

New South Wales

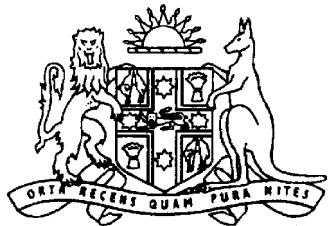
# Institute of Teachers Act 2004 No 65

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New South Wales

## **Institute of Teachers Act 2004 No 65**

Act No 65, 2004

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An Act to constitute the NSW Institute of Teachers; to make provision for professional teaching standards and the accreditation of school teachers in relation to those standards; and for other purposes. [Assented to 6 July 2004]

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Section 1              Institute of Teachers Act 2004 No 65

Part 1              Preliminary

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**The Legislature of New South Wales enacts:**

## **Part 1              Preliminary**

### **1        Name of Act**

This Act is the *Institute of Teachers Act 2004*.

### **2        Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3        Definitions**

(1) In this Act:

**accredited** means accredited for the time being under Part 4, and includes provisionally accredited or conditionally accredited under that Part.

**Board** means the Board of Governance established under section 10.

**Chairperson** means the person appointed by the Minister under section 9.

**Chief Executive** means the Chief Executive of the Institute.

**Council** means the Quality Teaching Council established under section 12.

**degree** means a degree, diploma or similar award conferred by a tertiary institution approved by the Minister.

**Director-General** means the Director-General of the Department of Education and Training.

**employ** includes engage or appoint.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**government school** and **non-government school** have the same meanings as in the *Education Act 1990*.

**Institute** means the NSW Institute of Teachers constituted by this Act.

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**professional development** includes formal and informal learning activities designed to maintain and enhance the knowledge and skills of teachers.

**professional teaching standards** means the professional teaching standards approved by the Minister from time to time under section 19.

**roll of teachers** means the roll maintained by the Institute under Part 3.

**school** means a government school or a non-government school.

**teach** means undertake duties in a school that include (but are not limited to):

- (a) the direct delivery of courses of study that are designed to implement the curriculum (as determined by the Board of Studies) for primary or secondary schools in accordance with the *Education Act 1990*, and
- (b) responsibility for assessing student participation, performance and progress in such courses,

and **teacher** means a person who is, or is to be, employed to undertake any such duties (whether or not the person undertakes any other duties).

**teacher accreditation authority**—see section 4.

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

#### 4 Meaning of “teacher accreditation authority”

- (1) In this Act, **teacher accreditation authority** means:
  - (a) in relation to a government school:
    - (i) the Director-General, or
    - (ii) such other person or body as may be approved for the time being by the Director-General under subsection (2), or
  - (b) in relation to a non-government school:
    - (i) the Minister, or
    - (ii) such person or body as may be approved for the time being by the Minister under subsection (4).

- (2) The Director-General may approve a person or body to be the teacher accreditation authority in relation to a government school or a particular class of government schools for the purposes of this Act.

(3) The approval of any such person or body by the Director-General:

  - (a) authorises the person or body to accredit, in accordance with Part 4, persons at such levels of accreditation as may be determined by the Director-General, and
  - (b) is subject to the requirement that the person or body complies with:
    - (i) the accreditation procedures and guidelines set out in the professional teaching standards, and
    - (ii) the conditions imposed by or under this Act, and
    - (iii) such other conditions as the Director-General thinks fit to impose, and
  - (c) may be suspended or revoked at any time by the Director-General for such reasons as the Director-General thinks fit.

(4) The Minister may approve a person or body to be the teacher accreditation authority in relation to a non-government school for the purposes of this Act. In the case of a non-government school that is a member of a system of non-government schools approved by the Minister under Part 7 of the *Education Act 1990*, the person or body approved by the Minister under this subsection may be the approved authority for that system.

(5) The approval of any such person or body by the Minister:

  - (a) authorises the person or body to accredit, in accordance with Part 4, persons at such levels of accreditation as may be determined by the Minister, and
  - (b) is subject to the requirement that the person or body complies with:
    - (i) the accreditation procedures and guidelines set out in the professional teaching standards, and
    - (ii) the conditions imposed by or under this Act, and
    - (iii) such other conditions as the Minister thinks fit to impose, and
  - (c) may be suspended or revoked at any time by the Minister if the Minister is of the opinion that the person or body has failed to comply with any such requirement.

- (6) The suspension or revocation of the approval of a person or body as a teacher accreditation authority does not affect the accreditation by that authority of a person under Part 4.

## **5 Mutual recognition laws**

This Act does not limit or otherwise affect the operation of:

- (a) the *Mutual Recognition Act 1992* of the Commonwealth, or
- (b) the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

## **Part 2                    NSW Institute of Teachers**

### **Division 1                Constitution and functions of Institute**

#### **6                            Constitution of NSW Institute of Teachers**

- (1) There is constituted by this Act a corporation with the corporate name of the NSW Institute of Teachers.
- (2) The Institute is, for the purposes of any Act, a statutory body representing the Crown.

