

5 Professional and Legal Responsibilities of Teachers

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5.1 Professional Responsibilities of Teachers

5.1.1 Introduction

Teachers in the Education Teaching Service have a responsibility to ensure that students gain the knowledge and skills they require to become effective learners and ultimately effective and responsible citizens and understand and appreciate the values and beliefs supported by Australian society.

They also have a responsibility to meet the high standards of professional and ethical behaviour required by the Department, the public, parents and the profession itself.

Teachers undertake this responsibility within the framework of the law and lawful instructions from their employer.

The responsibilities listed below provide guidance for teachers as members of the teaching profession and will assist in giving direction to their interaction with teaching colleagues. They will also guide teachers in meeting the needs of students, in working with parents or caregivers and other staff, in liaising with the public and in being responsible and committed employees of the Department.

5.1.2 Professional Responsibilities

The following statement of professional responsibilities must be adhered to by all teachers.

In carrying out their duties and responsibilities all teachers must:

- be conscious of their special duty of care to the students of the NSW public education system in all educational activities in and out of school;
- demonstrate the highest standards of professional behaviour, exercise professional judgement and act in a courteous and sensitive manner when interacting with students, parents or caregivers, staff and the public;
- collaborate in the development of school plans, policies and programs;
- devise and document teaching and learning programs and develop and implement appropriate evaluation mechanisms;
- treat students equitably, including those with disabilities or other special needs;
- meet the individual learning needs of students and assist each student to maximise his or her learning outcomes;
- effectively manage and implement programs for child protection and student welfare;
- undertake appropriate ongoing professional development to promote competence in curriculum development, delivery and evaluation, classroom management and teaching skills;
- comply with legislative and industrial requirements and the Department's Code of Conduct, policies, including The Use of Employer Communication Devices and procedures;
- be familiar with the provisions of legislation relevant to their official responsibilities;
- comply with reasonable directions given by a supervisor or principal and adhere to official guidelines concerning the performance of their duties;
- implement the priorities of the Department and the school and ensure their professional

actions reflect Government and Departmental policy;

- be fair in exercising delegated responsibility and promote personal and professional development of staff;
- perform their duties efficiently and effectively and with honesty, integrity and fairness at all times;
- ensure that decisions are made fairly and conveyed promptly both within the Department and to those students and members of the public who have a right to know;
- use information gained in the course of employment only for proper and appropriate purposes;
- use public resources economically; and
- behave in such a manner as to protect and enhance the esteem and standing of public education. In particular:
 - teachers must not, under any circumstances, have sexual relationships with students. It is irrelevant whether the relationship is homosexual or heterosexual, consensual or non-consensual or condoned by parents or caregivers. The age of the students or staff member involved is also irrelevant;
 - teachers must not, under any circumstances, engage in conduct of a sexual nature with a student. Improper conduct of a sexual nature by a teacher against a student includes sexual intercourse and any other form of child sexual abuse (which must be notified) as well as but not limited to the following:
 - * inappropriate conversations of a sexual nature;
 - * obscene language of a sexual nature;
 - * suggestive remarks or actions;
 - * jokes of a sexual nature;
 - * obscene gestures;
 - * unwarranted and inappropriate touching;
 - * sexual exhibitionism;
 - * personal correspondence with students in respect of the teacher's sexual feelings for the student; and
 - * deliberate exposure of students to sexual behaviour of others, other than in the case of prescribed curriculum material in which sexual themes are contextual;
 - teachers must not give students alcohol or other drugs, nor will they encourage or condone the use of alcohol or other drugs by students. They may, however, administer or supervise the administration of prescribed medications consistent with Departmental guidelines.
 - teachers must not, under any circumstances, use any form of discipline which involves corporal punishment or engage in any form of behaviour which could cause physical or emotional abuse to students.

5.2 Code of Conduct

Departmental policies on ethical behaviour, including the Code of Conduct is available on the Department's internet site at: <https://education.nsw.gov.au/policy-library/policies/pd-2004-0020>.

5.3 Child Protection

- a) Departmental employees are required to report concerns about suspected risk of harm to children and young people to the Department of Community Services. In cases where there are child abuse allegations against Departmental employees and/or suspected risk of harm specifically related to the actions of an employee, they are also required to ensure that a report is made to the Child Protection Investigation Directorate within the Department.
- b) Departmental policies and procedures relating to child protection are available on the Department's internet site at: <https://education.nsw.gov.au/student-wellbeing/child-protection>.

5.4 Care and Supervision of Students

5.4.1 Introduction

It is crucial that every school and staff member actively provides for the protection, safety and welfare of students. Ensuring the protection, safety and welfare of each student helps create the foundation for an effective learning environment.

The Terms of Settlement shown below are the result of extensive negotiations between the Department and Federation regarding care and supervision of students.

5.4.2 Care and Supervision of Students - Terms of Settlement Between the NSW Department of Education and Training and the NSW Teachers Federation

PURPOSE

The purpose of the terms of settlement is to clarify the responsibilities of principals and teachers in regard to the supervision of students within school grounds.

