Band 1 salary.
 - 3.5.2 A teacher with accreditation at Proficient will commence on the Band 2 salary.
 - 3.5.3 A teacher with accreditation at Highly Accomplished/Lead will commence on the Band 3 salary.

The salary bands are as follows.

Band 1	(Graduate)
Band 2	(Proficient)
Band 2	(Proficient) Band 2.1
Band 2	(Proficient) Band 2.2
Band 2	(Proficient) Band 2.3
Band 3	(Highly Accomplished/Lead)

- 3.6 Salary progression from Band 1 to Band 2 will take effect from the first full pay period after confirmation of proficient accreditation by the Teacher Accreditation Authority for teachers who have been employed for a minimum of two years full time and subject to the satisfactory performance of their duties. For those teachers who have confirmation of accreditation at Proficient but do not have two years full time service, progression from Band 1 to Band 2 will take effect from the first full pay period after the completion of two years of full time service.
- 3.7 Salary progression from Band 2.0 to 2.1 will take effect from the first full pay period after the completion of two years full time service at Band 2.0 for those teachers who continue to meet the requirements of proficient accreditation, including maintenance and subject to the satisfactory performance of their duties.
- 3.8 Salary progression from Band 2.1 to 2.2 and from 2.2 to 2.3 will take effect from the first full pay period after the completion of one year of full time service for those teachers who continue to meet the requirements of proficient accreditation, including maintenance and subject to the satisfactory performance of their duties.
- 3.9 Salary progression from Band 2.3 to Band 3 will take effect from the first full pay period after confirmation of Highly Accomplished/Lead accreditation by the Teacher Accreditation Authority for teachers who have been remunerated at Band 2.3 for a minimum of one year full time and subject to satisfactory performance of their duties. For those teachers who have confirmation of accreditation at Highly Accomplished/Lead but do not have one year of full time service at Band 2.3, progression from Band 2.3 to Band 3 will take effect from the first full pay period after the completion of one year of full time service at Band 2.3
- 3.10 For the purpose of salary progression, one year of full time service is 203 days.
- 3.11 Payment of salaries under this clause is conditional upon a teacher maintaining the appropriate level of accreditation.

3.12 Salaries and rates of pay for teachers under standards based remuneration shall be paid in accordance with clauses 3.5 to 3.12 and Schedule 1A.

Teachers - Common Incremental Salary Scale – 1 January 2020 to 30 June 2020.

3.13 Standards based remuneration will not apply to School Counsellors, Education Officers, Home School Liaison Officers and Aboriginal School Liaison Officers. These classifications will continue to be remunerated on the common incremental salary scale until 30 June 2020.

3.14 Minimum salaries on commencement of employment and maximum salaries for those classifications remunerated on the common incremental salary scale in Schedule at 1B are set out in the table below:

Classification	Minimum starting salary	Maximum salary
4YT school teachers	Step 5	Step 13
5YT school teachers	Step 6	Step 13
Education officers and Aboriginal student liaison officers:		
Non graduates	Step 3	Step 13
Graduates without teacher training	Step 4	Step 13
Graduates with teacher training	Step 5	Step 13
Graduates with five years of training	Step 6	Step 13

3.15 Subject to clause 6, Salary Progression and Maintenance, clause 20, Calculation of Service officers and temporary employees shall progress without change to their incremental date by way of annual increments to Step 13 on the common incremental salary scale as set out in Schedule 1B.

3.16 Salaries and rates of pay for teachers under the common incremental salary scale shall be paid in accordance with clauses 3.13 to 3.15 and Schedule 1B.

School Counsellors - Standards Based Remuneration – From 1 July 2020 to 31 December 2020

3.17 The rates of pay for school counsellors on the standards based remuneration structure will be in accordance with the school counsellor's level of registration.

3.17.1 A school counsellor with eligibility for registration with the Psychology Board will commence on the Band 1 salary.

3.17.2 A school counsellor with a minimum of provisional registration with the Psychology Board will commence on the Band 2 salary.

3.17.3 A school counsellor who is an existing teacher with the Department at the time of commencing employment as a school counsellor will be paid no less than the applicable classroom teacher rate from Schedule 1A, up to a maximum of Band 2.3, on commencement as a school counsellor.

3.17.4 The Professional Practice Framework will be finalised during 2020, following consultation between the parties.

The salary bands are as follows.

Band 1	Eligibility for registration with the Psychology Board
Band 2	A minimum of provisional registration with the Psychology Board.
Band 2	Band 2.1
Band 2	Band 2.2
Band 2	Band 2.3

3.18 Payment of salaries under this clause is conditional upon a school counsellor maintaining the appropriate level of registration.

3.19 Salaries and rates of pay for school counsellors shall be paid in accordance with clauses 3.17 to 3.19 and Schedule 1C.

School Counsellors - Standards Based Remuneration – From 1 January 2021

3.20 The rates of pay for school counsellors on the standards based remuneration structure will be in accordance with the school counsellor's level of registration and or teachers accreditation on commencement of employment.

3.20.1 A school counsellor with eligibility for registration with the Psychology Board will commence on the Band 1 salary.

3.20.2 A school counsellor with proficient accreditation against the Professional Practice Framework (PPF) and a minimum of provisional registration with the Psychology Board will commence on the Band 2 salary.

3.20.3 A school counsellor with evidence against the PPF, full registration with the Psychology Board and proficient accreditation with NESAs will commence on the Band 3 salary.

3.20.4 A school counsellor who is an existing teacher with the Department at the time of commencing employment as a school counsellor will be paid no less than the applicable classroom teacher rate from Schedule 1A, up to a maximum of Band 2.3, on commencement as a school counsellor.

The salary bands are as follows.

Band 1	Eligibility for registration with the Psychology Board
Band 2	Proficient accreditation against the PPF and a minimum of provisional registration with the Psychology Board.
Band 2	(Proficient) Band 2.1
Band 2	(Proficient) Band 2.2
Band 2	(Proficient) Band 2.3
Band 3	Evidence against the PPF, full registration by the Psychology Board and accreditation proficient by NESAs.

3.21 Salary progression from Band 1 to Band 2 will take effect from the first full pay period after confirmation of Proficient accreditation against the PPF and a minimum of provisional registration with the Psychology Board for school counsellors who have been employed for a minimum of two years full time and subject to the satisfactory performance of their duties. For those school counsellors who have confirmation of Proficient accreditation against the PPF and a minimum of provisional registration with the Psychology Board but do not have two years full time service, progression from Band 1 to Band 2 will take effect from the first full pay period after the completion of two years of full time service.

3.22 Salary progression from Band 2.0 to 2.1 will take effect from the first full pay period after the completion of two years full time service at Band 2.0 for those school counsellors who continue to meet the requirements of registration with the Psychology Board and subject to the satisfactory performance of their duties.

3.23 Salary progression from Band 2.1 to 2.2 and from 2.2 to 2.3 will take effect from the first full pay period after the completion of one year of full time service for those school counsellors who continue to meet the requirements of registration with the Psychology Board and subject to the satisfactory performance of their duties.

3.24 Salary progression from Band 2.3 to Band 3 will take effect from the first full pay period after confirmation of evidence against the PPF in accordance with the procedures implemented by the Department, full registration by the Psychology Board and accreditation at proficient or higher by NESAs for school counsellors who have been remunerated at Band 2.3 for a minimum of one year full time and subject to satisfactory performance of their duties. For those school counsellors who have confirmation of evidence against the PPF in accordance with the procedures implemented by the Department, full registration by the Psychology Board and accreditation at proficient or higher by

NESA but do not have one year of full time service at Band 2.3, progression from Band 2.3 to Band 3 will take effect from the first full pay period after the completion of one year of full time service at Band 2.3

- 3.25 For the purpose of salary progression, one year of full time service is 203 days.
- 3.26 Payment of salaries under this clause is conditional upon a school counsellor maintaining the appropriate level of registration/accreditation.
- 3.27 Salaries and rates of pay for school counsellors shall be paid in accordance with clauses 3.20 to 3.27 and Schedule 1C.

Education Officers/HSLO/ASLO/ - Salary Scale - From 1 July 2020

- 3.28 Education Officers, Home School Liaison Officers and Aboriginal Student Liaison Officers who are not eligible for standards based remuneration will be remunerated on the salary scale at Schedule 1D. Salaries and rates of pay for EO's/HLSO's/ASLO's shall be paid in accordance with clauses 3.28 to 3.30 and Schedule 1D.
- 3.29 Minimum salaries on commencement of employment and maximum salaries for those classifications remunerated on the salary scale in Schedule at 1D are set out in the table below:

Classification	Minimum starting salary	Maximum salary
Education officers and Aboriginal student liaison officers:		
Non graduates	Step 5	Step 13
Graduates without teacher training	Step 5	Step 13
Graduates with five years of training	Step 6	Step 13

- 3.30 Subject to clause 6, Salary Progression and Maintenance, clause 21, Calculation of Service officers and temporary employees shall progress without change to their incremental date by way of annual increments to Step 13 on the salary scale as set out in Schedule 1D.

Principal Classification Structure

- 3.31 Principals will be classified as follows and paid in accordance with Schedule 2A.
 - 3.31.1 Teaching Principal (TP1) or Associate Principal
 - 3.31.2 Teaching Principal (TP2) or Associate Principal
 - 3.31.3 Principal 1 (P1)
 - 3.31.4 Principal 2 (P2)
 - 3.31.5 Principal 3 (P3)
 - 3.31.6 Principal 4 (P4)
 - 3.31.7 Principal 5 (P5)
- 3.32 The rate of pay for a principal will provide for a base principal salary and a complexity loading for principals in the classifications of P2, P3, P4 and P5.
- 3.33 The principal classification in is derived from the school funding allocation as prescribed by the Purpose of Funding for the Principal Classification document.

- 3.34 An annual review of funding thresholds will take place linked to the release of the school funding allocations and from the previous school year.
- 3.35 Base salaries and complexity loadings will be adjusted where applicable in accordance with clause 3.2.
- 3.36 In circumstances where the application of the school funding allocation to a school results in a higher principal classification, the principal will, while they remain at that school, receive the new salary effective from Day 1, Term 1 of the following year.
- 3.37 In circumstances where the application of the school funding allocation to a school results in a lower principal classification, the principal will, while they remain at that school, retain their classification, complexity loading and salary for a period of three years effective from Day 1, Term 1 of the following year.

At the end of the three year period, the principal's classification, complexity loading and salary will revert to the relevant level in accordance with Schedule 2A.

- 3.38 Principals who hold a substantive principal position prior to Day 1, Term 1 2016/20 and choose to remain on the former principal classification structure will be remunerated according to the previous enrolment based classification and review procedure, increased in accordance with clause 3.2.

4. Deduction of Union Membership Fees

- 4.1 The union shall provide the employer with a schedule setting out union fortnightly membership fees payable by members of the union in accordance with the union's rules.
- 4.2 The union shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of union fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.
- 4.3 Subject to 4.1 and 4.2 above, the employer shall deduct union fortnightly membership fees from the pay of any employee who is a member of the union in accordance with the union's rules, provided that the employee has authorised the employer to make such deductions.
- 4.4 Monies so deducted from employees' pay shall be forwarded regularly to the union together with all necessary information to enable the union to reconcile and credit subscriptions to employees' union membership accounts.
- 4.5 Unless other arrangements are agreed to by the employer and the union, all union membership fees shall be deducted on a fortnightly basis.
- 4.6 Where an employee has already authorised the deduction of union membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

5. Allowances

- 5.1 Allowances shall be paid in accordance with this clause and Schedules 7 and 8. Allowances in terms of Schedule 7 shall be paid to officers and or temporary employees in the circumstances set out in subclauses 5.2 to 5.7 inclusive.
- 5.2 In lieu of evening work, weekend work, travel time (where applicable) and all additional duties and responsibilities involved to:
 - 5.2.1 Home school liaison officers and Aboriginal student liaison officers.
 - 5.2.2 Teachers in charge
 - 5.2.3 Year advisers.

- 5.2.4 Teachers other than the principal appointed to teach classes of students with disabilities.
- 5.2.5 Principals of schools designated by the Secretary as schools for specific purposes.
- 5.2.6 The Principal of Stewart House.
- 5.2.7~~8~~ The deputy principal (primary) or assistant principal of a central school.
- 5.3 In demonstration schools to:
 - 5.3.1 principals -
 - Former PP1 and PP2 schools, classified as such prior to 1 January 2016, which receive the allowance under subclause 5.3.1 will continue to be paid this allowance for the duration of this award.
 - 5.3.2 other promotions positions; and
 - 5.3.3 trained teachers.
- 5.4 In schools where there is a requirement for demonstration lessons to be taken to:
 - 5.4.1 teachers, for each demonstration lesson in excess of two in any term actually given by them; and
 - 5.4.2 teachers at any other school at which demonstration lessons are given in respect of authorised demonstration lessons for:
 - each half hour lesson; or
 - each 40 minute lesson involving secondary students.
 - 5.4.3 provided that payments made to teachers under paragraphs 5.4.1 and 5.4.2 of this subclause are subject to a maximum per annum payment; and for the purpose of this subclause a demonstration lesson shall mean a lesson authorised by or on behalf of a university given to student teachers, or a lesson given to another group approved by the Secretary.
- 5.5 In residential agricultural high schools to:
 - 5.5.1 teachers rostered for out of normal hours student supervision;
 - 5.5.2 head teacher (welfare) for residential supervision;
 - 5.5.3 a teacher appointed to be in charge of residential supervision;
 - 5.5.4 principals for on call and special responsibilities; and
 - 5.5.5 deputy principals for on call and special responsibilities.
- 5.6 To supervisors of female students:
 - 5.6.1 Where the average attendance of female students does not exceed 200;
 - 5.6.2 Where the average attendance of female students exceeds 200 but does not exceed 400;
 - 5.6.3 Where the average attendance of female students exceeds 400.
- 5.7 Education officers who have been on top of their appropriate salary scale for a period of twelve months and have demonstrated to the satisfaction of the Secretary by the work performed and results achieved,

the aptitude, abilities and qualities warranting such payment shall receive an additional payment as set out in Schedule 7 and, after a further twelve months, an additional allowance of the same amount.

- 5.8 Locality and related allowances shall be paid as set out in Schedule 8.
- 5.9 To Executive Principals, Connected Communities as set out in Schedule 7 subject to the:
- 5.9.1 completion by the Executive Principal, Connected Communities of five (5) years of service in that position; and
- 5.9.2 satisfactory performance of the Executive Principal, Connected Communities in that position at the end of the five year period as determined by the Executive Director, Connected Communities; and
- 5.9.3 on completion of each subsequent five years of service in that position subject to the provisions of 5.9.2 above.

6. Salary Progression and Maintenance

1 January 2020 to 30 June 2020

- 6.1 Teachers who were employed prior to 1 January 2016 and who were eligible for progression to standards based remuneration via the transition provisions shall be entitled to progress along or be maintained on the common incremental salary scale after 203 days of service or the salary level for a promotions position after each 12 months of service subject to the officer demonstrating continuing efficiency in teaching practice via an annual performance and development plan, satisfactory performance and professional growth until they transition to the standards based remuneration scale. Salary progression for teachers under standards based remuneration will occur in accordance with the provisions of subclauses 3.5 to 3.12.
- 6.2 Temporary teachers who were employed prior to 1 January 2016 and who were eligible for progression to standards based remuneration via the transition provisions shall be entitled to progress along or be maintained on the common incremental salary scale until they transition to the standards based remuneration scale. Salary progression for teachers under standards based remuneration will occur in accordance with the provisions of subclauses 3.5 to 3.12. All progression for temporary teachers is subject to the provisions of subclause 22.4 of clause 22, Temporary Teachers.
- 6.3 Those officers prescribed at clause 3.13 shall be entitled to progress along or be maintained on the common incremental salary scale after each 203 days of service subject to the officer demonstrating continuing efficiency in teaching practice via an annual performance and development plan, satisfactory performance and professional growth for the life of this award.
- 6.4 A temporary teacher relieving in a TP1 or AP1 position or Principal - Environmental Education Centre or Hospital School or Grade 1 position under clause 24, Relief in TP1 or AP1 or Principal - Environmental Education Centre or Hospital School or Grade 1 Positions, shall be entitled to be maintained at that salary level subject to the provisions of subclause 22.4 of clause 22, Temporary Teachers.

From 1 July 2020 onwards

- 6.5 Salary progression for teachers under standards based remuneration will occur in accordance with the provisions of subclauses 3.5 to 3.12.
- 6.6 Salary progression for school counsellors under standards based remuneration will occur in accordance with the provisions of subclauses 3.20 to 3.27.
- 6.7 All progression for temporary teachers is subject to the provisions of subclause 22.4 of clause 22, Temporary Teachers.

- 6.8 Those officers prescribed at clause 3.28 shall be entitled to progress along or be maintained on the salary scale after each 203 days of service subject to the officer demonstrating continuing efficiency in teaching practice via an annual performance and development plan, satisfactory performance and professional growth for the life of this award.
- 6.9 A temporary teacher relieving in a TP1 or AP1 position or Principal - Environmental Education Centre or Hospital School or Grade 1 position under clause 24, Relief in TP1 or AP1 or Principal - Environmental Education Centre or Hospital School or Grade 1 Positions, shall be entitled to be maintained at that salary level subject to the provisions of subclause 22.4 of clause 22, Temporary Teachers.

7. Performance and Development Processes for Teachers

- 7.1 The Performance and Development Framework for Principals, Executives and Teachers, jointly developed by the parties, applies to employees covered by this award.

8. Salary Packaging

- 8.1 For the purposes of this clause "salary" means the salary or rates of pay prescribed by Schedules 1A, 1B,1C, 1D, 2A, 2B, 3, 4, and 5 of this award and any allowances paid to an employee which form part of the employee's salary for superannuation purposes.
- 8.2 An employee may, by agreement with the employer, enter into a salary packaging arrangement including salary sacrifice to superannuation where they may convert up to 100% of their salary to other benefits.
- 8.3 Any pre-tax and post-tax payroll deductions must be taken into account prior to determining the amount of salary available to be packaged. Such payroll deductions may include but are not limited to, compulsory superannuation payments, HECS payments, child support payments, judgment debtor/garnishee orders, union fees, health fund premiums.
- 8.4 The terms and conditions of the salary packaging arrangement, including the duration as agreed between the employee and employer, will be provided in a separate written agreement, in accordance with the Department's salary packaging guidelines. Such agreement must be made prior to the period of service to which the earnings relate.
- 8.5 Salary packaging must be cost neutral for the employer. Employees must reimburse the employer in full for the amount of:
- 8.5.1 any fringe benefits tax liability arising from a salary packaging arrangement; and
 - 8.5.2 any administrative fees.
- 8.6 Where the employee makes an election to salary package the following payments made by the employer in relation to an employee shall be calculated by reference to the annual salary which the employee would have been entitled to receive but for the salary packaging arrangement:
- 8.6.1 Superannuation Guarantee Contributions;
 - 8.6.2 any salary-related payment including but not limited to allowances and workers compensation payments; and
 - 8.6.3 payments made in relation to accrued leave paid on termination of the employee's employment or on the death of the employee.

9. Initial Appointments

- 9.1 All initial appointments shall be on the basis of merit.

- 9.2 The initial appointment of all officers shall be for a minimum probationary period of one year. Confirmation of an officer's permanent appointment shall depend on the officer meeting the Department's requirements for permanent appointment current at that time.

10. Teaching in More Than One Location

- 10.1 Teachers may be programmed to teach in more than one location.
- 10.1.1 Where this occurs there shall be full consultation with the affected teacher or teachers, including sufficient notice and any specific needs of the affected teacher or teachers shall be taken into account.
- 10.1.2 A teacher who is appointed to a school and is programmed to teach in more than one school shall be entitled to the travel compensation provisions at Part B of Schedule 9, Excess Travel and Compensation for Travel on Official Business.

11. Deferred Salary Scheme

- 11.1 Officers may seek to join the Department's deferred salary scheme.
- 11.2 Successful applicants may defer twenty per cent of their salary for the first four years and be paid the deferred salary in the fifth year.
- 11.3 The deferred salary scheme does not apply to temporary teachers.

12. Compensation for Travel on Department Business

- 12.1 Where an employee is required and authorised to travel on Department business in the performance of their duties, compensation for travel shall be determined in accordance with the provisions of Schedule 9- Excess Travel and Compensation for Travel on Official Business.

13. Assessment and Reporting and Quality of Educational Outcomes

- 13.1 The following shall be implemented:
- 13.1.1 annual school reports and associated school self-evaluation and improvement programs;
- 13.1.2 school development policy;
- 13.1.3 the Higher School Certificate;
- 13.2 These shall be subject to the protocols agreed to in 1997 in relation to Annual School Self-Evaluation, Annual School Reporting and external test data (contained in Matter No. IRC 3925/97 as tabled in the Industrial Relations Commission).
- 13.3 The parties agree to negotiate on variations, if any, to the policies and procedures in place at the commencement of the award, relevant to annual school reports, school self-evaluation committees and school reviews.

14. Teacher Efficiency Process

- 14.1 The Teacher Improvement Programs relevant to each classification under this award will apply to all employees.
- 14.2 Any changes to existing procedures or the development of new procedures will be the subject of consultation between the parties.

15. Teaching Hours for Years 11 and 12

- 15.1 The purpose of this clause is to increase the delivery of Vocational Education and Training in schools and to enhance the curriculum opportunities available for post compulsory secondary students arising from the new Higher School Certificate.
- 15.2 A secondary school shall have core hours sufficient to operate an eight by 40 minute period timetable per day (or its equivalent).
- 15.3 A principal shall arrange for timetabling of classes for the year (or other period over which a school's timetable may apply) to maximise the extent to which the curriculum preferences of Year 11 and 12 students can be satisfied to meet the purpose expressed in subclause 15.1 above.
- 15.4 In addition to the core hours a principal may timetable classes for Years 11 and 12 outside core timetable hours between 7.30am and 5.30pm Monday to Friday, where not to do so would unnecessarily restrict Year 11 and 12 student course choice, provided that:
- 15.4.1 the principal has consulted with the school community; and
- 15.4.2 has taken into account the issues of course access for Year 11 and 12 students, parental concerns and practical matters relating to the operation of classes at such times.
- 15.5 A teacher shall not unreasonably refuse to teach classes at this time.
- 15.6 Provided that the overall hours of duty of the school teacher shall not be exceeded, a teacher timetabled in accordance with this clause and working beyond the core timetable hours shall be entitled to an equivalent period of core timetabled time off during the week for the time beyond the core time so taught. Wherever possible, the time off should be at the beginning or end of the core hours of the school day.
- 15.7 A teacher shall not be required to be timetabled both before and after the core hours on any given day.

16. Allocation of Duties in High Schools

- 16.1 Teachers (other than teachers in training), head teachers and deputy principals in high schools may be required to teach the following periods (or their time equivalent):

Classification	Teaching periods per week	Periods per week, as determined by the principal, for sport (refer to subclause 16.6)
Teachers in High Schools	28	up to 3
Head Teachers in High Schools	22	up to 3
Deputy Principals in High Schools	14	up to 3

- 16.2 A principal may require a teacher (other than a teacher in training), head teacher or deputy principal in high schools to relieve an absent colleague by working the following alternate periods as defined in clause 2.3:

Classification	Additional Alternate Periods per term
Teachers in High Schools	Up to 6
Head Teachers in High Schools	Up to 5
Deputy Principals in High Schools	Up to 3

(264)

SERIAL C8033

CROWN EMPLOYEES (TEACHERS IN SCHOOLS AND RELATED EMPLOYEES) SALARIES AND CONDITIONS AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Teachers Federation, Industrial Organisation of Employees.

(No. IRC 1027 of 2012)

Before The Honourable Justice Haylen

22 November 2012

AWARD

1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Dictionary
3.	Salaries
4.	Deduction of Union Membership Fees
5.	Allowances
6.	Salary Progression and Maintenance
7.	Teacher Quality
8.	Salary Packaging
9.	Initial Appointments
10.	Teaching in More Than One Location
11.	Deferred Salary Scheme
12.	Compensation for Travel on Department Business
13.	Assessment and Reporting and Quality of Educational Outcomes
14.	Teacher Performance Management
15.	Teaching Hours for Years 11 and 12
16.	Allocation of Duties in High Schools
17.	Teaching Outside Normal School Hours
18.	Alternative Work Organisation
19.	Teachers Appointed to More than One School
20.	Qualifications, Recruitment and Training
21.	Calculation of Service
22.	Temporary Teachers
23.	Casual Teachers
24.	Relief in PP6 or Principal - Environmental Education Centre or Hospital School Grade
25.	Training and Development
26.	Multi-skilling
27.	Duties as Directed
28.	Other Part Time Rates of Pay
29.	Home School Liaison Officers and Aboriginal Student Liaison Officers - Special Conditions
30.	Teachers in Residential Agricultural High Schools - Special Conditions
31.	Dispute Resolution Procedures
32.	No Further Claims
33.	Anti-discrimination
34.	WorkHealth & Safety

- 35. Saturday School of Community Languages
- 36. Area, Incidence and Duration

SCHEDULES

- Schedule 1- Common Incremental Salary Scale
- Schedule 2 - Allowances
- Schedule 3 - Locality Allowances
- Schedule 4 - Salaries - Promotion Classifications in the Teaching Service
- Schedule 5 - Rates of Pay - Casual Teachers
- Schedule 6 - Other Part time Rates of Pay
- Schedule 7 - Excess Travel and Compensation for Travel on Official Business
- Schedule 8 - Special Conditions Covering Home School Liaison Officers and Aboriginal Student Liaison Officers
- Schedule 9 - Special Conditions Covering Teachers at Residential Agricultural High Schools
- Schedule 10 - Saturday School of Community Languages

2. Dictionary

- 2.1 "Aboriginal Student Liaison Officer" means a person or teacher who has been temporarily appointed to the position of Aboriginal student liaison officer.
- 2.2 "Alternate Mode Course" means a course of teacher training other than a course completed by full time study with a higher education institution.
- 2.3 "Alternate Period" means a period taught by a teacher being a period other than a period which the teacher is normally timetabled to teach and where the need for the period to be taught arises from the absence from duty on leave of another teacher.
- 2.4 "Assistant Principal" means a teacher who is appointed as such to assist a principal of a school in the management of the school.
- 2.5 "Casual Teacher" means a teacher engaged on an hourly or daily rate of pay in the Teaching Service.
- 2.6 "Conditionally Trained Teacher (C)" means a teacher whose approval to teach is conditional upon completion of additional educational requirements prescribed by the Director-General.
- 2.7 "Core Hours" means the normal daily hours of operation of a school during which classes are conducted and in a high or central school includes a daily core timetable of eight periods, or the time equivalent.
- 2.8 "Degree" means a course of study in a higher education institution leading to a degree as described in the Australian Qualifications Framework as at 1 January 1995.
- 2.9 "Department" means the Department of Education and Communities.
- 2.10 "Deputy Principal" means a teacher appointed as such who is the deputy to the principal in a school and who acts as substitute in the absence of the principal, and is required to assist generally in the management of the school and, as required, in the special duties of the principal.
- 2.11 "Diploma" means a course of study in a higher education institution leading to a diploma as described in the Australian Qualifications Framework as at 1 January 1995.
- 2.12 "Director-General" means the Director-General of Education and Communities.

- 2.13 "Distance Education Centre" means a school established to provide full time or part time programs of secondary or primary courses to students who cannot normally attend on a daily basis. Provided that distance education centres can be either stand alone schools or centres attached and integrated into an existing school.
- 2.14 "District" means a group of schools.
- 2.15 "District Guidance Officer" means an officer appointed as such in a school district(s) or a group of schools who is responsible to the Director-General or nominee for the guidance service within the district(s) or group of schools.
- 2.16 "Education Officer" means an officer appointed as such, provided that for appointment the officer shall have an appropriate degree from a higher education institution or other qualifications and experience which the Director-General determines as satisfying requirements.
- 2.17 "Employee" means a person employed in a classification covered by this award by the Director-General or delegate under the provisions of the Teaching Service Act on a permanent or temporary basis.
- 2.18 "Environmental Education Centre" means a teaching and learning facility operated by the Department which students attend to participate in educational programs relevant to all primary and secondary key learning areas and/or to receive specific instruction in field work, and which provides support to schools in implementing environmental education.
- 2.19 "Equivalent" when referring to qualifications means those qualifications deemed by the Director-General to be equivalent to specified qualifications.
- 2.20 "Executive Principal, Connected Communities" means a person or officer employed temporarily under the provisions of the *Teaching Service Act*, 1980 to lead the schools selected by the Department to participate in the Connected Communities strategy for the period of the operation of that strategy.
- 2.21 "Executive Director Connected Communities" means a person who is responsible for leadership and implementation of the Connected Communities strategy in the Department.
- 2.22 "Federation" means the New South Wales Teachers Federation.
- 2.23 "Five Year Trained Teacher (5YT)" means a teacher who has obtained a degree and teaching qualifications from a higher education institution which together require a minimum of five years full time study. Any period of training in excess of that normally required to complete such a course shall not be deemed to be a training period for the purposes of any other definition.
- 2.24 "Four Year Trained Teacher (4YT)" means a teacher who has:
- 2.24.1 obtained a degree from a higher education institution and has, in addition, satisfactorily completed a teacher education qualification of at least one year's duration at a higher education institution; or
- 2.24.2 completed a four year teacher education degree from a higher education institution; or
- 2.24.3 completed such other course(s) which the Director-General determines as satisfying requirements for classification as a teacher.
- 2.25 "General Secretary" means the General Secretary of the Federation.
- 2.26 "Graduate" means a person who has obtained a degree from a higher education institution or possesses qualifications determined by the Director-General to be equivalent to such a degree.
- 2.27 "Graduate Diploma" means a course of study in a higher education institution leading to a graduate diploma as described in the Australian Qualifications Framework as at 1 January 1995.

- 2.28 "Head Teacher" means a teacher who is appointed as such in a high school, distance education centre or central school, and is responsible to the principal for the program of work in a designated subject or learning area and the coordination of the work of classes in that area. The head teacher also exercises supervision over and gives advice and direction, when necessary, to other teachers in the subject or learning area in addition to their teaching duties. Provided that head teachers may be appointed with specific designated responsibilities, including:
- 2.28.1 Head teacher (female students) advises female school students and promotes their interests in a high school or a secondary department of a central school where the enrolment of female school students in the school or department exceeds 500.
- 2.28.2 Head teacher (welfare) assists the principal and or deputy principal in the area of student welfare. Head teacher (welfare) includes head teacher (welfare) - residential agricultural high schools.
- 2.28.3 Head teacher (administration) is responsible for assigned duties associated with the general administration of the school.
- 2.29 "Higher Education Institution" means a university or other tertiary institution recognised by the Director-General which offers degrees, diplomas or teacher education courses.
- 2.30 "Highly Accomplished Teacher" means a person or officer employed temporarily by the Department pursuant to the provisions of the Teaching Services Act, 1980 under the period of the National Partnerships on Improving Teacher Quality and Low Socio Economic Status School Communities.
- 2.31 "Home School Liaison Officer" means a person or teacher who has been temporarily appointed to the position of home school liaison officer.
- 2.32 "Industrial Relations Commission" means the Industrial Relations Commission of New South Wales, established by the *Industrial Relations Act* 1996.
- 2.33 "In Lieu of Duties" means duties undertaken by a teacher for a teacher absent from the classroom on duty elsewhere or performing other duties when that teacher is relieved of part of their regular face to face teaching load through variations in school organisation.
- 2.34 "Officer" means and includes all persons permanently employed in the Teaching Service under the provisions of the Teaching Service Act and who, on the date of commencement of the award, were occupying one of the positions covered by the award or who, after that date, are appointed to one of these positions.
- 2.35 "Parties" means the Department and the Federation.
- 2.36 "Period" means, in a high or central school, a 40 minute teaching period.
- 2.37 "Principal" means a teacher appointed as such to be responsible for the management, organisation, administration, supervision and efficiency of a school and all departments in a school. A principal does not include a teacher in charge of a school.
- 2.38 "Residential Agricultural High School" means a school classified as such by the Director-General.
- 2.39 "School" means a Department school or other centre, where instruction is provided by the Department, excluding an institute and including any place designated as part of, or as an annex to, such school.
- 2.40 "School Counsellor" means a teacher with an equivalent of four years training and a major in psychology who has responsibility for providing schools with advice and support in matters relating to student academic and personal development, welfare and discipline and provides psychological and other testing as required.

