

Version No. 004

Victorian Institute of Teaching Act 2001

Act No. 96/2001

Version incorporating amendments as at 12 November 2003

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Victorian Institute of Teaching Act 2001

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Version incorporating amendments as at 12 November 2003

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The main purpose of this Act is to recognise, promote and regulate the teaching profession by—

- (a) providing for the registration of teachers in schools in Victoria;
- (b) regulating the conduct of those teachers;
- (c) providing a procedure for handling complaints about teachers registered or permitted to teach under this Act;
- (d) establishing the Victorian Institute of Teaching.

2. Commencement

- (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision referred to in sub-section (1) does not come into operation before 1 February 2003, it comes into operation on that day.

3. Definitions

In this Act—

"complaint" includes an allegation of serious incompetence, serious misconduct or unfitness to teach;

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s. 3

S. 3 def. of
"Secretary"
amended by
No. 83/2003
s. 14(4).

"Council" means the Council of the Victorian Institute of Teaching established under section 8;

"Fund" means the Victorian Institute of Teaching Fund;

"Institute" means the Victorian Institute of Teaching established under section 4;

"registered teacher" means a person registered under this Act as a teacher or a person who is granted permission to teach under this Act;

"registration" includes permission to teach under section 14;

"school" means a State school established by the Minister under section 21 of the **Education Act 1958** or a school registered or required to be registered under Part III of that Act;

"Secretary" means the Secretary to the Department of Education and Training;

"sexual offence" means—

- (a) an offence against section 44(2), 45, 47, 47A, 48, 49, 49A, 54, 56, 58, 60, 68, 69 or 70 of the **Crimes Act 1958**; or
- (b) an offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**; or
- (c) an offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes**

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Act 1958 inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**; or

- (d) an offence against section 38, 39, 40, 44(1), 53, 55, 57 or 59 of the **Crimes Act 1958** involving a person under the age of 18; or
- (e) an offence of attempting to commit any offence referred to in paragraph (a), (b), (c) or (d); or
- (f) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of or include elements which constitute an offence referred to in paragraph (a), (b), (c), (d) or (e);

"teacher"—

- (a) means a person who in a school, undertakes duties that include the delivery of an educational program or the assessment of student participation in an educational program; and
- (b) includes a person employed as the principal or the head of a school whether or not that person undertakes the duties of a teacher if the person has been employed as a teacher in any school prior to being employed as the principal or the head of a school;
- (c) does not include a teacher's aide, a teacher's assistant or a student teacher;

S. 3 def. of
"teacher"
 amended by
 No. 23/2002
 s. 203(1)(a).

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Victorian Legislation and Parliamentary Documents

S. 3 def. of
"Victorian
Electoral
Commission"
inserted by
No. 23/2002
s. 203(1)(b).

"Victorian Electoral Commission" means the
Victorian Electoral Commission established
under section 6 of the **Electoral Act 2002**.

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Part 2—Victorian Institute of Teaching

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PART 2—VICTORIAN INSTITUTE OF TEACHING

4. Establishment of Institute

- (1) There is established a Victorian Institute of Teaching.
- (2) The Institute—
 - (a) is a body corporate with perpetual succession;
 - (b) has an official seal;
 - (c) may sue and be sued in its corporate name;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The official seal must be kept as directed by the Institute and must only be used as authorised by the Institute.
- (4) All courts must take judicial notice of the imprint of the official seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

5. Functions of Institute

- (1) The functions of the Institute are to—
 - (a) recognise and promote the profession of teaching and regulate members of the teaching profession;
 - (b) approve teacher education courses that will lead to qualifications or competencies in teaching that satisfy the requirements for registration as a teacher;

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- (c) recommend for the approval of the Minister qualifications, criteria and standards for the registration and renewal of registration of teachers in schools in Victoria;
- (d) develop, establish and maintain standards of professional practice for entry into the teaching profession and for continuing membership of the profession;
- (e) grant registration or permission to teach in Victorian schools;
- (f) issue certificates of registration to those teachers who are registered to, or have permission to, teach in schools in Victoria;
- (g) maintain a register of teachers who are registered to, or have permission to, teach in schools in Victoria;
- (h) develop, maintain and promote a code of conduct for the teaching profession;
- (i) investigate the conduct, competence and fitness to teach of registered teachers and impose sanctions where appropriate;
- (j) develop and maintain a Professional Learning Framework to support and promote the continuing education and professional development of teachers;
- (k) undertake professional development programs and activities in relation to the functions of the Institute;
- (l) undertake and promote research about teaching and learning practices;
- (m) advise the Minister about any matters concerning teachers including the professional development needs of teachers;

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- (n) prepare for the approval of the Minister a strategic plan and an annual business plan of the Institute;
 - (o) perform any other function conferred on the Institute by this or any other Act.
- (2) The Minister may not approve qualifications, criteria and standards for the registration or renewal of registration of teachers in schools in Victoria unless they have been recommended by the Institute under sub-section (1)(c).