PRINCIPLES

This terms of settlement between the NSW Department of Education and Training (DET) and the NSW Teachers Federation on the Care and Supervision of Students recognises:

- the duty of care owed by the DET through its staff to students;
- principals and teachers have a responsibility for the protection, welfare and safety of students in school grounds when the school is open;
- parents (inclusive of guardians and legal guardians), caregivers, students, transport providers, police and members of the public have a role to play in ensuring the protection and welfare of students in travelling to and from schools. Principals and teachers have an educative role to assist in providing for the welfare and safety of students in travelling to and from school;
- the commitment of teachers and the DET in providing a safe learning environment for students;
- the goodwill of teachers in providing a range of extra curricula activities for students; and
- the need for supervision arrangements to have regard to the wide range of responsibilities of teachers including timetabled class time, less preparation, professional development and administrative tasks.

DUTY OF CARE

The duty of care owed by the Department through its staff to students arises directly from the special relationship between teachers and students. It derives from the fact that students up to the age of fifteen years are required by law to attend school and parents are required by law to send them to school.

The duty of care is a duty to take reasonable measures to protect students against risks of injury which reasonably could have been foreseen. The duty of care has been expressed by the courts as requiring teachers to take such measures as in all the circumstances are reasonable to prevent injury to the student. The duty is not to ensure that there is no injury but to take reasonable care to prevent injury which could reasonably have been foreseen.

This duty of care will arise whenever a teacher/student relationship exists. In the instance of playground supervision, the following apply regarding this duty of care:

- A teacher is to take such measures as are reasonable in the circumstances to protect a student under the teacher's care from risk of harm that the teacher should have reasonably foreseen. This requires not only protection from known hazards, but also protection from those that could foreseeably arise and against which preventative measures could have been taken.
- A higher standard of care is required for younger students and those with disabilities. Generally speaking, the less experienced the student, the higher the standard of care the Courts will expect to be exercised.
- The school principal is responsible for making and administering arrangements for adequate playground supervision. Teachers are responsible for carrying out their assigned supervisory duties in such a way that students are, as far as can reasonably be expected, protected from harm.
- A teacher's duty of care will arise whenever there is a teacher/student relationship and not just when the teacher is assigned for supervision duties eg. if a teacher walks through the school grounds or buildings and becomes aware of a situation that is putting students at risk, the duty of care would require taking reasonable steps to rectify the situation.

CUSTOM AND PRACTICE

In meeting the duty of care, for many decades principals have been responsible for making arrangements for the effective supervision of students in the school grounds during the period of half an hour before school work begins in the morning, taking into account the risk of harm to students and the workload of teachers.

The hours of duty as specified in regulations, determinations, handbooks and legislation are -

Teachers are required to be on duty at their schools half an hour before school work begins in the morning and may be required to be present, if thought necessary by the teacher in charge of the school, for half an hour after the dismissal of the school in the afternoon. Where special circumstances arise which, in the interest of the school, necessitate attendance beyond these hours, the attendance of the staff may be required.

The practice in secondary schools has varied from the practice in primary schools.

In secondary schools, by custom and practice, the requirement for all high school teachers to be in attendance for a half hour before classes begin in the morning for the purposes of supervision has not been enforced. This was explained by the then Director-General in a memorandum to all Principals dated 10 September 1981:

"Some years ago the teacher day in high schools was extended by a half-hour in order to provide for a sports afternoon. At that time, the requirement for high school teachers to be in attendance for a further half-hour before classes in the morning was not enforced, but this situation was varied in the late 1950's to provide for a teacher being on duty and available to attend to problems if the need arose during the pre-class period."

There has, however, been a requirement for some secondary school teacher(s) to be assigned to whole school supervision duties in the school grounds in the half hour before commencement of classes. Only the number of teachers required to ensure effective supervision have been required to be in attendance.

In practice this has not been adhered to strictly in all secondary schools and various forms of supervision have been in place in the half hour before school commences.

In larger primary schools the practice has been for teachers to be assigned to provide supervision of students during the half hour before lessons commence, usually at 9.30 am. In smaller primary schools supervision arrangements are consistent with the smaller number of students and staff, and are more informal in nature.