- 2.41 "Schools for Specific Purposes" (SSPs) for the purpose of the award are schools which are classified as such by the Director-General and are established under the *Education Act* 1990 to provide education for students with disabilities as listed in subclause 2.48.
- 2.42 "Senior Assistant" means a two or three year trained teacher who has been classified as a senior assistant on or before 1 January 1973 and who is employed in a school providing secondary education.
- 2.43 "Service" means continuous service, unless otherwise specified in the award.
- 2.44 "Supervisor of Female Students" means a female teacher appointed as such to advise female students and to promote their interests in a high school or secondary department of a central school where the school or department does not qualify for the appointment of a head teacher (female students).
- 2.45 "Teacher" means a person or officer employed permanently or temporarily in a full time or part time teaching position under the provisions of the *Teaching Service Act* 1980 and appointed to a school. Unless otherwise specified in the award, a teacher shall include a school teacher in training.
- 2.46 "Teacher in Charge (Schools)" means a teacher in charge of a centre not designated as a school determined by the Director-General where a principal is not appointed.
- 2.47 "Teacher in Charge of Residential Supervision of Agricultural High Schools" means a teacher selected by the principal to be responsible for the supervision and administration of additional duties relating to school student residence in residential agricultural high schools.
- 2.48 "Teacher in Training (Schools)" means a graduate recruited to train as a teacher through an alternate mode course.
- 2.49 "Teachers of Students with Disabilities" means school teachers appointed to schools for specific purposes, or support classes in primary or high schools established to provide education for students with disabilities and including appointments as itinerant support teacher, as follows:
- 2.49.1 students with: mild intellectual disabilities (IM); moderate intellectual disabilities (IO); severe intellectual disabilities (IS); behaviour disorders (BD); emotional disabilities (ED); hearing impairments (H); language disabilities (L); physical disabilities (P); severe reading (R), vision impairments (V); and
- 2.49.2 students in: an early childhood intervention program (EC); hospital schools, Royal Far West School, Stewart House (W); and community care programs (CT).
- 2.50 "Teaching Service Act" means the *Teaching Service Act* 1980.
- 2.51 "TAFE" means the New South Wales Technical and Further Education Commission.
- 2.52 "Temporary Teacher" means a person employed in one engagement full time for four weeks or more or in one engagement for one to four days per week for two terms or more.
- 2.53 "Temporary Employee" means and includes all persons employed on a temporary basis, other than on a casual or part time casual basis under the *Teaching Service Act* 1980.
- 2.54 "Trained Teacher" means a teacher who has satisfactorily completed a prescribed course of training at a higher education institution, or such other course or courses which the Director-General determines as satisfying requirements for classification as a teacher.
- 2.55 "Two Year Trained Teacher (2YT) or Three Year Trained Teacher (3YT)" means a teacher who has satisfactorily completed a prescribed course of teacher education of two or three years duration respectively at a higher education institution, or such other course or courses which the Director-General determines as satisfying requirements for classification as a school teacher.

- 2.56 "Year Adviser" means a teacher appointed to assist Year 7-12 students in every high school or every central school which has a secondary department.
- 2.57 "Year 12 Relieving Period" means a relieving period required to be undertaken by a teacher when that school teacher has been relieved of their timetabled Year 12 face to face teaching duties after Year 12 students leave school to sit for the Higher School Certificate Examination in Term 4 of each year.

3. Salaries

- 3.1 Salaries and rates of pay shall be paid in accordance with this clause and Schedules 1, 4, 5, 6 and 10 and will be increased by 2.5% from the first pay period commencing on or after 1 January 2013.
- 3.2 Allowances under this award will be increased by 2.5% from the first pay period commencing on or after 1 January 2013.
- 3.3 Subject to the provisions of the *Teaching Service Act* 1980 and the regulations made thereunder and to satisfy the conditions prescribed by this award, the salaries of the following officers and temporary employees are set out in Schedules 1, 4, 5 and 6.

Classification	Schedule
Teachers, education officers, home school liaison officers, Aboriginal student liaison officers, counsellors	Schedule 1
Promotion classifications in schools and non school based Teaching Service classifications salary scales.	Schedule 4

- 3.4 Except as otherwise provided under the Department's salary packaging scheme as set out in clause 8, Salary Packaging, employees in Schedules 1, 4, 5 and 6 must be paid at an annual salary level not less than that for the appropriate classification.
- 3.5 Minimum salaries on commencement of employment and maximum salaries under the common incremental salary scale in Schedule 1 are set out in the table below:

Classification	Minimum starting salary (new step)	Maximum salary (new step)
2YT school teachers	Step 2	Step 13
3YT school teachers	Step 3	Step 13
4YT school teachers	Step 5	Step 13
5YT school teachers	Step 6	Step 13
C2YT school teachers	Step 2	Step 6
C3YT school teachers	Step 3	Step 6
C4YT school teachers	Step 5	Step 9
C5YT school teachers	Step 6	Step 9
Education officers and Aboriginal student liaison officers:		
Non graduates	Step 3	Step 13
Graduates without teacher training	Step 4	Step 13
Graduates with teacher training	Step 5	Step 13
Graduates with five years of training	Step 6	Step 13
Teachers in training	Step 1	Step 1

NOTE: Conditionally trained teachers (C) remain on first step of the appropriate incremental scale for the first two years of service, before progressing to the appropriate maximum step by annual increments.

- 3.6 Subject to clause 6, Salary Progression and Maintenance, clause 21, Calculation of Service officers and temporary employees shall progress without change to their incremental date by way of annual increments to Step 13 on the common incremental salary scale as set out in Schedule 1.

- 3.7 Two and three year trained school teachers may vary their incremental date and rate of progression if they satisfy conditions contained in subclauses 3.8, 3.9, 3.10 and 3.11 of this clause.
- 3.8 A two year trained teacher who successfully completes studies which satisfy requirements for a three year teacher education degree or diploma shall progress to that step on the common incremental salary scale that the teacher could have achieved had the teacher entered the Teaching Service as a three year trained teacher. Subject to clause 6, Salary Progression and Maintenance, these teachers shall then progress along the common incremental salary scale on the anniversary of the first day of the month following the successful completion of the required study.
- 3.9 A two year trained teacher who successfully completes one year of full time recognised degree level study or its equivalent shall be paid a double increment with retention of normal incremental date. On reaching Step 9 of the common incremental salary scale, such a teacher shall be deemed a three year trained teacher and, subject to clause 6, Salary Progression and Maintenance may progress by annual increments to the top step of the common incremental salary scale.
- 3.10 A three year trained teacher who successfully completes one year of full time recognised degree level study or its equivalent shall progress one increment on the common incremental salary scale, effective from the first day of the month following the successful completion of the required study.
- 3.11 A three year trained teacher who completes:
- 3.11.1 a graduate diploma of at least one year of full time study or its part time equivalent; or
- 3.11.2 part of a degree course or an equivalent course of study as determined by the Director-General which results in the teacher having attained an academic standard equivalent to that of a four year trained teacher,
- shall progress to the step on the common incremental salary scale that the teacher could have achieved had the teacher entered the Teaching Service as a four year trained teacher. The salary progression shall be effective from the first day of the month following the successful completion of the required study.
- 3.12 In relation to promotions classifications in schools, the following shall apply:
- 3.12.1 The position of principal in a primary school shall be classified as follows:

Classification of Principal	Student Enrolments
PP6	1 - 25
PP5	26 - 159
PP4	160 - 300
PP3	301 - 450
PP2	451 - 700
PP1	701+

- 3.12.2 Principals shall only be appointed to hospital schools when specifically approved by the Director-General.
- 3.12.3 Promotions positions in schools for specific purposes shall receive the same salary as applicable to similar positions in primary schools. Provided that, in determining the principal's salary, the school student enrolment numbers shall be notionally determined by multiplying the permanent full time teaching staff by 30. Teaching staff for this purpose does not include employees, including the principal, who are not required to undertake face to face teaching duties.
- 3.12.4 The salary payable to principals of stand alone distance education centres shall be equivalent to those paid to principals of primary schools. Provided that to determine the student enrolment numbers for the purpose of determining the classification of a principal of a stand alone distance education centre, the actual number of each category of student shall be multiplied by the following factors to determine notional student numbers:

Category of Student	Factor
Primary students	2.14
Secondary students - integrated	2.46
Secondary students - stand alone	1.8
Students at the Open High School, each unit of study per student	6 x 1.89
Pre-school students	1.38
Students with disabilities	2.7

3.12.5 The position of principal in a central school shall be classified as follows:

Classification of Principal	Student Enrolments
PC4	26 - 159
PC3	160 - 300
PC2	301 - 450
PC1	451+

3.12.6 The position of principal in a high school shall be classified as follows:

Classification of Principal	Student Enrolments
PH2	1 - 900
PH1	More than 900

- 3.13 Where the actual enrolment used to determine the classification of a principal's position in subclause 3.14 either increases or decreases so that the principal's position would be reclassified, then the variation in the principal's classification shall not be effected until the enrolment is such that it has fallen within the new student enrolment band for a period of two consecutive years.

4. Deduction of Union Membership Fees

- 4.1 The union shall provide the employer with a schedule setting out union fortnightly membership fees payable by members of the union in accordance with the union's rules.
- 4.2 The union shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of union fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.
- 4.3 Subject to 4.1 and 4.2 above, the employer shall deduct union fortnightly membership fees from the pay of any employee who is a member of the union in accordance with the union's rules, provided that the employee has authorised the employer to make such deductions.
- 4.4 Monies so deducted from employees' pay shall be forwarded regularly to the union together with all necessary information to enable the union to reconcile and credit subscriptions to employees' union membership accounts.
- 4.5 Unless other arrangements are agreed to by the employer and the union, all union membership fees shall be deducted on a fortnightly basis.
- 4.6 Where an employee has already authorised the deduction of union membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

5. Allowances

- 5.1 Allowances shall be paid in accordance with this clause and Schedules 2 and 3. Allowances in terms of Schedule 2 shall be paid to officers and or temporary employees in the circumstances set out in subclauses 5.2 to 5.7 inclusive.

- 5.2 In lieu of evening work, weekend work, travel time (where applicable) and all additional duties and responsibilities involved to:
- 5.2.1 Home school liaison officers and Aboriginal student liaison officers.
 - 5.2.2 Teachers in charge
 - 5.2.3 Year advisers.
 - 5.2.4 Teachers required by the Director-General to have a Health Education Certificate.
 - 5.2.5 Teachers other than the principal appointed to teach classes of students with disabilities.
 - 5.2.6 Principals of schools designated by the Director-General as schools for specific purposes.
 - 5.2.7 The Principal of Stewart House.
 - 5.2.8 The Assistant Principal of Stewart House.
 - 5.2.9 The deputy principal (primary) or assistant principal of a central school.
- 5.3 In demonstration schools to:
- 5.3.1 principals -
 - class PP1;
 - class PP2;
 - 5.3.2 other promotions positions; and
 - 5.3.3 trained teachers.
- 5.4 In schools where there is a requirement for demonstration lessons to be taken to:
- 5.4.1 teachers, for each demonstration lesson in excess of two in any term actually given by them; and
 - 5.4.2 teachers at any other school at which demonstration lessons are given in respect of authorised demonstration lessons for:
 - each half hour lesson; or
 - each 40 minute lesson involving secondary students.
 - 5.4.3 provided that payments made to teachers under paragraphs 5.4.1 and 5.4.2 of this subclause are subject to a maximum per annum payment; and for the purpose of this subclause a demonstration lesson shall mean a lesson authorised by or on behalf of a university given to student teachers, or a lesson given to another group approved by the Director-General.
- 5.5 In residential agricultural high schools to:
- 5.5.1 teachers rostered for out of normal hours student supervision;
 - 5.5.2 head teacher (welfare) for residential supervision;
 - 5.5.3 a teacher appointed to be in charge of residential supervision;
 - 5.5.4 principals for on call and special responsibilities; and

- 5.5.5 deputy principals for on call and special responsibilities.
- 5.6 To supervisors of female students:
 - 5.6.1 Where the average attendance of female students does not exceed 200;
 - 5.6.2 Where the average attendance of female students exceeds 200 but does not exceed 400;
 - 5.6.3 Where the average attendance of female students exceeds 400.
- 5.7 Education officers who have been on top of their appropriate salary scale for a period of twelve months and have demonstrated to the satisfaction of the Director-General by the work performed and results achieved, the aptitude, abilities and qualities warranting such payment shall receive an additional payment as set out in Schedule 2 and, after a further twelve months, an additional allowance of the same amount.
- 5.8 Locality and related allowances shall be paid as set out in Schedule 3.
- 5.9 To Executive Principals, Connected Communities as set out in Schedule 2 subject to the:
 - 5.9.1 completion by the Executive Principal, Connected Communities of five (5) years of service in that position; and
 - 5.9.2 satisfactory performance of the Executive Principal, Connected Communities in that position at the end of the five year period as determined by the Executive Directed, Connected Communities; and
 - 5.9.3 on completion of each subsequent five years of service in that position subject to the provisions of 5.9.2 above.

6. Salary Progression and Maintenance

- 6.1 An officer shall be entitled to progress along or be maintained on the common incremental salary scale or the salary level for a promotions position after each 12 months of service subject to the officer demonstrating by means of an annual review, continuing efficiency in teaching practice, satisfactory performance and professional growth. Salary progression may also occur in accordance with the provisions of subclauses 3.7, 3.8, 3.9, 3.10 and 3.11 of clause 3, Salaries.
- 6.2 A temporary teacher shall be entitled to progress along or be maintained on the common incremental salary scale subject to the provisions of subclause 22.4 of clause 22, Temporary Teachers.
- 6.3 A temporary teacher relieving in a PP6 or Principal - Environmental Education Centre or Hospital School or Grade 1 position under clause 24, Relief in PP6 or Principal - Environmental Education Centre or Hospital School or Grade 1 Grade One Positions, shall be entitled to be maintained at that salary level subject to the provisions of subclause 22.4 of clause 22, Temporary Teachers.

7. Teacher Quality

- 7.1 To provide feedback on an officer or temporary employee's performance each officer or temporary employee's principal, supervisor or nominee shall ensure that the teacher's performance is appraised by annual review. This appraisal implemented from the beginning of term four, 2000 for school teachers and in 2005 for non school based teaching service staff continues in force as follows:
 - 7.1.1 The officer or temporary employee's principal, supervisor or nominee shall be responsible for annually reviewing the performance and development of the officer or temporary employee undertaking their work.

A History of Public School Teachers'
Organisations in New South Wales, 1855 to 1945

by

Bruce Mitchell

This thesis was submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy in the Australian National University.

February 1969

This thesis is my own work.

Bruce Mitchell

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Abbreviations used in Footnotes

<u>A.J.E.</u>	<u>Australian Journal of Education.</u>
A.N.U. Archives	Australian National University Archives.
A.T.A. Minutes.	Assistant Teachers' Association Minute Books.
C.M.	Council Meeting of the New South Wales Teachers' Federation.
<u>D.T.</u>	<u>Daily Telegraph, Sydney.</u>
<u>J.P.E.</u>	<u>Journal of Primary Education.</u>
<u>N.S.W.E.G.</u>	<u>New South Wales Educational Gazette.</u>
<u>P.I.G.</u>	<u>Public Instruction Gazette.</u>
<u>S.M.H.</u>	<u>Sydney Morning Herald.</u>
<u>V. & P., L.A. of N.S.W.</u>	<u>Votes and Proceedings of the Legislative Assembly of New South Wales.</u>

Precis

From the beginnings of a system of public education in New South Wales in the middle of the nineteenth century the teachers attempted to form organisations to represent their many interests. Before 1895 they had not succeeded in forming lasting organisations but by the first years of the twentieth century the foundations of a teachers' trade union and professional organisation were laid. Although reconstituted in 1918, this organisation has had a stable existence throughout the educational changes, wars and depression of this century. The themes traced through this story include the relationship between teachers' organisations and educational administrators, the aspects of teachers' work experience reflected in their organisations, the development of institutions concerned with both 'professional' and 'industrial' matters and the relationship of teachers' social and political attitudes to those of other groups in society.

Introduction

Teachers and their organisations have, in the last 10 or 15 years, become subjects for historians and political scientists who write about non-parliamentary subjects. This interest reflects the growing numbers of schoolchildren and teachers in most countries of the world and the proportionally greater expenditure of money on public education. Teachers' organisations have also become more militant: strikes have occurred even in Australia, and 'teacher power' has become a factor which administrators and governments must face.

Traditional research on educational history has been antiquarian and administrative because it relied on the easily accessible documents. Recent research has, however, been wider. Teachers' organisations in Australia have been studied as political pressure groups, as elements in industrial relations, as influences on educational practice, as aspiring professional bodies, and as products of a peculiar social group. Histories of the major teachers' bodies in Britain, France and the United States have been published. Research on educational administration in the United States has examined teachers and their organisations in broad sociological, political and educational contexts. There is also current North American interest in trade union organisation and collective bargaining among public servants and teachers, while teachers' unions have been included in generalisations about 'white collar unionism'.

My contribution is to present a straight-forward narrative of the emergence and development of the central

organisation of New South Wales teachers. The themes and problems I am interested in include the nature of the relationship between teachers' organisations and educational administrators, the aspects of teachers' work experience reflected in their organisations, the development of institutions concerned with both 'professional' and 'industrial' matters, and the relationship of teachers' social and political attitudes to those of other groups in the society. Most of my generalised views about New South Wales teachers have been introduced as the story unfolds but in the Conclusion some of the issues have been separately treated.

The teachers who are the subject of this study are those in public (that is, state) infants, primary and secondary schools. Teachers in technical education and since 1949 in some universities, although at times members of the organisations I am studying, have been excluded from my story. Teachers in private schools, who have organised themselves for industrial purposes only since the 1950s, are also ignored. I have been concerned primarily with teachers in their organisations and have not attempted a general social or educational history of teaching, although at times I have ventured into these wider fields.

Chapter 1

An Era of Impermanent Organisations,

1850s to 1890s

The state school teachers of New South Wales formed many organisations while the foundations of the system of state education were being laid, and the educational environment of the years from the 1850s to the end of the century helped shape these organisations. In 1848 the first real steps were taken to provide elementary schooling for the children of New South Wales when two Boards were established: the Board of National Education, charged with controlling the national or state schools; and the Denominational School Board which was to administer the schools run by the various religious denominations.¹ Progress was very slow in the 1850s as the colony experienced upheavals caused by gold rushes, a rapid population increase and the achievement of colonial self government, but the Board of National Education managed to lay down the administrative framework for a system of education.²

1

Throughout the thesis, accounts of the general history of education in New South Wales are based on the works cited in the Bibliography, especially those works by A.G. Austin, A. Barcan, K. Gollan, A.J. Hutchins, C.C. Linz, S.H. Smith and G.T. Spaul, and C. Turney.

2

The work of the Denominational School Board, which was less effective than that of the Board of National Education, and in any case terminated in 1866, is ignored in this account.

This was no mean achievement for a colony with a population of less than 350,000 in 1860, scattered over a huge area served by only the most primitive of communications. Trained teachers were rare, there were very few men and women with more than an elementary education, illiteracy was widespread and the colony lacked those qualities of more settled or prosperous communities which produce local interest and initiative in matters of education. The politicians and administrators working to establish national schools shared with their counterparts in Victorian England the aim of 'improving' the bulk of the people by providing for them instruction based on the three Rs. Literacy and instruction in useful knowledge would produce, for individuals and the masses generally, social and moral improvement, and the social fabric would be strengthened as working men learned to imitate middle class virtues of diligence, responsibility and respect for authority.¹ English educational developments were not, however, wholly reproduced in Australia for the voluntary principle which guided the nonconformist churches of the Old World in their attitude to governments had to succumb in Australia to economic and geographic realities, and in the second half of the nineteenth century state aided and non-denominational (but not non-Christian) school systems were established in all Australian colonies.² As well as stemming from an

1

On this movement see, for example, J.F.C. Harrison, Learning and Living, 1790-1960, 1961, especially pp.38-89; and R.J.W. Selleck, The New Education, 1968, pp.6-19.

2

The best account of this process is in A.G. Austin, Australian Education, 1788-1900, 1964.

Australian tradition of a paternalistic government, the provision of education proceeded with another, usually unspoken, assumption: that schools should be available as equally as possible to all children in the colony. This assumption when associated with the abandonment of voluntarism and the absence of local initiative resulted in the creation of rigidly centralised school systems. The schools remained, however, what a scholar of English education calls 'instruments for shaping society according to dominant middle-class views'.¹

The Board of Commissioners for National Education established strict control over the Local Patrons of the schools. The Local Patrons' role was clearly subordinate although it entailed financial and other obligations and the right to make suggestions to the Board. Teachers were appointed by the Board which retained sole rights of control, discipline and dismissal, and fixed the basic salary which was supplemented by school fees paid by the parents. To provide a supply of teachers model schools were established, training was provided for candidates to teaching positions, and a pupil-teacher system commenced. To ensure that the teachers continued to educate themselves and improve their teaching a system of classifying teachers by their educational attainments and teaching skill was introduced. The system as it existed to the end of the century rested on the institution of the pupil-teacher. Most teachers entered the service by becoming pupil-teachers at 13 or 14 years of age. After four years

¹

J.F.C. Harrison, op.cit., p.40.

teaching, learning from instruction given by the headmaster, and sitting for annual examinations, some of them were admitted to the training college for one, two or three years where they were classified 3A, 3B or 3C on the basis of their teaching skill and examination results. Many of the untrained former pupil-teachers remained in the service, mostly as unclassified teachers in charge of small schools. They could obtain a classification and, like the trained teachers, could improve their classification by sitting for teachers' examinations. While the teachers were classified in descending order 1A, 1B, 2A, 2B, 3A, 3B and 3C, the schools themselves were classified by the number of pupils into ten classes down to a minimum of 20 pupils. Groups of children smaller than 20 were classified as provisional schools or half-time schools. Regulations defined the classification a teacher had to possess before he or she could be promoted to a larger school. A teacher's salary depended upon both his and the school's classification as well as upon other factors like sex and marital status. There were also allowances for some special positions, for the work of a teacher's wife in taking needlework classes and for those headmasters who were not provided with a rent-free house. Except for some categories of ex-students of the training college who were awaiting appointment as headmasters, there was no system of annual increments or extra payment for length of service. Before 1880 all teachers received additional income from pupils' fees. The system of examinations and inspections, plus regulations restricting the speed of movement from one grade to the next, effectively produced the familiar

pattern of a teacher's slow progress through increasingly larger schools to higher salaries. This system kept most teachers studying to pass exams for most of their careers and maintained a movement of teachers throughout the colony.

The inspection system was perhaps the cornerstone of the whole structure. It was designed to see that adequate standards in buildings, furniture and grounds were maintained, that the pupils were reaching the standards required in the 'Table of Minimum Attainments', and that the teachers were correctly performing all their manifold duties. The inspectors, usually men of academic achievement as well as great practical experience, were figures to instil apprehension and even terror into the most diligent of teachers. An inspector's infrequent and brief visit to the typical teacher alone in his small bush school was full of anxiety for the teacher, though perhaps it was merely a small part of an arduous, lonely and nomadic existence for the inspector. Inspectors may have behaved like martinets or like sympathetic friends¹ but possessing the powers they did to advance, delay or destroy a teacher's career, and to reward or condemn by a word a teacher's labours, it was only to be expected that all inspectors and the whole inspectorial system became major subjects of teachers' myths and legends. Stories about inspectors, based upon truth, or at least on possibility, became one of the main ingredients of communication between teachers whenever they met. Teachers notoriously 'talk shop'

1

A.G. Austin, op.cit., pp.239-40, describes various approaches of inspectors.

and inspectors, easily identified as outsiders and known to many teachers, were much more satisfactory subjects for conversation than any one teacher's peculiar pupils or local gossip.

It is possible to attribute the creation of the administrative system in large part to the work of one man, William Wilkins, who arrived in New South Wales in 1851 at the age of 24. He had been among the first students trained at Battersea College under Dr James Kay [later Sir James Kay-Shuttleworth], and had had a distinguished teaching career before being appointed in 1850 as Headmaster of the Fort Street Model School. In 1854 he was made Inspector and Superintendent of Schools as well as retaining his first position. In 1860 he relinquished the Model School and became Chief Inspector, in 1863 Acting Secretary to the Board of National Education, and in 1864 its secretary. At every stage in this progression Wilkins either reorganised a position which had previously existed or created a new position. He borrowed heavily from the Irish system of administrative procedure and from the English method of classifying teachers, but the details of the system were essentially his. He reorganised the Fort Street Model School, instituted the training of candidates, introduced the pupil-teacher system and the classification of teachers, and virtually created the whole inspection system.

Wilkins undoubtedly played a major personal role in the development of the education system of New South Wales,



Guidelines for the Management of Conduct and Performance

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1. LEGISLATIVE SCHEME

These guidelines for the Management of Conduct and Performance are the 'guidelines' specified under:

- section 93D, [Teaching Service Act 1980](#), and
- section 30, [Education \(School Administrative and Support Staff\) Act 1987](#)

2. APPLICATION OF PROVISIONS

2.1 Procedures relating to misconduct and performance

The provisions for dealing with misconduct and performance apply generally to:

- officers (i.e. permanent employees) who are employed by the Department of Education under the [Teaching Service Act](#)
- persons who are permanently employed under the [Education \(School Administrative and Support Staff\) Act](#).

They **do not** apply to:

- public service staff who are employed under the [Government Sector Employment Act 2013](#)
- persons who are employed on a probationary, temporary or casual basis.

2.2 Procedures relating to serious criminal offences

The provisions for dealing with serious criminal offences apply to all persons employed under the legislation set out in [section 2.1](#) above. They also apply to temporary employees employed under the legislation.

2.3 Procedures relating to Charged Persons and Unauthorised Persons

The provisions for dealing with Charged Persons and Unauthorised Persons (see [Dictionary](#)) apply to all persons employed under the legislation set out in [section 2.1](#) above. They also apply to temporary employees employed under the legislation.

2.4 Application of existing policies

The guidelines must be applied following the correct application of the procedures below, where relevant:

- [Responding to Allegations Against Employees in the Area of Child Protection](#)
- [Complaint Handling Policy](#)
- [School Community and Consumer Complaints Procedures](#)
- [Teacher Improvement Program](#)
- [Executive Improvement Program](#)
- [Principal Improvement Program](#)
- [Procedures for Managing School Based Non-Teaching Staff Identified as Having Performance Difficulties.](#)

If there is inconsistency between the guidelines and the above procedures, subject to the requirement that the protection of children is to be given paramount consideration, and to any other statutory requirement contained in the procedures, the guidelines will prevail over the procedures.

3. PURPOSE AND OPERATION

3.1 Policy Statement

The Department of Education has responsibility to deal appropriately and expediently with the small number of employees whose conduct or work performance is not of a satisfactory standard.

The objects of the Acts together with the legislative scheme and these guidelines set out a consistent framework which accords with the rules of procedural fairness. The paramount consideration in all conduct and performance matters is the protection of children, ensuring a safe environment for students at all times.

Workplace managers are responsible for managing conduct and performance issues of employees in a fair, timely and transparent manner.

Workplace managers should take direct management action in response to lower-level misconduct where investigation is not warranted. Measures may include but are not limited to; providing guidance/advice, mentoring, addressing a complaint, training and providing a written direction.

Before a performance improvement program is commenced, a workplace manager must ensure performance concerns have been communicated and clarified with the employee, followed by the provision of support to address the identified concerns.

Discipline or performance review processes must be applied consistently without bias and each case should be considered upon its merits. Investigations and performance processes must be conducted in a fair, transparent and timely manner. The approach taken will depend on the nature and seriousness of the issue. Each matter will be assessed and a considered decision will be made about whether to take remedial or disciplinary action.

The Acts provide an indicative range of options for remedial action and a prescribed range of disciplinary options.

The Acts and guidelines also deal with employees or temporary employees who are charged with, or found guilty of serious offences.

The Acts provide for the immediate dismissal of persons who become 'Unauthorised Persons' as a result of being found guilty of specified criminal offences or following the cancellation of a person's Working With Children Check (WWCC) clearance.

4. OBJECTS AND PRINCIPLES UNDERPINNING THE GUIDELINES

4.1 Objects of the Acts

The protection of children is to be the paramount consideration:

- in taking any action with respect to an employee or temporary employee under the Acts
- in dealing with any appeal against, or determining any claim with respect to that action.

This paramount consideration responds to the department's duty of care towards children who attend schools and the communities' expectation that students are cared for in a safe environment at all times.

Courts and tribunals are required to give paramount consideration to the protection of children when dealing with an appeal against any relevant disciplinary action or any claim made about such action.

The objects of the legislative scheme for the management of conduct and performance are:

- to maintain appropriate standards of conduct and work related performance for officers in the teaching service and school administrative and support staff.
- to protect and enhance the integrity and reputation of the respective employee groups, and
- to ensure that the public interest is protected.

4.2 Timeliness

A disciplinary or remedial process should be taken without delay. It is in the interests of all parties for the matter to be resolved in a timely and expeditious manner.

In some cases where other agencies are involved, internal investigative and disciplinary processes may be delayed. For example, delay may occur where another external investigating body, such as the NSW Police Force, the Department of Communities and Justice, Office of the Children's Guardian, NSW Ombudsman or the Independent Commission Against Corruption, has requested that the department's process be deferred while it carries out an investigation.

Other matters that may impact on timeliness include the:

- complexity of the issues
- number of witnesses/parties involved
- need to seek external or internal expert advice
- impact of delay on the fairness of the process, or matters arising from the process such as the suspension of the officer
- health or wellbeing of the employee or witness.

4.3 Procedural fairness

Procedural fairness is a legal safeguard applying to an individual whose rights or interests are or could be affected.

An employee should be made aware of these guidelines and advised on how to access a copy.

A fundamental rule of procedural fairness is that a person be advised of the matter against them, have an opportunity to respond to the matter and have their response considered by the investigator or decision-maker. This rule is reflected in section 93D and 93F of the [Teaching Service Act](#), and section 30 and 32 of the [Education \(School Administrative and Support Staff\) Act](#). The procedural guidelines ensure that an employee who is the subject of an allegation/s of misconduct or unsatisfactory performance concerns must be:

- advised in writing of the alleged misconduct and that the matter may lead to disciplinary action being taken
- given an opportunity to respond to an allegation of misconduct
- given an opportunity to respond to the decision maker that their performance is still unsatisfactory following an improvement program
- provided with an opportunity to respond to the proposed disciplinary action prior to a final decision being reached.
- Procedural fairness also encompasses processes such as:
- making reasonable enquiries or investigations prior to taking disciplinary action
- ensuring a person has been given a reasonable opportunity to improve

- ensuring that the investigator and/or decision maker have no direct interest and are unbiased in the matter.

The Acts specifically exclude undertaking a formal hearing with legal representation, the calling or cross-examination of witnesses (see section 93E of the [Teaching Service Act](#) and section 31 of the [Education \(School Administrative and Support Staff\) Act](#), when taking disciplinary action.

4.4 Deciding each matter on its merits

While disciplinary and remedial processes must be applied in a consistent manner, each matter must be treated on its individual merits and the form of action relevant to the individual matter. Irrelevant considerations must be disregarded.

This means that the same misconduct, unsatisfactory performance or serious offence conviction (unless it gives rise to a person being barred from engaging in child-related work) will not necessarily lead to the same disciplinary action or remedial action being imposed. The circumstances of each case may be different. The relevance of the matter to the employee's position and duties may differ.

4.5 Support person

An employee can be assisted through the performance and investigation process by a support person of their choosing. The support person can attend meetings and interviews with the employee.

The support person may be a representative of the employee's union, a colleague, an adult family member or a legal representative.

The employee should give notice of their support person prior to the commencement of the meeting or interview.