#### **7                            Functions of Institute**

- (1) The Institute has the functions conferred or imposed on it by or under this or any other Act.
- (2) The functions of the Institute include the following:
  - (a) to provide advice to the Minister on the development, content and application of the professional teaching standards,
  - (b) to provide advice to the Minister on any of the Minister's other functions under this Act (including the function of approving persons or bodies as teacher accreditation authorities in relation to non-government schools or the suspension or revocation of any such approval),
  - (c) to advise and assist teacher accreditation authorities in accrediting persons under this Act,
  - (d) to monitor the accreditation process across all schools,
  - (e) to ensure that the professional teaching standards are applied fairly and consistently.
- (3) Without limiting subsection (2), the functions of the Institute include providing advice to the Minister on:
  - (a) the approval by the Minister of initial and continuing teacher education courses or programs that are relevant for the purposes of accreditation under this Act, and
  - (b) the approval by the Minister of persons or bodies who may provide professional development in accordance with the requirements of the professional teaching standards.
- (4) The Institute may delegate to any person or body any of the functions of the Institute (other than this power of delegation).

- (5) The functions of the Institute do not extend to industrial matters concerning teachers (such as the salaries of teachers or their conditions of employment).

## **8 Ministerial control**

The Institute is subject to the direction and control of the Minister (except in relation to the preparation and content of any report or recommendation made by the Institute to the Minister).

## **Division 2 Office of Chairperson**

### **9 Chairperson**

- (1) The Minister is to appoint a person to hold office as the Chairperson of the Board.
- (2) The same person also holds office as the Chairperson of the Council.
- (3) A person may hold office as the Chairperson for terms totalling not more than 6 years.
- (4) The Chairperson has the following functions:
- (a) to convey to the Minister the advice of the Institute,
  - (b) to receive, and pass on to the Board, any directions of the Minister,
  - (c) to co-ordinate the functions of the Board and the Council,
  - (d) to act as spokesperson for the Institute,
  - (e) to preside at meetings of the Board and the Council.

**Note.** See also Schedule 1 for other provisions that relate to the Chairperson.

## **Division 3 Board of Governance**

### **10 Establishment of Board of Governance**

- (1) There is established by this Act a Board of Governance for the Institute.
- (2) The Board is to consist of the following members:
- (a) the Chairperson,
  - (b) 3 persons appointed by the Minister, being persons having such experience and expertise as the Minister considers relevant,
  - (c) the Chief Executive.

- (3) The Minister, in appointing persons under subsection (2) (b), is to have regard to achieving an appropriate balance of legal, business, risk management and financial skills.
- (4) Schedule 1 has effect with respect to the members and procedure of the Board.

## **11 Functions of Board**

- (1) The Board has the following functions:
  - (a) to oversee the functions, finances, strategic direction and operations of the Institute,
  - (b) to monitor the management and performance of the Institute,
  - (c) to govern the affairs of the Institute in accordance with the directions of the Minister.
- (2) The Board must give the Minister any information about the exercise of the Board's functions that the Minister requests.

## **Division 4 Quality Teaching Council**

### **12 Establishment and function of Quality Teaching Council**

- (1) The Quality Teaching Council is established by this Act.
- (2) The function of the Council is to provide advice to the Institute in relation to the exercise of the Institute's functions under this Act.

### **13 Membership of Council**

- (1) The Council is to consist of the following members:
  - (a) 10 persons (the *elected members*) who are teachers and who are elected, in accordance with the regulations, by those persons whose are enrolled on the electoral list referred to in section 17,
  - (b) 10 persons appointed by the Minister (the *appointed members*),
  - (c) the Chairperson.
- (2) The appointed members are as follows:
  - (a) a nominee of the NSW Teachers Federation,
  - (b) a nominee of the NSW/ACT Independent Education Union,
  - (c) a nominee of the Board of Studies,
  - (d) a nominee of the Director-General,

- (e) a nominee of the Catholic Education Commission, NSW,
  - (f) a nominee of the Association of Independent Schools of NSW,
  - (g) a person who, in the opinion of the Minister, represents the interests of parents of school-age children,
  - (h) a nominee of the NSW Teacher Education Council,
  - (i) 2 persons who, in the opinion of the Minister, represent the interests of teachers, with at least one such person being a member of the Professional Teachers' Council NSW.
- (3) After the third anniversary of the first election of the elected members of the Council, each person who is an elected member must be a teacher who is accredited under Part 4.
  - (4) A person may hold office as a member of the Council for terms totalling not more than 6 years.
  - (5) Schedule 2 has effect with respect to the members and procedure of the Council.