SCHOOL SUPERVISION PLAN

1. Recognising the duty of care to students and the principles and past custom and practice outlined above, the parties agree that all schools will have a formal supervision plan which provides for the effective supervision of students in the half hour before normal classes begin and during recess and lunch time.
2. Principals and teachers at each school are in the best position to identify reasonably foreseeable risks and put in place arrangements which are reasonable to protect students against injury.
3. The principal is responsible for the development, implementation and evaluation of the student supervision plan in consultation with staff. A feature of this should be fairness and equity. Principals should consider the views of students and the parent bodies in the development of this plan.
4. The plan should be based on a comprehensive assessment of risk, taking into account factors relevant to the school such as: the age, number and nature of students; the finishing time of kindergarten classes; the layout and terrain of the school grounds, including split sites; proximity of play areas to busy roads; fixed playground equipment; climatic conditions; the activity being undertaken; emergency situations; potential hazards; transport arrangements; as well as the duties and workload of individual teachers.
5. Under this plan, and recognising specific school conditions, supervision usually involves actual teacher presence in the playground and/or buildings where students are present, or teacher observation of students from the point in the school which provides ready access to those students. Where this is impractical in small primary schools the plan must specify how the supervision is to be provided to ensure that the duty of care is met.
6. The duty of care must be exercised from the time the school formally accepts the presence of students half an hour before normal classes begin until they safely depart the school after normal classes finish.
7. Special arrangements apply in relation to school activities such as excursions and sporting activities conducted outside the school grounds.
8. The supervision plan should specify the supervision arrangements and responsibilities of teachers at various times throughout the day and be distributed to all teachers including new teachers and casual teachers. Teachers should be given the opportunity to clarify their understanding of the plan and their role in it. The supervision plan should be communicated to parents and caregivers and be accessible to visitors to the school.
9. Parents are to be informed of the opening hours of the school.
10. The Principal should ensure that students understand the supervision arrangements throughout the school day. Students should be informed of where the supervisory teacher(s) are on duty. Students should be instructed to seek the help of a supervisory teacher in situations which demand it. Students should be instructed as to what constitutes unsafe activities.
11. Any variations to school hours should include an assessment of the impact on school transport arrangements and school supervision requirements.
12. A copy of the supervision plan is to be forwarded to the district superintendent.

SUPERVISION BEFORE AND AFTER NORMAL SCHOOL LESSON TIME

It is not the responsibility of schools to provide free child minding services for students for extended periods before and after school. Schools are not expected to provide supervision for students any earlier than the half hour before normal school classes commence in the morning.

When normal classes finish in the afternoon it is expected that students will safely depart the school. Parents must be made aware of this.

Primary Schools

In primary schools the age of students is a major factor in determining the nature and level of supervision. In larger primary schools supervision is to be provided by assigned teachers during the half hour before lessons commence, usually at 9.30 am. This supervision will usually involve teachers observing and being seen to observe. In smaller primary schools supervision arrangements for the half hour before school commences may be consistent with the smaller number of students and will usually involve observation of students from a point in the school that provides ready access to the students.

Secondary Schools

In secondary schools there will be more flexibility in before school supervisory practices in recognition of the age of students and the increasing variations in school hours and patterns of attendance. Supervision in the half hour before school begins, usually at 9.00 am, is to be determined by the principal in consultation with the staff. This Supervision plan must address the requirements of duty of care and is to be based on a range of local factors including an assessment of student travel patterns, the usage by students of school grounds before normal lessons commence and the history of before school supervision needs.

The NSW Teachers Federation has made representations to the DET that the nature of before school supervision in secondary schools, as determined by the principal in consultation with the staff and detailed in the memorandum 87/239 "Policy on the Supervision of Students", the aspect of the 1987 second tier salaries settlement dealing with "Student Care" and memorandum 88/120 "Policy on the Supervision of Students", has generally proven satisfactory and appropriate to local circumstances. The parties agree that the nature and adequacy of this supervision, particularly in meeting duty of care requirements, is to be evaluated by the principal in consultation with the staff in each secondary school during term 2, 1998 and submitted to the district superintendent.

ASSISTING STUDENTS TO TRAVEL SAFELY TO AND FROM SCHOOL

1. Schools and parents have a responsibility to promote appropriate behaviour and the safety of students travelling to and from school. School policies should include statements covering appropriate behaviour in travelling to and from school.

Schools should support parents in developing appropriate standards of behaviour for students travelling to and from school. Schools also have a responsibility to develop educational programs that will reinforce both community and parental standards. Community groups, including other government authorities, should be invited to contribute to these programs.

Students also have a responsibility to meet community, school and parental expectations in this regard. This should be brought to the attention of parents. Students have a responsibility to behave in appropriate ways and to ensure both their own safety and that of other students.

Particular care needs to be taken by parents in and around schools when collecting students, particularly young students. In this regard schools should bring any concerns about dangerous practices in and around schools to the attention of parents and the appropriate authorities.

2. School supervision plans need to address the safe arrival and departure of students at and from the school. There must be a realistic assessment of the responsibilities of each

individual school for the safety of pupils attending that school.

Senior officers of the Department and NSW Teachers Federation will initiate discussions with the Staysafe Committee, the Police Department, Local Government Authorities and the Roads and Traffic Authority to clarify their responsibilities and to promote a safe environment in the immediate vicinity of schools.

In the meantime it is expected that existing practices related to bus supervision and road crossing specific to particular schools would continue.

3. Senior officers of the Department and NSW Teachers Federation will arrange for a "risk assessment" to be carried out on a trial basis in and about a sample of school grounds to assist in the provision of a safe environment for students and staff and to inform the parties in the implementation of the terms of settlement.

The senior officers of the Department and NSW Teachers Federation will consider:

- a) The needs of students who may be present before or after ordinary school hours
 - i) in or near school premises
 - ii) leaving or waiting for school buses
 - iii) are crossing busy nearby/adjacent busy thoroughfares
 - b) The effect on supervision of a range of factors including
 - i) age of students
 - ii) nature of traffic flow near the school
 - iii) bus timetables
 - iv) physical and geographical layout of the school
 - v) bus loading and unloading areas
 - vi) the time for which students may need supervision
 - vii) responsibility of parents collecting students
 - viii) appropriate education programs for children travelling on school transport.
4. A checklist of measures that schools have initiated to promote the safe arrival and departure of students will be prepared and distributed to all schools.