The support person's presence is a safeguard against unfair practices. They act as a witness or adviser to the employee and must not act as an advocate during meetings and interviews.

The support person can be a legal representative, but during meetings and interviews they fulfil the role of a support person and not a legal advocate. They are not permitted to advocate, answer on behalf of the employee or cross-examine the person conducting the meeting or interview.

The nominated support person must not be a witness in the investigation, be involved in the investigation/performance process, or contribute to an unreasonable delay in the investigation/performance process by being unavailable. The support person must be an adult.

If the investigator or decision maker has reason to believe that the employee does not have the capacity to speak effectively or to understand the implications of a process, they can suggest that an employee find an appropriate support person, contact their respective union and/or seek legal advice.

5. DICTIONARY

The Acts mean the [Teaching Service Act](#) and the [Education \(School Administrative and Support Staff\) Act](#).

Charged person is defined in the Acts and means a person whose WWCC clearance is cancelled pending determination of proceedings against the person for an offence specified in Schedule 2 to the [Child Protection \(Working with Children\) Act 2012](#).

Decision maker means the officer/s delegated by the Secretary to make certain decisions about remedial or disciplinary actions.

Delegated officer means the officer/s delegated by the Secretary to undertake certain actions.

The department unless otherwise specified, means the Department of Education.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

Disciplinary Advisory Panel means a panel convened by a decision maker with delegation to take disciplinary action involving demotion, direction to resign or dismissal.

The panel provides advice to the decision maker on matters where a decision maker is of the opinion that demoting, directing to resign or dismissing an employee may be an appropriate disciplinary action.

The convening decision maker may refer other matters to the panel where they are of the opinion that an advisory panel may assist them in reaching a considered decision about the appropriate disciplinary action.

The convening decision maker reaches a decision as to the proposed disciplinary action after taking advice. However, only the convening decision maker has a determinative role. All other members of the panel have an advisory role.

The convening decision maker may at their discretion remit a matter back to the panel before taking disciplinary action to consider further information provided by an employee.

The panel is constituted and has terms of reference set out in the [Disciplinary Advisory Panel – Terms of Reference](#). This document does not form part of the guidelines.

Disqualified person is defined in section 18 of the [Child Protection \(Working with Children\) Act 2012](#), which means:

- a person convicted of an offence specified in Schedule 2, if the offence was committed as an adult
- a person against whom proceedings for any such offence have been commenced, if the offence was committed as an adult, pending determination of the proceedings for the offence.

The employee, unless otherwise stated, relates to a permanently employed officer or employee under the Acts. See [section 2.1](#).

Internal disclosure

An internal disclosure is a disclosure made in good faith by a person regarding the alleged misconduct of another person. It is a specific ground of misconduct under the Acts for anyone to take any action against another person that is substantially in reprisal for that person making an internal disclosure.

It is a criminal offence under section 64 of the [Children's Guardian Act 2019](#) to take, or threaten to take, detrimental action in respect of a person who reports or proposes to report, in good faith, a reportable allegation. Reportable allegations are handled in accordance with the policy [Responding to Allegations against Employees in the Area of Child Protection](#).

Public interest disclosures

It is a criminal offence under section 20(1) of the [Public Interest Disclosures Act](#) to take “detrimental” action substantially in reprisal for the person making a public interest disclosure (PID).

The onus of proof lies on the defendant to prove that detrimental action shown to be taken against a person was *not* substantially in reprisal for the person making a public interest disclosure.

The object of the [Public Interest Disclosures Act](#) is to encourage and facilitate a disclosure, made in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector.

The PID reporter’s identity should be kept confidential and limited to only those people who need to know. The reporter’s identity may be revealed in limited circumstances including with the reporter’s consent and/or where there is a need to disclose the information for the matter to be effectively investigated or for disciplinary action to occur.

Schedule 2 offences include (but are not limited to): acts of indecency, sexual intercourse with a child under 10, sexual intercourse with a child between 10-16, sexual intercourse with a child between 16-18 under special care and possession, dissemination or production of child pornography.

A conviction includes a finding that the offence for a charge was proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction. See section 5 of the [Child Protection \(Working with Children\) Act](#).

Secretary means the Secretary of the NSW Department of Education

Serious offence is defined in the Acts as a criminal offence that is punishable by imprisonment for 12 months or more in New South Wales, or an offence committed elsewhere than New South Wales, that if it were committed in New South Wales, would be an offence so punishable. (A person does not have to receive a penalty of 12 months imprisonment – if the offence can attract such a penalty it is classified as a serious offence).

Workplace manager includes the person with responsibility in managing a particular workplace including principals or directors

Unauthorised person as outlined in sections 93R of the [Teaching Service Act](#) and section 32I of the [Education \(School Administrative and Support Staff\) Act](#) means:

- (a) a person whose WWCC clearance is cancelled under section 23 of the [Child Protection \(Working with Children\) Act](#), other than a charged person, or
- (b) a charged person or the person being convicted of an offence specified in Schedule 2, or
- (c) other person who is required to hold but is not the holder of a WWCC clearance except for the following:
 - i. persons who are the subject of an interim bar
 - ii. persons who are refused a WWCC clearance and the time limit to apply for a review of the decision has not yet elapsed, or the application has been made but has not yet been dealt with
 - iii. persons who are not the holder of a WWCC clearance, are eligible to apply, but have not applied for a WWCC clearance
 - iv. persons who are exempt from the requirement to hold a WWCC clearance.

6. APPROPRIATE USE OF REMEDIAL ACTION OR DISCIPLINARY ACTION

Taking remedial action may be relevant in the following situations:

- managing unsatisfactory performance
- dealing with misconduct including when the decision maker is of the opinion that the employee has engaged in misconduct, where the imposition of remedial action is appropriate
- when an employee has been found guilty of an offence.

Taking disciplinary action is relevant in the following circumstances:

- when the decision maker is of the opinion that the employee has engaged in misconduct, and it is appropriate
- in dealing with unsatisfactory performance, where the performance is still unsatisfactory after a performance improvement program has been completed
- where an employee has been found guilty of a serious offence, where it is appropriate.

6.1 Disciplinary Options

The options for disciplinary action are:

- **Dismissal:** Dismissal should be regarded as the most serious action available.
- **Directing the employee to resign or to be allowed to resign:** This option should only be considered where a decision has been made that the employee should no longer be employed by the department. Should the person not resign, dismissal is the only alternative.
- **Reduction of the employee's salary or demotion to a lower position:** This may be relevant in some disciplinary cases, including those that arise from continued unsatisfactory performance, where remedial action or a performance improvement program has not resulted in improved performance. A demotion may be permanent or for a particular period. Such action must be taken in consultation with all affected parties.
- **The imposition of a fine:** The Acts provide that a fine may be imposed on an employee, including if the employee has voluntarily separated from the department prior to completion of the disciplinary process. Where a fine is not paid by an employee the Acts allow the fine to be deducted from the employee's salary or termination payments. Where the officer is no longer an employee the fine can be treated as a debt due to the crown.
- **A caution and/or reprimand:** Cautions and/or reprimands are made in writing and clearly state:
 - the standard of conduct or performance that is required
 - the possible consequences of a repetition of the conduct.

6.2 Remedial Options

Remedial options include but are not limited to:

- **Counselling:**
 - **Performance:** Counselling refers to support, advice and feedback. It should be part of daily supervision, ongoing performance and development cycle and enables an early response to unsatisfactory performance

- **Conduct:** Counselling may also be used in relation to conduct matters where it is considered that it is not appropriate to undertake disciplinary action.
- **Training and development:** Training and development should be a usual part of managing staff to enable them to perform their work to the required standard. Where it is used in a remedial context, it should be directed to the relevant area of performance or conduct. Training and development may include professional learning, induction, mentoring, and referral to relevant policies.
- **Monitoring the employee's conduct or performance:** This process enables ongoing monitoring and feedback to the employee. The process should be transparent with feedback being a key aspect of the process. It can involve classroom observation, reviewing documentation and work products. Monitoring performance or conduct may highlight areas requiring training and development.
- **Implementing a performance improvement plan:** Any performance improvement plan must comply with the relevant departmental procedures, for example, for teachers, see the Teacher Improvement Program
- **Issuing a warning:** A warning addresses specific conduct or performance that is not satisfactory, provides the expectations of the employee in relation to ongoing conduct and performance.
- **Transferring at current pay rate:** This is relevant when there are reasons to believe that the issue is related to the employee's present work environment or that the work is beyond the person's capability and that training and development will not be sufficient to remedy the issue. Transfer can offer the person a fresh start and removes an employee from the particular environment.
- **Induction:** Induction is a particularly useful tool when new material and/or processes are introduced.
- **Mentoring:** Mentoring can enable peer assistance and support to be provided. It is important that the mentor should be a role model in relation to the areas of concern who understands the nature of the issue to be addressed.
- **Staff rotation:** This action may assist the employee to better understand the nature of the work undertaken by the department and expose the person to different processes. It may assist in improving performance by developing such understanding or by enabling the person to learn from other employees.
- **Referral to relevant policies:** Sometimes unsatisfactory performance or conduct can be due to unfamiliarity with relevant policy. In such a case, referral to the correct policies and procedures and an explanation of their relevance and effect, may assist the person to reach the expected standard of performance.

7. PROCEDURAL GUIDELINES FOR DEALING WITH MISCONDUCT

The Secretary is to deal with alleged misconduct by an employee. The Secretary has delegated this function to particular decision makers who understand the disciplinary process and have the resources available to undertake the delegated function.

7.1 Timeframes

The process for addressing misconduct at all stages is to be undertaken in a timely and expeditious fashion.

As a guide only, uncomplicated matters should generally be concluded within three months from when the initial allegation is received by the Secretary.

Some matters will take longer to finalise for a range of reasons (see [section 4.2](#)) but officers and permanent employees should be advised of the allegations as soon as practicable.

An employee who is the subject of allegations, alleged victims, complainants, and school managers will be advised in writing at least once each school term of the progress of the investigation and when it is anticipated the investigation will be concluded. Where delays arise or are likely, information will be provided about the reasons for the delay.

Delays will be documented and monitored.

7.2 Misconduct

Misconduct is defined in the Acts as:

- a contravention of any provision of the respective Acts or regulations
- engaging in, or having engaged in, any conduct that justifies the taking of disciplinary action for example conduct that may be contrary to the [Code of Conduct](#) and/or other established policies of the department
- taking any detrimental action (within the meaning of the [Public Interest Disclosures Act 1994](#)) against a person that is substantially in reprisal for the person making a public interest disclosure within the meaning of that Act
- taking any action against a person that is substantially in reprisal for an internal disclosure made by that person

Misconduct may relate to an incident or conduct that happened:

- while the employee concerned was not on duty, or
- before the employee was appointed to their position.

The term 'misconduct' applies to many different factual situations but usually involves deliberate acts. It could relate to an isolated or specific event or a pattern of conduct over time.

When considering whether conduct constitutes misconduct, consideration must be given to the objects of the Acts as set out in [section 4.1](#).

Further guidance in respect to conduct which should be addressed through disciplinary action is contained in the [Guidance on misconduct](#).

7.3 Risk management and the removal from duty during an investigation

Risk management strategies will be employed to manage risk to all parties in an investigation.

A risk will be assessed that may consider the risks to:

- any complainant or class of complainants
- students/children
- potential witnesses
- the employee themselves
- any investigation
- the department itself.

A delegated officer may provide directions to an employee to safeguard the integrity of the investigation, for the protection of complainants, alleged victims and the school community generally.

If it is considered not feasible to manage the identified risks while the employee remains on duty or that the officer may be in breach of directions put in place to manage risk, the following options will be considered in order:

- placing the employee in an alternative location undertaking the same role
- placing the employee in alternative location undertaking alternative duties
- suspension with pay
- suspension without pay.

Suspension without pay should only be considered in matters where there is overwhelming evidence of guilt or where it becomes untenable for the employee to remain on alternative duties.

Alternative duties and suspension is a protective measure while the investigation and disciplinary process is being undertaken. It is not a disciplinary outcome available to a decision maker. The decision to remove an officer from duty is viewed to be a serious step where the risk cannot be managed in their workplace.

The paramount consideration in removing an employee from duty during an investigation is the protection of students. The decision will also consider a range of factual, contextual and management considerations in line with Premier's Memorandum [M1994-35 Suspension of Public Employees from Duty](#) including the:

- nature of the allegations; inclusive of the strength of the evidence implicating the officer
- nature and location of the current duties
- public interest
- efficient operation of the department
- maintenance of good order and discipline.

An employee who is placed on alternative duties or is suspended will be provided with reasons for the decision. The employee will be invited to request a reconsideration of the action taken and to provide a written submission to the delegated officer for consideration by the Disciplinary Advisory Panel. The delegated officer will determine the reconsidered outcome.

If further information is received, in the course of an investigation, which materially changes the risks, a reconsideration of the risk management action will be undertaken.

7.3.1 Alternative location or duties

An employee placed on alternative duties will continue to work under the same working conditions including salary, hours and vacation periods.

The employee may not be eligible for allowances where the new duties do not require those functions for example, year advisor or first aid allowances.

7.3.2 Suspension with or without pay

Suspensions with or without pay will be reviewed at least every 30 days.

An employee suspended without pay will accrue salary during the period of suspension. During this period the salary is withheld.

Any salary withheld under these provisions will be forfeited to the State unless the Secretary otherwise directs, or the salary was due to the employee in respect to a period before the suspension was imposed.

The position of a suspended employee will not be permanently filled while they are on suspension or alternative duties.

If the employee is found not guilty in relation to a criminal matter and no disciplinary action is taken against the employee, the employee will be paid any withheld salary.

7.4 Investigation and disciplinary process stages

The process for dealing with an allegation of misconduct can be divided into three stages:

- Stage 1:** Determination of an appropriate course of action when dealing with an allegation of misconduct
- Stage 2:** Investigation, if it is determined that an investigative response is required
- Stage 3:** Determination about appropriate outcome. This could involve dismissal of the allegation/s, no further action, remedial action, disciplinary action or a combination of remedial and disciplinary action.

7.4.1 Stage 1 – Initial determination of an appropriate course of action

7.4.1.1 Assessing the allegation or incident

The Acts allow the Secretary, through a delegated officer to take any of the following action:

- to take no further action in relation to the allegation or incident
- to take no further action against the employee
- to take remedial action against the employee
- to deal with the allegation of misconduct as a disciplinary matter in accordance with these guidelines.

In deciding what action to take, the delegated officer should assess the matter and consider the facts, seriousness and nature of the particular incident. This decision may rely solely on the available documentation. Alternatively, the alleged conduct may require an investigation.

If further information indicates that the employee may have engaged in misconduct, the delegated officer may determine that the matters require investigation.

A delegated officer may determine that no further action is required at any stage in the disciplinary process. The issues can be remitted back to a workplace manager for appropriate direct management action. The workplace manager is responsible for addressing the matter including informing relevant parties of the action to be taken.

Remedial action can also be taken under the Acts at any stage. A determination that misconduct has occurred does not have to be made for remedial action to be imposed by a delegated officer.

7.4.1.2 Responding to allegations of a child protection nature

In addition to the general assessment of allegations [above](#), the process for determining the appropriate course of action when dealing with an allegation of a child protection nature against an employee is outlined in [Responding to Allegations against Employees in the Area of Child Protection](#). These procedures clarify that the Secretary is required to respond to all allegations of a child protection nature against employees.

If the allegations constitute reportable conduct in line with the [Children's Guardian Act](#) they will be reported to the Children's Guardian. The Children's Guardian can exempt some classes or kinds of conduct from reporting.

7.4.1.3 Advising the employee

The employee who is the subject of the allegation must be advised at the earliest opportunity in writing of the intended action:

- If it is decided remedial action will be taken the employee is to be advised of the type of remedial action to be taken.

- If it is decided to treat the allegation as a disciplinary matter, the employee is to be advised of the intention to investigate.

Where the entire allegation can be put to the employee at the outset, the advice will accord with [7.4.2.4](#) (Allegations must be put to the employee with the opportunity to respond).

However, where further information gathering is required, the written advice to the employee at the outset will:

- provide as much detail as possible about the nature of the allegations to the extent that it does not interfere with the investigation of another agency, places another person at significant risk or significantly impair the investigation.
- invite the employee to make a written submission, nominate relevant witnesses or provide supporting documentation relevant to the alleged conduct.

An employee is not required to make a submission. However, the employee's submission will be considered as part of the investigation, including whether the investigation should proceed and avenues of enquiry.

7.4.2 Stage 2 – The investigation stage

The investigation enables issues to be fully explored before any final decision is made in relation to the allegation. It also includes continuation of an internal investigation where external authorities have completed any relevant investigation.

The investigation will consider the employee's submissions, evidence and nominated witnesses. The investigator is not required to approach every nominated witness but will ensure the investigation report documents why a witness nominated by an employee was not approached. Circumstances include but are not limited to:

- where there is information that approaching a witness may adversely impact on their welfare
- where permission from a parent of a witness cannot be obtained
- a witness attesting solely to an employee's character and not to the matters subject to investigation
- where the nominated witness cannot be identified or is too broad including the nomination of a whole class of students
- where a sufficient sample of witnesses have been approached to provide a balanced account of the matters subject to investigation.

As outlined in Stage 1 ([7.4.1](#)), the department has procedures in place for dealing with allegations of different types of misconduct and for undertaking investigations.

There are common procedural requirements which apply when investigating allegations of misconduct:

7.4.2.1 The investigation will be conducted by an appropriate investigator/s.

The investigator/s should:

- understand the investigation process
- be free from actual or perceived bias. This includes not having direct involvement with the matter the subject of investigation including as a source of the initial allegation.
- have no personal involvement or friendship with the employee who is subject to the allegation/s
- be objective and not prejudge the matter
- be suitably experienced and qualified to undertake the investigation.

7.4.2.2 **The investigation should be conducted in a confidential manner.**

Confidential information obtained during the investigation will not be disclosed except for the purpose of the investigation, any action arising from the investigation or where there is a lawful basis for sharing/reporting information. This is to protect the integrity of the process and to preserve the privacy of the parties concerned.

Similarly, all witnesses, including the employee the subject of the investigation and their support person, will be advised that they should maintain confidentiality and not discuss the matter except for the purposes of the investigation, obtaining legal advice/union support or in relation to their personal health or support needs.

7.4.2.3 **The absence of the employee does not preclude investigation.**

The investigation may be completed without the response of the employee if:

- the employee fails to attend an interview or to provide a written response
- there are no reasonable circumstances mitigating the failure of the employee to attend an interview or provide a written response
- reasonable efforts are made to ascertain why the employee did not provide a response.

7.4.2.4 **Allegations must be put to the employee with the opportunity to respond.**

In addition to the advice provided in line with [7.4.1.3](#) (Advising the employee), the employee will be provided with complete allegations for response. Where appropriate to the circumstances for the efficient management of the investigation an employee may be provided with the complete allegations simultaneously with the investigation advice.

The employee will be provided with allegations containing sufficient detail to allow them to fairly and accurately respond. The employee should also be advised that the allegation if proven, may result in disciplinary action.

The identity of the person who made the allegations or is a witness is only to be revealed if it is essential for procedural fairness, to enable the employee to respond to the allegations.

The employee will be given a period of no less than 14 days in which to respond to specific allegations or 7 days to request an interview. This allows time to seek appropriate support and advice.

The employee is to be advised that they may also bring any written submissions to any interview and be given seven days (or longer in complex matters) from an interview to provide any further written submissions.

Applications for an extension of time will be considered, if reasonable, having regard to the overall circumstances and balance the need to ensure fairness with the need to progress the matter.

If no response is forthcoming or if the employee states that they do not intend to respond, the investigator will make no inference about whether the allegations have been denied or admitted.

7.4.2.5 **Notification and advice of interview**

When an employee agrees to an interview to respond to allegations they must have been:

- provided with at least 24 hours' notice, unless they have elected to proceed within this period
- notified of the time, date, location, nature and purpose of the interview and the name/s of the officer/s conducting the interview
- advised about accessing the guidelines on the department's website

- advised of the allegations to be canvassed at the interview, to the extent that the allegations are known at that time
- provided an opportunity to make comment on any relevant issue, and to give their version of the relevant event/s
- advised that any admissions made will be considered should the matter proceed to be dealt with as a disciplinary matter.
- advised that a support person may be present and their role.
- given the opportunity to raise any special needs which will need to be accommodated in the interview
- advised that a copy of the record of interview (either an audio recording or transcript) will be provided upon request.

7.4.2.6 **General conduct of interviews**

How an interview is conducted will depend on the nature of the misconduct, the sources of evidence, the availability of witnesses and the willingness of the person to be interviewed. The common elements of an interview are that:

- it will occur in private
- the investigators will be fair, courteous and impartial
- any person interviewed can have a support person ([section 4.5](#))
- procedural information will be provided to ensure the person understands the implications of providing information to the investigator
- an audio recording device will generally be used to record interviews and a copy of the audio recording or transcript offered. However, this is subject to the consent of the person who is being interviewed. In cases where interviews are not recorded, notes or a statement will be taken
- a copy of any interview transcript, notes or statement can be provided to the interviewee on request.

7.4.2.7 **Interview**

When interviewing a person the investigator will:

- advise that the interview will be recorded subject to their agreement and they can be provided with a copy of the audio/transcript or notes
- advise of the purpose of the interview and how this information will be used
- clarify the role of the support person in line with [section 4.5](#), including that they can request a halt to the interview if they wish to speak privately to the employee/witness
- advise the person to maintain confidentiality and any limitations on confidentiality that can be afforded by the investigation.

In addition, where the person being interviewed is the employee subject to allegations the investigator will:

- advise the employee that any admissions made may be used in the decision making process
- advise the employee that the employee will have an opportunity to respond to the questions asked and to provide comments about relevant issues, including providing their version of events

- put each particular of the allegation/s to the employee and invite them to respond
- clarify their response or any other matters relating to the allegation/s
- advise the employee that they can provide a further written submission in 7 days
- advise the employee of the next steps in the investigation and disciplinary processes including the option to provide further submissions if a disciplinary action is proposed.

An investigator must:

- avoid using accusing or intimidating language or tone of voice
- avoid making comments about the answer given
- not communicate personal views or the views of other people
- ask the employee if there is anything else they wish to say
- not indicate that a view has been formed.

7.4.2.8 **Collection of additional evidence**

Other sources of evidence may be sought and may include but are not limited to:

- documentary evidence such as photographs, emails and workplace records
- site inspections
- expert evidence such as technical and forensic evidence.
- material from other agencies provided under information sharing arrangements.

7.4.2.9 **Allegations of victimisation or harassment**

An employee must not discuss the investigation or their evidence with potential witnesses without first seeking the agreement of the investigator as it may contaminate the investigation process. Engaging in such conduct would breach these guidelines and amount to misconduct.

An employee is entitled to advise the investigator of witnesses they believe have relevant evidence for the investigation to consider but should not directly approach a witness during an investigation.

If a witness informs the investigator that they are being victimised or harassed by the employee who is the subject of an investigation, the investigator will seek evidence in relation to the alleged victimisation and/or harassment. Such information may result in further allegations being put to the employee.

7.4.2.10 **Preparation of the investigation report**

The investigator examines the evidence and analyses any submission received from the employee. The investigator will prepare an investigation report that:

- consolidates all the material gathered during the investigation process
- details the allegation/s involving the employee
- outlines the investigation process followed
- provides a factual analysis of the evidence
- provides reasons for not interviewing witnesses nominated by the employee
- provides the investigator's view on the relevant facts as to whether, on the balance of the probabilities the employee has engaged in the alleged misconduct, referring to material upon which the view is based

- sets out the investigator's recommendation, if appropriate, discusses the relative seriousness of the conduct and whether the matter should be treated as a disciplinary matter, including any comment on systemic or operational matters that need to be addressed
- has all relevant attachments, such as correspondence with the employee, disciplinary and other interviews, and witness statement/s.

7.4.2.11 Finalisation of the investigation without further action

If the investigator is satisfied, at any time, that the facts do not support the allegation of misconduct, a recommendation that the matter be dismissed or no further action be taken will be forwarded to the delegated officer.

If the delegated officer determines that the allegation/s of misconduct is not sustained, a finding that the allegation is dismissed and/or no further action should be taken will be made.

The employee will be advised that the allegation/s is not sustained and that no action will be taken. The complainant, the alleged victim and key witnesses (if applicable) are also advised of the outcome of the investigation.

7.4.3 Stage 3 – Determination about appropriate outcome by decision maker

7.4.3.1 Decision maker may request further information

The decision maker may seek specialist advice (including departmental and legal) or make further enquiries including requesting further investigation of certain matters prior to forming an opinion.

Should it be necessary to put further allegations to the employee, the processes for putting allegations and allowing an employee to respond must be followed.

7.4.3.2 Onus and standard of proof

The department has the onus of proving that the employee has engaged in misconduct. The decision maker must be satisfied on the balance of probabilities, based on the relevant facts that the employee has engaged in misconduct.

For a decision maker to be satisfied that an allegation of misconduct is proven, it is not necessary that each of the particulars of that allegation be made out as a matter of fact. It is open to the decision maker to find that the person has engaged in misconduct even where the decision maker has found that one or more, but not every one of the particulars of the allegation have been found proven.

In relation to an allegation of misconduct where the possible findings against an employee or the consequences for that employee are serious (that is they may result in the demotion, a direction to resign or the dismissal of the employee) the decision maker should ensure that the employee is 'reasonably satisfied' that the allegation of misconduct has been established (see [Briginshaw v Briginshaw \(1938\) 60 CLR 336 at 362](#)):

reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequences of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

If the decision maker has formed the view that the person has engaged in misconduct, then consideration must be given to appropriate action which should follow.

7.4.3.3 **Misconduct not found**

The decision maker may determine that the facts do not support the allegation of misconduct. In this case, the decision maker may determine that misconduct is not sustained and will advise the employee, and the complainant and other parties (where appropriate).

The materials in relation to the matter including the investigation report will be removed from any records or files held as to the individual employee (personnel files) but such records will be retained in accordance with the [State Records Act 1998](#). All records of disciplinary investigations are retained by EPAC under restricted access.

Remedial action may still be taken by a decision maker despite misconduct not being found.

7.4.3.4 **Misconduct proven**

The decision maker, who finds the employee has engaged in misconduct, may exercise discretion in making a determination about what action to take. In determining the appropriate course of action, the decision maker will not adopt a policy that a particular conduct will always attract the same action. Advice may be sought from specialists (departmental and legal) before making a determination.

A decision maker is not obliged to impose disciplinary action on an employee who has been found to have engaged in misconduct.

If the decision maker determines that misconduct has occurred, they may decide to:

- take no further action
- take no further action against the employee but take management action to address any systems or organisational issues
- take remedial action with respect to the employee
- take disciplinary action against the employee
- take both remedial and disciplinary action against the employee.

7.4.3.5 **Information to be considered following a finding that misconduct is proven**

The decision maker and/or disciplinary advisory panel considers the following information to determine what action should be taken following proven misconduct:

- the facts of the case
- whether the employee poses an ongoing risk to children
- the impact of the conduct on the objectives of the Acts (see section 4.1)
- the nature and seriousness of the proven misconduct, including the effect and circumstances of the incident
- the degree of relevance of the conduct matter to the employee's position and duties
- the employment history and general conduct history of the employee
- whether the conduct or substantially similar conduct has previously been the subject of remedial or disciplinary action
- whether policies and guidelines applicable to the conduct were in place, were known, were being followed
- mitigating or extenuating circumstances:
 - any personal circumstances of the employee and whether these may have contributed to any misconduct for example health issues, particular stressors on the employee
 - the effect of the proposed action on the employee.

Matters outside the investigation report and supporting documentation, such as employment records, monitoring programs and previous misconduct may also be taken into account when deciding whether disciplinary action is appropriate and if so what action should be taken.

7.4.3.6 **Misconduct proven – no further action and remedial action**

If the decision maker decides that the employee has engaged in misconduct but that no disciplinary action will be taken given the facts of the particular case, the employee will be notified in writing of the outcome and where applicable details of any remedial action to be taken.

7.4.3.7 **Proposing disciplinary action**

A decision maker is not limited to a single course of action and may take a type of disciplinary action in combination with other disciplinary or remedial action.

Where a decision maker is of the opinion that the kind of disciplinary action that should be taken is outside the decision maker's delegation, it should be referred to an appropriate decision maker with delegation to impose more serious disciplinary action.

Where a decision maker is of the opinion that the appropriate disciplinary action which is within their delegation includes demotion, direction to resign or dismissal they must first refer the matter to the Disciplinary Advisory Panel . The only exception is where an employee has been convicted of a Schedule 2 offence and is unauthorized to work in child related employment. This will result in summary dismissal.

7.4.3.8 **Disciplinary Advisory Panel**

A Disciplinary Advisory Panel (the panel) will be convened to provide advice to the decision maker on matters where a decision maker is of the opinion that demoting, directing to resign or dismissing an employee may be an appropriate disciplinary action.

7.4.3.9 **Misconduct proven – disciplinary action advice to employee**

If the decision maker has determined that on the balance of the probabilities an employee has engaged in misconduct and that disciplinary action may be appropriate, the employee must be notified in writing of the decision and the proposed disciplinary action to be taken.

The written notification must include:

- the details of the misconduct that the decision maker is of the opinion the employee has engaged in
- the full investigation report with all supporting attachments, subject to any legislative or confidentiality requirements which includes public interest disclosure considerations.
- an outline of the disciplinary action that the decision maker proposes to impose, including the severest disciplinary action that is being considered for the particular matter.
- advice that any previous employment matters, such as past remedial action or discipline matters or previous satisfactory work history may be taken into account
- advice that the employee may request within 7 days an interview with the final decision maker and/or provide a written submission within 14 days.

7.4.3.10 **Submissions prior to disciplinary action**

Before taking disciplinary action the decision maker must have invited the employee and/or their union to make a submission and/or participate in an interview. This information, if provided, must be considered before a final decision is made.

The employee may request within 7 days of receipt of the written notice of the proposed disciplinary action, to attend an interview with the final decision maker, accompanied by a

support person before a final decision is made. The support person may speak on behalf of the officer but may not cross-examine the decision maker.

An interview is not intended to provide an opportunity to further examine evidentiary material or to provide extensive submissions on the evidence. The purpose of the interview is for the decision maker to hear submissions on the proposed disciplinary action.

The employee and/or union has 14 days from the receipt of the written notice of the proposed disciplinary action to make a submission and to provide any additional information which they consider should be taken into account in relation to the disciplinary action being proposed before a final decision is made.

The decision maker has the discretion to extend the period for providing a response, having regard to the overall circumstances and the need to ensure procedural fairness, if the employee applies for additional time and provides reasonable grounds for seeking the extension.

7.4.3.11 Taking disciplinary action

In making a decision as to disciplinary action, the decision maker must consider all the material before them, including the content of any interview or further submissions from the employee.

Where a matter has been considered by the Disciplinary Advisory Panel it can be remitted back for further consideration at the discretion of the decision maker.

The decision maker is not precluded from taking lower level disciplinary action, remedial action or no action.

The employee will be advised in writing of the final decision as to disciplinary action and if applicable, the date from which the decision becomes effective.

7.4.4 Legal advice

Although there is no right to formal legal representation during an interview with the decision maker, all parties have a right to access legal advice throughout the investigative and disciplinary process. This includes the employee who is subject to the allegations, the investigator and the decision maker.

7.4.5 Rights of appeal

There is no internal right of appeal of a decision as to disciplinary action.

However, the employee may be able to seek appropriate external review. Such review may include an application to the Industrial Relations Commission, or other appropriate body.

7.4.6 External agency requests

The Children's Guardian or ICAC may request that the department review its handling of a matter or the decision reached. Where the department agrees to undertake a review it will be undertaken by an officer who has not handled the matter and the decision made by an officer more senior than the initial decision maker.

7.5 Action taken if an employee has resigned or retired

The Acts provide that a reference to a resignation, is a reference to a resignation that has been accepted by the Secretary/delegated officer.