## **Division 5 Chief Executive and staff of Institute**

### **14 Chief Executive of Institute**

- (1) The Chief Executive of the Institute is the person holding or acting in that office under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Chief Executive is responsible for the day-to-day management of the affairs of the Institute subject to, and in accordance with, the policies and general directions of the Board.
- (3) Subsection (2) is subject to any arrangement to the contrary arising out of the exercise of the Chairperson's functions under section 9 (4).
- (4) Any act, matter or thing done in the name of, or on behalf of, the Institute by the Chief Executive is taken to have been done by the Institute.

### **15 Staff of Institute**

- (1) The staff of the Institute are (subject to this section) to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.

- (2) The Institute may arrange for the use of the services of any staff or facilities of a government agency. Any person whose services the Institute makes use of under this subsection is, for the purposes of this Act, taken to be a member of staff of the Institute.
- (3) The Institute may also employ staff for any special purpose approved by the Minister. Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to the employment of any such staff.
- (4) The Institute may engage consultants for the purposes of getting expert advice.

## **Part 3 Roll of teachers**

### **16 Institute to maintain roll of teachers**

- (1) The Institute is required to maintain, in printed or electronic form (or both), a roll of teachers for the purposes of this Act.
- (2) The roll of teachers is to consist of 2 parts, namely:
  - (a) the electoral list, and
  - (b) the accreditation list.

### **17 Electoral list**

- (1) A person is eligible to be enrolled on the electoral list if the person:
  - (a) is employed as a teacher in New South Wales, or
  - (b) was employed as a teacher in New South Wales at any time during the period of 3 years immediately before the date on which the next election of the elected members of the Council is due to be held, or
  - (c) is qualified (but not employed) as a teacher and is employed:
    - (i) as a member of staff of the Institute, the Department of Education and Training or the Board of Studies, or
    - (ii) by any other person or body prescribed by the regulations.
- (2) Any such person is eligible to be included on the electoral list regardless of whether the person is accredited.
- (3) If a person is enrolled on the electoral list, the list is to include the contact details (if any) provided by the person or otherwise made available to the Institute.

### **18 Accreditation list**

- (1) The accreditation list is to contain the following particulars in relation to each person who is accredited:
  - (a) the name and date of birth of the person,
  - (b) the level at which the person is accredited,
  - (c) the teacher accreditation authority that accredited the person and the date on which the person was accredited,
  - (d) such other particulars as are required by or under this Act or the regulations to be included on the accreditation list.

- (2) The accreditation list is also to contain the details of any decision by a teacher accreditation authority:
  - (a) to refuse an application to accredit any person, or
  - (b) to revoke the accreditation of any person.
- (3) The Institute is authorised:
  - (a) to request and receive any such information from a teacher accreditation authority, and
  - (b) to provide any information contained in the accreditation list to any of the following:
    - (i) any teacher accreditation authority,
    - (ii) the person or body responsible for registering or accrediting teachers under the law of another jurisdiction,
    - (iii) any other person or body prescribed by the regulations.

**Note.** Section 22 requires a teacher accreditation authority to notify the Institute if the authority makes any accreditation decision under Part 4 in relation to a person.

See also section 42 which authorises the Institute to enter into information sharing arrangements with relevant agencies.

## **Part 4      Accreditation of teachers**

### **Division 1      Professional teaching standards**

#### **19   Minister may approve professional teaching standards**

- (1) The Minister may, from time to time and having regard to the advice of the Institute, approve of professional teaching standards in relation to each of the following levels of accreditation:
  - (a) provisional accreditation under Division 3,
  - (b) conditional accreditation under Division 3 or 4,
  - (c) accreditation at professional competence level under Division 3, 4 or 5,
  - (d) accreditation at professional accomplishment level under Division 5,
  - (e) accreditation at professional leadership level under Division 5.
- (2) The Institute is to ensure that the professional teaching standards are made available to teacher accreditation authorities and to all teachers.

#### **20   Matters to be dealt with by professional teaching standards**

The professional teaching standards may deal with, and make provision for or with respect to, the following matters:

- (a) the skills, qualifications, experience and knowledge required for teaching at each level of accreditation,
- (b) the conditions and criteria for continuing accreditation, including requirements in relation to professional development,
- (c) the procedures and guidelines to be followed by teacher accreditation authorities in relation to the accreditation of persons under this Part (including the revocation of accreditation),
- (d) the approval by the Minister of initial and continuing teacher education courses or programs that are relevant to the accreditation of persons under this Part,
- (e) the approval by the Minister of those persons or bodies who may provide professional development,

- (f) ethical conduct of teachers,
- (g) any other matter relating to teaching standards.