LIABILITY

When a student is injured while in the care of the school, it is possible that legal action will be taken. If this occurs, it is invariably the State of New South Wales that is sued rather than individual schools or staff members. This is because the Department, like all employers, is vicariously liable for acts and omissions of its employees at work. Teachers should not be concerned about incurring any individual liability provided that the teacher is not guilty of serious and wilful misconduct.

In some rare cases teachers or executive staff members are sued either individually or together with the State of New South Wales. In those rare instances the NSW Department of Education and Training seeks Crown representation for the staff member involved. Crown representation means that the NSW Solicitor's Office acts for the staff member and the State meets all costs and verdicts.

DISPUTE RESOLUTION PROCEDURES

Subject to the provisions of the *Industrial Relations Act 1996*, should any dispute (including a question or difficulty) arise about the implementation of the terms of settlement, then the following procedures shall apply:

1. Should any dispute, question or difficulty arise as to matters arising from implementation of the terms of settlement in a particular workplace, then the employee and/or Federation workplace representative will raise the dispute, question or difficulty with the principal/supervisor as soon as practicable.
2. The principal/supervisor will discuss the matter with the staff member and/or Federation representative within two working days with a view to resolving the dispute, question or difficulty or by negotiating an agreed method and time frame for proceeding.
3. Should the above procedure be unsuccessful in producing a resolution of the dispute, question or difficulty or should the matter be of a nature which involves multiple workplaces, then the individual staff member or the Federation may raise the matter with an appropriate officer of the Department with a view to resolving the dispute, question or difficulty or negotiating an agreed method and time frame for proceeding.
4. Where the procedures in paragraph 3 above of this subclause do not lead to resolution of the dispute, question or difficulty, the matter will be referred to the General Manager of Personnel of the Department and the General Secretary. They or their nominees will discuss the dispute, question or difficulty with a view to resolving the matter or by negotiating an agreed method and time frame for proceeding.
5. Should the above procedures not lead to a resolution, then either party may make application to the Industrial Relations Commission of NSW.

MONITORING

The parties will monitor the implementation of the terms of settlement.

5.5 Legislative Responsibilities of Teachers

5.5.1 Introduction

Teachers are subject to the laws of the State and the Commonwealth in the same way as other citizens. Some Acts and regulations have a specific application or relevance to teachers and in some instances impose additional obligations on teachers.

This section identifies some of the key statutory responsibilities of teachers and summarises provisions that are of particular relevance.

5.5.2 *Education Act 1990*

The provisions of some relevant sections of the Act are summarised below:

5.5.2.1 Objectives for Administration of this Act or of Education, Section 6

It is the intention of Parliament that every person concerned in the administration of this Act or of education for children of school-age in New South Wales is to have regard (as far as is practicable or appropriate) to the following objects:

- assisting each child to achieve his or her educational potential;
- promotion of a high standard of education in government schools which is provided free of charge for instruction and without discrimination on the ground of sex, race or religion;
- encouraging innovation and diversity within and among schools;
- provision of an education for children that gives them access to opportunities for further study, work or training;
- mitigating educational disadvantages arising from the child's gender or from geographic, economic, social, cultural, lingual or other causes;
- provision of an education for Aboriginal children that has regard to their special needs;
- development of an understanding of Aboriginal history and culture by all children;
- provision of an education for children from non-English speaking backgrounds that has regard to their special needs;
- recognition of the special problems of rural communities, particularly small and isolated communities;
- provision of opportunities to children with special abilities;
- provision of special educational assistance to children with disabilities;
- development of a teaching staff that is skilled, dedicated and professional;
- provision of opportunities for parents to participate in the education of their children;
- provision of an education for children that promotes family and community values.

5.5.2.2 Register of Enrolments and Attendances, Section 24

The principal must keep a register in a form approved by the Minister, of the enrolments and daily attendances of all children at the school.

The register must be available for inspection during school hours by an inspector from the Office of the Board of Studies or other person authorised by the Minister, who may require the principal of the school to furnish a copy of the register or any part of it.

When required to do so by the Minister, the principal must furnish to the Minister information, within a time and in a form approved by the Minister, concerning the enrolment and attendance of children at the school during a specified period.

The particulars of enrolments and daily attendances recorded in a register must be retained for such period as the Minister may determine.

A principal who without reasonable excuse fails to comply with any of the above requirements is guilty of an offence.

5.5.2.3 Instruction to be Free, Section 31

The instruction provided in government schools is to be free of charge.

5.5.2.4 Special Religious Education, Section 32

In every government school, time is to be allowed for the religious education of children of any religious persuasion, but the total number of hours so allowed in a year is not to exceed, for each child, the number of school weeks in the year.

The religious education to be given to children of any religious persuasion is to be given by a member of the clergy or other religious teacher of that persuasion authorised by the religious body to which the member of the clergy or other religious teacher belongs.