A decision to pursue such action depends on a number of factors including, but not limited to:

- the seriousness of the matter
- the protection of children and whether the employee may be likely to return to teaching or other child-related employment at some future date

- the practicality of access to the former employee
- the cost benefit to the department of pursuing the matter.

With the exception of when a fine is imposed, taking disciplinary action does not affect the former employee's retirement or resignation or the relevant benefits and liabilities. If a fine is imposed, it may be recovered from the former officer as a debt due to the Crown.

If an employee seeks to resign or medically retire prior to the completion of any disciplinary process, the Secretary/delegated officer has the power to refuse to accept the resignation or medical retirement.

7.6 Notifying allegations of misconduct to external agencies

There are legislated requirements for the department to report certain allegations of misconduct to the Children's Guardian, the Department of Communities and Justice, the NSW Police Force (if the allegations potentially constitute a criminal offence), the NSW Education Standards Authority and the Independent Commission Against Corruption.

The outcomes of investigations of allegations of reportable conduct of a child protection nature against employees are also required to be reported to the Children's Guardian if a finding is made that the employee has engaged in the following conduct:

- (a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child
- (b) any serious physical assault of a child.

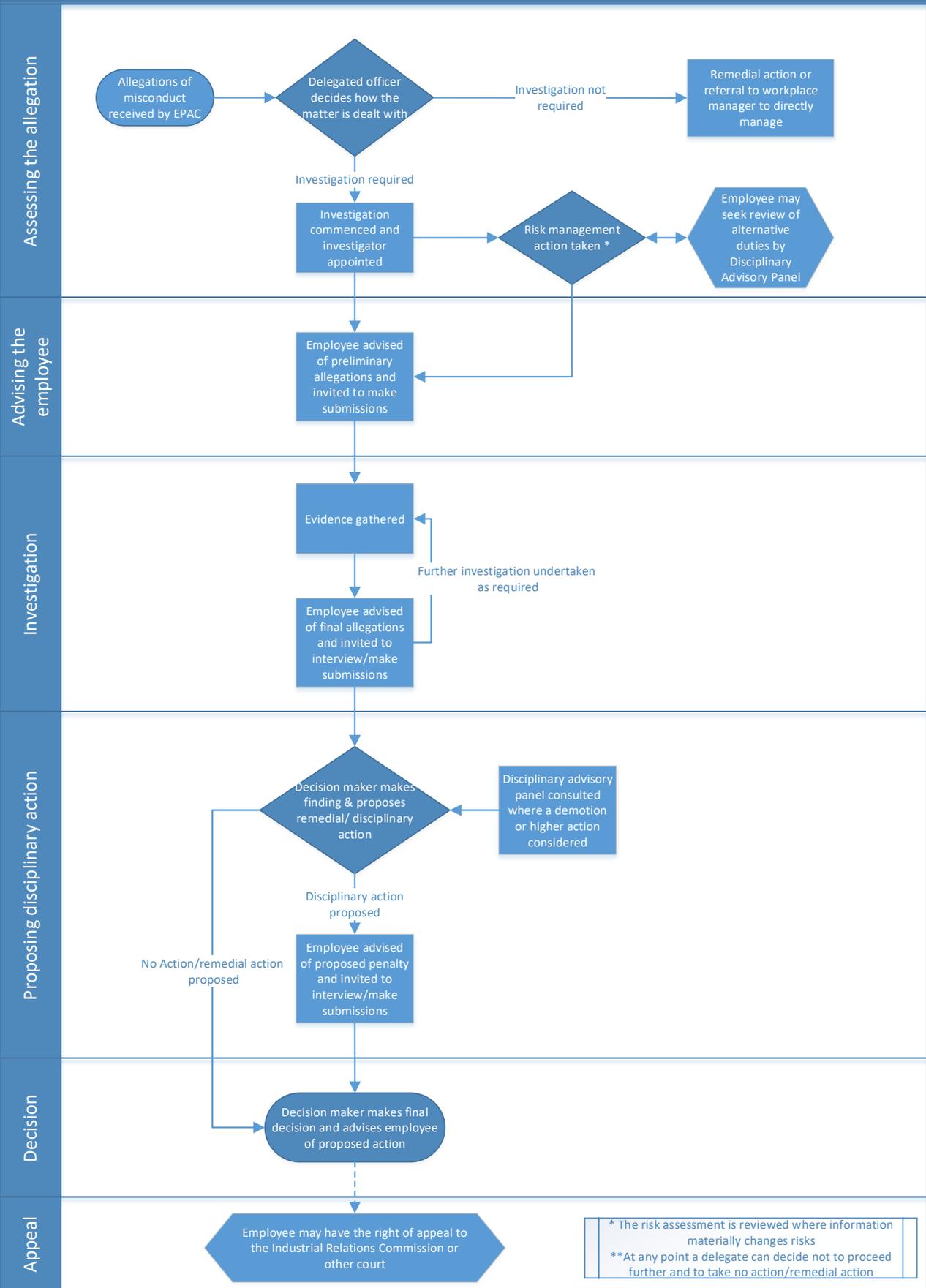
Certain external reporting requirements are outlined in the following documents:

- [Responding to Allegations against Employees in the Area of Child Protection](#)
- [Child Protection Policy Guidelines: Responding to and reporting students at risk of harm](#)

In general, external notification needs to be made when any action is taken to investigate matters that have been subject of allegations involving the following matters:

- risk of significant harm to children or young people
- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child
- any assault, ill treatment or neglect of a child
- any behaviour that causes psychological harm to a child
- certain criminal offences, including fraud
- corrupt conduct or maladministration
- allegations that may impact on teaching accreditation.

Disciplinary Process



8. PROCEDURAL GUIDELINES FOR DEALING WITH UNSATISFACTORY PERFORMANCE

The legislation provides for:

- persons permanently employed under the [Education \(School Administrative and Support Staff\) Act](#) to have their performance reviewed periodically
- officers employed under the [Teaching Service Act](#) to have their performance reviewed at least annually
- the performance review to be against established criteria/standards
- the Secretary to review the performance of an employee on such other occasions as the Secretary considers appropriate
- a performance improvement program to be implemented, if the opinion is formed following a review of performance that the employee is not performing their duties in a satisfactory manner
- the requirement for an employee to participate in any such performance improvement program in the manner required by the program
- the performance improvement program to be on terms and is to be implemented for such period as the Secretary considers appropriate.

The Secretary will delegate their functions to deal with unsatisfactory performance to an officer who understands the process and has the resources available to them to carry out the delegated function.

8.1 Responding to unsatisfactory performance

Workplace managers/supervisors are responsible for ensuring that employees under their supervision meet required work standards. It is important that employees who are not meeting the required standards have those issues addressed as soon as performance difficulties are identified.

Generally, unsatisfactory performance means not meeting agreed goals and tasks, timeframes or criteria/standards of work. The agreed criteria/standards can be in a work plan or in any other documentation, for example a Performance and Development Plan. Any standard that is applied must be relevant to the employee's position description, duty statement or articulated criteria, for example Australian Professional Standards for Teaching Staff.

8.2 Performance management

The following strategies should be implemented and referred to in dealing with instances of unsatisfactory performance:

- provide and adhere to induction programs
- ensure there are clearly articulated work standards and performance requirements which are reasonable and attainable
- collaboratively develop performance and development plans to assist the employee to reach expected work standards
- ensure that there is a clear understanding of the work to be performed
- ensure training and development opportunities are provided
- remove barriers to effective performance including:

- ensuring equitable allocation of work
- appointing officers and employees on their ability to perform the job
- ensuring fair and equitable distribution of overtime and leave
- ensuring a fair and transparent performance and development cycle.

8.3 Consideration of organisational and non-work-related factors

The manager/supervisor should, where relevant, consider factors which may contribute to the unsatisfactory performance. Factors contributing to poor performance may include:

- organisational factors (for example poorly managed restructuring; poor work and job design; ineffective recruitment and selection resulting in a 'mismatch' of people and jobs; inappropriate planning, resourcing, and competing deadlines)
- management practices (for example inappropriate or unacceptable management approach; inconsistent application of performance standards; biases, changes in opinion or lack of care or commitment on the manager/supervisor's part)
- training and development needs (for example inadequate induction and explanation of job role/responsibilities; insufficient skills, training, or experience to perform the duties and responsibilities of the position; unsupported introduction of new technology)
- poor communication between management and employees (for example inadequate performance evaluation and feedback)
- inappropriate work environment (for example occupational health and safety standards not being met)
- direct or indirect discrimination or workplace bullying and harassment
- social factors (for example conflicting personality clashes within the work environment)
- personal issues (for example lack of motivation or commitment; health, mental health or family problems; drug and alcohol misuse).

Performance difficulties that are not work-related may require intervention or assistance by management, employee associations, an employee assistance provider, or external individuals or organisations. The cause of performance difficulties must be identified and appropriate adjustments and/or strategies developed, including implementation of an improvement program, to assist the employee to deal with identified poor work performance.

Unsatisfactory performance should be dealt with by the manager/supervisor as soon as performance difficulties are identified. The nature of the unsatisfactory performance should be clearly articulated, with reference to examples. This enables the employee and the workplace manager/supervisor to be clear about the issues and concerns.

8.4 Performance principles generally

Dealing with unsatisfactory performance requires a staged process which is fair, timely and transparent, consistently applied and has regard to the particular circumstances of the case.

Improvement of performance is the primary goal and staff have a right to regular feedback about their performance and development.

The process should also have regard to any relevant written documentation that may be in place.

The key stages for addressing unsatisfactory performance are:

1. early identification and individualised targeted support through supervisory performance and development discussions

2. undertaking a performance improvement program
3. taking remedial or disciplinary action.

While performance and development is a shared responsibility between an employee and their supervisor, the supervisor has the primary responsibility for performance management. Early identification and provision of individualised targeted support in most cases should address an unsatisfactory performance problem. Performance feedback and appraisal should be ongoing and part of supervisory performance discussions with employees. It is only if action at this stage has failed to rectify the unsatisfactory performance that consideration needs to be given to involving the subsequent stages.

The department has established procedures for formally addressing unsatisfactory performance, should processes of support aimed at assisting them to meet required criteria/standards and remedial action not be successful.

These are:

- Teacher Improvement Program
- Executive Improvement Program
- Principal Improvement Program
- Procedures for Managing School Based Non-Teaching Staff Identified as Having Performance Difficulties.

If, at the end of a performance improvement program, the employee's performance is satisfactory, no further action is required other than the usual performance and development reviews.

8.5 Remedial action vs Disciplinary action

Before implementing disciplinary action to deal with unsatisfactory performance, the manager/supervisor must be satisfied that individualised and targeted support has been provided to the employee through an improvement program to enable him or her to perform at the required standard.

Disciplinary action is not the first option for managing unsatisfactory performance, but may become necessary when performance remains unsatisfactory following an improvement program. Disciplinary action is only appropriate where performance remains unsatisfactory after the employee has been given a reasonable opportunity to improve his or her performance.

If the Secretary is of the opinion that an employee is not performing in a satisfactory manner or to a satisfactory level, he or she may decide to take remedial action unless the officer is a school principal in which case disciplinary action will commence.

8.6 Unsatisfactory performance of an employee

If an employee's performance has been assessed to be unsatisfactory following completion of a performance improvement program, they are directed to alternative duties in a location where they are not carrying out the inherent duties of their position.

The manager/supervisor forwards the improvement program documentation to EPAC for review as to whether the process used in the performance improvement program was appropriately followed.

8.7 Unsatisfactory performance of principals

If the decision maker is of the opinion that a school principal's performance is still unsatisfactory following completion of a performance improvement program or following the

principal's failure to participate in or satisfactorily complete such a program, the decision - maker may:

- dismiss the school principal from the teaching service
- demote the school principal to a lower position in the teaching service.
- Before taking any such action with respect to a school principal, the decision maker must:
- notify the principal in writing of the proposed action and the reasons for taking that action
- give the principal at least 21 days in which to make a written submission to the Secretary in relation to the proposed action
- take into consideration any written submissions received from the principal during that period.

8.8 Determination about appropriate outcome (other than school principals)

If the performance of an employee (other than a school principal) is still assessed to be unsatisfactory following the completion of a performance improvement program or following his or her failure to participate in or to satisfactorily complete such a program the decision maker may take:

- remedial action
- disciplinary action
- a combination of remedial action and disciplinary action.

The decision maker will advise the employee in writing that his or her performance remains unsatisfactory and that this assessment may lead to disciplinary action.

The notification should indicate:

- the details of the unsatisfactory performance against the criteria/standard in the performance improvement program
- that the decision maker is of the opinion that the performance is still unsatisfactory
- that the decision maker is considering disciplinary action and the implications of that action including the most serious disciplinary action that may be imposed
- a summary of the process taken to date including the reasonable opportunity the employee has had to respond to the decision maker about his or her performance
- advice that the employee will be provided with an opportunity to provide a submission in relation to any proposed disciplinary action
- that the officer's or employee's response will be taken into consideration in deciding whether to take disciplinary action.

8.9 Unsatisfactory performance resulting in remedial action

All remedial and formal action contained in the department's relevant improvement program and procedures as outlined in [section 8.2](#) must be exhausted before these guidelines apply.

However, the decision maker has the option to apply remedial action at any stage in the process if they determine that further remedial action may successfully address a person's performance difficulties.

If the decision maker determines that remedial action is warranted, the employee should be advised in writing about:

- the remedial action proposed

- the reasons for the decision
- the consequences of the decision
- the process taken to date
- disciplinary action being taken if unsatisfactory performance continues or re-occurs
- how to access further assistance if required.

Where the proposed remedial action is the transfer to another position that would require the employee to change residence, then the person must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The decision maker should be satisfied the person has no valid reason for refusing the transfer.

8.10 Unsatisfactory performance resulting in disciplinary action

In making a decision about disciplinary action the decision maker must, prior to notifying the employee of this fact, give consideration as to what is the most severe disciplinary action that might apply to such unsatisfactory performance.

The decision maker must exercise his or her discretion and not adopt a policy that unsatisfactory performance will always attract the same disciplinary action.

In considering disciplinary action, the decision maker must consider:

- the protection of children is to be the paramount consideration
- the facts of the matter
- the impact of the unsatisfactory performance on the employee's work
- the impact of the unsatisfactory performance of the objectives on the relevant Act
- the nature and seriousness of the unsatisfactory performance
- the skill, experience and position of the employee
- any mitigating or extenuating circumstances that may have contributed to performance difficulties
- the employment history of the employee
- whether the unsatisfactory performance has previously been the subject of counselling or previous remedial or disciplinary action
- the effect of the proposed action on the employee
- the employee's response.

If the decision is to take disciplinary action the decision maker must write to the employee and include the following:

- the disciplinary action being considered, including the most severe disciplinary action that is being considered
- an outline of any previous employment matters, such as past remedial action or discipline matters or previous satisfactory work history may be taken into account
- advice that the employee may request within 7 days an interview with the final decision maker and/or provide a written submission within 21 days in relation to the disciplinary action being considered.

The decision maker has discretion to extend the period for response if the officer applies for additional time within the 21 day period and provides reasonable grounds for seeking the extension.

Before the decision maker makes a decision as to disciplinary action they will:

- provide an opportunity for the employee to participate in an interview with a support person and/or a written submission
- consider the submissions made by the employee and/or union.

The decision maker is also not precluded at this stage from ordering remedial action instead of disciplinary action or in conjunction with disciplinary action if they are of the view that a matter could be more effectively addressed in this manner.

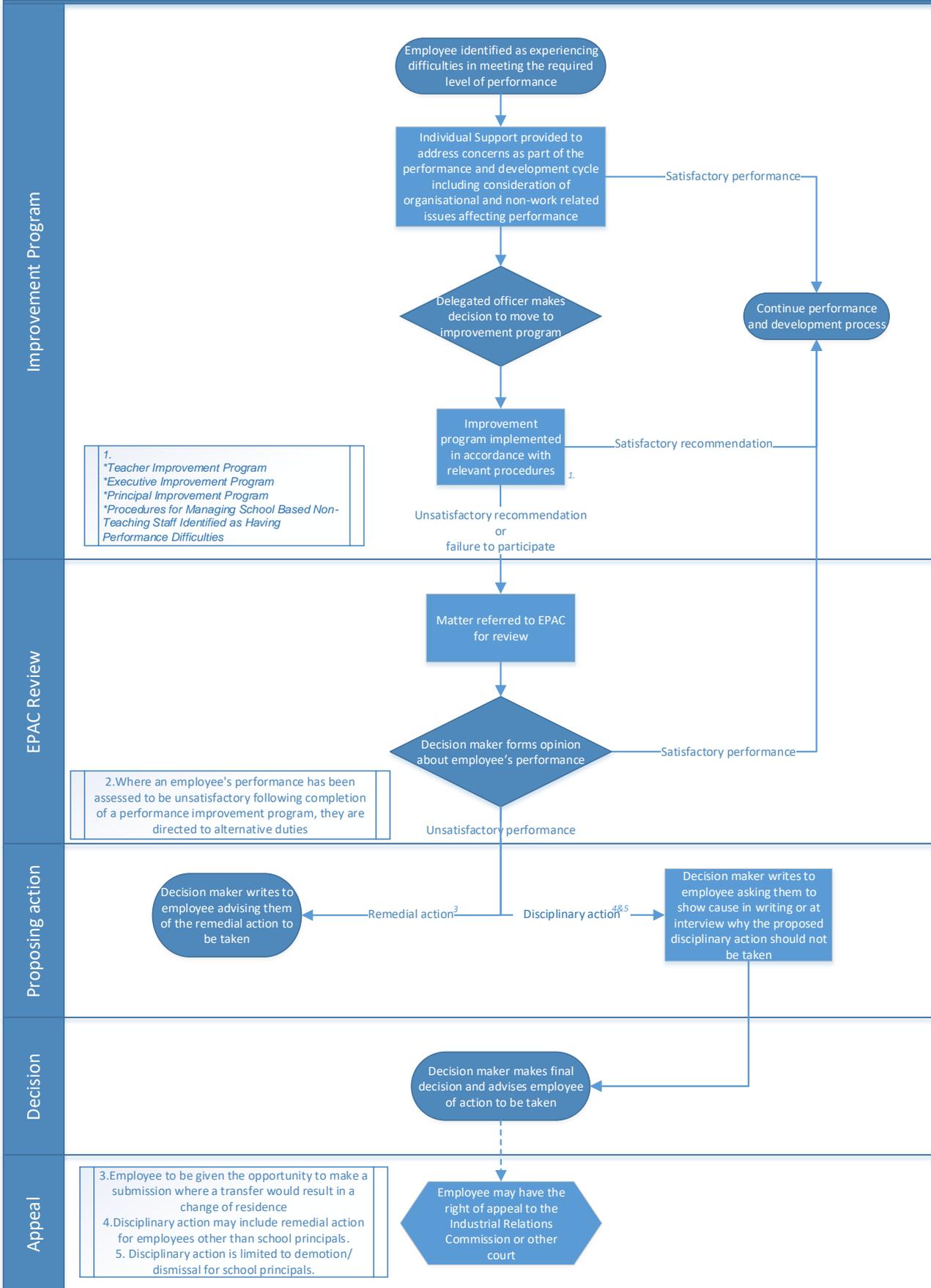
In relation to school principals, the decision maker may only consider demotion or dismissal (see [section 8.7](#)).

The employee will be advised in writing of the final decision as to disciplinary action and if applicable, the date from which the decision becomes effective.

8.11 Assistance in applying the guidelines

The decision maker may seek advice from relevant internal or external experts to assist in forming a view as to how the matter might proceed.

Process for dealing with unsatisfactory performance



9. PROCEDURAL GUIDELINES FOR DEALING WITH A SERIOUS CRIMINAL OFFENCE

These guidelines apply to situations in which:

- an employee or temporary employee is charged with a serious criminal offence (that is one punishable by imprisonment for 12 months or more)
- an employee is found guilty of such an offence.

The Secretary or their delegate can take action in respect of an employee found guilty of a serious offence.

For matters that involve an employee or temporary employee being charged and/or convicted of serious sex offences or offences against children that render them barred to engage in child-related work (defined by the [Child Protection \(Working with Children\) Act](#); refer to [section 10](#)).

9.1 Notification requirements

Under the Acts, an officer, permanent employee or temporary employee who:

- (a) is charged with, or is found guilty of an offence that is punishable by imprisonment for 12 months or more in New South Wales, or
 - (b) is charged with, or who is found guilty elsewhere than 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 Secretary.

The role of receiving this information has been delegated to the workplace manager, for example, a teacher must advise their principal. The workplace manager/supervisor must immediately report that fact to EPAC.

If an employee has reason to believe that the person has been charged with having committed, or has been convicted of a serious offence but has not reported that fact as required, they must report the matter to EPAC.

9.2 Procedural fairness

Prior to taking any disciplinary action, the decision maker must ensure that the principles of procedural fairness have been followed and that the employee has been provided with the opportunity to make submissions about any proposed disciplinary action.

9.3 Removing the officer from duty following a criminal charge or criminal conviction

Decisions in respect to risk management and removing an officer from duty are made in line with the process described at [section 7.3](#).

9.4 Investigation of a criminal matter that directly relates to an employee's work

The timing of conducting an internal investigation depends on the police investigation. All stages of dealing with the allegation as a disciplinary matter should continue unless requested by the external authority not to proceed. If the process is not completed and the employee is charged by the police it is usually appropriate to await the outcome of the court proceedings. Such matters are generally negotiated on a case by case basis having regard to timeliness, procedural fairness and the requirements of other agencies.

The department will seek information on the progress of a matter and act promptly upon conclusion of the criminal proceedings. The employee has an obligation to inform the Secretary if they are convicted of a serious offence.

9.5 Employee convicted of a serious offence

When an employee has been found guilty (with or without conviction) of a serious offence, the relevant material and facts can be forwarded directly to a decision maker. The decision maker may decide to:

- take disciplinary action
- take remedial action
- take no further action.

A decision maker must exercise discretion in selecting the appropriate action and not adopt a policy that a particular serious offence will always attract the same action, unless the offence renders the employee barred to engage in child-related work. It should not be assumed that all other convictions will result in either disciplinary action or remedial action.

However, if an employee becomes an unauthorised person, their employment will be terminated effective from the date upon which the employee became an unauthorised person.

In all matters other than those involving an unauthorised person, the decision maker should, if available, be provided with:

- the certificate of conviction
- the agreed facts or Court findings where available
- a transcript of the Judge's/Magistrate's sentencing remarks, where available.

9.5.1 What issues should be considered in deciding the appropriate action

In determining the appropriate action, the decision maker will have regard to the objects of the legislation.

Issues to be considered include:

- the facts of the case if known
- whether the employee poses an ongoing risk to children
- the impact of the conduct on the objectives of the Acts (see [section 4.1](#))
- the nature and seriousness of the proven conduct, including the effect and circumstances of the incident
- the degree of relevance of the conduct matter to the employee's position and duties
- the employment history and general conduct history of the employee
- whether the conduct or substantially similar conduct has previously been the subject of remedial or disciplinary action
- whether orders of the Court prevent the employee attending for work
- mitigating or extenuating circumstances
- any personal circumstances of the employee and whether these may have contributed to any misconduct for example health issues, particular stressors on the employee
- the effect of the proposed action on the employee.

9.5.2 Decision process

9.5.2.1 Disciplinary action proposed

If the decision maker decides disciplinary action is appropriate, the employee must be notified in writing of that opinion and of the disciplinary action being considered, including the most

severe disciplinary action. Before any disciplinary action is taken, the employee has an opportunity to make a submission in relation to the disciplinary action being considered.

If the decision is to take disciplinary action, the written notification must state:

- the details of the serious offence
- the materials to be taken into account, for example certificate of conviction (if available), transcripts from criminal proceedings, other criminal convictions
- an outline of the disciplinary action that the decision maker proposes to impose, including the severest disciplinary action that is being considered for the particular matter
- details of any previous employment matters, such as past remedial action or discipline matters or previous satisfactory work history that may be taken into account
- advice that the employee may request within 7 days an interview with the final decision maker and/or provide a written submission within 14 days
- that these further submissions and/or additional information will be considered before a final decision is made to implement the disciplinary action being considered.

9.5.2.2 **Employee submissions**

Before taking disciplinary action the decision maker must have invited the employee and/or their union to make a submission and/or participate in an interview. This information, if provided, must be considered before a final decision is made.

The employee may request within 7 days of receipt of the written notice of the proposed disciplinary action, to attend an interview with the final decision maker, accompanied by a support person before a final decision is made. The support person may speak on behalf of the officer but may not cross-examine the decision maker.

An interview is not intended to provide an opportunity to further examine evidentiary material or to provide extensive submissions on the evidence. The purpose of the interview is for the decision maker to hear submissions on the proposed disciplinary action.

The employee and/or union has 14 days from the receipt of the written notice of the proposed disciplinary action to make a submission and to provide any additional information which they consider should be taken into account in relation to the disciplinary action being proposed before a final decision is made.

The decision maker has the discretion to extend the period for providing a response, having regard to the overall circumstances and the need to ensure procedural fairness, if the employee applies for additional time and provides reasonable grounds for seeking the extension.

9.5.2.3 **Decision**

In making a decision as to what disciplinary action to impose, the decision maker must consider all the material before them, including the content of any interview or further submissions from the employee. The decision maker should make a final decision promptly and expeditiously.

The decision maker is not limited to a single course of action and may take no action or a type of disciplinary action in combination with other disciplinary or remedial action.

Where the decision maker is of the opinion that the kind of disciplinary action that should be taken is outside the decision maker's delegation, it should be referred to an appropriate decision maker with delegation to impose more serious disciplinary action.

Where the decision maker is of the opinion that the appropriate disciplinary action which is within their delegation includes demotion, direction to resign or dismissal they must first refer the matter to the disciplinary advisory panel.

A Disciplinary Advisory Panel (the panel) will be convened to provide advice to the decision maker on matters where a decision maker is of the opinion that demoting, directing to resign or dismissing an employee may be an appropriate disciplinary action.

The employee will be advised in writing of the final decision as to disciplinary action and, if applicable, the date from which the decision becomes effective.

9.5.3 Employee found not guilty of a serious charge

A not guilty finding or dismissal of the charge does not necessarily mean that the employee may not have engaged in misconduct. A criminal offence must be proved beyond reasonable doubt. The lesser civil standard of the balance of probabilities applies to misconduct matters.

Consideration will be given to whether there is sufficient reason to deal with the matter as an allegation of misconduct. These considerations also apply where a criminal charge does not proceed to a hearing or the police decide not to lay any charges.

If it is decided to deal with the matter as an allegation of misconduct the guidelines will apply and should be followed. Every effort should be made to ensure that any further investigation is completed expeditiously as usually considerable time may have elapsed pending the outcome of the criminal proceedings.

10. PROCEDURAL GUIDELINES FOR DEALING WITH CHARGED PERSONS AND UNAUTHORISED PERSONS

These procedures apply when an employee or temporary employee who is charged with and/or convicted of serious sex offences, or offences against children that would render them barred from engaging in child-related work (as defined by the [Child Protection \(Working with Children\) Act](#)).

The department requires that employees hold a current WWCC clearance to work in child related employment. For further information see the [Working with Child Check](#) policy.

Child-related work is defined in sections 6 and 7 of the [Child Protection \(Working with Children\) Act](#). Additional roles are identified in the [Child Protection \(Working with Children\) Regulation 2013](#).

Under this system, a WWCC will either result in a clearance to work with children for five years or a bar against working with children. Individuals who receive a WWCC clearance will be subject to ongoing monitoring and a person's WWCC clearance may be cancelled or may become subject to an interim bar as determined by the Office of the Children's Guardian.

The Office of the Children's Guardian must cancel the WWCC clearance of a person if the Office of the Children's Guardian becomes aware that the person is or becomes a disqualified person (see [Dictionary](#)), or if the Office of the Children's Guardian is satisfied that the person poses a risk to the safety of children.

10.1 Charged person and unauthorised person status must be notified to the Secretary

An employee or temporary employee who is charged with an offence that would render them barred from working in child-related work or who becomes an unauthorised person must immediately report that fact to the Secretary by contacting their workplace manager.

The workplace manager/supervisor must notify EPAC of the employee or temporary employee's circumstances.

If a workplace manager/supervisor or other senior officer becomes aware that an employee or temporary employee has been charged or convicted of such offences, and has not notified the Secretary themselves, they must immediately notify EPAC.

10.2 Charged person

Under the Acts, if an officer, permanent employee or temporary employee has their WWCC clearance cancelled pending determination of proceedings for an offence listed in Schedule 2 to the [Child Protection \(Working with Children\) Act](#), they are no longer the holder of a WWCC clearance and must not be allowed to continue to engage in child-related work.

Charged persons must be removed from child-related work. Consideration should be given to whether the employee can be placed on alternative duties.

An employee who becomes a charged person can be suspended with or without pay. All decisions about suspensions must be reviewed every 30 days.

10.3 Charged person found not guilty of the offence

Even though the charged person has been found not guilty of the offence, they are still not able to work in child-related work until they have a WWCC clearance. The employee will need to reapply for a WWCC clearance.

Refer also to [section 9.5.3](#) in the event that the person subsequently obtains their WWCC clearance.

10.4 Charged person found guilty of the offence

If a charged person is found guilty of the offence (with or without a conviction) that person becomes an unauthorised person.

10.5 Termination of employment of unauthorised persons

The Acts provide for the immediate termination of employment of an employee or temporary employee who is or becomes an unauthorised person and who is employed by the department in child-related work as defined by the [Child Protection \(Working with Children\) Act](#).

The Acts refer to a person whose substantive position is child-related work, notwithstanding that they may be temporarily employed or placed on alternative duties in a different position.

10.6 Process of dismissal following a person becoming an unauthorised person

Following a person becoming unauthorised the dismissal takes effect immediately and the employee or temporary employee will not have any right to provide a response or to an interview.

The person will be advised in writing as soon as practicable that they have been dismissed, or in the case of a temporary employee, that their contract has been terminated.

10.7 Seeking a review of unauthorised person status

A person may be eligible to seek a review of the decision to refuse a WWCC clearance or the decision to cancel their WWCC clearance under Part 4 of the [Child Protection \(Working with Children\) Act](#).

Any such application is determined by the NSW Civil and Administrative Decisions Tribunal.

10.8 Person dismissed as unauthorised person, subsequently obtains a WWCC clearance to work with children

If a person is dismissed as an unauthorised person and they subsequently obtain a WWCC clearance within 12 months from the date of that dismissal, the person is entitled to be reinstated to, or re-employed in a position that is similar to the position that person held prior to their dismissal. The person must take immediate steps following advice that they have a WWCC clearance to advise the department that they will seek reinstatement.

The person is deemed to have never been dismissed from employment and to have been on leave without pay during the period between dismissal and reinstatement or re-employment. Regulations can be made under the Acts dealing with leave, superannuation entitlements and similar issues.

10.9 Disciplinary action against a person who ceases to be an unauthorised person

In circumstances where a person ceases to be an unauthorised person and is reinstated or re-employed in accordance with the relevant Acts, there is nothing to prevent the department from dealing with that person under any other provision of the Acts in relation to the reasons as to why that person was an unauthorised person.

10.10 Compensation or other industrial remedies

The Industrial Relations Commission or any other court or tribunal does not have jurisdiction to order reinstatement or re-employment of an employee contrary to a termination of employment under the relevant Acts in respect of a person who has effectively been deemed to be an unauthorised person or to order the payment of damages or compensation for any such termination or other related matter.

10.11 **Compensation or other industrial remedies**

The action takes effect immediately without any right to a hearing or any requirement to comply with the rules of procedural fairness.



PEOPLE AND SERVICES



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Performance and Development Framework for Principals, Executives and Teachers In NSW Public Schools

Introduction and context

The NSW Department of Education and Communities is committed to attracting, inducting, developing and recognising a high performing workforce.

Effective performance and development requires a collaborative and supportive workplace committed to a positive culture of ongoing learning by individuals and teams.

All teachers have a right to be supported in their professional learning, as well as a responsibility to be involved in performance and development processes that facilitate their professional growth and the provision of quality teaching and learning, consistent with the NSW Department of Education and Communities' policies, aims and strategic directions and school plan.