## **Division 2                  Accreditation scheme—general provisions**

### **21 School-based accreditation scheme**

- (1) The teacher accreditation authority for a school may, in accordance with this Part:
  - (a) accredit any person who is employed to teach in the school (including any person who has applied for a position as a teacher in the school), and
  - (b) revoke the accreditation (including the accreditation by another teacher accreditation authority) of any person:
    - (i) who is employed to teach in the school, or
    - (ii) who was previously employed to teach in the school (but who is no longer employed to teach in that or any other school).
- (2) If a person is accredited under this Part, the person's accreditation has effect in relation to any school, but is subject to revocation by a teacher accreditation authority.
- (3) The accreditation of a person under this Part is not restricted to accreditation in relation to a specific area of study or expertise. Accordingly, a person's accreditation does not, in itself, limit the areas of study in which the person teaches.

### **22 Accreditation decisions to be provided to Institute**

- (1) Any decision by a teacher accreditation authority under this Part in relation to a person must be notified in writing to the Institute within 21 days after the making of the decision.
- (2) In the case of a teacher accreditation authority that is approved by the Director-General or the Minister under section 4, it is a condition of the approval that the authority complies with subsection (1).

### **23 Procedural matters**

- (1) An application by a person for accreditation under this Part is to be in the form, and contain the particulars, approved by the Institute.

- (2) If a teacher accreditation authority accredits a person under this Part, the authority is to issue a certificate of accreditation to the person in the form approved by the Institute.
- (3) The accreditation of a person under this Part is subject to the conditions imposed by or under this Act or the regulations.

#### **24 General grounds for revocation of accreditation**

Without limiting any other provision of this Part, a teacher accreditation authority may revoke the accreditation of a person under this Part if:

- (a) in the case of a person who is or was employed to teach in a government school:
  - (i) a punishment referred to in section 85 (1) (b) or (c) of the *Teaching Services Act 1980* is imposed on the person, or
  - (ii) the person's appointment on probation is annulled under section 48 (2) of that Act, or
- (b) in the case of a person who is or was employed to teach in a non-government school:
  - (i) the person is convicted of an offence prescribed by the regulations, or
  - (ii) the authority is satisfied that the person is a prohibited person within the meaning of the *Child Protection (Prohibited Employment) Act 1998*, or
- (c) in either case—the teacher accreditation authority is satisfied that the person has failed to comply with any condition to which the person's accreditation is subject.

**Note.** Sections 33, 38, 39 (5) and 40 (4) provide other grounds for the revocation of a person's accreditation.

#### **25 Annual fee**

- (1) A person who is accredited under this Part must, in accordance with the regulations, pay an annual fee to the Institute.
- (2) The amount of the annual fee is to be prescribed by the regulations.
- (3) It is a condition of the person's accreditation under this Part that the annual fee is paid.
- (4) This section does not apply to a person who is conditionally accredited under Division 4.

## **26 False information and representation**

- (1) A person must not, in an application for accreditation under this Part, provide any information that the person knows is false or misleading in a material particular.
- (2) A person must not make any representation to the effect that the person is accredited at any level of accreditation unless the person is for the time being accredited at that level.

Maximum penalty: 50 penalty units.

## **27 Review by Administrative Decisions Tribunal of accreditation decisions**

- (1) A person may apply to the Administrative Decisions Tribunal for a review of the following decisions:
  - (a) the refusal or failure by a teacher accreditation authority to accredit the person under this Part,
  - (b) the revocation of the person's accreditation by a teacher accreditation authority under this Part.
- (2) Any such decision by a teacher accreditation authority is not reviewable by any other court or tribunal (including in any proceedings in the nature of disciplinary proceedings or in any proceedings for unfair dismissal).

## **Division 3                  Mandatory accreditation of new scheme teachers**

**Note.** New scheme teachers will need to be provisionally or conditionally accredited under this Division before they may be employed to teach.

Provisional accreditation will be available to a new scheme teacher who has met the requirements specified in the professional teaching standards for accreditation at that level (in most cases this means that the person holds full teaching qualifications) or if the person has completed a teacher education course approved by the Minister. The person will be required to obtain accreditation at professional competence level within 3 years after being provisionally accredited.

Conditional accreditation will be available to a new scheme teacher who has a degree in a relevant area or has completed a substantial part of a teacher education course approved by the Minister. Such a person will, however, be required to undertake professional development or further teacher education and will have 4 years to obtain accreditation at professional competence level.

The time for obtaining accreditation at professional competence level will vary in the case of new scheme teachers who are employed on a casual or part-time basis.

## 28 Definitions

In this Division:

**approved course** means an initial teacher education course or program approved by the Minister under the professional teaching standards.