6. Powers of Institute

- (1) For the purpose of performing its functions, the Institute has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.
 - (2) Without limiting sub-section (1)—
 - (a) the Institute may be a member of a company, association, trust or partnership;
 - (b) form or participate in the formation of a company, association, trust or partnership;
 - (c) enter into a joint venture with any other person or persons;
 - (d) apply for, obtain and hold, whether on its own behalf or jointly with any other person, any intellectual property rights;
 - (e) assign or grant licences in respect of those intellectual property rights, with or without charge;
 - (f) enter into agreements and arrangements for the commercial exploitation of intellectual property rights;
 - (g) charge fees for services provided by the Institute under this Act.
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- (3) This section does not limit any other power given to the Institute by any other provision of this Act.

7. Ministerial advice

The Institute must give due regard to any advice given by the Minister in relation to the exercise of its powers and the performance of its functions.

8. Membership of the Council

- (1) The Institute is to be governed by a Council of the Victorian Institute of Teaching.
- (2) The Council is to consist of not more than 20 members of whom—
- (a) 9 are to be appointed by the Governor in Council in accordance with sub-section (3)(a), (b), (c), (d), (e) and (f); and
 - (b) 10 are to be elected under sub-section (4)(a) and (b); and
 - (c) one is to be the Secretary or the nominee of the Secretary.
- (3) Of the appointed members—
- (a) one is to be appointed as the Chairperson on the nomination of the Minister;
 - (b) 3 are to be teachers nominated by the Minister following the Minister's consideration of names submitted to the Minister by organisations representing the professional interests of teachers;
 - (c) one is to be a principal nominated by the Minister following the Minister's consideration of names submitted to the Minister by organisations representing the professional interests of principals in Victorian schools;

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- (d) one is to be the parent of a student in a State school or a school registered under Part III of the **Education Act 1958** selected by the Minister following the Minister's consideration of names submitted to the Minister from organisations representing parents of students in those schools;
- (e) 2 are to be persons nominated by the Minister following the Minister's consideration of names submitted to the Minister from persons or bodies employing teachers in schools registered under Part III of the **Education Act 1958** or bodies or organisations representing those employers;
- (f) one is to be a person with experience or expertise in preparing people to be teachers nominated by the Minister following the Minister's consideration of names submitted to the Minister from tertiary institutions that prepare people to be teachers.
- (4) Of the elected members—
- (a) 8 are to be persons who are registered under section 11 of whom—
- (i) 2 are to be elected by and from registered teachers who are currently teaching in a primary school that is a State school or are currently teaching at least one subject in such a primary school or the primary part of such a school;
- (ii) one is to be elected by and from registered teachers who are currently teaching in a primary school that is registered under Part III of the **Education Act 1958** that is operating under the auspices of the Catholic
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Education Commission or is currently teaching at least one subject in such a primary school or the primary part of such a school;

- (iii) 2 are to be elected by and from registered teachers who are currently teaching in a secondary school that is a State school or are currently teaching at least one subject in such a secondary school or the secondary part of such a school;
- (iv) one is to be elected by and from registered teachers who are in a secondary school that is registered under Part III of the **Education Act 1958** that is operating under the auspices of the Catholic Education Commission or is currently teaching at least one subject in such a secondary school or the secondary part of such a school;
- (v) one is to be elected by and from registered teachers who are currently teaching in a school that is registered under Part III of the **Education Act 1958** (other than a school referred to in sub-paragraph (ii) or (iv)) or is currently teaching at least one subject in such a school;
- (vi) one is to be elected by and from registered teachers who are currently teaching in a State special school for students with disabilities or impairments;