This Performance and Development Framework is referenced in the Terms of Settlement (27 November 2013) for the Salaries and Conditions Award 2014-2016 for teachers in the NSW Teaching Service. It replaces previous processes outlined under the Teacher Assessment and Review Schedule, Executive Assessment and Review Schedule, Principal Assessment and Review Schedule and Officer Assessment and Review Schedule.

The overarching purpose of the performance and development process is to support the ongoing improvement of student outcomes through continuous development of a skilled, effective and professional teaching workforce.

The performance and development process for the principal, executive or teacher is a positive developmental activity that is intrinsically linked to the policies, aims and strategic directions of the NSW Department of Education and Communities, and reflected in school planning processes.

The Australian Professional Standards for Teachers, as referenced in the Terms of Settlement (27 November 2013) for the Salaries and Conditions Award 2014-2016, form the basis for guiding development and assessing performance.

Probation, induction, accreditation, career pathways and leadership development are all features of a teacher's career cycle that are supported by ongoing performance and development processes.

This framework provides simple, adaptable information and tools that support principals, executives and teachers to sustain a positive and collaborative performance and development culture in their workplace.

Performance and development process

Effective performance and development processes are based on three distinct yet interdependent phases:

- Phase 1: Plan
- Phase 2: Implement
- Phase 3: Review

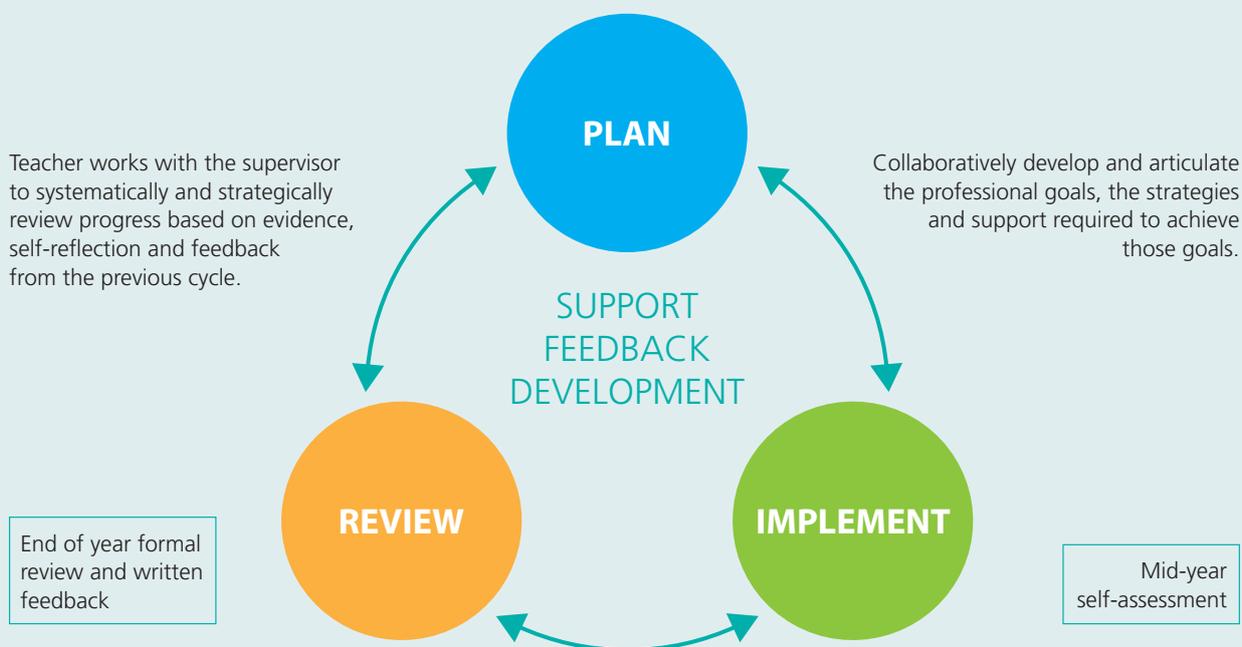
The phases encompass the various activities teachers, executives and principals are already undertaking in the normal course of their work, rather than create separate and additional processes. This includes streamlining the processes around teacher accreditation. Care should be taken to avoid checklists and proformas that create unnecessary paperwork and detract from teaching and learning.

Applicability

Performance and development processes are applicable to permanent, temporary and casual teachers, executives and principals working in NSW public schools. These processes are applicable to specialist teachers such as school counsellors and school liaison officers, and to teachers employed in non-school based teaching service (NBTS) classifications.

References to teachers in this and associated documents include all of the above groups of employees.

Key phases of the annual performance and development process



Professional learning support for teachers and supervisors in:

- developing goals
- identifying appropriate evidence
- observing teaching
- giving and receiving effective feedback

Phase 1: Plan

The focus of the planning phase is to create an individual Performance and Development Plan (PDP) and a whole school/workplace professional learning plan to guide the work of each principal, executive or teacher for the year ahead. The PDP is developed through collaboration and professional dialogue with colleagues and is based on the following documents:

Australian Professional Standards for Teachers which will form the basis for guiding and assessing performance and development.

Australian Teacher Performance and Development Framework on which the process will be based.

Australian Charter for the Professional Learning of Teachers and School Leaders which affirms that Teacher Professional Learning (TPL) is a shared responsibility that must be taken up at all levels of the education system – by teachers, school leaders, system leaders and policy makers.

Planning and goal setting

Teachers, executives and principals should receive support and guidance from their supervisor in setting meaningful and appropriate professional goals. This process should occur in a collaborative and supportive environment. For experienced teachers, executives and principals, goals may be framed around the higher career stages of Highly Accomplished or Lead.

- Goals should be constructed so that they:
 - align with the policies, aims and strategic directions of the Department and the school plan, and are clearly related to the Australian Professional Standards for Teachers
 - recognise the experience and expertise of the teacher, existing strengths and areas for professional growth
 - are informed by the everyday learning, teaching and leadership practice undertaken by teachers in the normal course of their work.

- At least three and no more than five professional goals are required.
- The planned goals and professional learning support must take into account:
 - system priorities (such as new syllabuses)
 - school priorities (such as the whole school professional learning plan)
 - personal teaching and career aspirations
 - accreditation requirements (where applicable).

Teachers must be able to identify a personal goal of their choice and be provided with the appropriate professional learning opportunities.

- The PDP is to be implemented on an annual basis and ideally, should be finalised no later than mid-term one of the school year, taking into account the need to be flexible for variables such as final school enrolments and staff movements.
- The PDP is finalised at a planning meeting between the teacher and the supervisor following quality discussions about teaching practice and performance. The planning meeting may be done through a team process such as stage, faculty or executive meetings.
- The PDP is to be viewed as a dynamic plan. If the need arises, teachers may amend and adjust their PDP throughout the performance and development cycle, to address emergent and unexpected issues in consultation with their supervisor.
- The PDP template is used to record the results of the performance and development planning phase.
- As a guide, the completed PDP should not exceed one A4 page.

Phase 1: Plan (continued)

Professional learning

Well-resourced and timely professional learning that meets the needs of teachers is an integral condition of a skilled, effective and professional teaching workforce.

The Department will provide Teacher Professional Learning (TPL) including resources to support the teacher's learning needs as identified through the performance and development planning process.

The teacher and supervisor will work together to identify professional learning activities that:

- support the achievement of established performance goals
- further develop knowledge, skills and capabilities
- build on existing strengths
- support career aspirations.

Professional learning activities are to be recorded on the PDP template.

Staff may wish to use professional learning to assist in career planning that may involve, but is not limited to:

- reflecting on one's skills, knowledge and experiences
- reflecting on achievements in other positions, for example work with agencies such as the Board of Studies, Teaching and Educational Standards (BOSTES), professional associations and community organisations, or as a school/local area project manager
- consideration of career goals, which may be in terms of career stages (Proficient Teacher, Highly Accomplished Teacher and Lead Teacher), or school based or non-school based promotion
- identifying ways to achieve career goals (the strategies should support teachers to recognise their current and developing capabilities, professional goals and achievements)
- reflecting on and evaluating progress and modifying career planning as appropriate.

Phase 2: Implement

The focus of this phase is to implement the planned strategies, support and professional learning that will lead to the achievement of, or progress towards, the PDP goals. This phase involves a focus on the continuous improvement of teaching, learning and leadership practice and the learning outcomes of students. Reflective practice and feedback will allow for adjustments and refinements to be made to the PDP as the annual cycle progresses.

Identifying evidence to assess progress towards goals

Evidence will be systematically collected, sourced from the everyday work of the teacher and when considered holistically, will demonstrate the teacher's progress towards the professional goals.

The evidence should be authentic and reliable. Evidence gathered and presented through this process should not be an end in itself. The evidence should be directly drawn from the normal, everyday work of the teacher, rather than through the creation of separate and additional processes, and be sufficient to indicate the teacher's performance.

Determining the most appropriate forms of evidence should be a collaborative activity, informed by the context of the school and the career stage of the teacher. Depending on the experience and expertise of the teacher, support may be required to identify the appropriate sources of evidence for each goal.

Sources of evidence of professional practice and growth may include, but are not limited to:

- data on student learning and development outcomes (including but not limited to formal student assessment data). Student outcomes should be broadly defined in ways that include student learning, engagement in learning and wellbeing; that avoid simplistic approaches that tie evaluation of teaching directly to single outcome measures; and that acknowledge that these can be assessed in a variety of ways including teacher professional judgement.

- feedback from direct observation of teaching, through agreed, collaborative lesson observations. This could be by a peer or supervisor.
- results of collaborative practices with colleagues (for example, curriculum and assessment development, feedback and evaluation from whole school and other professional learning activities.)
- self-reflection on the impact of professional learning.

The types and sources of evidence will align to the Professional Standards for Teachers at the appropriate career stage and should form the basis of accreditation and maintenance requirements. These processes should be aligned, not duplicated.

Principals will be required to present evidence to address three broad areas of professional practice:

- school planning and management
- student learning outcomes
- positive, collaborative workplace culture.

The quantity of evidence required to substantiate progress towards each goal is a professional judgement, determined in collaboration with the supervisor. As a minimum, there should be one piece of evidence to demonstrate progress towards or achievement of each goal articulated in the PDP.

The duration of meetings, collection of data, number of peer observations and documentation of this and other collaborative practice should be determined with regard to the school's organisation and the current roles and duties of teachers.

Phase 2: Implement (continued)

The direct observation of classroom practice is an important component of the process, and is an essential element of the Australian Teacher Performance and Development Framework. The observation should be negotiated, linked to the teacher's goals and the appropriate Standards, and undertaken in a collegial and supportive manner.

Observation processes are to be negotiated in a collegial, mutually respectful manner, undertaken by an agreed colleague and documented.

The level of experience of the teacher will inform the number of observations of teaching practice. There needs to be a minimum of two documented observations per year. In the context of a supportive culture, additional peer observations can be a valuable part of a quality professional learning plan.

Documented observations by the supervisor of leadership practices of executives and principals are to be conducted.

In the case of executives and principals with teaching responsibilities, the colleague will undertake and document a mix of structured observations of both teaching practice and management/leadership practices, as agreed between the executive or principal with the supervisor. This may occur throughout the annual cycle.

Ongoing feedback, reflection and refinement

The PDP is a dynamic plan, open to adjustment and refinement as required in consultation with supervisors. This may include making goal adjustments or adding new strategies or support structures, or continuing with goals from one PDP to another.

Teaching is enhanced when teachers are provided with positive encouragement to reflect on their practice, and benefit from regular feedback and professional development throughout the year.

Regular feedback and reflection helps the teacher to adjust the plan so that it meets their professional learning needs throughout the year. It is the shared responsibility of individuals, teams, colleagues and supervisors to seek and provide positive and constructive professional feedback.

The frequency of self-reflection will be determined by the teacher and may be used to inform the development of the PDP.

Feedback can be provided through one-to-one discussions, through shared professional practice and in settings such as stage, faculty or executive meetings.

Written feedback may be provided following an observation of professional practice or participation in a collegial activity. The timing, location and format for providing feedback should be negotiated between the teacher and the supervisor, with due regard for workload and the responsibilities of all those involved.

Phase 3: Review

The focus of this phase is to formally review the teacher's performance and development progress and achievement, providing explicit, constructive feedback to the teacher to inform the next planning cycle.

This phase provides the supervisor and the principal, executive or teacher with an opportunity to have purposeful dialogue that will support them in their ongoing professional growth and career development.

As the Australian Professional Standards for Teachers have been used to form the basis for developing the individual PDP, the annual written feedback (summative statement) recorded on the PDP template can be used as evidence for maintenance of BOSTES accreditation.

Self-assessment and annual review

There are two main formal reviews in the annual cycle: the self-assessment review midway through the cycle and the annual review at the end of the cycle.

Self-assessment

A self-assessment review should be conducted by the principal, executive or teacher mid-way through the annual cycle. It provides the teacher with the opportunity to:

- reflect on teaching and/or leadership practice, and on progress towards the achievement of the PDP goals and related professional development strategies
- refine the PDP through the use of evidence and re-focus attention on achieving the goals, if needed.

The written self-assessment review is recorded in the PDP template and the teacher may discuss it with the supervisor and use it as part of the annual review process.

Annual review

Towards the end of the annual cycle, teachers, executives and principals will participate in a structured discussion with their supervisor to facilitate the provision of a review on progress towards the goals and formal written feedback, informing the next performance and development cycle.

A key feature of the formal annual feedback process will be an agreed, written assessment, recorded on the PDP template. This will show the teacher's progress towards achieving their professional goals, based on evidence and developed through constructive dialogue.

The written feedback can be developed collaboratively by the teacher and their supervisor and should inform the development of the next PDP.

The provision of formal written feedback provides an opportunity to articulate each teacher's achievements.

The formal feedback and review that occurs at the conclusion of one cycle leads to the commencement of the next cycle. Individuals will consider current, revised or new goals to reflect achievements and progress they have made in the current year and their ongoing career development.

Post annual review

The supervisor should ensure that:

- all documentation relating to the annual review has been provided to the teacher to whom it pertains and is electronically filed in a secure location
- her/his supervisor has been informed of the outcome of the annual review
- success is acknowledged.

Documentation

Teacher and executive documentation should be retained at the school and stored securely. The teacher and executive should retain the original copy of the documentation.

A copy of the principal's documentation is retained locally and securely by the Director Public Schools. The principal should retain the original copy of the documentation.

Documentation is not to be used for purposes outside the Performance and Development Framework, without the knowledge of the teacher, executive or principal to whom it pertains.

Documentation practices should be consistent with the Department's Record Management Program.

Appendix

Further information related to the Performance and Development Framework is provided below.

Teacher accreditation

In the case of the teachers requiring or maintaining accreditation at Proficient Teacher level, performance and development processes should be implemented in conjunction with the Department's Accreditation at Proficient Teacher Procedures (October 2014).

In the case of teachers who are voluntarily seeking or maintaining accreditation at Highly Accomplished Teacher and Lead Teacher levels, performance and development processes should be implemented in conjunction with the Accreditation at Highly Accomplished Teacher and Lead Teacher Procedures.

Beginning teacher support program and Induction

Beginning teacher support funds are provided to schools for each permanent beginning teacher for their first year of permanent teaching. This is equivalent to two hours per week release time for the beginning teacher and an additional one hour per week release time for an experienced teacher to provide mentoring support. In the teacher's second year of permanent teaching, one hour per week release time is allocated.

These funds allow schools to collaboratively develop a program of induction, professional development and mentoring appropriate to the needs of the permanent beginning teacher. This will include the provision of increased, regular release time for the beginning teacher, as well as regular mentoring from an experienced teacher colleague, aligned to the beginning teacher's PDP and their accreditation requirements.

Teacher Professional Learning funds allocated to schools should also be used to support the performance and development needs of beginning temporary and casual teachers.

Teacher efficiency process

The teacher efficiency process will be positioned within the broader context of a school's performance and development processes and professional learning platform.

The Department's obligation is to ensure that all teachers will be supported through the ongoing performance and development process.

Where a teacher's efficiency is causing concern the relevant Departmental procedures should be implemented as soon as possible to ensure the provision of ongoing quality teaching to students.

Implementation of teacher efficiency procedures should be managed separately from implementation of performance and development processes and action should not be postponed until the end of a performance and development cycle.

The following procedures should be used where a principal, manager or supervisor identifies that a teacher is experiencing difficulty with his or her performance.

- Principals – Principal Improvement Program (July 2014)
- Executives – Executive Improvement Program (July 2014)
- Teachers – Teacher Improvement Program (July 2014)
- Probationary Teachers – Probationary Teacher Improvement Process (August 2014)

Changing duties

Where a teacher is temporarily appointed to either a school based or non-school based teaching service position for more than one school term, or the individual and supervisor expect that the temporary appointment will continue for more than one school term, the individual and supervisor should adjust the PDP in keeping with the new role / duties.

Appendix (continued)

If a teacher is absent on unexpected extended leave during the performance and development annual cycle, following return to work, the PDP entered into before the leave commenced should be reviewed as soon as possible.

Where a teacher works in more than one school/ workplace they should have a PDP negotiated with each supervisor but managed by one designated supervisor. In these circumstances, the negotiations should not duplicate the PDP process.

Care should be taken in supporting the performance and development of teachers who are making a graduated return to work, including the assessment of their work performance. This involves the teacher being assessed consistent with their case circumstances, including the stage they have reached in their rehabilitation program.

Confidentiality

Crucial to successful implementation of performance and development is adherence to confidentiality, where applicable, and thorough documentation practices.

It is the responsibility of all teachers involved to maintain confidentiality, to uphold the professional standing of individuals and ensure dignity and respect in the workplace.

Documentation is jointly owned by the teacher and their supervisor. Both parties should sign copies of the PDP, Self-Assessment and Annual Review, to indicate that this documentation has been sighted. Where either party wishes to make comments on the performance and development process, this should be recorded as a signed statement on the relevant document.

A principal and director will, if required, have access to each teacher's PDP. An executive director will, if required, have access to the PDP for principals within their local area. In exceptional circumstances, an executive director may need to access the PDP of a teacher or an executive, with the individual's knowledge.

Resolving concerns

All teachers have a right to be supported in their professional learning, as well as a responsibility to be involved in performance and development processes that facilitate their professional growth and the provision of quality teaching and learning, consistent with the Department's policies, aims and strategic directions and school plan.

If teachers have concerns about the nature and manner in which performance and development processes are conducted, or the availability/ provision of professional learning, it is necessary to address these concerns in a timely and productive manner. Such concerns should be addressed with reference to the Department's Complaints Handling Policy Guidelines.

Professional and Ethical Standards

Teacher Improvement Program

Implementation document for the
management of conduct and performance policy



2019

Policy document number: PD/2006/0335/03/v1.0.0
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Last revised: January 2019 Updated November 2020
Contact: Director, Employee Performance
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1 Introduction

The quality of teaching is a major factor impacting on the learning outcomes of students. For teachers in New South Wales public schools the [Australian Professional Standards for Teachers at Proficient \(the Standards\)](#) are the source for professional judgements about teacher quality.

The [Performance and Development Framework for Principals, Executives and Teachers](#) is the starting point for managing teacher performance and development. All teachers have a responsibility to commit to the performance and development processes that assist and support their professional growth, the provision of quality teaching and learning and the exercise of their professional responsibilities as teachers. Performance and development is a shared responsibility of the teacher, executive staff and the principal. Concerns about a teacher's performance should be addressed as they arise throughout the performance and development cycle. The connection between the performance and development cycle, addressing performance concerns and the teacher improvement process is elaborated in the [Improving the Quality of Teaching Diagram](#) and the [information sheet](#).

The procedures within this document guide the implementation of a Teacher Improvement Program (TIP). They support the [Guidelines for the Management of Conduct and Performance](#) and the [Teaching Service Act 1980](#) for maintaining appropriate standards of work-related performance for those employed in the Teaching Service.

2 Application

These procedures apply to all permanent, unpromoted teachers who are not probationary.

Where a **probationary teacher** is experiencing difficulties progressing to meet the Standards at Proficient within the relevant timeframe, the principal will use the **Probationary Teacher Improvement Program**.

Where a **teacher on a temporary engagement** is experiencing difficulties meeting the Standards at Proficient or requirements of the position or there are circumstances concerning early cessation, the principal/manager will use the **Managing Temporary Teacher Engagements Process**.

Where a **teacher engaged in a non school based Teaching Service position** is experiencing difficulties meeting the Standards at Proficient and/or requirements of the position, the supervisor/manager will contact Professional and Ethical Standards (PES) for advice on the appropriate process to follow.

The various improvement program procedures can be found on the [PES intranet](#).

2.1 These procedures do not apply in the following circumstances

2.1.1 Misconduct

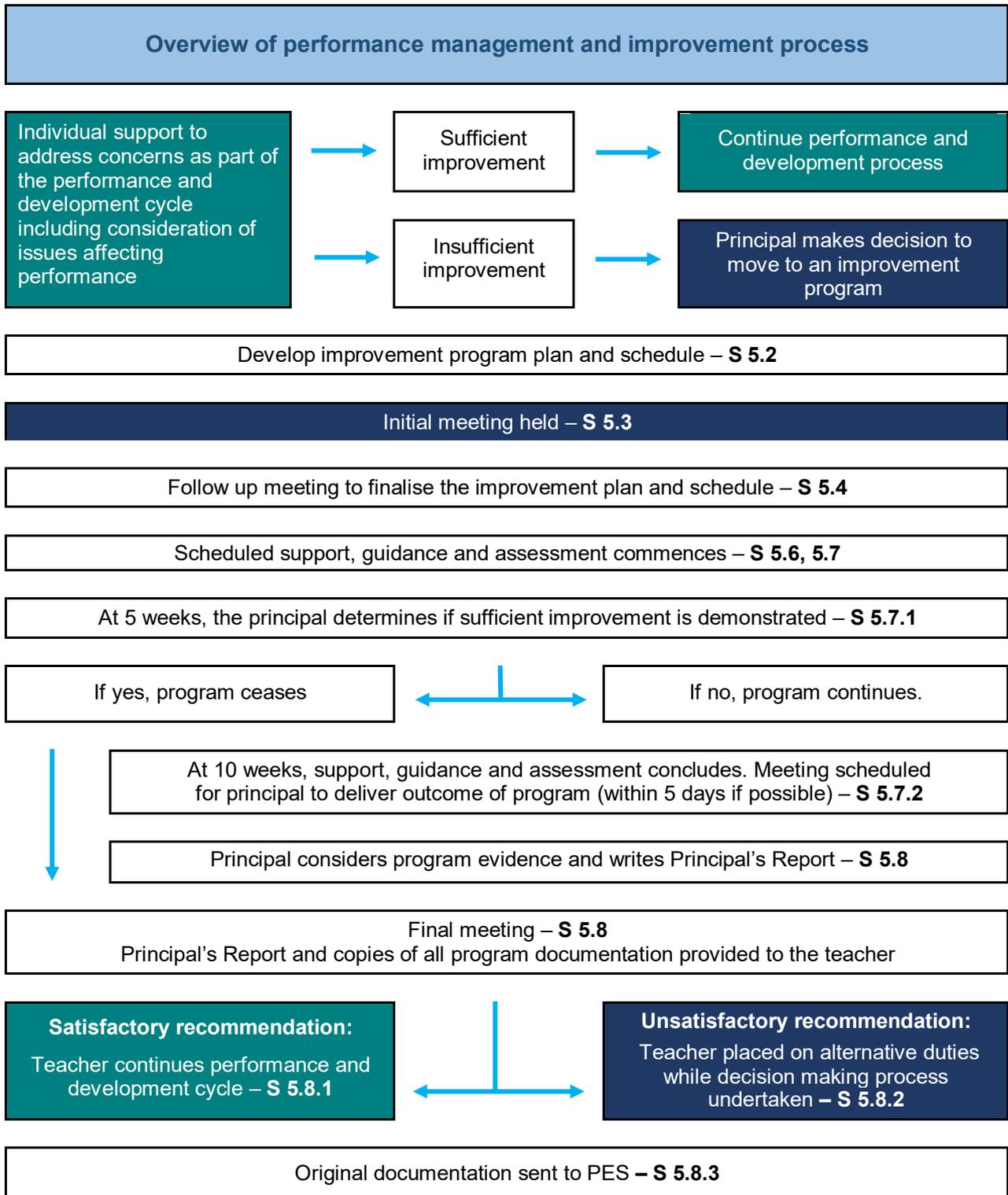
Principals should determine whether the issues constitute underperformance or misconduct. Matters concerning possible misconduct must be referred promptly to [Professional and Ethical Standards \(PES\)](#).

2.1.2 Meeting accreditation standards

Compliance with accreditation requirements (other than a teacher's practice continuing to meet the Standards at Proficient) such as failing to complete sufficient professional development hours are referred to Human Resources and are not a matter for an improvement program. If there are performance concerns, the principal should contact PES.

3 Overview

This overview provides an outline of the process. Further details are contained within the procedures.



3.1 Procedural fairness

These procedures are to be implemented in a procedurally fair manner.

Procedural fairness includes the teacher's right to:

- be informed by the principal about any performance difficulties they are experiencing and how the issues will be addressed
- be given a copy of these procedures when they are first informed of the implementation of the improvement program
- be heard, which includes the right of the teacher to put their views on the matter and respond to the difficulties identified
- impartial decision making including
 - i. impartiality in all phases of the process
 - ii. an absence of bias in the decision maker(s)
 - iii. knowing the action that will be taken at all stages of the process
 - iv. having questions or concerns genuinely considered
- have a support person present at formal meetings during the improvement program and access to advice and support from their union.

4 Addressing underperformance against the Standards at Proficient

One incident of a teacher having difficulty does not establish that they are underperforming. Failure to meet the required level of teaching performance is demonstrated by a cumulative pattern of practice.

A TIP should not be implemented unless concerns have been addressed through the performance and development cycle.

Before a TIP can commence the principal is to ensure performance concerns have been clarified with and communicated to the teacher, followed by the provision of support to address the identified concerns.

The support implemented should be documented on or appended to the teacher's Performance and Development Plan (PDP). Support should include ongoing feedback and monitoring so that the teacher is aware of progress.

In clarifying concerns during the performance and development cycle, the teacher should be provided the opportunity to express any matters affecting their performance, for example, personal difficulties, health problems or school organisation issues.

Where reasonable support has not led to sufficient improvement in performance, a TIP is then implemented and the performance and development cycle is suspended. Refer to the [Improving the Quality of Teaching diagram](#) and accompanying [information sheet](#) for guidance. Information on identifying and addressing underperformance is available in the resources.

4.1 Complaints made about the teacher

Complaints may be an indicator of underperformance. However, a complaint or a number of complaints does not necessarily demonstrate that the teacher is failing to meet the Standards at Proficient.

The appropriate department policies concerning complaints or allegations must be followed in relation to responding to complaints. Where findings indicate performance issues, these should be addressed initially as part of the performance and development cycle.

5 Implementing a TIP

The purpose of the TIP is to provide support to teachers to make satisfactory and sustained improvement in accordance with the Standards. An improvement program may be implemented at any time in the performance and development cycle, following appropriate and documented support.

It is the principal who determines if a teacher is to be placed on a TIP. While there will be opportunity for the teacher to have input into the development of the TIP plan and schedule, the teacher is obliged to make every effort to participate in the TIP as a condition of employment.

Prior to implementing a TIP and scheduling an initial meeting, the principal should establish whether there are factors affecting the teacher's performance which may be effectively addressed via means other than a TIP, seek advice from PES and advise the Director, Educational Leadership.

5.1 Timeframe

The TIP consists of five school weeks of support, guidance and assessment with a further five weeks available if required to meet all identified areas for improvement (up to ten weeks in total). This must be completed within a maximum timeframe of twelve school weeks from the initial meeting. This timeframe applies regardless of whether the teacher is full or part-time. The maximum timeframe can only be extended under exceptional circumstances. If the principal is considering extending the program, requests should be made using the [Variation to program form](#) and must be approved by the PES decision maker.

5.2 Developing the TIP plan

Before the initial meeting the principal will draft the [TIP plan](#) in consultation with PES. The plan will include:

- the relevant Standards and descriptors
- areas requiring improvement
- teacher actions
- support to be provided
- evidence of proficient teaching practice
- a schedule of activities.

The Standards and areas requiring improvement set out in the TIP plan are determined by the principal.

5.3 Initial meeting

The principal notifies the teacher in writing, using the [Invitation to the initial meeting](#) and provides the [Role of support person](#) information sheet and a copy of these procedures.

The teacher will be informed that they may seek advice and support from the NSW Teachers Federation prior to the initial meeting. An officer of the NSW Teachers Federation may attend meetings at the invitation of the member, particularly the initial meeting, week 5 review meeting and the final meeting.

The initial meeting is conducted in a consultative manner in accordance with section 2.1 and 2.5 of the [Consultative Arrangements: Policy and Guidelines](#).

The teacher is deemed to be on a TIP from the date of the initial meeting. The teacher's personnel record will be flagged. The TIP plan should commence as soon as practicable following this meeting.

During the initial meeting, the principal will provide a copy of the draft [TIP plan](#). They will also complete and provide copies of:

- [Initial meeting checklist](#)
- [Notification to Director, Educational Leadership and PES](#).

The teacher will be provided with a copy of the TIP procedures (if not provided already).

A meeting will be scheduled to finalise the TIP plan.

A copy of the [Minutes of the initial meeting](#) will be provided to the teacher. Amendments, if requested, should be documented.

5.4 Finalising the TIP plan

An opportunity for the teacher to obtain advice must be provided. In most cases, two working days for this purpose is reasonable. The teacher, on request, should be provided some release to obtain advice, review the plan and draft possible revisions.

The principal will meet and consult with the teacher about the schedule, actions and types of support to be provided. Consideration should be given to the use of release time, particularly in the initial weeks of the program, for the teacher to address the requirements of the TIP. The principal will make the final decision on the TIP plan.

5.5 Documentation during the TIP

Documentation should be signed by the teacher and principal/delegate to indicate that the material has been sighted. Where there is disagreement about the content of any document, this should be noted as a comment with the signature.

If the teacher refuses to sign any or all of the documents, the principal should note the refusal and the date on the documents. This will not delay implementation of the TIP.

5.6 Implementing the TIP

Support, guidance and assessment may be provided by the principal, executives from within the school and from another school and/or personnel with specialist knowledge.

Observations of practice should provide support and advice to the teacher and focus on the Standards identified as requiring improvement. Observations include teaching practice in the classroom and documentation associated with teaching practice. Information on observations of practice is available in the resources. A report for each [observation](#) should be completed and provided to the teacher in a timely manner.

Verbal feedback should be provided as soon as practicable and followed up with written feedback. The teacher should receive feedback before a further observation so that there is reasonable time to enable the teacher to act upon the advice provided.

Appendix 1 provides a list of roles and responsibilities.

Appendix 2 provides a list of links and resources for further information.

5.7 Review meetings

Review meetings should be held weekly. The main purpose is to provide feedback to the teacher on their progress, the opportunity for the teacher to provide feedback on support received and to raise any issues, and for any adjustments to be made to the TIP plan by the principal in consultation with the teacher. Changes should be documented.

Attendees at the review meetings include the principal, the teacher, their support person (if requested), supervisor, department personnel aiding implementation of the TIP (if applicable) and a minute taker.

[Minutes](#) should be completed as soon as practicable after the meeting and signed by the teacher and principal. A copy of review meeting minutes will be kept with improvement program documents and provided to the teacher. Any requests for amendments should be noted and considered.

5.7.1 Week 5 review meeting

Prior to the week 5 review meeting, the principal should seek further advice from EPAC about the progress and next steps of the TIP.

The principal will inform the teacher of their decision to either continue the program or to end the program if the required level of improvement has been met.

If the program is to end, the principal will follow the procedure in section 5.8.1 of this document.

If the program is to continue, amendments may be made to reflect the ongoing needs of the teacher in one or more of the areas for improvement.

5.7.2 Week 10 review meeting

Prior to the week 10 review meeting, the principal should seek further advice from PES about the progress and next steps of the TIP.

The principal will meet with the teacher to consider progress and schedule a final meeting within five working days, where possible, to deliver the outcome.