**new scheme teacher** means:

- (a) a person:
  - (i) who has never been employed to teach in New South Wales before the relevant date, and
  - (ii) who is (or who would be) employed as a teacher for the first time after the relevant date, or
- (b) a person:
  - (i) who was, immediately before the relevant date, the holder of a tertiary or teaching qualification prescribed by the regulations, and
  - (ii) who returns, at any time after the relevant date, to employment as a teacher following a period of at least 5 years during which time the person was not employed to teach, or
- (c) a person who was employed to teach for the first time in New South Wales during the period of 3 months (or such other period as may be prescribed by the regulations) immediately before the relevant date.

**Note.** The mutual recognition principle (as set out in the legislation referred to in section 5) in relation to occupations applies in respect of persons who are "registered" as teachers in certain other jurisdictions.

**relevant date** means the date on which this Division commences.

## 29 Employment of new scheme teachers

- (1) A person who is a new scheme teacher must not be employed to teach in a school unless:
  - (a) the person is accredited, and
  - (b) in the case of a person who is conditionally accredited under section 31—the person is working under the on-site supervision of another teacher (other than a person who is provisionally or conditionally accredited under this Division or who is conditionally accredited under Division 4).

**Note.** **Accredited** is defined under section 3 to include provisionally or conditionally accredited under this Division.

(2) If, in contravention of this section, a person:

- (a) is employed, or
- (b) continues to be employed,

the person's employer is guilty of an offence.

Maximum penalty: 100 penalty units.

### **30 Provisional accreditation of new scheme teachers**

- (1) A teacher accreditation authority may, on application by a person who is a new scheme teacher:
  - (a) provisionally accredit the person, or
  - (b) refuse to provisionally accredit the person.
- (2) A teacher accreditation authority may provisionally accredit any such person if the authority is satisfied that:
  - (a) the person meets the requirements specified in the professional teaching standards for provisional accreditation, or
  - (b) the person has completed an approved course and will receive a qualification in relation to that course.
- (3) In the case of a person referred to in subsection (2) (b), it is a condition of a person's provisional accreditation that the person provides, as soon as practicable after receiving his or her qualification in relation to the approved course, the teacher accreditation authority with evidence of the person's qualification.
- (4) The provisional accreditation of a person who is a new scheme teacher ceases (unless sooner revoked by a teacher accreditation authority):
  - (a) at the end of the relevant period, or
  - (b) if, before the end of the relevant period, the person is accredited at professional competence level by a teacher accreditation authority—when the person is accredited at that level.
- (5) In this section:  
*relevant period*, in relation to a person who is provisionally accredited under this section, means:
  - (a) if the person is employed on a full-time basis—the period of 3 years (or such longer period as may be determined by the

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Minister in any particular case) following the date on which the person was provisionally accredited, or

- (b) if the person is employed on a casual or part-time basis:
    - (i) the period determined in accordance with the regulations to be commensurate with the 3-year period for persons employed on a full-time basis, or
    - (ii) such longer period as may be determined by the Minister in any particular case,
- following the date on which the person was provisionally accredited.

### **31 Conditional accreditation of new scheme teachers**

- (1) This section applies to a person who is a new scheme teacher but who:
  - (a) does not meet the requirements specified in the professional teaching standards for provisional accreditation, or
  - (b) has not completed an approved course.
- (2) A teacher accreditation authority may, on application by a person to whom this section applies:
  - (a) conditionally accredit the person, or
  - (b) refuse to conditionally accredit the person.
- (3) A teacher accreditation authority may conditionally accredit any such person if:
  - (a) the person holds a degree in an area that is relevant to the area in which the person is or is to be employed to teach, or
  - (b) the authority is satisfied that the person has completed a substantial part of an approved course.
- (4) It is a condition of a person's conditional accreditation under this section that the person undertakes such professional development or further teacher education (or both) as may be determined by the teacher accreditation authority for the school in which the person is employed.
- (5) In making any determination in relation to a person for the purposes of subsection (4), the teacher accreditation authority is to have regard to:
  - (a) any advice of the Institute, and
  - (b) the skills, knowledge and relevant experience of the person.

- (6) The conditional accreditation of a person under this section ceases (unless sooner revoked by a teacher accreditation authority):

  - (a) at the end of the relevant period, or
  - (b) if, before the end of the relevant period, the person is accredited at professional competence level by a teacher accreditation authority—when the person is accredited at that level.

(7) In this section:

*relevant period*, in relation to a person who is conditionally accredited under this section, means:

  - (a) if the person is employed on a full-time basis—the period of 4 years (or such longer period as may be determined by the Minister in any particular case) following the date on which the person was conditionally accredited, or
  - (b) if the person is employed on a casual or part-time basis:
    - (i) the period determined in accordance with the regulations to be commensurate with the 4-year period for persons employed on a full-time basis, or
    - (ii) such longer period as may be determined by the Minister in any particular case,

following the date on which the person was conditionally accredited.