The religious education to be given is in every case to be the religious education authorised by the religious body to which the member of the clergy or other religious teacher belongs.

The times at which religious education is to be given to children of a particular religious persuasion are to be fixed by agreement between the principal and the local member of the clergy or other religious teacher of that persuasion.

Children attending a religious education class are to be separated from other children at the school while the class is held.

If the relevant member of the clergy or other religious teacher fails to attend the school at the appointed time, the children are to be appropriately cared for at the school during the period set aside for religious education.

5.5.2.5 Objection to Religious Education, Section 33

No child at a government school is to be required to receive any general religious education or special religious education if the parent of the child objects to the child's receiving that education.

5.5.2.6 Admission to Government Schools, Section 34

The parent of a child may enrol the child at any government school if the child is eligible to attend the school and the school can accommodate the child.

A child is, in any case, entitled to be enrolled at the government school that is designated for the intake area within which the child's home is situated and that the child is eligible to attend.

The Director-General is to designate intake areas, and the government school or schools for each such area, so that all school-age children in the State will be eligible to attend a government school.

The Minister may refuse the admission of a child to all or any government schools if:

- the child has been expelled from any government school; or
- the Minister is of the opinion that there is other sufficient reason to do so.

A child is not to be refused admission to a government school because of the child's race or religion.

5.5.2.7 Discipline in Government Schools, Section 35

The Minister may control and regulate student discipline in government schools.

The Minister may prepare guidelines for the adoption by government schools of fair discipline codes that provide for the control and regulation of student discipline in those schools (except for the suspension or expulsion of students).

The guidelines and codes must not permit corporal punishment of students attending government schools.

The guidelines and codes may permit other reasonable forms of punishment or correction of those students, including requiring students to perform any reasonable work or service for the school.

The Minister may establish programs to assist any child who has a history of non attendance at or has been expelled from a government school to adjust more successfully to school life or to improve their behaviour so as to be able to return to school.

The Minister may, on the recommendation of the Director-General, expel a child of any age from a government school. The Director-General may suspend any child from a government school.

5.5.3 Teaching Services Act 1980

This Act among other things establishes the Education Teaching Service and governs the employment, termination and discipline of teachers. Many of the provisions under the Act affect teachers and are dealt with elsewhere in this handbook, namely Section 5.2 Code of Conduct and Section 5.7 Discipline Guidelines.

Teachers who become bankrupt are required under Section 88 of the Act to notify the Director-General and to provide a written explanation of the cause of their bankruptcy.

5.5.4 Education Teaching Service Regulation 2001

The term "teacher" in this section is used as defined by the *Education Teaching Service Regulation 2001*, that is an officer or temporary employee of the Education Teaching Service, whether a member of the teaching staff, administrative staff or any other staff of the Service.

The provisions of some relevant clauses of the Regulation are summarised below.

5.5.4.1 Compliance with Statutory Conditions of Service, Clause 5

All teachers must acquaint themselves with the statutory conditions of service.

The person in charge of a school, school department or establishment must ensure that copies of:

- the *Teaching Services Act 1980*; and
- this Regulation; and
- all determinations relating to conditions of employment, including salaries, wages or other remuneration under Section 25 of the *Teaching Services Act 1980* in relation to teachers

are kept in the school, school department or establishment for the use of teachers.

The person in charge of a school, school department or establishment must report to the Director-General any breach of the statutory conditions of service that comes to the person's knowledge.

5.5.4.2 Compliance with Directions, Clause 6

A teacher must immediately comply with all lawful directions given by the person under whose control or supervision the teacher is placed.

A request for the review of a direction may be made by or on behalf of one or more teachers by means of a notice in writing given to the person by whom the direction was given.

The person with whom the request is lodged must immediately send it to the Director-General or to an authorised officer.

The making of a request for the review of a direction does not relieve a teacher of his or her obligation to comply with it as far as is reasonably practicable.

5.5.4.3 Scope of Duties, Clause 7

In addition to performing the specific duties attached to the position to which the teacher is appointed, a teacher must:

- participate actively in all corporate interests of the school, school department or establishment in which the teacher is employed; and
- undertake such other duties as may be assigned to the teacher by the person in charge of that school, school department or establishment.

5.5.4.4 Disclosure of Information, Clause 8

A teacher must not:

- except in the discharge of official duties, use any information gained by or conveyed to the teacher in the course of those duties; and
- without the express direction or permission of the Minister or the Director-General, disclose (whether directly or indirectly) any such information.

5.5.4.5 Management of Schools, Clause 10

A teacher who is in charge of a school, school department or establishment must manage the school, school department or establishment in a proper, efficient and economic manner. The teacher's obligations include:

- having well-stated policies and plans of action, clearly defined goals, a balanced, sequential and appropriate curriculum and suitable mechanisms for supervision, evaluation and documentation that ensure co-ordination of all school activities, continuity of policy and good communication;
- encouraging and assisting the professional development of members of staff without discrimination, as required by the *Anti-Discrimination Act 1977*;
- making effective and economic use of resources;
- ensuring discipline;
- encouraging teachers to submit suggestions for increasing the efficiency of staff;
- training teachers and providing opportunities and facilities for them to improve themselves in matters connected with their official duties:
 - by attendance at courses organised by or for the school, school department or establishment; and
 - by attendance at suitable lectures and courses at tertiary institutions.