5.8 Concluding a TIP and outcomes

The principal will complete the [Principal's Report](#) and provide this to the teacher at the final meeting. The principal cannot delegate responsibility for determining whether the teacher has made sufficient improvement and for writing the Principal's Report.

5.8.1 Required level of improvement met

If the teacher is assessed as reaching the level of performance required to meet the Standards, the principal:

- sends the [Program outcome to Director, Educational Leadership and PES](#) and the flag will be removed from the teacher's personnel record
- gives a completed [Level of performance required met](#) and a copy of the Principal's Report to the teacher.

All documentation associated with the improvement program is forwarded to PES.

5.8.2 Required level of improvement not met

If the teacher is assessed as not reaching the level of performance required to meet the Standards, the principal:

- advises the teacher of the outcome, provides a copy of the Principal's Report and all documentation
- advises the teacher that they have **14 calendar days** to provide a written response to the Principal's Report to PES and that they may seek assistance from the NSW Teachers Federation
- provides the teacher with a letter from the PES decision maker directing them to alternative duties
- provides time for the teacher to collect their belongings and identify any personal resources that may need to be delivered to their home. The teacher will give all school keys and equipment to the principal
- ensures that the teacher's support person is released, if necessary, to assist the teacher with these requirements.

5.8.3 Process following the final meeting

The principal sends the [Program outcome to Director, Educational Leadership and PES](#).

The principal provides the completed Principal's Report and originals of the documentation gathered during the improvement program to PES.

5.8.4 Process at PES

A review of all documentation will be conducted to address procedural fairness, the educational aspects of the improvement program and issues raised in the teacher's response that may require clarification from the principal. Generally this will be completed within 21 days.

The PES decision maker will consider the documentation. If the principal's recommendation is not upheld, the decision maker, officers from Human Resources and the Director, Educational Leadership, will discuss the return of the teacher to a suitable position.

If the PES decision maker upholds the principal's recommendation:

- the teacher will be informed in writing of the proposed remedial or disciplinary action in accordance with section 93 of the Teaching Service Act 1980
- the teacher will be provided with **14 calendar days** from the date of receipt of the letter to respond to the proposed action
- the decision maker will consider the response and make a final decision within **seven calendar days** following receipt of the teacher's submission

If a teacher does not demonstrate satisfactory and sustained improvement, the disciplinary outcomes available to the decision maker include directing or allowing the teacher to resign or dismissing the teacher from the Teaching Service. The teacher may also be placed on the Not to be employed list. The outcome may require reporting to NSW Education Standards Authority (NESA) as part of legislative requirements.

6 Administrative Matters

6.1 Relief days

To support the implementation of a TIP, an allowance of up to ten relief days over and above school funds is available. In order for the teacher to address the requirements of the TIP, particularly in the initial weeks, the principal should consult with the teacher and consider providing appropriate release from their normal load and/or duties. To access the relief days, principals complete the [Relief days request form](#).

6.2 Sick leave

Teachers who are sick while on a TIP are able to apply for sick leave in accordance with section 4.11 of the [Teachers Handbook](#). Sick leave needs to be recorded and medical certificates provided.

If teachers take periods of sick leave during a TIP, the program will continue when they resume duty. If the overall time of the TIP reaches twelve school weeks a decision will be made on the information available.

Where a teacher returns to work part time on a rehabilitation program, the TIP will recommence after consultation.

A teacher who takes long term sick leave during a TIP may be referred for an Independent medical capacity assessment to determine their fitness to resume work and participate in the TIP. Contact [Health and Safety](#) for advice.

6.3 Long service leave

Where approval to take long service leave has been granted prior to the commencement of a TIP, the teacher will be able to take leave. This will pause the improvement program only for the duration of the long service leave. The TIP will immediately resume when the teacher returns to duty. Generally long service leave will not be approved while a teacher is on a TIP.

6.4 Leave without pay

Teachers will not be granted leave without pay during the period of a TIP or where they are subject to disciplinary action because of failing to meet the level of performance required.

6.5 Family and community service leave

Family and community service (FACS) leave is granted in accordance with provisions contained in section 4.5 of the Teachers Handbook. Extended FACS leave over 3 days will only be approved in exceptional circumstances.

6.6 Workers compensation

A workers compensation claim submitted by a teacher who is on a TIP or who is subject to disciplinary action will be managed by Health and Safety in accordance with the department's return to work program and relevant legislation.

If a teacher submits a notification of injury and subsequent workers compensation claim, the principal will provide a statement that the teacher has had difficulties identified with their performance. This information should be provided to the injury management advisor who will ensure it is considered by the department's workers compensation fund manager. The principal should also advise PES.

Teachers should be aware that under the Workers Compensation Act 1987 – section 11A there is no compensation for psychological injury caused by reasonable actions of an employer, including performance appraisal and discipline.

6.7 Applying for transfer or promotion

Applications for transfer, advertised positions and promotion will not be actioned for teachers on an improvement program, or who are on alternative duties while awaiting a final decision from PES following a TIP.

6.8 Resignation and retirement

Where a teacher applies to resign or retire while on a TIP the principal forwards the teacher's application to PES. Such applications will be considered on a case by case basis.

Where the PES decision maker accepts the resignation or retirement of a teacher on an improvement program, the teacher will be advised in writing of the circumstances under which any future application for employment will be considered.

6.9 Disputes

Should a dispute arise about the management of the TIP, the following procedure from section 31 of the [Crown Employees \(Teachers in Schools and Related Employees\) Salaries and Conditions Award 2017](#) (and successor Awards) applies:

- the teacher and/or NSW Teachers Federation workplace representative will immediately raise the dispute with the principal
- should the matter not be resolved within three working days the matter will be referred to the Director, Educational Leadership and the appropriate NSW Teachers Federation officer

- where the procedure does not lead to resolution within five working days, the matter will be referred to the Executive Director PES and the General Secretary of the NSW Teachers Federation. They or their nominees will negotiate an agreed method and timeframe for resolving the matter
- should the above procedures not lead to a resolution, then either party may make application to the Industrial Relations Commission of New South Wales.

The TIP will continue during this process unless otherwise determined by the PES decision maker.

Appendix 1

Summary of roles

1.1 Teachers

In performing their duties efficiently and competently, teachers have a responsibility to:

- actively participate in the performance and development cycle in place at their school
- reflect on and develop their professional practice
- seek assistance from colleagues, including executive staff, if they are experiencing difficulties
- participate in a TIP, where required by the principal, to assist them to improve and overcome any difficulties in their teaching performance
- seek out support and guidance when participating in a TIP
- engage in professional learning for their development and growth
- meet accreditation requirements.

1.2 Support person

The role and responsibilities of the support person are contained in the [Role of support person](#) information sheet.

A support person should not be directly involved in supporting or supervising the teacher in relation to the TIP. Generally, it is not appropriate for the teacher's supervisor to act as support person during an improvement program.

A support person may take notes during the meeting. While the principal may request a copy of these notes, it is a matter for the support person and the teacher whether or not to provide their notes.

1.3 NSW Teachers Federation representative

A NSW Teachers Federation officer or representative may be invited to attend meetings by a member. The NSW Teachers Federation representative is not an advocate.

The NSW Teachers Federation may provide ongoing advice throughout the TIP and also assist the teacher in preparing any replies and submissions in response to the Principal's Report or decisions made by PES.

1.4 Principals

Principals are responsible for the provision of educational leadership in the school. This includes the provision of:

- induction programs
- performance and development processes
- professional learning and allocation of resources
- systems for supervision and accountability.

In fulfilling their responsibility for the leadership and management of staff in schools, principals have a responsibility to:

- ensure the performance of teachers is appraised on an ongoing basis and appropriate feedback is provided as part of a teacher's participation in the performance and development cycle

- appropriately inform teachers, who have been identified as experiencing difficulties with their teaching performance, about these procedures and timelines
- ensure that the teacher is clearly advised of the Standard or Standards where performance difficulties exist and what level of performance is expected to satisfactorily meet these Standards
- ensure that teachers who continue to experience difficulties with their teaching performance after appropriate individual support as part of the performance and development cycle, have the opportunity to improve through the implementation of a TIP
- ensure that teachers have the opportunity to respond to feedback, statements or decisions arising from the application of these procedures
- provide consistent and regular communication
- collate evidence of all communication, meetings, feedback and support activities
- attend review meetings
- determine whether the teacher meets the Standards following the implementation of the TIP.

Principals are to contact their Director, Educational Leadership and EPAC for advice prior to commencing the implementation of these procedures.

1.5 Executive staff member/supervisor

Executive staff members or supervisors assist the principal in providing support, guidance and assessment to the teacher in accordance with the TIP plan.

1.6 Mentor

A mentor provides coaching and support without assessment. The mentor can be at the same level of the teacher or above. The supervisor cannot act in a mentor role.

1.7 Department of Education

The department has a responsibility to:

- ensure principals and executive teachers receive appropriate support and training to implement these procedures
- provide appropriate support to schools and teachers including resources necessary for the proper implementation of these procedures
- provide support mechanisms, such as the Employee assistance program, to assist staff who may be experiencing problems impacting on their performance
- take appropriate disciplinary action, including dismissal, when it is evident that a teacher's performance has failed to improve following the implementation of an improvement program.

Appendix 2

Resources

- [Australian Professional Standards for Teachers](#)
- [Teaching Services Act \(1980\)](#)
- [Performance and Development Framework for Principals, Executives and Teachers in NSW Public Schools](#)
- [Guidelines for the Management of Conduct and Performance](#)
- [Performance – Human Resources website](#)
- [Complaints Handling Policy](#)
- [Child Protection – Allegations Against Employees Policy](#)
- [Code of Conduct](#)
- [Workers Compensation Act 1987](#)
- [Workplace Injury Management and Workers Compensation Act 1998](#)
- [Consultative Arrangements: Policy and Guidelines](#)
- [TIP plan and schedule proformas](#)
- [Implementation resources](#)

Professional and Ethical Standards





PERFORMANCE AUDIT

26 SEPTEMBER 2019

Ensuring teaching quality in NSW public schools

THE ROLE OF THE AUDITOR-GENERAL

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Public Finance and Audit Act 1983* and the *Local Government Act 1993*.

We conduct financial or 'attest' audits of State public sector and local government entities' financial statements. We also audit the Total State Sector Accounts, a consolidation of all agencies' accounts.

Financial audits are designed to add credibility to financial statements, enhancing their value to end-users. Also, the existence of such audits provides a constant stimulus to entities to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to entities and reports periodically to parliament. In combination these reports give opinions on the truth and fairness of financial statements, and comment on entity compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These examine whether an entity is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or parts of an entity's operations, or consider particular issues across a number of entities.

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In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **'Ensuring teaching quality in NSW public schools'**.

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford

Auditor-General
26 September 2019

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Ensuring teaching quality in NSW public schools

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Section one

Ensuring teaching quality
in NSW public schools

Executive summary

Australian research has shown that quality teaching is the greatest in-school influence on student engagement and outcomes, accounting for 30 per cent of the variance in student performance. An international comparative study of 15-year-old students showed the performance of New South Wales students in reading, mathematics and science has declined between 2006 and 2015.

The Australian Professional Standards for Teachers (the Standards) describe the knowledge, skills and understanding expected of effective teachers at different career stages. Teachers must be accredited against the Standards to be employed in NSW schools. The NSW Education Standards Authority (NESA) is responsible for ensuring all teachers in NSW schools are accredited. As part of the accreditation process the NSW Department of Education (The Department) assesses whether public school teachers meet proficient accreditation standards and advises NESA of its decisions.

The School Excellence Framework provides a method for the Department to monitor teaching quality at a school level across four elements of effective teaching practice. The Performance and Development Framework provides a method for teachers and their supervisors to monitor and improve teaching quality through setting professional goals to guide their performance and development.

The Department has a strategic goal that every student, every teacher, every leader and every school improves every year. In line with this goal, the Department has a range of strategies targeted to improving teaching quality at different career stages. These include additional resources to support new teachers, a program to support teachers to gain higher-level accreditation, support for principals to manage underperforming teachers, and a professional learning program where teachers observe and discuss each other's practice.

The objective of this audit was to assess the effectiveness of the NSW Department of Education's and the NSW Education Standards Authority's arrangements to ensure teaching quality in NSW public schools. To address this objective, the audit examined whether:

- agencies effectively monitor the quality of teaching in NSW public schools
- strategies to improve the quality of teaching are planned, communicated, implemented and monitored well.

The NSW Education Standards Authority does not oversight principals' decisions to accredit teachers as proficient. This means it is not ensuring minimum standards for teaching quality are consistently met.

NESA does not have a process to ensure principals' decisions to accredit teachers are in line with the Standards. The decision to accredit teachers is one of the main ways to ensure teaching quality. In New South Wales public schools, around 2,200 principals are tasked with making decisions to accredit their teachers as proficient. NESA provides training and guidelines for principals to encourage consistent accreditation decisions but regular turnover of principals makes it difficult to ensure that all principals are adequately supported. NESA has more oversight of provisional and conditional accreditation for beginning teachers, as well as higher-level accreditation for highly effective teachers. That said, there are only limited numbers of teachers with higher-level accreditation across the state.

The Department of Education does not effectively monitor teaching quality at a system level. This makes it difficult to ensure strategies to improve teaching quality are appropriately targeted.

The Department is not collecting sufficient information to monitor teaching quality across the state. No information on teacher assessment against the Performance and Development Framework is collected centrally. Schools self-assess their performance against the School Excellence Framework but this does not assess teaching quality for all teachers. The Department also surveys students about their experiences of teaching quality but schools opt-in to this survey, with 65 per cent of public schools participating in 2018. These factors limit the ability of the Department to target efforts to areas of concern.

We examined five key strategies that support the critical parts of a teacher's career. Most strategies were based on research and consultation, planned, trialled, reviewed and adjusted before wider rollout. Guidance and training is provided to communicate requirements and help schools implement strategies at a local level. Monitoring of strategies implemented at a local level is variable. We identified several instances where Quality Teaching, Successful Students funding was used outside guidelines. Two strategies have not yet been evaluated, which prevents the Department from determining whether they are having the desired impact.

The Performance and Development Framework is not structured in a way that supports principals and supervisors to actively improve teacher performance and teaching quality.

There is limited opportunity for supervisors to set goals, conduct observations of teaching practice, or provide constructive written feedback on a teacher's progress towards achieving their goals under this framework. Guidance on how to use the Standards to construct quality goals, observe teaching practice and provide valuable feedback is also insufficient. The framework focuses on teachers' self-identified development goals but there is no requirement to align these with the Standards. These limitations reduce the ability of supervisors to use this framework to effectively manage teacher performance and improve teaching quality.

The Department manages those teachers formally identified as underperforming through teacher improvement programs. Only 53 of over 66,000 teachers employed by the Department were involved in these programs in 2018. By comparison, a report on inspections conducted in the United Kingdom assessed the quality of teaching as 'inadequate' in three per cent of schools.

1. Key findings

There is no review of principals' decisions to accredit teachers at minimum standards

NESA does not check whether proficient accreditation determinations made by principals are in line with the minimum standards for proficient teaching. This exposes a risk that teachers may be accredited without meeting minimum standards. In mid-2016, an external review recommended NESA develop a risk-based audit program to check determinations, but it has not yet done so.

NESA has greater oversight of higher-level accreditation for highly effective teachers. NESA facilitates a moderating committee to review all higher-level applications, which improves consistency of decisions. The Department can choose to proceed with accreditation despite advice to the contrary from the committee. Between 2012–2016, this occurred for 9 out of 118 decisions.

As of 2018, there were only 102 out of over 66,000 teachers with higher-level accreditation working in NSW public schools. Stakeholders and principals we interviewed told us the length and complexity of the application process deter potential candidates.

The Department does not effectively monitor teaching quality at a system level

While principals are responsible for monitoring the quality of teaching within their school, the Department does not have reliable and complete information to monitor the quality of teaching across the system. The Performance and Development Framework is not implemented in a way that allows for centralised oversight or reporting. Individual plans, observations and reviews are all kept at a school level in various formats which prevents central analysis.

Information collected on teaching quality at a whole of school level through the School Excellence Framework is self-assessed by schools. While self-assessments are validated every five years, the process does not require an actual assessment of teaching quality for all teachers. The 'Tell Them From Me' student and teacher surveys give partial indicators of teaching quality. However, the surveys are optional for schools and rely on self-reported information for teachers. This may bias results and means that survey data must be considered alongside other sources of data.

There are weaknesses in the teacher performance and development process, and insufficient guidance to ensure it is used effectively

The Performance and Development Framework is not being used effectively to manage teacher performance. There is a lack of clear guidance on expectations for constructing quality goals, observing teaching practice and providing effective feedback. The quality of goals, observations and feedback documented in 130 performance and development plans we reviewed varied greatly. For example, some reviews cited a brief informal classroom visit as evidence of observing teaching practice while others gave detailed examples of teacher practice against the Standards.

The Framework itself is weighted towards development at the expense of being a robust tool to observe and improve teaching quality. All goals, observations and feedback included in performance and development plan requires agreement from the teacher, limiting the ability for supervisors to use the framework to target gaps and effectively manage teacher performance.

The external validation process gives principals insight into teaching quality in their school

While principals we interviewed found preparing evidence sets for the external validation process time consuming, it also provided an opportunity to improve their understanding of their school's performance and quality of teaching. Aligning the external validation process with the school planning cycle would allow principals to use the knowledge and feedback gained from the external panel to target strategies to areas identified for improvement.

Strategies to improve teaching quality are informed by consultation, trialled and reviewed before wider implementation, but their overall impact is not evaluated

Strategies to improve teaching quality are based on research and stakeholder feedback. They target support to critical parts of a teacher's career including to: support beginning teachers, address underperformance, identify and reward high-performing teachers, and provide relief time for primary school executives to share their expertise.

We reviewed two programs aimed at identifying high-performing teachers and supporting underperforming teachers. Both were implemented as small scale trials, reviewed, and adjusted before being rolled out further. Monitoring has so far been limited to counting how many principals were provided with support, or how many teachers applied for higher-level accreditation. As the programs are expanded, they should be evaluated to consider the impact on teaching quality.

The \$224 million Quality Teaching, Successful Students program has not been evaluated since it began in 2015. Evaluations are needed to compare the relative cost-effectiveness of strategies and target support to strategies providing the best value for money. By comparison, Beginning Teacher Support Funding was evaluated in 2017, leading to changes in the how funding was targeted. The Quality Teaching Rounds professional learning program is also subject to a comprehensive research program in partnership with the University of Newcastle until 2022.

Guidelines support schools to implement strategies to improve teaching quality, but the Department is not monitoring their use of the funding

The Department provides training and guidance for schools to implement its strategies to improve teaching quality. Schools choose how to use funding to support beginning teachers and for the Quality Teaching, Successful Students program. Guidelines and examples help to inform school decisions for this funding. Schools report basic information on how they use funding in their annual reports but this is not monitored by the Department. We identified examples where the use of funding for the Quality Teaching, Successful Students program was inconsistent with guidelines.

The purpose and role of highly accomplished and lead teachers in schools is not clear

The Department has set a goal to increase the number of teachers with higher-level accreditation and is supporting this with a dedicated program. However, it has no current strategies on how to use these teachers effectively to improve teaching quality across the system. There is also no guidance for schools on how to use these teachers at a local level. Having further guidance on the role these teachers play in the system may provide a clearer purpose for expert teachers in improving the quality of teaching practices in their school, or across school networks. Without clear guidance, there is the risk that teachers with higher-level accreditation are underutilised and investment of resources to support this level of accreditation will be wasted.

2. Recommendations

By July 2020, the NSW Education Standards Authority should:

1. work with relevant stakeholders to ensure Teacher Accreditation Authorities receive adequate training before making accreditation decisions
2. review and improve the application and assessment processes for attaining higher-level accreditation, in consultation with NSW and national stakeholders, by:
 - a) clarifying the quantity and quality of evidence for higher-level accreditation
 - b) reducing duplication throughout the assessment process
3. implement a program of risk-based reviews to provide confidence that proficient level accreditation determinations align with the Australian Professional Standards for Teachers.

By July 2020, the Department of Education should:

4. improve the Performance and Development Framework by:
 - a) providing guidance that supports aligning goals, professional development, observations and reviews to the Australian Professional Standards for Teachers
 - b) strengthening the quality of observations of teaching practice and requiring at least one observation to be conducted by a supervisor
 - c) providing guidance that supports supervisors and principals to effectively use the framework to improve teacher performance before formal performance management
 - d) monitoring implementation of the Framework through collection of de-identified Performance and Development Plans, observations and reviews
5. improve the School Excellence policy by:
 - a) clarifying the quantity and quality of evidence required for external validation
 - b) requiring tailored written feedback from external validation panels, allowing schools to better use insights for future planning
 - c) aligning the external validation process to the school planning and reporting cycle to allow schools to better use the insights gained from the external validation process
6. develop and implement a strategy on how to more effectively use Highly Accomplished and Lead Teachers to improve teaching quality across the state
7. evaluate the Quality Teaching, Successful Students program to determine whether it has been implemented in accordance with guidelines and is achieving its intended outcomes.

1. Introduction

1.1 Quality teaching

In 2011, the Australian Institute for Teaching and School Leadership (AITSL) developed the Australian Professional Standards for Teachers (the Standards). The Standards were informed by extensive research and provide a public statement of what is effective teaching practice.

The Standards provide a common language to discuss teaching quality. They describe the knowledge, skills and understanding expected of effective teachers. There are seven teaching standards within the three domains of Professional Knowledge, Professional Practice and Professional Engagement. The Standards set out what teachers should know and be able to demonstrate at four career stages: Graduate, Proficient, Highly Accomplished and Lead.

1.2 Accreditation

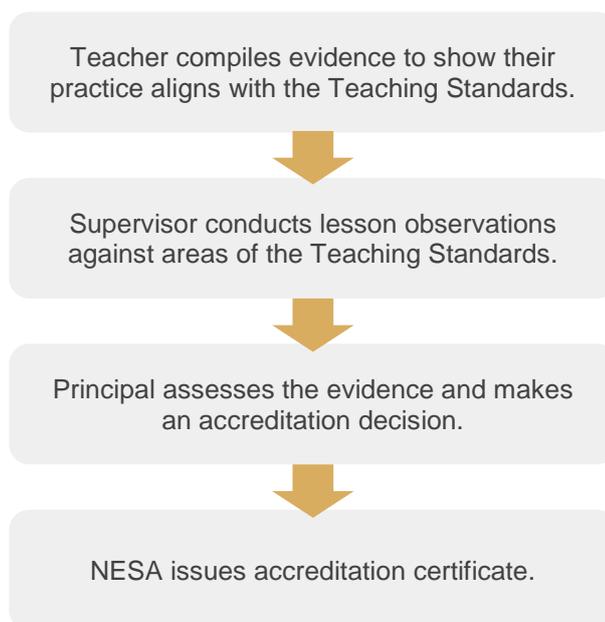
All teachers must be accredited to teach in NSW schools. Teacher accreditation is the process to assess and recognise whether teachers' practice meets the Standards. The mandatory accreditation of teachers was designed to provide a minimum standard for teaching quality. The NSW Education Standards Authority (NESA) is responsible for ensuring all teachers in NSW are accredited in line with the Standards.

Prior to commencing all teachers must be accredited at the provisional or conditional level. NESA requires full time provisional teachers to reach the proficient level of accreditation within three years, and full time conditional teachers to reach proficient accreditation within four years. Part-time and casual teachers have longer to attain proficient accreditation, with provisional teachers having up to five years, while conditional have up to six years. The Department expects its teachers to demonstrate practice at the proficient level within two years of full time employment. To be accredited as proficient, a teacher must have completed a NESA-endorsed teaching degree, compile evidence that their practice meets the Standards and have their supervisor assess their teaching practice.¹

While NESA is responsible for regulating teacher accreditation, accreditation determinations are made by Teacher Accreditation Authorities (TAAs). TAAs are responsible for assessing applications for achieving and maintaining accreditation at the proficient level. Within Department schools, this role is normally fulfilled by the Principal, as shown in Exhibit 1.

¹ Section 1.2 of this report was amended on Tuesday 21 January 2020. The original text of this paragraph gave incorrect timeframes for provisional and conditional teachers to reach the proficient level of accreditation as four and five years respectively. The correct timeframes are three years for provisional teachers and four years for conditional teachers.

Exhibit 1: Process of gaining proficient accreditation



Source: NSW Education Standards Authority.

Teachers are required to maintain their accreditation every five years, or every seven years for part-time or casual teachers. To maintain proficient level accreditation in NSW, teachers must complete 100 hours of professional development over this period, and have their principal declare their teaching practice aligns with the Standards.

The Standards also include higher levels of accreditation, which are voluntary. To gain accreditation at the Highly Accomplished and Lead Teacher (HALT) levels, teachers must complete a structured assessment process to demonstrate their practice meets these levels.

The Department has 31 Teaching Quality Advisors across the state to support accreditation. Their role includes providing advice and support to build the capacity of school leaders to implement policy and procedures for the accreditation of teachers.

1.3 Frameworks for monitoring teaching quality

The Department has two main frameworks to assess and monitor teaching quality. The School Excellence Framework is used to monitor teaching quality at a school level, while the Performance and Development Framework is used at an individual teacher level.

School Excellence Framework

The School Excellence Policy aims to assist schools to continuously improve the provision of high-quality educational opportunities for each and every student. This policy provides direction for school planning, annual reporting, and annual self-assessment against the School Excellence Framework (SEF). The SEF defines excellence across three domains of learning, teaching and leading. There are four elements in the teaching domain: effective classroom practice, data skills and use, professional standards and learning and development.

Each year, schools self-assess against the elements of the SEF. Schools are expected to collect evidence to support their self-assessment, which is endorsed by their director. Directors are the direct line manager of the school principal and oversee approximately 20 schools each.

Every five years, the school's self-assessment is externally validated by a panel made up of a Principal School Leadership and fellow principal. The Principal School Leadership is a role that assists school principals to develop healthy and sustainable leadership practices. Schools are required to produce evidence to justify their self-assessment, which is reviewed by the panel to validate the school's self-assessment.

Performance and Development Framework

The Performance and Development Framework for Principals, Executives and Teachers in NSW Public Schools (PDF), jointly developed with the NSW Teachers Federation, provides a common approach to develop teachers and assess their performance. Under the Framework, each teacher is required to have a Performance and Development Plan (PDP) if they are teaching more than 42 days per year (Exhibit 2).

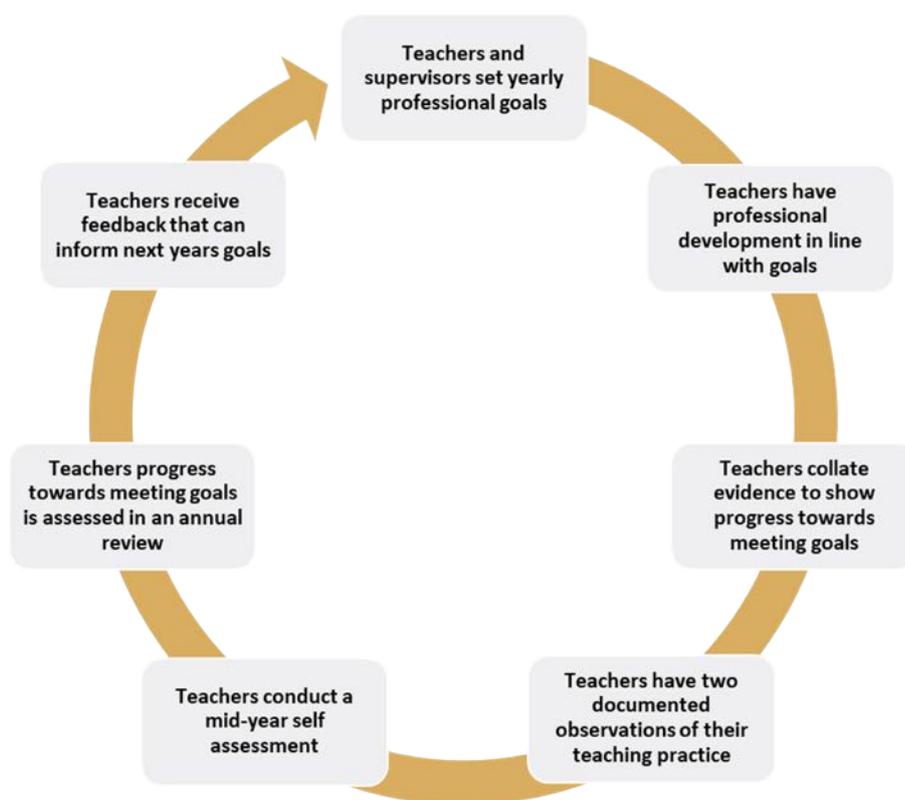
Teachers, in consultation with their supervisors, set between three and five professional goals for their PDP. Guidance suggests that teachers should consider system and school priorities, personal teaching and career aspirations and accreditation requirements when establishing these goals. The goals of the teacher will guide their professional development throughout the year. In 2018, the Department allocated over \$65.2 million in targeted professional development funding for teachers and non-teaching staff.

Under the PDF, teachers conduct the following key activities throughout the year:

- collate evidence on an ongoing basis to demonstrate progress towards their goals
- conduct a self-assessment review to reflect on their practice and progress towards goals
- have informal discussions with their supervisors to get feedback on their progress
- have their teaching observed at least twice by an agreed person and receive feedback.

The PDP cycle concludes with a formal review by the teacher's supervisor. This review assesses the teacher's achievement of their goals. Teachers receive written feedback to inform development of their professional goals in the following year. Teachers can also use this process as evidence for gaining or maintaining accreditation.

Exhibit 2: Performance and development cycle



Source: NSW Department of Education.

1.4 Strategies and programs to improve teaching quality

The Department has a strategic goal that 'every student, every teacher, every leader and every school improves every year'. It has five major strategies to improve teaching quality that align with this goal (see Exhibit 3). These include locally administered programs, trial programs for high performing and underperforming teachers, and research-directed professional learning.

Exhibit 3: Strategies and programs to improve teaching quality

Strategy/Program	Background	Funding 2018 (\$m)
Quality Teaching, Successful Students	Provides additional staffing allocation to improve the quality of teaching in all NSW public schools with primary students enrolled.	88.0
Beginning Teacher Support Funding	Provides funding to support early career teachers to attain proficient accreditation within two years of permanent placement.	65.5
Mastery of Teaching	Systematically identifies, encourages and supports expert teachers to achieve Highly Accomplished Teacher accreditation.	2.4
Teacher Performance Management and Improvement project	Provides tailored support to school leaders to enhance and improve the performance of all teachers, and address underperformance.	4.0
Quality Teaching Rounds	Involves teachers observing each other's lessons using the NSW Quality Teaching model as a basis for collaborative reflection on classroom practice.	2.4*

* Only includes funding contributed by the Department of Education. The University of Newcastle and a not-for-profit partner are contributing more than \$20 million to this program.

Source: NSW Department of Education.

Locally administered programs

The Department has locally administered programs to improve the quality of teaching in primary schools, as well as supporting early career teachers. Under these programs, the Department provides schools with additional funding. In line with the Local Schools, Local Decisions reform, the school principal decides on the best use of the funds within guidelines.

The Quality Teaching, Successful Students (QTSS) program provides additional funding to improve the quality of teaching in all NSW public schools. QTSS funding can be used to provide coaching or additional staff to improve the capabilities of the teacher and allow for the school executive to establish collaborative practices for teachers to co-develop lesson plans and assessment tasks.

The Department provides targeted assistance to early career teachers. The Strong Start, Great Teachers program provides schools with information, advice, and guidance to create school-based induction programs for beginning teachers. A series of online modules also help early career teachers apply for proficient accreditation. Beginning Teacher Support Funding provides schools with additional funding for the induction and professional development of beginning teachers, guided by the Standards, with a focus on supporting the achievement of Proficient accreditation.