## **32 Accreditation of new scheme teachers at professional competence level**

A teacher accreditation authority may, on application by a person who is a new scheme teacher:

- (a) accredit the person at the professional competence level if:
    - (i) the person is provisionally accredited under section 30 or conditionally accredited under section 31, and
    - (ii) the authority is satisfied that the person meets the requirements for accreditation at professional competence level, or
  - (b) refuse to accredit the person at professional competence level.

### **33 Revocation of accreditation of new scheme teachers under this Division**

A teacher accreditation authority may:

- (a) revoke the provisional accreditation of a person under section 30 if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards that apply to the person, or
- (b) revoke the conditional accreditation of a person under section 31 if the authority is satisfied that the person has failed to comply with:
  - (i) the condition referred to in section 31 (4), or
  - (ii) any of the requirements of the professional teaching standards that apply to the person, or
- (c) revoke the accreditation of a person who is a new scheme teacher at professional competence level if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards for accreditation at professional competence level.

**Note.** Section 24 provides other grounds for revocation of accreditation.

### **Division 4 Mandatory accreditation of transition scheme teachers**

#### **34 Definitions**

In this Division:

*relevant date* means the date on which this Division commences.

*transition scheme teacher* means a person:

- (a) who was, at any time before the relevant date, employed to teach in a school, and
- (b) who was not, as at that date, the holder of:
  - (i) a teaching qualification prescribed by the regulations, or
  - (ii) a degree in an area that is relevant to the area in which the person is employed to teach.

### **35 Employment of transition scheme teachers**

- (1) A person who is a transition scheme teacher must not be employed to teach in a school unless the person:
  - (a) is accredited, and
  - (b) is working under the on-site supervision of another teacher (other than a person who is provisionally or conditionally accredited under Division 3 or who is conditionally accredited under this Division).
- Note.** **Accredited** is defined under section 3 to include conditionally accredited under this Division.

(2) If, in contravention of this section, a person:

  - (a) is employed, or
  - (b) continues to be employed,

the person's employer is guilty of an offence.

Maximum penalty: 100 penalty units.

### **36 Conditional accreditation of transition scheme teachers**

- (1) A teacher accreditation authority may, on application by a person who is a transition scheme teacher:
  - (a) conditionally accredit the person under this section, or
  - (b) refuse to conditionally accredit the person.
- (2) It is a condition of the accreditation of a person under this section that the person works, to the satisfaction of the teacher accreditation authority for the school in which the person is or is to be employed, towards obtaining a degree in an area that is relevant to the area in which the person is employed to teach.
- (3) The conditional accreditation of a person under this section ceases (unless sooner revoked by a teacher accreditation authority):
  - (a) 7 years after the date on which the person was conditionally accredited (or such longer period as the Minister may determine in any particular case), or
  - (b) if, before the end of that period, the person is accredited at professional competence level by a teacher accreditation authority—when the person is accredited at that level.

### **37 Accreditation of transition scheme teachers at professional competence level**

A teacher accreditation authority may, on application by a person who is a transition scheme teacher:

- (a) accredit the person at the professional competence level if:
  - (i) the person is conditionally accredited under section 36, and
  - (ii) the authority is satisfied that the person meets the requirements of the professional teaching standards for accreditation at professional competence level, or
- (b) refuse to accredit the person at professional competence level.

### **38 Revocation of accreditation under this Division of transition scheme teachers**

A teacher accreditation authority may:

- (a) revoke the conditional accreditation of a person who is a transition scheme teacher if the authority is satisfied that the person has failed to comply with:
  - (i) the condition referred to in section 36 (2), or
  - (ii) any of the requirements of the professional teaching standards that apply to the person, or
- (b) revoke the accreditation of any such person at professional competence level if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards for accreditation at professional competence level.

**Note.** Section 24 provides other grounds for revocation of accreditation.

## **Division 5 Voluntary accreditation**

### **39 Voluntary accreditation of teachers at various levels**

- (1) This section applies to any person who is a teacher (other than a new scheme teacher within the meaning of Division 3 or a transition scheme teacher within the meaning of Division 4).
- (2) A teacher accreditation authority may, on application by a person to whom this section applies:
  - (a) accredit the person at any one or more of the following levels:
    - (i) professional competence level,

- (ii) professional accomplishment level,  
(iii) professional leadership level, or
- (b) refuse to accredit the person at any such level.
- (3) A person may be accredited at more than one such level at any one time.
- (4) A teacher accreditation authority may not accredit a person to whom this section applies at the level of accreditation in respect of which the application is made unless the authority is satisfied that the person meets the requirements for accreditation at that particular level.
- (5) A teacher accreditation authority may revoke the accreditation of a person at a particular level under this section if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards for accreditation at that level.  
**Note.** Section 24 provides other grounds for revocation of accreditation.
- (6) The revocation of a person's accreditation at professional competence level under this section operates to revoke the person's accreditation (if any) at professional accomplishment level or professional leadership level, or both, under this section.