5.5.4.6 Medical Examination, Clause 11

For the purpose of ascertaining the fitness of a teacher to perform his or her duties, the Director-General may direct the teacher to submit to a medical examination by a qualified medical practitioner selected by the Director-General.

The teacher must comply with the direction.

5.5.4.7 Director-General to be Notified of Serious Offences Committed by Members of Staff, Clause 20

A teacher who is charged with or who is found guilty of an offence referred to in Section 86 of the *Teaching Services Act 1980* (a serious criminal offence committed in New South Wales or elsewhere) must immediately report that fact to the Director-General.

On becoming aware of the fact that a teacher has been charged with or found guilty of such an offence, the person in charge of the school, school department or establishment in which the teacher is employed must also immediately report that fact to the Director-General.

5.5.5 Children and Young Persons (Care and Protection) Act 1998

Teachers are mandatory reporters of children at risk of harm under Section 27 of the *Children and Young Persons (Care and Protection) Act 1998*.

5.5.6 Crimes Act 1900

The *Crimes Act 1900* sets out the majority of crimes and their punishment.

There are some provisions in the Act which have specific application to teachers and in some instances even prescribe a higher penalty for teachers. These sections include the following:

- **Carnal knowledge by teacher, etc, Section 73**
- **Attempt or assault with intent, Section 74**

It is an offence currently punishable by eight years imprisonment for a teacher to have sex with or by any means attempt or assault with intent to have sex any female pupil between the age of sixteen and seventeen years.

It is of course an offence to have or attempt to have sexual intercourse with a child under the age of sixteen years. Pursuant to Section 66C any person who has sexual intercourse with a child of or above the age of ten years and under the age of sixteen years and which person whether generally or at the time of the sexual intercourse has the child under their authority (i.e. a teacher) will be liable to ten years imprisonment. By virtue of Sections 66A and 66B (attempt or assault with intent) if the child is under ten years of age the penalty is twenty years imprisonment. Pursuant to Section 61H(1) "sexual intercourse" is very broadly defined. The Act also extends to indecent acts and assaults as well as inciting a child to commit an act of indecency.

It is an offence under the *Crimes Act* for anyone to have sex with a male under eighteen years of age. The maximum penalty available is much greater if the person involved is a teacher.

It is an offence punishable by a fine and/or imprisonment for up to two years to possess any child pornography.

The publication of child pornography which includes distribution, circulation, selling or hiring carriers and maximum penalty of five years imprisonment and/or a substantial fine.

5.5.7 ***Anti-Discrimination Act 1977***

Teachers are required to comply with the provisions of the *Anti-Discrimination Act 1977*. The Act provides that certain types of discrimination, harassment and vilification are unlawful in a wide range of circumstances. These types or grounds include race, sex, homosexuality, marital status, disability, carer responsibilities, age and transgender. The provisions extend to encompass discrimination against a person because of the characteristics of that person's relatives or associates.

Discrimination can be direct or indirect:

- Direct discrimination may arise where a person is treated unfairly or unequally merely because they belong to a particular group or category of persons.
- Indirect discrimination may arise where a person is subject to a requirement (rule, practice, policy or procedure) which although the same for everyone, has in practical effect an unequal or disproportionate result on a particular group of persons that that person belongs to. Unless the requirement is reasonable in all the circumstances then it will be generally regarded as indirect discrimination.

It is illegal for an education authority to discriminate on the grounds listed above in enrolling students or in the basis on which students are enrolled.

5.5.8 ***Occupational Health and Safety Act 2000***

The *Occupational Health and Safety Act 2000* and associated legislation such as the *Dangerous Goods Act 1975* and regulations place specific responsibilities on all persons at the workplace. Employees must take reasonable care of the health and safety of others including visitors. Employees must co-operate with employers in their efforts to comply with occupational health and safety requirements (Section 20 of the Act).

No person must interfere with or misuse things provided for the health, safety and welfare of persons at work, obstruct or hinder attempts to give aid or attempts to prevent a serious risk to the health and safety of a person at work or refuse a reasonable request to assist in giving aid or preventing a risk to health and safety (Sections 21 and 24A of the Act). The Act also prescribes penalties for various breaches of the Act.

5.5.9 *Freedom of Information Act 1989*

This Act among other things provides the right of public access to many documents held by Government agencies, such as the NSW Department of Education and Training subject to a number of specified exceptions. The exceptions are quite numerous and include documents containing information of a confidential business or personal nature, documents covered by legal privilege and documents which could affect the economy of the State.

Applicants do not have to give a reason to see any documents, but the NSW Department of Education and Training must give an explanation if the documents requested are not provided. An appeal mechanism is available.

An application fee currently \$30 applies and processing charges may also be applicable.

5.5.10 *Public Finance and Audit Act 1983*

This Act makes provision for the administration and audit of public money and public property among other things.