Trial programs for high performing and underperforming teachers

The Mastery of Teaching program aims to identify high performing teachers and assist them in applying for Highly Accomplished Teacher accreditation. Teachers are nominated to participate by their principal or director and receive mentoring from existing Highly Accomplished or Lead teachers to prepare their submission for higher-level accreditation. The program aims to increase the number of Highly Accomplished Teachers from around 100 in 2018 to 530 by 2022. Following an initial pilot in 2018, the program was expanded to 20 principal networks in 2019.

The Teacher Performance Management and Improvement (TPMI) project provides support to school leaders to improve the practice of underperforming teachers. Under this project, field officers assist principals to build their competency in dealing with underperforming teachers. The project trial is operating across the state and is funded to 2020.

Research-directed professional learning

The University of Newcastle, in partnership with the Department, developed the NSW Quality Teaching model in 2003. Based on this model, the University developed Quality Teaching Rounds (QTR). The Department has collaborated with the University to implement QTR in public schools across the state. During QTR, teachers observe teaching practice, receive constructive feedback on their own teaching and conduct extended discussions about classroom practice. Feedback is based on 18 elements of quality teaching described in the Quality Teaching model. Since 2014, 1,587 teachers and 629 schools have attended QTR training delivered by the University.

2. Monitoring the quality of teaching in NSW public schools

2.1 Understanding teaching quality

The Department does not communicate a consistent definition of teaching quality

The Department has no single consistently communicated definition of teaching quality, and includes varying descriptions of quality teaching in multiple tools and strategies. This is problematic because clear expectations on quality teaching are needed to inform direct feedback to teachers on classroom practice, as well as to effectively deliver and evaluate strategies that aim to improve teacher performance. Principals we spoke with indicated that they reference the Standards, What Works Best report and the Quality Teaching model when providing feedback on teachers' classroom practice.

We analysed the alignment of four frameworks the Department uses to communicate quality teaching practices with the Australian Professional Standards for Teachers (the Standards) as shown in Exhibit 4. We found a lack of consistency within the Department's own tools and strategies, and between these frameworks and the Standards. For example, the teaching domain in School Excellence Framework does not sufficiently cover the need for teachers to maintain safe learning environments (Standard 4), whereas this is necessary to create conditions to facilitate learning, detailed in the Department's 'What Works Best' report on evidence-based classroom teaching strategies. Reviewing and updating relevant frameworks and guidance to make clear links to the Standards would provide a more consistent message to schools on the Department's expectations for teaching quality.

Exhibit 4: Alignment with Australian Professional Standards for Teachers

The Standards	Quality Teaching model	School Excellence Framework	What Works Best	Teacher Success Profile
1. Know students and how they learn	✓	✓	✓	✓
2. Know the content and how to teach it	✓	✓	✓	✓
3. Plan for and implement effective teaching and learning	✓	✓	✓	✓
4. Create and maintain supportive and safe learning environments	✓	—	✓	✓
5. Assess, provide feedback and report on student learning	✓	✓	✓	—
6. Engage in professional learning	—	✓	✓	—
7. Engage professionally with colleagues, parents/carers and the community	—	✓	—	✓

Note:

✓ = Standards clearly reflected in framework, — = Standards not clearly reflected in framework.

Analysis of the School Excellence Framework in this table only considers elements expressed in the 'Teaching' domain.

Source: Audit Office analysis.

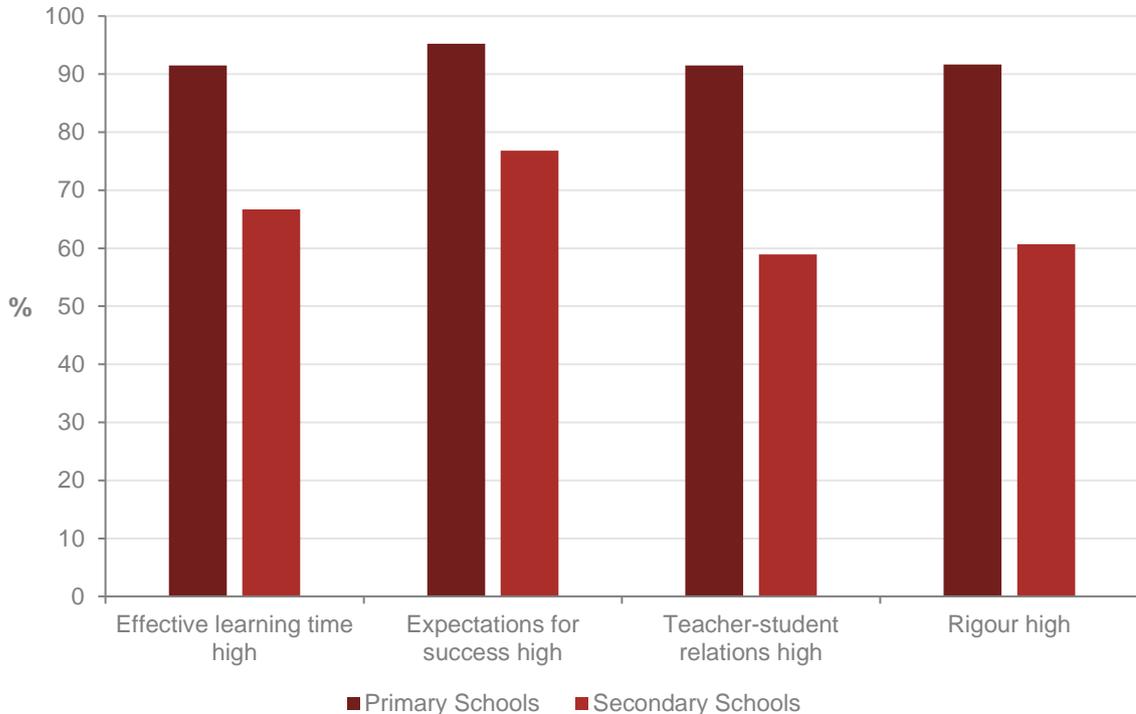
Student and teacher surveys are used to monitor indicators of teaching quality

The Department uses student and teacher surveys as a source of information to monitor effective teaching and classroom practices. The survey is optional for schools to participate in and relies on self-reported information by students and teachers. This may bias results and means that survey data must be considered alongside other sources of data. The Centre for Education Statistics and Evaluation (CESE) presents insights from this data to the Secretary and Minister annually. CESE also uses the survey data to demonstrate links between effective teaching practices and student outcomes.

The student 'Tell Them From Me' survey captures the views of students on their schooling. In addition to other items, the survey covers three indicators of effective teaching and three indicators of effective classroom practices. Around 65 per cent of schools and 300,000 students participated in the 2018 student survey. The teacher survey captures eight indicators of effective teaching and classroom practices from the perspective of teachers. Around 39 per cent of schools and 20,000 teachers participated in the 2018 teacher survey.

Exhibit 5 presents four indicators of effective teaching practice from the student survey. It shows that primary school students are more likely to report elements of quality teaching than secondary school students. This is also reflected in the teacher survey where primary school teachers are more likely to report they use quality teaching practices than secondary school teachers.

Exhibit 5: Elements of effective teaching and classroom practice reported by students, 2018



Source: Tell Them From Me student survey, NSW Department of Education 2018.

2.2 Accreditation of teachers

NESA clearly communicates requirements for proficient accreditation

NESA provides clear guidance and training to assist teachers to understand the requirements for attaining proficient accreditation. NESA requires full time provisional teachers to reach proficient level of accreditation within three years, and full time conditional teachers to reach proficient accreditation within four years. The Department expects its teachers to achieve this within two years of full time employment. Proficient level accreditation was designed to provide a minimum standard for teaching quality. NESA's guidance details the level of practice that teachers must demonstrate to be accredited as a proficient teacher. Evidence guides help teachers to gather evidence to demonstrate that their teaching practices align with the Standards. Separate guidance and training is provided for casual and part-time teachers, who have five years to reach proficient accreditation from provisional accreditation or six years from conditional accreditation.²

There is a risk of principals making inconsistent decisions when accrediting teachers

The decision to accredit a teacher as proficient is one of the main gates to ensure teacher quality. For public schools, decisions are made by approximately 2,200 principals. Without appropriate support, there is a risk of inconsistent interpretation of the Standards, and therefore inconsistent decisions. NESA provides training and support to principals to mitigate this risk.

² Section 2.2 of this report was amended on Tuesday 21 January 2020. The original text of this paragraph gave incorrect timeframes for provisional and conditional teachers to reach the proficient level of accreditation as four and five years respectively. The correct timeframes are three years for provisional teachers and four years for conditional teachers. The amendment also clarifies timelines for casual and part-time teachers to reach proficient accreditation.

NESA works with the Department to encourage greater consistency of accreditation decisions. NESA provides training and other guidance to improve principals' understanding of the requirements of accreditation. Regular turnover of principals makes it difficult for agencies to ensure that all principals are adequately supported. Many principals we interviewed reported inconsistent standards for making accreditation determinations amongst peer principals.

NESA has limited oversight of the process to accredit teachers as proficient

NESA's processes do not provide assurance that proficient accreditation determinations are consistent with the Standards. Principals notify NESA when they make an accreditation determination and provide a copy of the application. NESA checks the paperwork is complete and that the documentation is completed by the appropriate person before issuing a certificate. It does not check whether the information within the submission aligns with the Standards.

Prior to 2016, NESA reviewed all accreditation decisions. An independent review recommended it stop reviewing all applications and transition to a risk-based audit program, which it is yet to develop. NESA recently commissioned research to identify what a proficient teacher looks like in practice. It plans to use findings from this research to inform its future risk-based audit program. This program will only allow NESA to provide advice to address inconsistencies in future decisions as it cannot overturn decisions by Teacher Accreditation Authorities.

It was a government policy to automatically recognise all teachers who were employed before 1 October 2004 as meeting the proficient level of accreditation based on their experience. NESA accredited around 60,000 teachers through this process. These teachers were not required to demonstrate their practice aligns with the Standards at the time of accreditation. This increases the importance of this cohort demonstrating their practice continues to meet the Standards in procedures to maintain ongoing accreditation.

Teachers are not required to produce evidence to demonstrate their practice aligns with all standards to maintain accreditation

NESA reduced the amount of documentation teachers are required to submit to maintain proficient accreditation in response to a government mandated review. Teachers were previously required to report how their practice aligns with all of the Standards. The review noted that if schools had a robust performance and development framework then NESA could rely on the principal's assessment of whether their teachers continued to meet the Standards. Since 2018, the teacher's principal now endorses that their practice aligns with the Standards. However, as the current Performance and Development Framework is not consistently implemented in line with the Standards, the ability for principals to reliably make this assessment is compromised (see Section 2.3).

Teachers must complete 100 hours of professional development every five years (or seven years for casual and part-time teachers) but there is no longer a requirement for this to address all Standards. If the Performance and Development Framework is aligned with the Standards, then professional development should be concentrated on relevant elements of the Standards.

Teachers can use compulsory employment requirements such as child protection and first aid training to count towards the required 100 hours of professional learning. While these are important, they do not improve the quality of teaching.

Processes for gaining higher-level accreditation are lengthy and complex

As of 2018, there were only 102 out of 66,487 teachers with higher-level accreditation working in NSW public schools. Stakeholders we interviewed told us the length and complexity of the application process, deter potential candidates.

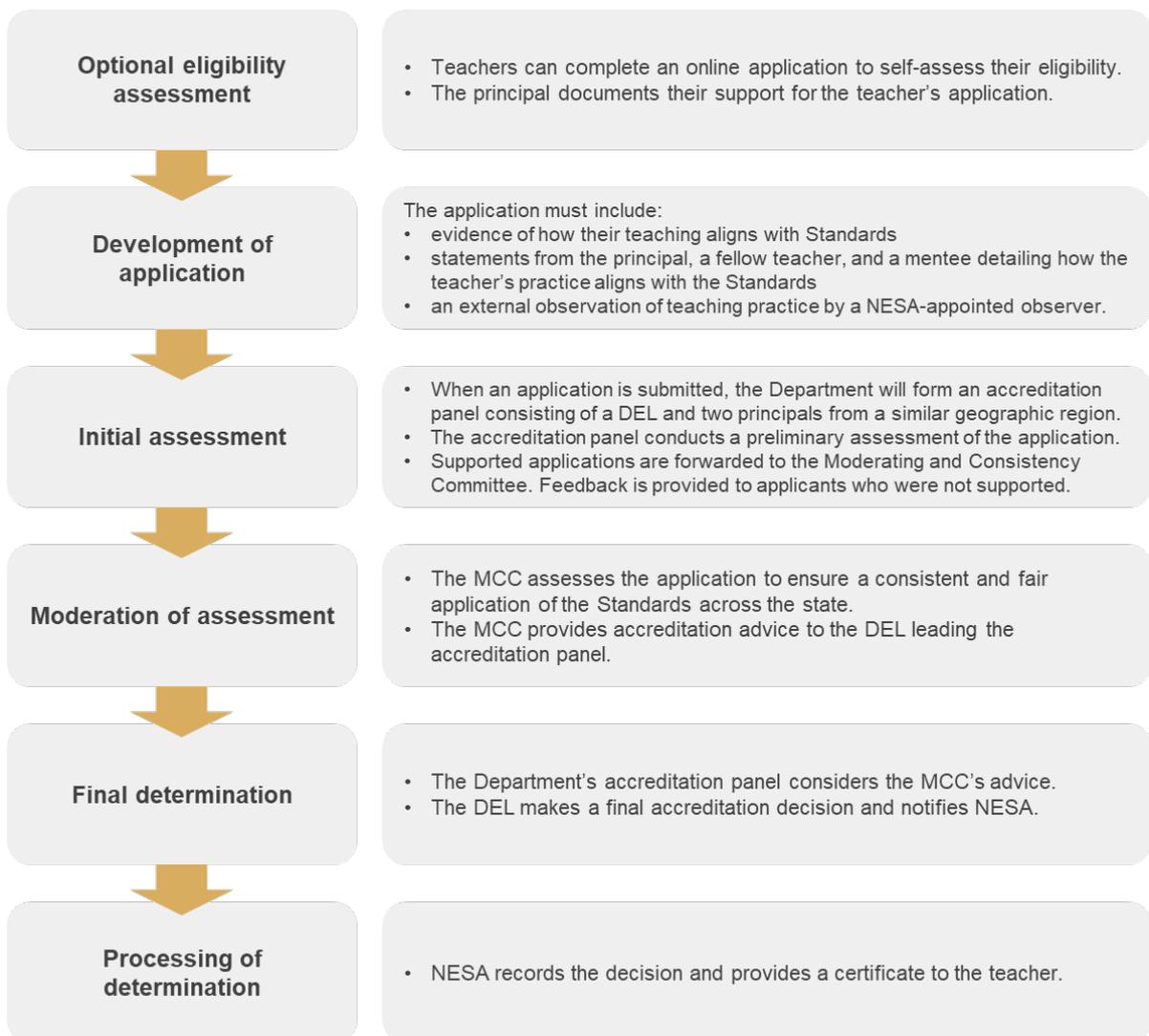
NESA guidance informs teachers of the higher-level accreditation requirements. This guidance includes evidence guides and process maps for each stage of accreditation. Training is also offered to help applicants become more familiar with the Standards. However, applications for higher-level accreditation that we reviewed exceeded 160 pages, and can take up to three years to complete. Providing clearer guidance on the expected length, and depth of evidence, required to meet these requirements could encourage more teachers to apply for higher-level accreditation.

Applications for higher-level accreditation typically take around 11 weeks to assess. Higher-level accreditation determinations are made by Directors of Educational Leadership (DELs). In public schools candidates develop their application, with the assistance of their principal. Applications are initially assessed by a panel consisting of a DEL and two principals from within the same operational directorate. The DEL is responsible for ensuring the panel does not have any potential conflicts of interest.

Endorsed applications are then forwarded to the Moderating and Consistency Committee (MCC). The MCC is a cross-system panel that makes recommendations on higher-level accreditation to improve consistency across sectors. The MCC review process typically takes two weeks to assess applications and a further two weeks to provide recommendations.

Some stakeholders we consulted had concerns about consistency in the handling of applications, and the amount of feedback provided, by DELs. The DEL makes the final determination, which may or may not align with the MCC's recommendation (See Exhibit 6). Between 2012–2016, eight per cent of higher-level accreditation determinations were made contrary to the MCC's recommendation. Relying on the MCC's assessment could shorten the overall assessment period and provide greater consistency across sectors.

Exhibit 6: Process of attaining higher-level accreditation in a public school



Source: NSW Department of Education and the NSW Education Standards Authority.

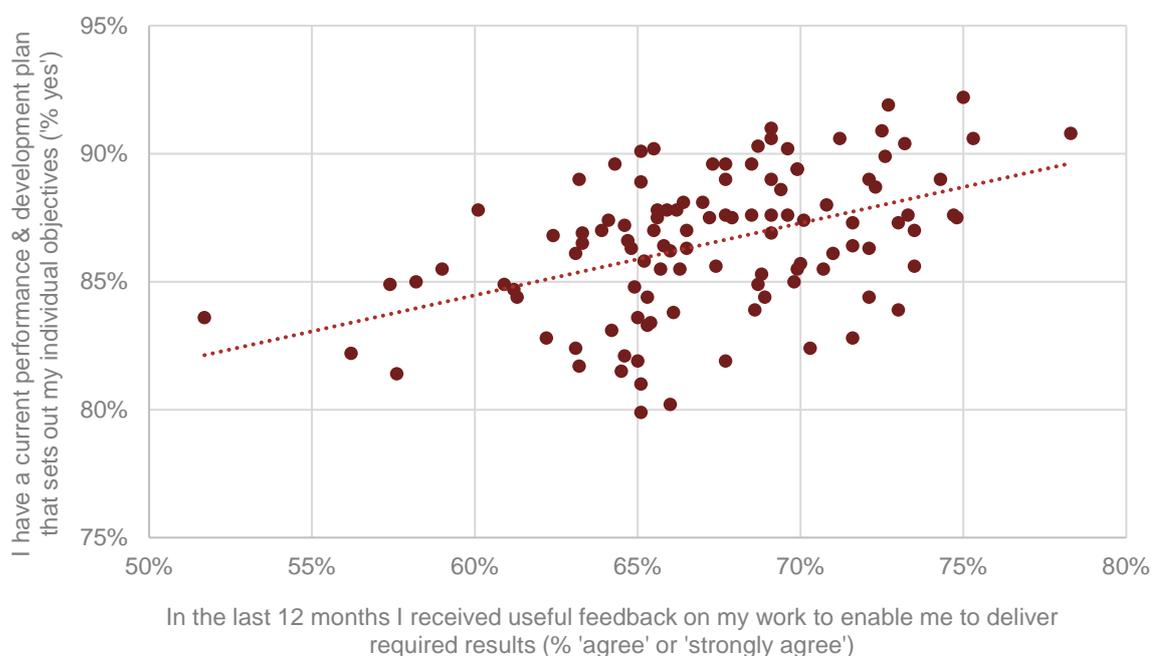
2.3 Performance and Development Framework

No system-wide view of compliance with the Performance and Development Framework

The Department has no central oversight of schools' implementation of the Performance and Development Framework (PDF). Principals are responsible for implementing the PDF in their school. The Department does not monitor whether teachers have a Performance and Development Plan (PDP), receive feedback from lesson observations or formal feedback on their performance. PDPs are stored locally and schools we consulted used a range of methods to store documents from hard copies to collaborative electronic workpapers. This complicates any efforts for central oversight.

The Department could use existing data to target its oversight. Each year, teachers are asked to complete a survey that asks if they have a performance and development plan and if they receive informal and scheduled feedback on performance. In 2018, the proportion of teachers who responded to the survey reported they had a PDP ranged from 80 to 92 per cent across Principal networks. Where teachers reported a performance and development plan, they were more likely to report they received useful feedback to improve their performance (see Exhibit 7).

Exhibit 7: Relationship between teachers having a PDP and receiving useful feedback



Note: Each dot on this chart represents one of the 110 Principal networks across NSW.

Source: Audit Office analysis based on the NSW Public Service Commission's People Matter Employee Survey 2018.

Monitoring and reporting on compliance with the basic elements of the PDF could also be used to inform initiatives to improve teaching quality. Several principals we consulted told us they compile teachers' PDP goals to identify common areas for professional development. Similarly, the Department could compile de-identified performance goals to identify system-wide priorities. Using a Human Capital Management system could provide a consistent way to collect and analyse information from PDPs. The NSW Public Service Commission encourages agencies to implement these systems to give greater visibility of workers' capabilities and aspirations.

The Performance and Development Framework relies too heavily on mutual agreement

Most principals we consulted supported the PDF for providing a structure and process to set goals, observe teacher practice and have formal reviews. Under the Framework, teachers collaborate with their supervisors to establish goals, nominate a colleague to observe their teaching practice and agree on annual written feedback on progress towards their goals.

The requirement for teachers to agree with all goals within their PDP limits the ability of the principal or supervisor to set goals to target areas of greatest individual need. Setting appropriate goals is critical as they form the basis of professional learning, observations, self-assessment and annual review.

Teachers can select who conducts observations and negotiates what will be observed. This introduces risks that underperforming teachers choose peers rather than supervisors to conduct the observation and do not receive effective feedback.

Teachers must also agree to all written feedback. This limits opportunities for robust supervisor feedback to target areas for improvement. Lack of documented feedback on teacher performance can also compromise the ability for principals to commence formal performance improvement programs if necessary.

The Standards should be more clearly reflected in teacher professional goals

The Department does not clearly communicate its expectations for teachers' professional goals or provide any guidance on what effective professional goals look like. Guidance recommends that professional goals should 'consider' the Standards, Department and school priorities. Integrating the Standards into professional goals would help the principal to more reliably declare that teachers practice aligns with the Standards. This is a key element for teachers to maintain accreditation. We assessed a selection of 130 de-identified teacher PDPs from the schools we interviewed as part of the audit. We found that 101 of the 130 PDPs referred to the Standards in at least one of their professional goals. The overall quality of goals in the PDPs we assessed varied greatly. For example, only 48 of the 130 PDPs had goals that were measurable.

Further guidance on observations of teaching practice and effective feedback is needed

Teachers must have two lessons observed as part of the PDF but there is no guidance on effective methods of observation or how to provide effective feedback. Australian research has suggested that effective systems of teacher appraisal and feedback can increase teacher effectiveness by up to 30 per cent. Only 10 of the 130 PDPs we assessed had evidence that two observations were conducted. For PDPs that had evidence of at least one observation, the method and quality of the observations was variable. For example, some used a brief informal classroom visit or a 'partial' lesson observations as evidence.

Of the PDPs we reviewed, meaningful written feedback was more likely in observations of teaching practice that were assessed against the Standards. Strengthening the expectations on the appropriate level and depth of feedback would provide teachers with clearer direction on how they can improve their teaching practice. NESA has guidance on how to conduct observations for teacher accreditation requirements.

A review conducted by the Department in 2018 identified that professional goals and feedback was not strongly linked to the Standards. The integration of the Standards into the PDF is integral to effectively use the PDP to monitor and improve teaching quality.

One school we consulted demonstrated a good approach to integrating the Standards with the PDF (Exhibit 8).

Exhibit 8 – Integrating the Standards into Performance and Development Framework

Macarthur Girls High School has mapped and aligned the Australian Professional Standards for Teachers (the Standards) to all plans and frameworks it implements at the school including the School Plan, the School Excellence Framework, the whole school Professional Learning Plan for staff and Executive members and the Performance and Development Framework.

When creating their professional goals in the annual Performance and Development Plan, staff refer to the School Plan, their Faculty Plan and their personal career goals. As the School Plan and subsequent Faculty Plans are mapped to the Standards staff's goals therefore reflect this alignment.

All staff are observed at least twice annually and nominate 2-3 standards they would like to focus on. The observer describes the teaching and learning activities that occurred and evaluates the teacher's classroom practice in relation to the identified standard descriptors.

As part of the Performance and Development Plan process, all teachers collect evidence to demonstrate their progress towards achieving their goals. As each teacher's goals are informed by the School Plan and Faculty Plan; the evidence collected may also provide evidence towards the attainment of key improvement measures in the School Plan and inform the annual SEF self-assessment. Staff may also use this evidence as part of their accreditation and maintenance process.

Source: Audit Office analysis based on information from Macarthur Girls High School 2019.

2.4 Managing underperforming and unsatisfactory teachers

The number of teachers with identified underperformance and unsatisfactory performance is low

The number of teachers formally identified as underperforming or unsatisfactory in NSW public schools is low. The Performance and Development Framework is not being implemented in a way to allow principals to reliably identify underperforming teachers (see section 2.3). In 2018, only 43 per cent of teachers who responded to a state-wide survey agreed that their manager appropriately deals with employees who perform poorly. In 2018, only 53 (or 0.1 per cent) of teachers were formally identified as underperforming or unsatisfactory. By comparison, a report on school inspections conducted in the United Kingdom assessed teaching quality in three per cent of schools as 'inadequate'.

Teachers are classified as underperforming when their supervisor identifies they are experiencing difficulty with their teaching performance and are put on a performance improvement program. If after this process, the teacher's practice does not align with the Standards, the teacher can be declared unsatisfactory. In 2018, only 29 teachers were either dismissed or resigned as part of a formal action taken based on concerns of poor teaching quality.

Some principals are not confident in managing underperforming teachers

A recent survey found that most aspiring principals were concerned about their capacity to manage underperforming teachers. Principals are responsible for managing the performance of their teachers. The Department's Employee Performance and Conduct (EPAC) directorate has recently established a program aimed at building the capacity of principals to allow them to confidently manage underperforming teachers (see Chapter 3).

Past experiences can make principals reluctant to undertake formal performance management. Several principals we interviewed recalled instances where teachers submitted bullying and harassment claims after being informed their practice is below standard. These principals reported that this provided grounds for the teacher to take leave, disrupted classes and affected staff morale.

EPAC has improved its process for managing underperforming and unsatisfactory teachers

The Department recently streamlined its process for managing underperforming and unsatisfactory teachers. It updated its Teacher Improvement Plan, allowing continual assessment of progress towards meeting the Standards. Under the plan, teachers have up to ten weeks to improve their teaching practice. Principals can conduct assessments throughout this period to provide additional support and ensure the goals are met by the end of the assessment period.

The Department provides resources and training for principals to use when addressing underperformance. These resources support principals to have meaningful performance conversations, reliably assess teacher performance, and implement the performance management processes in line with policies and legislation. Principals we consulted who have used the revised process appreciated the improvements and felt better supported throughout the performance management process.

2.5 School Excellence Framework

The Department assists schools to conduct their self-assessments

Schools are expected to gather and reflect on evidence when self-assessing their performance. The Department provides guidelines to help schools conduct annual self-assessments against the School Excellence Framework (SEF). The Department also provides training, and survey tools, to capture student, parent and teacher feedback to inform school self-assessments. Principals we consulted generally understood the framework and the expectations of the self-assessment process.

Directors of Educational Leadership (DELs) can use the SEF process to monitor teaching quality across their network of schools. DELs endorse each self-assessment and must satisfy themselves that the self-assessment accurately represents the school's performance. DELs we consulted told us they discussed any concerns with the principal prior to endorsement.

Schools reported that preparing an evidence set for external validation is onerous

Schools we interviewed reported they found preparing evidence sets for external validation onerous. Each school's self-assessment against the SEF is externally validated every five years to promote greater consistency. Schools produce an annotated evidence set to justify their self-assessment.

Most principals we interviewed told us that before beginning the process they were unaware of the depth of evidence required to support each assessment, as well as the appropriate length of the submission. Most principals also chose to heavily involve their school executive in compiling and annotating evidence, in some cases this was at the expense of their regular teaching and management duties. Some principals we interviewed reported they spent over 120 hours to prepare the evidence set. Clearer communication of the expectations of the depth of evidence required could reduce the workload of schools in preparing for the external validation process.

The Department could maximise the value of the external validation process for schools

Principals we interviewed reported that although it took significant resources, they found the external validation process useful in improving their understanding of their school's performance and quality of teaching. The value of the external validation process could be improved by the external panel providing additional written feedback to schools and aligning the external validation process with the school planning cycle.

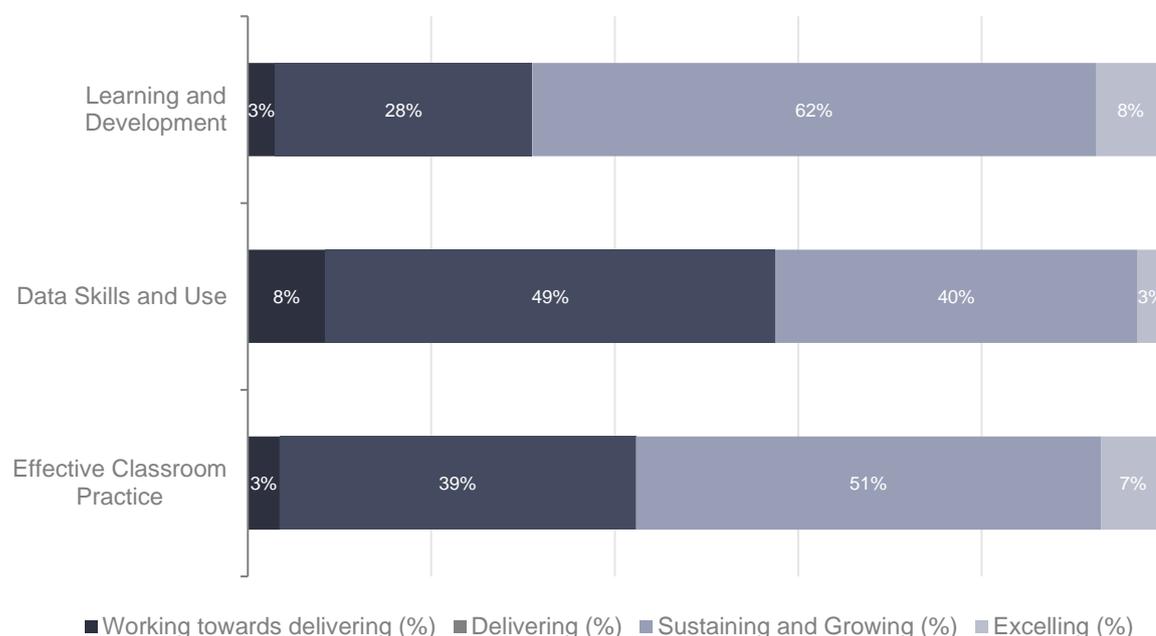
During the final stages of external validation, the panel meets with the school's executive to discuss their findings. Most principals we interviewed found these discussions added value. The process is completed with a short, standardised letter listing the panel's overall assessment. More detailed written feedback would allow the school to reflect on the panel's observations and provide an input to inform future school planning.

Aligning the external validation process with the school planning cycle would allow principals to use the knowledge and feedback gained through this process to inform their school plan. By preparing the evidence set, Principals must source data to demonstrate the school's performance. This gives a clear understanding of the areas of improvement. Principals could then use feedback from the external panel to develop strategies to improve performance in these key areas. Aligning the two processes may increase the value of external validation and produce stronger school plans.

Information collected from the SEF informs strategies to improve teaching quality

The Secretary is provided with an annual overview of the performance of schools in many areas including teaching quality. Each year, CESE produces a report that summarises the results from schools' self-assessments against the SEF as well as the results from external validation. These reports are used to inform strategies to address areas for improvement on a state-wide level. Recent reports have highlighted that the use of data within schools to monitor student development and target effective teaching strategies is an area for improvement (Exhibit 9).

Exhibit 9: School Excellence Framework – 2018 school self-assessments – teaching domain



Source: NSW Department of Education 2019.

To address this gap, the Department developed training and guidance to better equip schools with the skills and knowledge for the effective use of data. Since 2016, over 70 per cent of NSW public schools have had at least one teacher participate in this training.

The Department provides schools with access to a set of surveys (Tell Them From Me) to allow them to formally collect feedback from students, parents and teachers on their experiences. Over 1,000 staff from over 420 schools have participated in training to assist them to use this data to improve teaching practice or for school planning.