#### **40 Voluntary accreditation of new scheme and transition scheme teachers at higher levels**

- (1) This section applies to any person:
  - (a) who is a new scheme teacher within the meaning of Division 3 and who is accredited under that Division at professional competence level, or
  - (b) who is a transition scheme teacher within the meaning of Division 4 and who is accredited under that Division at professional competence level.
- (2) A teacher accreditation authority may, on application by a person to whom this section applies:
  - (a) accredit the person at either or both of the following levels:
    - (i) professional accomplishment level,
    - (ii) professional leadership level, or
  - (b) refuse to accredit the person at any such level.

- (3) A teacher accreditation authority may not accredit a person under this section at the level of accreditation in respect of which the application is made unless the authority is satisfied that the person meets the requirements for accreditation at that particular level.
- (4) A teacher accreditation authority may revoke the accreditation of a person at a particular level under this section if the authority is satisfied that the person has failed to comply with any of the requirements of the professional teaching standards for accreditation at that level.  
**Note.** Section 24 provides other grounds for revocation of accreditation.
- (5) The revocation of a person's accreditation at professional competence level under Division 3 or 4 operates to revoke the person's accreditation (if any) at professional accomplishment level or professional leadership level, or both, under this section.

#### **41 Application fee**

- (1) A person who applies for accreditation under this Division must pay an application fee to the Institute.
- (2) The amount of the application fee is to be prescribed by the regulations.
- (3) If a person applies for accreditation under this Division, the teacher accreditation authority concerned may refuse to accredit the person unless the authority is satisfied that the person has paid the application fee.

## **Part 5      Miscellaneous**

### **42 Exchange of information**

- (1) The Institute may enter into an arrangement (*an information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging any information that is held by the Institute or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to information that assists in the exercise of the functions of the Minister or Institute under this Act or of the relevant agency concerned.
- (3) Under an information sharing arrangement, the Institute and the relevant agency are, despite any other Act or law of the State, authorised:
  - (a) to request and receive information that is held by the other party to the arrangement, and
  - (b) to disclose that information to the other party.
- (4) This section does not limit the operation of section 18 (3).
- (5) In this section:  
*relevant agency* means any of the following:
  - (a) the Board of Studies,
  - (b) the Department of Education and Training,
  - (c) any teacher accreditation authority,
  - (d) any university or other tertiary institution,
  - (e) any other person or body prescribed by the regulations.

### **43 Institute of Teachers Fund**

- (1) There is to be established in the Special Deposits Account an Institute of Teachers Fund (*the Fund*) into which is to be paid:
  - (a) the fees payable to the Institute under this Act, and
  - (b) any money appropriated by Parliament for the purposes of the Institute, and
  - (c) the proceeds of any property acquired by the Institute under section 44, and
  - (d) any other money required by or under this or any other Act to be paid into the Fund.

- (2) There is to be paid from the Fund:
  - (a) all amounts required to meet expenditure incurred by the Institute in exercising its functions and in the administration of this Act, and
  - (b) any allowances paid to members of the Board and the Council, and
  - (c) any amount authorised by the Minister to be paid from the Fund, and
  - (d) all other payments required by or under this or any other Act to be paid from the Fund.
- (3) The Institute may invest money in the Fund:
  - (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power to invest money held by the Institute, in accordance with and subject to the *Trustee Act 1925* and in any other manner approved by the Minister with the concurrence of the Treasurer.

**44 Institute may accept gifts, devises or bequests**

- (1) The Institute has power to acquire by gift, devise or bequest, any property for the purposes of this Act.
- (2) The Institute may agree to the condition to which any such gift, devise or bequest is subject.
- (3) The rule of law relating to perpetuities does not apply to any condition to which the Institute has agreed under this section.

**45 Delegations**

- (1) An office holder may delegate to any person any function conferred or imposed on the office holder by or under this Act, other than this power of delegation.
- (2) In this section:  
*office holder* means the Minister, the Director-General or the Chairperson.

**46 Act to bind Crown**

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.
- (2) However, nothing in this Act renders the Crown liable to prosecution for an offence.

**47 Contracting out void**

- (1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary.
- (2) No contract or agreement made or entered into before or after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act or the regulations.

**48 Personal liability**

A matter or thing done or omitted to be done by:

- (a) the Institute, or
- (b) a member of staff of the Institute, or
- (c) a member of the Board or the Council, or
- (d) any other person acting under the direction of the Institute, the Board or the Council,

does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**49 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court.

**50 Recovery of money**

Any fee due to the Institute may be recovered as a debt in a court of competent jurisdiction.