5.5.11 *Privacy and Personal Information Protection Act 1998*

This Act impacts broadly on the collection, storage and use of personal information by Public Sector Agencies. Teachers are responsible directly or indirectly for the collection and use of a vast amount of personal information concerning students. The Act also applies to personal information obtained by the Department in relation to staff, parents and other community members.

Further information on the Act and its implications for staff may be found in the Privacy Bulletins issued to schools and in the Department's Privacy Code of Practice.

5.5.12 *Child Protection (Prohibited Employment) Act 1998*

It is an offence under this Act for a prohibited person to seek or engage in child related employment. A prohibited person is someone who has been convicted of a serious sex offence.

It should be noted that this Act applies to both paid and volunteer workers.

5.6 Policy for Members of the Education Teaching Service on the Issuing of Personal References to Other Staff Members

5.6.1 Department's Policy on the Provision of Personal References

Members of the Education Teaching Service should refer to the current departmental policies relating to the provision of personal references which are available on the Department's intranet site at:

<https://education.nsw.gov.au/policy-library/policies/pd-2004-0020>

5.7 Discipline Guidelines

5.7.1 Overview

This section provides the legislative framework and Departmental procedures for dealing with breaches of discipline by teachers.

5.7.2 What is a Breach of Discipline?

Section 83 of the *Teaching Services Act 1980* states that a member of the teaching service who:

- a) commits any breach of this Act or the Regulations;
- b) engages in any misconduct;
- c) uses intoxicating beverages or drugs to excess;
- d) wilfully disobeys, or wilfully disregards, any lawful order made or given by a person having authority to make or give the order;
- e) is negligent, careless, inefficient or incompetent in the discharge of their duties; or
- f) engages in any disgraceful or improper conduct;

is guilty of a breach of discipline.

An alleged breach of discipline is dealt with by the Director-General or a prescribed officer.

A prescribed officer is an officer holding or acting in the position of deputy director-general, assistant director-general, general manager, executive director, director or district superintendent who has been appointed by the Director-General to deal with the charge.

5.7.3 Disciplinary Process

A teacher who has committed a breach of discipline under Section 83 of the *Teaching Services Act 1980* and who is issued with a notice of charge must respond within the time specified in the notice of charge which is usually fourteen days. Teachers may seek independent advice prior to preparing their response to the charges.

If the teacher admits the charge(s) the prescribed officer who issued the notice of charge will consider the evidence and may recommend or impose one or more of the penalties listed in Section 5.7.4.

If the teacher denies the charge(s) or does not reply to the notice of charge, a prescribed officer other than the prescribed officer who issued the original notice of charge will be appointed to deal with the alleged breach of discipline.

The prescribed officer either considers the matter through the Departmental reports and the teacher's written reply or conducts an inquiry. When the prescribed officer makes a finding, the prescribed officer will advise the teacher of the finding.

Where there is a finding that the charge(s) is proven, or where the teacher admits to the charge(s), the prescribed officer will invite the Department and the teacher to make a submission on penalty. The prescribed officer can then impose one or more of the penalties listed in Section 5.7.4.

5.7.4 What Penalties Apply?

When a teacher is found guilty of a breach of discipline Section 85 of the *Teaching Services Act 1980* provides that the Director-General may impose one or more of the penalties listed below:

- a) caution;
- b) reprimand;
- c) fine;
- d) reduce rate of salary or wages;
- e) reduce to a lower classification or position;
- f) dismiss; and/or
- g) direct or allow resignation within a set period.

A prescribed officer may impose one or more of the above penalties as described in points a) to e) or can recommend f) and g) to the Director-General.

When a permanent teacher on probation is found guilty of a breach of discipline the Director-General or a prescribed officer may decide to annul the teacher's appointment.

5.7.5 Duties of Teachers During the Discipline Process

Where a teacher has been charged with a breach of discipline or is charged criminally with having committed a serious offence, under Section 87 of the *Teaching Services Act 1980* the Director-General or prescribed officer may:

- direct the teacher to alternative duties;
- direct the teacher to work in another location;
- direct the teacher not to attend work; or
- in exceptional circumstances suspend the teacher from duty without pay e.g. where a teacher has been convicted of a serious criminal charge, has been remanded in custody, or has admitted to behaviour that under the circumstances renders the teacher unfit to continue in employment.

5.7.6 Reporting of Criminal Charges

The *Education Teaching Service Regulation 2000* clause 20 requires teachers to report to the Director-General any finding of guilt in respect of a serious criminal charge brought against them. A serious criminal charge is defined as one which carries a maximum penalty of twelve months or more imprisonment.

In such cases Section 86 of the *Teaching Services Act 1980* provides that the Director-General may impose penalties as per Section 5.7.4 above.