3. Strategies to improve teaching quality

3.1 Locally administered strategies

Programs are consistent with evidence on the benefits of mentoring and coaching

The Quality Teaching, Successful Students program was informed by the Department's Centre for Education Statistics and Evaluation's (CESE) research into high performing education systems. This research identified the importance of collaborative practices in improving teaching quality, and the role school leaders play in facilitating this culture. QTSS was announced as a government election commitment in 2015, providing \$224 million over four years to 'train and support primary school teachers to become mentors to others'.

Beginning Teacher Support Funding is consistent with a CESE review of academic literature and feedback from stakeholder consultation. The review found that effective induction programs use trained expert mentors and provide direct coaching time. Submissions and comments made in response to a discussion paper consistently raised that beginning teachers should have access to a quality induction program, reduced teaching loads and support from trained mentors.

The Great Teaching, Inspired Learning Blueprint for Action committed that all beginning teachers would receive high quality support in their first year of teaching. Teacher mentors would be given access to specific training and flexibility in their teaching responsibilities to support classroom observation and provide structured feedback to early career teachers.

Programs have identified objectives but have not set key performance indicators or targets

The objective of the Quality Teaching, Successful Students program is to ensure all primary students benefit from high quality teaching and learning practices that best meets their needs. Beginning Teachers Support Funding is provided to support beginning teachers' induction and professional development guided by the Standards. There are no key performance indicators or targets attached to either of these programs, which reduces effective monitoring of progress towards the objectives of the programs.

Accountability for use of funding is limited to school annual reports

Schools report on the use of Beginning Teacher Support Funding and Quality Teaching, Successful Students funding in their annual reports. This form of reporting helps show the school community how funding is being used. But the lack of central monitoring means that there is no review of whether funding is being used in line with program guidelines.

We reviewed how 30 schools reported their use of Beginning Teacher Support Funding in their annual reports and found that all schools' reported use of funding was in line with guidelines. A policy document outlines that this funding should be used in accordance with four conditions:

- beginning teachers have reduced responsibilities or teaching loads
- beginning teachers are provided with ongoing feedback and support
- teacher mentors have access to specific training and flexibility in their teaching responsibilities to support classroom observation and provide structured feedback
- beginning teachers have access to professional learning on several nominated areas.

We also reviewed how 30 schools reported their use of Quality Teaching, Successful Students funding. One school had no explanation for how funding was used. We assessed that a further five schools' reported use of funding as outside of guidelines.

These schools used funding to:

- support students with specific learning needs
- support the school through an external validation process
- provide relief time for teachers to update student, parent and teacher surveys
- purchase and implement a student diagnostic assessment
- implement filmmaking and coding programs.

Quality Teaching, Successful Students program guidance notes that strategies to enhance professional practice funded through the program must be evidence-based and focused on improving the quality of teaching. Guidelines note that funding can be used to:

- provide release time for a school executive to establish collaborative teaching practices
- provide release time for a school executive to establish mentoring practices to help an individual teacher with a specific issue such as classroom management
- employ a specialist in an area where teachers need support, such as literacy or numeracy
- support teachers with accreditation or the performance and development framework.

Evaluation has been conducted on only one of the two strategies

The Department identified a key measure of success for the Quality Teaching, Successful Students program as improved student learning outcomes. We were not provided with evidence that the QTSS program has been reviewed or evaluated since its introduction in 2015 to determine whether it is realising this intended outcome.

In 2017, CESE evaluated the use of Beginning Teacher Support Funding. The evaluation found that not all teachers were receiving release time and mentoring allocations in full, suggesting that the policy had not been fully implemented as intended. It also found that teachers with two years or less experience scored lower than more experienced teachers on the measured drivers of student learning, confirming that the program is appropriately targeting them for support.

The evaluation surveyed principals who suggested better targeting of funding, improving communication of guidelines, and more professional support for mentors. The Department responded to the evaluation by updating policies, improving communication to funding recipients, and developing case studies to showcase good practice. From 2017, funding was extended to support beginning teachers on temporary one-year contracts who have yet to be accredited at proficient level. CESE has flagged further evaluations to be conducted as more data became available.

3.2 Programs for high-performing and underperforming teachers

Programs aim to improve identification of high performing and underperforming teachers but are only reaching a small number of teachers at this stage

The Mastery of Teaching program aims to increase the number and effective use of Highly Accomplished Teachers. Of more than 66,000 teachers in NSW public schools, only 102 are accredited at the Highly Accomplished or Lead Teacher (HALT) level. The program provides mentoring to teachers currently demonstrating expert teaching practice who wish to apply for higher-level accreditation.

The Teacher Performance Management and Improvement (TPMI) project supports principals in managing teacher performance. Out of 49,000 permanent and over 39,000 casual and temporary teachers, 53 were involved in teacher improvement programs in 2018. The program provides hands-on support and guidance in managing teacher underperformance and improvement.

Pilot programs are backed by evidence and consultation

The Mastery of Teaching program was informed by research showing that high-performing education systems systematically identify expert teachers and deliberately organise the sharing of their expertise among teachers within and across schools. The Department also surveyed its existing cohort of HALTs to inform the design of the program. The survey identified:

- access to support from existing HALTs is unequal across the state
- the self-selection application process may discourage some teachers from applying
- there are misconceptions about the intensive nature of the accreditation process.

The TPMI project used research from the principal workload study, school leadership strategy, and a survey of aspiring principals to inform its approach. It found that existing principals reported time barriers and the perceived length of the process as key reasons for not managing underperforming teachers. Aspiring principals reported a lack of confidence and capability in this area.

Pilot programs have identified objectives and set KPIs to determine success

The objective of the Mastery of Teaching program is to increase the number of Highly Accomplished Teachers by using school leaders to identify teachers currently demonstrating expert practice and using existing HALT teachers to support identified teachers through accreditation. The program originally set a key performance indicator of increasing the number of teachers to an average of 10 in each of the Department's 110 networks by 2022.

The objective of the TPMI trial is to support principals to enhance the quality of teaching through better performance and development practices, and address teacher underperformance as part of a high-performance school culture. The TPMI identified nine goals under two main areas to:

- improve teacher performance and development, management and improvement processes
- increase school leaders' willingness and confidence to engage in these processes.

Trials are supported by training and guidelines for implementation

The Department provided clear information to directors and principals in the 20 networks selected for the Mastery of Teaching program trial. Information packs described the purpose and process of the program. Checklists and forms assist directors, principals, and existing HALTs through their respective parts of the process. Guidelines help a state-wide panel make consistent judgements to select supported candidates.

Several directors and principals we interviewed told us they participated in or were setting up alternate arrangements to support aspiring HALT teachers. This creates a potential for inconsistent advice and duplication of effort across networks without sharing of good practice.

TPMI project teams gave 124 presentations at principal network meetings and professional learning events up to October 2018. Presentations showed research on the impacts of underperforming teachers, links between performance development and performance improvement, responsibilities of principals and supervisors, and links to further resources. In a review of the project, principals gave positive feedback on the resources, templates and other tools to help guide professional conversations and document processes.

Mid-point reviews and evaluations were conducted to inform further rollout of trials

The Department reviewed the pilot of the Mastery of Teaching program in 2018. Lessons learned from the review included the need for:

- more support for directors, principals and teachers to understand the stages of the teaching standards, accreditation and their link to in-school performance and development programs
- increased reliability of judgements about the teaching practice of nominated teachers
- more effective ways to better match observers to nominated teachers.

CESE evaluated the TPMI trial in October 2018. The evaluation found that two-thirds of principals who participated showed increased willingness and/or confidence to manage and improve teacher performance. The number of improvement programs implemented during the trial in participating areas was higher than in previous years and in out-of-trial areas.

Face-to-face contact was considered critical to the success of the program as it allowed for more efficient communication when working with complex issues. Other aspects of the trial that were also highly valued included the expertise, knowledge and guidance provided by the field team.

Pace of expansion may cause issues in resourcing and consistent implementation

The original Mastery of Teaching project plan was overambitious given the low number of existing HALT teachers. In May 2018, the original plan targeted support for 1,110 new Highly Accomplished teachers by 2022. At June 2019, the target was halved to a total of 530 Highly Accomplished Teachers. The Department had identified 75 nominated teachers and 35 observers and coaches for 2019. The pace of expansion is still highly dependent on the availability of existing HALTs to observe and coach.

TPMI supported only 17 per cent of schools in trial areas in 2018. The program evaluation recommended that communication should be improved but noted that further resources may be needed if more schools sought support. TPMI improved its communication when it expanded to all areas of the State in 2019. Field officers' caseloads should be monitored to ensure TPMI can continue to provide shoulder-to-shoulder support, which was considered essential to its success.

Trial programs need to be monitored and adapted where necessary during wider rollout

The initial project plan for the Mastery of Teaching did not schedule any further reviews past the pilot stage. Effective evaluation requires planning in the early stages of a program design.

The project also aimed to 'create authentic in-school roles and a new career pathway for teachers who wish to stay in the classroom and impact on the practice of their colleagues'. Future evaluation should consider how Highly Accomplished teachers supported by this program are sharing their expertise and improving the quality of teaching in their schools. It should also compare how Lead Teachers are being used, who are not currently targeted by the program.

The Department advised that the TPMI trial has been scheduled for further evaluation in 2020. A limitation of the initial trial evaluation was that much of the data focusing on the impact of the trial was based on participants' perceptions, and thus subjective. Future evaluations should assess whether supported schools have built capacity to address teacher underperformance without intensive TPMI support. The role of the Director, Education Leadership could be an alternate way to support principals in managing and improving teacher performance.

3.3 Quality Teaching Rounds

A university partnership helped to establish a firm research base for the program

Quality Teaching Rounds (QTR) extends on research about the effectiveness of 'instructional rounds' and 'professional learning communities'. Instructional rounds require all participants to take turns in sharing their practice providing a common experience as a basis for analysis and discussion. Professional learning communities require ongoing commitment to a group which allows for development of trust and respect.

QTR combines these approaches with the Quality Teaching model. Developed by the University of Newcastle (the University) and the Department in 2003, the model provides a tool to systematically analyse lesson quality. The associated coding scales were informed by research into elements of effective teaching.

Objectives and key performance indicators are shared with the University

The objective of QTR as stated by the University is to improve the quality of teaching in ways that teachers experience as supportive and positive, rather than subjecting teachers to intensified levels of accountability and performance review.

The Department strongly endorses this model of teacher professional development and supports schools with funding, training and online resources. Key performance indicators include the number of teachers trained, number of schools scaling QTR and qualitative feedback from schools. Participating in QTR is a local school decision.

Guidance material helps support consistent implementation but is dated

Guidance material to help teachers implement the Quality Teaching model is dated (2006) and does not reference contemporary policies or procedures. The guide has broken links to supporting resources, and does not reference the Performance and Development Framework, the Standards or professional accreditation. The discussion paper introducing the Quality Teaching model is also dated (2003). The paper references educational research from the 1990s as the most recent available.

A website developed by the Department and University provides further practical guidance for schools to implement QTR, including on:

- planning for casual relief at the start of each school term or year
- producing a timetable for the rounds (an example of a full day timetable is provided)
- forming Professional Learning Communities and choosing an approach to facilitation.

The Department has established an online community of practice for QTR participants to share good practice, ask questions and support colleagues. It should monitor this communication channel to ensure schools are provided with consistent advice.

Department has funded teachers to attend training and take part in the research trial

The University, in partnership with the Department, provides professional learning to teachers to train them to conduct Quality Teaching Rounds within their school. Training is offered across the State which provides further opportunities for a wide range of schools to participate. Since 2014, 1,587 teachers and 629 schools have participated in QTR training delivered by the University.

In 2019, the Department waived the workshop fee of \$500 per participant for two teachers per school and contributed up to \$2000 per school to contribute to casual relief. The University provides schools with additional funding of up to \$20,000 to take part in its research trial.

Some schools are adapting how they implement the program to reduce costs

Several schools we interviewed told us they had sent teachers to be trained but could not implement QTR in their schools due to the ongoing costs. These costs are typically to provide relief time for four days per teacher per year for ongoing implementation of QTR.

Other schools we interviewed told us they had taken elements of the framework and adapted it to reduce costs. For example, some reduced the number of teachers in a round to three. The Department's guidance is that a round should consist of between four to six teachers.

The University identifies eight essential features of implementing QTR. The University assessed whether schools were conducting QTR in compliance with these eight features in a trial. It found all participating schools met at least five elements but that effects on teaching quality were stronger for schools that met six or more of the elements.

Randomised controlled trial evaluation is being used to identify program outcomes

The Department, in partnership with the University, funded a randomised controlled trial of QTR in 2014–2015. This method of evaluation gives greater assurance of impact. Participating in QTR was found to significantly improve the quality of teaching and teaching morale in a diverse range of schools.

The trial involved 12 primary and 12 secondary schools which were randomly allocated to one of two 'intervention' groups or a waitlist 'control' group. 192 teachers' lessons were observed at baseline, post-intervention and after 12 months to determine impact on classroom practice.

The University is conducting further research on the program up to 2022 in a larger sample of schools. This research will use NAPLAN and Progressive Achievement Tests to determine impact on student outcomes. It will also investigate the sustainability of the effects on students and teachers, scalability, and how to support small and remote schools through a digital form of QTR.

3.4 Executive Priority Project – Teaching Quality

Executive Priority Project provides an overview of activities across the Department

The Executive Priority Project – Teaching Quality aims to provide a single point of oversight, coordination and accountability for work related to improving teaching quality in public schools. Cross-divisional project working groups provide subject matter expertise and support executive sponsors to align workstreams across the program. Seven workstreams cover most elements of the lifecycle of a teacher including: pre-service recruitment and attraction, early career teachers, expert teachers, teacher performance and development, and professional learning.

The structure of the Executive Priority Project may help align the work of different areas of the Department. Divisions of the Department are expected to produce delivery plans for each initiative under the Executive Priority Project. Resourcing is largely drawn from within business units and this creates risks to deliver work involving significant changes.

Executive focus may help progress work on traditionally difficult areas more quickly

Executive representation on steering committees and buy-in to the project may help address difficult, longstanding issues. For example, one workstream is tasked with developing an alternate career pathway for expert teachers. The project has identified that the skills of Highly Accomplished and Lead Teachers are not being fully utilised as intended. Only 27 HALTs accredited in NSW who are employed by the Department are currently working in classroom teacher positions. A survey conducted in March 2019 found that most HALTs are in leadership positions but don't feel their skills in instructional leadership, mentoring, coaching and leading professional learning are adequately leveraged.

This workstream has developed a concept paper and is working with Human Resources to explore new role descriptions, salary scales and planned release time to spread the expertise of HALTs across the system. The descriptions of Highly Accomplished and Lead Teacher practice in the Standards could be used to guide potential roles and responsibilities.

Another workstream is focused on improving performance and development and teacher improvement practices. This includes updating templates and development of new resources.

Section two

Appendices

Appendix one – Response from agencies



Ms Margaret Crawford
Auditor-General of NSW
Level 19, Darling Park Tower 2
201 Sussex Street
SYDNEY NSW 2000

DGL19/585

Dear Ms Crawford

Thank you for your letter of 28 August 2019 providing a copy of the *New South Wales – General's Performance Audit – Ensuring teaching quality in NSW public schools* report and seeking a response from the Department of Education (Your ref: D191841/PA6637). I am pleased to provide you with an Education Cluster response to the report.

It is evident the audit recommendations presented in the report are clearly aligned with the strategic plans of the Department of Education and NSW Education Standards Authority (NESA).

The Department of Education Strategic Plan 2018-2022 includes the goal that every student, every teacher, every leader and every school improves every year; to enable us to achieve this goal, we have made Improving Teaching Quality one of the five key priorities for the Department.

The Department and NESA have jointly prepared a response which reflects the position of both agencies, supporting all seven (7) recommendations. The consolidated response is reflected in the table attached together with detailed commentary linked to each recommendation.

I want to take this opportunity to express my appreciation for the input you and your office have added in supporting this important body of work. Further to this, I would like to acknowledge officers from across the Education Cluster who have contributed to this activity.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mark Scott'.

Mark Scott AO
SECRETARY
DEPARTMENT OF EDUCATION

6 September 2019

Response to Recommendations

	Recommendation	Response	Comments
1.	Work with relevant stakeholders to ensure Teacher Accreditation Authorities receive adequate training before making accreditation decisions	Support	<p>Supporting Proficient Teacher accreditation decisions</p> <p>NESA is currently conducting research that aims to identify a minimum benchmark for Proficient Teacher. Establishment of a valid and reliable benchmark for Proficient Teacher practice will underpin strategies aimed at supporting TAAs across NSW to make consistent accreditation decisions.</p> <p>NESA will use findings from the research to:</p> <ul style="list-style-type: none"> • Communicate a consistent definition of teaching quality at the Proficient Teacher level of the Standards • produce resources that support the development of a common understanding of what Proficient Teacher practice looks like across the profession • inform criteria for conducting risk-based audits of TAAs' Proficient Teacher accreditation decisions. <p>Online support materials are also under development for implementation from November 2019 that provide more guidance for principals, TAAs and supervisors on making valid, reliable and consistent judgements about practice at Proficient Teacher. These resources will be updated, as necessary, based on findings from the Proficient Teacher judgements research.</p> <p>The Department of Education supports NESA's research to identify a minimum benchmark for Proficient Teacher accreditation. The Department has provided principal and supervisor nominees to NESA to participate in this research.</p> <p>The Department supports NESA's provision of training of External Assessors, TAA (AIL) personnel and MCC members. Currently, the Department has commenced training of the first cohort of 150 Directors, Educational Leadership and Principals across all six operational directorates in the nationally recognised Assessor Training Program (ATP).</p>

Education Cluster Response – Performance Audit – Ensuring Teaching Quality in NSW Public Schools

	Recommendation	Response	Comments
			<p>Supporting Highly Accomplished and Lead Teacher accreditation decisions</p> <p>NESA has developed a tailored, NSW version of AITSL's Assessor Training Program (ATP) which is currently being delivered across systems and sectors in NSW to improve cross-sectoral consistency. The training involves a comprehensive online module followed by a face-to-face training session for External Assessors, TAA (AIL) personnel and MCC members.</p> <p>Completion of the ATP online module and the face-to-face session is mandatory for all agents in the assessment and decision-making process for higher-level accreditation including:</p> <ul style="list-style-type: none"> • External Assessors allocated to conduct observations of applicants as part of the higher-level application and assessment process • members of the MCC responsible for moderating judgements and providing TAAs (AIL) with advice and recommendations about accreditation • TAA (AIL) personnel responsible for assessing applications and making decisions about accreditation at the higher levels. <p>The ATP aims to improve the consistency, validity and reliability of accreditation decisions for Highly Accomplished and Lead Teacher.</p> <p>The ATP is designed to provide assessors with:</p> <ul style="list-style-type: none"> • a deep understanding of the Standards for Highly Accomplished and Lead Teacher • a comprehensive understanding of national teacher certification, with particular emphasis on the role of assessors • skills in making valid and consistent judgements about evidence of practice against the Standards for Highly Accomplished and Lead Teacher • the capability to undertake informed observations of teaching practice • guidance on engaging in effective communications with fellow assessors,

Education Cluster Response – Performance Audit – Ensuring Teaching Quality in NSW Public Schools

	Recommendation	Response	Comments
			<p>Supporting Highly Accomplished and Lead Teacher accreditation decisions</p> <p>NESA has developed a tailored, NSW version of AITSL's Assessor Training Program (ATP) which is currently being delivered across systems and sectors in NSW to improve cross-sectoral consistency. The training involves a comprehensive online module followed by a face-to-face training session for External Assessors, TAA (AIL) personnel and MCC members.</p> <p>Completion of the ATP online module and the face-to-face session is mandatory for all agents in the assessment and decision-making process for higher-level accreditation including:</p> <ul style="list-style-type: none"> External Assessors allocated to conduct observations of applicants as part of the higher-level application and assessment process members of the MCC responsible for moderating judgements and providing TAAs (AIL) with advice and recommendations about accreditation TAA (AIL) personnel responsible for assessing applications and making decisions about accreditation at the higher levels. <p>The ATP aims to improve the consistency, validity and reliability of accreditation decisions for Highly Accomplished and Lead Teacher.</p> <p>The ATP is designed to provide assessors with:</p> <ul style="list-style-type: none"> a deep understanding of the Standards for Highly Accomplished and Lead Teacher a comprehensive understanding of national teacher certification, with particular emphasis on the role of assessors skills in making valid and consistent judgements about evidence of practice against the Standards for Highly Accomplished and Lead Teacher the capability to undertake informed observations of teaching practice guidance on engaging in effective communications with fellow assessors,

Education Cluster Response – Performance Audit – Ensuring Teaching Quality in NSW Public Schools

	Recommendation	Response	Comments
			applicants, principals, referees and others during the assessment process.
2.	Review and improve the application and assessment processes for attaining higher-level accreditation, in consultation with NSW and national stakeholders, by: <ul style="list-style-type: none"> a) clarifying the quantity and quality of evidence for higher-level accreditation b) reducing duplication throughout the assessment process 	Support	<p>NESA has been working on strategies to clarify requirements and expectations about the amount of evidence required of applicants for higher-level accreditation, reduce duplication and processing times and improve alignment between NSW and national certification processes.</p> <p>In response to the Auditor-General's recommendation, NESA will revise higher-level application requirements and the processes for moderation by the MCC in consultation with key stakeholders.</p> <p>NESA's revised application process will:</p> <ul style="list-style-type: none"> clarify and communicate evidence requirements for applicants improve alignment with national certification processes reduce duplication in the assessment process be more developmental in nature by increasing opportunities for support and feedback to applicants throughout the process. <p>The Department of Education welcomes the proposed revision and will work with NESA to ensure this supports our shared commitment to increase the number of teachers accredited as Highly Accomplished and Lead Teacher in NSW.</p>
3.	Implement a program of risk-based reviews to provide confidence that proficient level accreditation determinations align with the Australian Professional Standards for Teachers.	Support	<p>The Department and NESA want to ensure that the public can have confidence that proficient level accreditation determinations align with the Australian Professional Standards for Teachers. The agencies will work together to ensure there is moderation of decisions made by TMs and that TAAs are actively accessing the guidance and support available to them.</p> <p>NESA's internal process for auditing Proficient Teacher and maintenance of accreditation decisions is under development. A pilot is planned to begin in late 2019 that aims to review the extent to which the revised policies for Proficient Teacher and maintenance are meeting their objectives.</p> <p>To inform NESA's longer-term Proficient Teacher audit process, a valid and reliable benchmark for Proficient Teacher practice needs to be established and agreed to by</p>

Education Cluster Response – Performance Audit – Ensuring Teaching Quality in NSW Public Schools

	Recommendation	Response	Comments
			the profession. NESA is currently conducting research that aims to identify a minimum benchmark for Proficient Teacher.
4.	<p>improve the Performance and Development Framework by:</p> <ul style="list-style-type: none"> a) providing guidance that supports aligning goals, professional development, observations and reviews to the Australian Professional Standards for Teachers b) strengthening the quality of observations of teaching practice and requiring at least one observation to be conducted by a supervisor c) providing guidance that supports supervisors and principals to effectively use the framework to improve teacher performance before formal performance management d) monitoring implementation of the Framework through collection of de-identified Performance and Development Plans, observations and reviews 	Support	<p>The Department is committed to ensuring the Performance and Development process for teachers supports the ongoing improvement of student outcomes through continuous development of a skilled, effective and professional teaching workforce. Within the Executive Priority Program for Improving Teaching Quality we are aiming to deliver in early 2020 (subject to consultation) a:</p> <ul style="list-style-type: none"> - Refined Performance and Development Plan (PDP) template clearly linked to the Australian Professional Standards for Teachers (the Standards) to support accreditation processes, with agreement of the NSW Teachers Federation. - Relaunch of the Performance and Development Framework for Principals, Executives and Teachers via a consolidated suite of e-learning tools and a face-to-face format to support and build supervisor and principal capabilities in managing performance and development. <p>The revised Framework will clarify the requirement for observation and the Department will propose the requirement for at least one observation to be conducted by a supervisor, subject to consultation with relevant stakeholders. There already exist a number of templates for observation of teaching, linked to Instructional Rounds, Quality Teaching Rounds, Accreditation and Improvement programs. The development of an observation template to support the performance and development process will be explored.</p> <p>We will further consider and consult on the appropriate mechanism for monitoring of how the Framework is being applied in schools, including plans, observations and feedback to teachers, in order to support the Department in refining our guidance and targeting our professional development of teachers and supervisors.</p>
5.	<p>Improve the School Excellence policy by:</p> <ul style="list-style-type: none"> a) clarifying the quantity and quality of evidence required for external validation b) requiring tailored written feedback from external validation panels, allowing 	Support	<p>School Planning, including self-assessment against the School Excellence Framework and the use of external validation, is an important part of ensuring every school improves every year. Refinements to this process are being implemented as part of the Executive Priority Program Improving Schools and Student Outcomes:</p> <ul style="list-style-type: none"> a) Work has commenced with Directors, Educational Leadership (DELs) and CESE to build contextualised, authentic, self-assessment processes to address

Education Cluster Response – Performance Audit – Ensuring Teaching Quality in NSW Public Schools

	Recommendation	Response	Comments
	<ul style="list-style-type: none"> c) schools to better use insights for future planning c) aligning the external validation process to the school planning and reporting cycle to allow schools to better use the insights gained from the external validation process 		<p>the perceived onerous task of creating evidence sets. Further support will be developed by gathering sample evidence sets from schools undertaking external validation in 2019, to support system understanding of the quantity and quality of evidence required. The Department places a stronger focus on analysis rather than annotation when undertaking self-assessment, i.e. identifying evidence of impact/change rather than activity/process quality, and drawing conclusions and future directions based on these evidence sets.</p> <ul style="list-style-type: none"> b) The external validation panel process is currently being reviewed as part of the Executive Priority Project workstream on School Excellence. This includes strengthening the external validation process to support and inform school planning. c) The Improving School and Student Outcomes Steering Committee has endorsed a move to a 4-year planning cycle, aligning the external validation cycle with the school planning cycle. Roll out of the new model will commence with schools undertaking external validation in 2020. The rolling school planning cycle will commence for all schools in 2021, in line with the new school planning cycle
6.	Develop and implement a strategy on how to more effectively use Highly Accomplished and Lead Teachers to improve teaching quality across the state	Support	<p>There is an important role for skilled and experienced teachers to work with colleagues leading professional learning communities within and across schools. Many of our teachers already take on these additional responsibilities voluntarily or as part of a leadership role in schools, but this is ad hoc rather than systematic.</p> <p>To provide greater capacity for leadership of teaching and learning, the Department will scope and consult on options for career pathways that would recognise and reward expert teachers who remain in the classroom and work with other teachers to improve their practice. This would be parallel to the traditional school leadership pathway, with opportunities for movement between.</p> <p>Research shows, and the Department agrees, that HALTs demonstrate high levels of teaching efficacy and engage in practices that demonstrate leadership of teaching and learning. Our Mastery of Teaching program, which will support our goal of increasing the numbers of Highly Accomplished teachers state-wide, already focuses on spreading quality teaching practice and driving school improvement. The early expansion of this program is in rural, remote and regional settings where there are few or no existing HALTs.</p>

Education Cluster Response – Performance Audit – Ensuring Teaching Quality in NSW Public Schools

	Recommendation	Response	Comments
			Consideration of school-based roles for 'expert teachers' will build upon and seek to deploy more systematically this small but growing cohort of teachers with higher levels of accreditation.
7.	Evaluate the Quality Teaching, Successful Students program to determine whether it has been implemented in accordance with guidelines and is achieving its intended outcomes.	Support	<p>Principals are supported by the Schools Strategic Resourcing Unit (SSRU) to make evidence based decisions and have the flexibility to determine how best to use their Quality Teaching, Successful Student (QTSS) staffing resource allocation. Principals are required to outline the proposed use of the allocation in their school plan and report on implementation and impact.</p> <p>The SSRU is developing strategies to support schools to strategically use their allocation and to measure the impact on student learning outcomes. The impact of the initiative can be enhanced when combined with flexible funding to focus on improving the quality of teaching.</p> <p>There needs to be a strengthening of accountability around the impact of use of the QTSS allocation, particularly now it is recurrent funding. It is timely to consider what has been achieved and if the methodology that drives the allocation to schools is meeting needs of schools, including specialist settings.</p> <p>SSRU will work with CESE to initiate an evaluation of the initiative. As part of this, the Department will consider whether to introduce an additional allocation to support secondary based staff to increase teacher quality in all public schools, as QTSS is currently only available to support primary based staff.</p>

Education Cluster Response – Performance Audit – Ensuring Teaching Quality in NSW Public Schools

Appendix two – About the audit

Audit objective

This audit assessed the effectiveness of the NSW Department of Education's and NSW Education Standards Authority's arrangements to ensure teaching quality in NSW public schools.

Audit criteria

We addressed the audit objective through the following audit questions and criteria.

1. Do agencies effectively monitor the quality of teaching in NSW public schools?
 - a) Agencies have clearly defined indicators of teaching quality.
 - b) Agencies consistently assess, monitor and report on teaching quality.
 - c) Agencies collect and analyse data to monitor trends in teaching quality across NSW.
2. Are strategies to improve the quality of teaching planned, communicated, implemented and monitored well?
 - a) Effective planning was undertaken for the implementation and delivery of strategies to improve teaching quality.
 - b) Strategies are implemented in accordance with their guidelines
 - c) Agencies regularly monitor, evaluate and report on the effectiveness of strategies to improve teaching quality.

Audit scope and focus

In assessing the criteria, we focused on the following aspects.

1. Arrangements to monitor teaching quality, including:
 - a) performance and Development Framework for Principals, Executives and Teachers in NSW Public Schools
 - b) School Excellence Framework
 - c) teacher accreditation at proficient and higher levels
 - d) management of unsatisfactory teacher performance.
2. Strategies to improve teaching quality, improving:
 - a) Strong Start, Great Teachers
 - b) Quality Teaching, Successful Students
 - c) Quality Teaching Rounds
 - d) Mastery of Teaching program
 - e) Teacher Performance Management and Improvement project
 - f) Executive Priority Project - Teaching Quality.

Audit exclusions

The audit did not assess:

- the regulation or accreditation of initial teacher education courses
- accreditation of professional development courses
- early childhood education or schools for specific purposes
- the school leadership institute and strategy
- merits of government policy objectives.

Audit approach

Our procedures included:

1. interviewing staff from the audited agencies
2. interviewing 14 principals from a selection of primary and secondary schools.
3. reviewing documents relevant to strategies and other monitoring arrangements:
 - a) Planning documents for strategies
 - b) Program guidelines and communication materials
 - c) School Excellence Framework evidence sets and external validations
 - d) School Plans and Annual Reports
 - e) Performance and Development Plans
 - f) Program reviews and evaluations.
4. analysing data from sources including:
 - a) School Excellence Framework self-assessments and external validations
 - b) People Matter Employee Survey
 - c) Tell Them From Me Surveys
 - d) Teacher accreditation decisions.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standard ASAE 3500 Performance Engagements and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Public Finance and Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We gratefully acknowledge the co-operation and assistance provided by the audited agencies throughout the audit. We also thank the school principals we selected and other stakeholders who met with us to discuss the audit.

Audit cost

The estimated cost of the audit, including travel and overheads, is \$330,000.

Appendix three – Performance auditing

What are performance audits?

Performance audits determine whether State or local government entities carry out their activities effectively, and do so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The -Auditor-General's mandate to undertake performance audits is set out in section 38B of the *Public Finance and Audit Act 1983* for State government entities, and in section 421D of the *Local Government Act 1993* for local government entities.

Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the -Auditor-General who seeks input from parliamentarians, State and local government entities, other interested stakeholders and Audit Office research.

How are performance audits selected?

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the -Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three-year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the head of the audited entity who is invited to formally respond to the report. The report presented to the NSW Parliament includes any response from the head of the audited entity. The relevant minister and the Treasurer are also provided with a copy of the final report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

Who checks to see if recommendations have been implemented?

After the report is presented to the NSW Parliament, it is usual for the entity's audit committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help parliament hold government accountable for its use of public resources.

OUR VALUES

Purpose – we have an impact, are accountable, and work as a team.

People – we trust and respect others and have a balanced approach to work.

Professionalism – we are recognised for our independence and integrity and the value we deliver.

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