## **51 Service of documents on Institute**

- (1) A document may be served on the Institute by leaving it at, or by sending it by post to:
  - (a) the office of the Institute, or
  - (b) if it has more than one office, any one of its offices.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Institute in any other manner.

## **52 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may exempt any specified class of persons from any provision of this Act or the regulations. The exemption of any such class of person is subject to such conditions as may be prescribed by the regulations.
- (3) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.

## **53 Savings and transitional provisions**

Schedule 3 has effect.

## **54 Amendment of other Acts**

Each Act specified in Schedule 4 is amended as set out in that Schedule.

## **55 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

## **Schedule 1 Provisions relating to members and procedure of the Board**

(Section 10 (4))

### **1 Definitions**

In this Schedule:

**appointed member** means a member of the Board including the Chairperson but not including the Chief Executive.

**member** means any member of the Board.

### **2 Acting members and acting Chairperson**

- (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Minister may, from time to time, appoint an appointed member to act in the office of Chairperson during the illness or absence of the Chairperson, and the appointed member, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.
- (3) The Minister may remove any person from any office to which the person was appointed under this clause.

### **3 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **4 Remuneration of appointed members**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **5 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or

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- (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time.

## **6 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:

Schedule 1 Provisions relating to members and procedure of the Board

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- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
  - (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister otherwise determines:
    - (a) be present during any deliberation of the Board with respect to the matter, or
    - (b) take part in any decision of the Board with respect to the matter.
  - (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
    - (a) be present during any deliberation of the Board for the purpose of making the determination, or
    - (b) take part in the making by the Board of the determination.
  - (6) A contravention of this clause does not invalidate any decision of the Board.

## 8 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

## **9 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

## **10 Quorum**

The quorum for a meeting of the Board is 3 members (one of whom must be the Chief Executive).

## **11 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, another appointed member elected as Chairperson for that meeting by the members who are present) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **13 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **14 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

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## **Schedule 2 Provisions relating to members and procedure of the Council**

(Section 13 (5))

### **1 Definitions**

In this Schedule:

**appointed member** means an appointed member as referred to in section 13 (1) (b).

**elected member** means an elected member as referred to in section 13 (1) (a).

**member** means any member of the Council (including the Chairperson).

### **2 Terms of office of appointed and elected members**

- (1) Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) Subject to this Schedule and the regulations, an elected member holds office for a period of 3 years.

### **3 Acting appointed and elected members**

- (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the appointed member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member. The Minister may remove any person from the office to which the person was appointed under this subclause.
- (2) The regulations may provide for the appointment of a person to act in the office of an elected member during the illness or absence of the elected member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.

### **4 Remuneration of appointed and elected members**

An appointed member or an elected member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**5 Filling of vacancy in office of appointed or elected members**

- (1) If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) If the office of any elected member becomes vacant, the vacancy is to be filled in accordance with the regulations.

**6 Vacancy in office of appointed or elected member**

- (1) The office of an appointed member or an elected member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and, in the case of an appointed member, is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time.
- (3) The Minister may remove an elected member from office at any time for misbehaviour or incompetence.

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## 7 Disclosure of pecuniary and other conflicts of interests

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest, or any other interest, in a matter being considered or about to be considered at a meeting of the Council, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure by a member at a meeting of the Council that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Institute.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines:
  - (a) be present during any deliberation of the Council with respect to the matter, or
  - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest, or any other interest, in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Council for the purpose of making the determination, or
  - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.

## **8 General procedure**

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

## **9 Quorum**

The quorum for a meeting of the Council is 12 members.

## **10 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **11 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

## **12 Transaction of business outside meetings or by telephone**

- (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council.
- (2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **13 First meeting**

The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

## **Schedule 3 Savings and transitional provisions**

(Section 53)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Interim Council**

- (1) Until such time as the elected members of the Council are elected in accordance with section 13 (1) (a), the Council is to consist of such members as may be appointed by the Minister.
- (2) Schedule 2 to this Act applies, with such modifications as are necessary, to and in respect of any such interim Council.

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## **Schedule 4 Amendment of Acts**

(Section 54)

### **4.1 Education Act 1990 No 8**

#### **Section 47 Registration requirements for non-government schools**

Omit section 47 (d). Insert instead:

- (d) teaching staff for the school have the necessary experience and qualifications (having regard to accreditation under the *Institute of Teachers Act 2004* but without limiting such other matters as may be relevant),

### **4.2 Public Sector Employment and Management Act 2002 No 43**

#### **Schedule 1 Departments**

Insert in alphabetical order of Departments:

Institute of Teachers

Chief Executive of the Institute

[Second reading speech made in—

Legislative Assembly on 12 May 2004

Legislative Council on 29 June 2004]

BY AUTHORITY