5.8 Crown Representation in Criminal and Civil Proceedings

5.8.1 Criminal Proceedings

When a teacher has been charged with a criminal offence or criminal proceedings are imminent and the matter arose out of or is related to the teacher's employment, the teacher may seek Crown representation. If Crown representation is sought the following procedures are to apply:

- a) the teacher must make a written application requesting that Crown representation be provided. The application must be accompanied by a report that provides a full disclosure of all relevant facts giving rise to the criminal proceedings. The application and report should be provided to the principal who will forward the documents to the district superintendent. In the case of a principal, the documentation should be forwarded directly to the district superintendent. Any application for Crown representation should be made as soon as possible after the teacher has been charged or becomes aware that the criminal proceedings are imminent;
- b) once a request for Crown representation is made, an investigation of the matter will be undertaken at the direction of the district superintendent. The principal should prepare a report for the district superintendent whilst in relation to a principal the investigation and report should be undertaken by the district superintendent;
- c) the district superintendent must at the earliest opportunity forward the papers to the General Manager of Personnel with an indication of whether the request by the teacher for Crown representation should be supported. If considered necessary by the General Manager of Personnel or the district superintendent, the principal/teacher involved can be asked to provide further information;
- d) when the documentation is received from the district superintendent, the teacher's legal position will be assessed and a determination will be made whether to support the request for Crown representation;
- e) if a determination is made to support the request a report will be submitted to the Attorney General with whom the final decision as to whether Crown representation should be granted rests. The nature of the Departmental recommendation will reply on the outcome of the investigation undertaken and will include an assessment of the extent to which the teacher has disclosed relevant facts;
- f) if Crown representation is granted, the Crown will thereafter provide legal representation in the proceedings. If during the course of the hearing, it appears that the teacher has acted unreasonably and/or has not made a full disclosure in the Departmental investigation, the representation may be withdrawn. In such circumstances, any costs incurred may be the responsibility of the teacher;
- g) if it appears that the teacher has not made a full disclosure, disciplinary action may be initiated against that person. Depending on the circumstances, the Crown may agree to meet the teacher's legal costs to that date;
- h) if Crown representation is granted, the teacher is entitled to be indemnified against any legal costs relating to the criminal proceedings. The indemnification does not extend to the payment of any fine, penalty or criminal compensation the teacher may be required to pay. The provision of Crown representation may be subject to any conditions the Attorney General or the Director-General of the Attorney General's Department consider appropriate.

5.8.2 Civil Proceedings

- a) Teachers on very rare occasions may be joined as parties to civil proceedings commenced by persons alleging negligence against the Department. In most instances, these proceedings will arise from accidents to students who are injured while at school. Teachers will generally be joined in such proceedings because they were the supervising teachers at the time of the incident that gave rise to the injuries claimed.
- b) The Department as an employer is vicariously liable for the negligent acts of its employees. The *Employees Liability Act 1991* provides that employers cannot seek contribution or indemnity from an employee unless the conduct of the employee constitutes serious and wilful misconduct or it did not occur in the course of and did not arise out of the employment of the employee.
- c) Teachers who are named as parties to litigation against the Department can seek Crown representation by following similar procedures as set out for criminal offences. A full and frank disclosure of all relevant facts should be made and forwarded through the principal to the General Manager of Personnel or in the case of a principal, directly to the General Manager of Personnel.
- d) Upon receipt, the report will be assessed and if the conduct of the teacher does not give rise to serious or wilful misconduct and occurred and arose in the course of their employment the party commencing proceedings will be contacted. The party commencing the proceedings will be requested to remove the name of the teacher from the proceedings before the court. This action is in line with the Department's obligations to accept liability for the actions of its staff who act within the scope of their duties in the course of their employment.
- e) If the party commencing proceedings refuses to remove the teacher from the proceedings, a recommendation will be made to the Attorney General, with whom the final decision rests, to afford the teacher Crown representation in the case. Again, any recommendation to the Attorney General will be dependant on the teacher involved making a full and frank disclosure of the facts surrounding the incident that is the subject of the legal proceedings.
- f) If Crown representation is granted, the Crown will thereafter assume liability whatever may be the result and will indemnify the teacher against any verdict and/or costs that may be awarded. If during the course of the hearing it appears the teacher has acted unreasonably or has not made a full and frank disclosure, Crown representation may be withdrawn and any costs incurred or damages awarded may become the responsibility of the teacher. Disciplinary action may also be initiated against the teacher.
- g) If Crown representation is granted, the teacher is entitled to be indemnified in respect of any legal costs incurred and any verdict that may be awarded against the teacher. The indemnity does not extend to any punitive or exemplary damages awarded where the teacher has engaged in serious or wilful misconduct. The provision of Crown representation may be subject to any conditions the Attorney General or the Director-General of the Attorney-General's Department consider appropriate.

5.9 Internal Reporting of Protected Disclosures

- a) The Department's policy on internal reporting of protected disclosures is available on the Department's internet site at: <https://education.nsw.gov.au/epac/policies-and-procedures/public-interest-disclosures-internal-reporting-policy>.
- b) This policy describes an internal reporting system for disclosing suspected corruption, maladministration or serious and substantial waste that complements normal communication channels between supervisors and staff. Staff are encouraged to continue to raise concerns at any time with their supervisors, but also have the option of making a protected disclosure in accordance with the policy.
- c) This policy should be read in conjunction with the Department's procedures for Responding to Suggestions, Complaints and Allegations 01/084 (S.069) which are available on the Department's internet site at: <https://education.nsw.gov.au/policy-library/policies/pd-2002-0051>. See Section 3.1, Responding to Suggestions, Complaints and Allegations for more details on these procedures.