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- (b) 2 are to be elected by registered teachers of whom—
- (i) one is to be a principal in a State school; and
 - (ii) one is to be a principal in a school registered under Part III of the **Education Act 1958**.
- (5) The Minister, in nominating persons to be appointed as members of the Council, must ensure that there will be at least one each of the following persons elected or appointed to the Council—
- (a) a teacher teaching in a school that is registered under Part III of the **Education Act 1958** other than a school auspiced by the Catholic Education Commission;
 - (b) a teacher teaching in a school that is registered under Part III of the **Education Act 1958** and auspiced by the Catholic Education Commission;
 - (c) a Principal of a school that is registered under Part III of the **Education Act 1958** other than a school auspiced by the Catholic Education Commission;
 - (d) a Principal of a school that is registered under Part III of the **Education Act 1958** and auspiced by the Catholic Education Commission;
 - (e) a representative of persons or bodies employing teachers in schools that are registered under Part III of the **Education Act 1958** other than schools auspiced by the Catholic Education Commission;
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- (f) a representative of persons or bodies employing teachers in schools that are registered under Part III of the **Education Act 1958** and auspiced by the Catholic Education Commission.
 - (6) The Council—
 - (a) is responsible for the management of the affairs of the Institute; and
 - (b) may exercise the powers of the Institute.
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PART 3—REGISTRATION AND PERMISSION TO TEACH

Division 1—Registration of Teachers

9. Application for registration

- (1) An application for registration as a teacher may be made to the Institute.
- (2) An application must be—
 - (a) made in the form approved by the Institute; and
 - (b) accompanied by—
 - (i) evidence that the person is qualified for registration in accordance with section 10; and
 - (ii) details of any information required by section 54; and
 - (iii) the fee fixed under section 81.
- (3) The Institute may require an applicant to provide further information or material in respect of the application.
- (4) The Institute may require an applicant for registration to—
 - (a) undergo a criminal record check or provide information about criminal records;
 - (b) submit to any tests or provide any references or reports to determine the suitability or fitness of the person to teach;
 - (c) submit to any medical or psychiatric examination that the Institute considers appropriate and, if required by the Institute, to provide any results or reports of the examination.

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10. Qualification for registration as a teacher

A natural person is qualified to be registered as a teacher if the person—

- (a) has obtained a qualification that is appropriate for entry to teaching approved by the Minister or obtained a qualification which is determined by the Institute to be equivalent to an approved qualification; and
- (b) produces evidence that the person satisfies the criteria approved by the Minister about—
 - (i) fitness to be a teacher; and
 - (ii) competence in speaking or communicating in the English language for the person to teach in a school; and
- (c) produces evidence that the person has achieved the standards of professional practice required for registration that are approved by the Minister.

11. Registration

- (1) The Institute may register an applicant as a teacher if—
 - (a) the applicant is qualified for registration under section 10; and
 - (b) there are no grounds under sub-section (2) under which the Board may refuse to grant registration to the applicant; and
 - (c) the applicant has satisfied the requirements of section 9;
- (2) The Institute may refuse to grant registration to an applicant on any one or more of the following grounds—

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- (a) that the character of the applicant is such that it would not be in the public interest to allow the applicant to teach in a school;
 - (b) that the applicant has been convicted or found guilty of a sexual offence or an indictable offence in Victoria or an equivalent offence in another jurisdiction;
 - (c) that the applicant has been convicted or found guilty of an offence where the ability of the applicant to teach in a school is likely to be affected because of the conviction or finding of guilt or where it is not in the public interest to allow the applicant to teach in a school because of the conviction or finding of guilt;
 - (d) that the applicant has previously held a right to teach in a school in another State or Territory or another country, being the equivalent of registration as a teacher under this Act, and that right has been cancelled or suspended and not restored because of conduct which, if committed within Victoria, would entitle the Institute to suspend or cancel the registration;
 - (e) that the applicant has not produced evidence which satisfies the Institute of his or her fitness to teach.

12. Provisional registration

- (1) An applicant who is qualified in accordance with section 11 except that the applicant has not achieved to the satisfaction of the Institute the standard of professional practice required for registration under section 11 is eligible to be provisionally registered.

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- (2) Provisional registration is subject to the condition that the registered person will before the end of the first year after the registration or within any further period not exceeding one year authorised by the Institute achieve the standard of professional practice required for registration under section 11.
- (3) The provisional registration of a teacher continues in force for the period not exceeding one year that is specified by the Institute or for a further period not exceeding one year that is specified by the Institute or until the registered teacher achieves the standard of professional practice required for registration under section 11, whichever occurs first.
- (4) The Institute may impose any condition, limitation or restriction it thinks appropriate on the provisional registration of a teacher.
- (5) The Institute may, upon application by the registered teacher, amend, vary or revoke any condition, limitation or restriction imposed under sub-section (4).

Division 2—Permission to teach

13. Application for permission to teach

- (1) An application for permission to teach may be made to the Institute.
- (2) An application must be—
 - (a) in the form approved by the Institute and contain particulars of the person or body who intends to employ or engage the applicant; and
 - (b) accompanied by the fee fixed under section 81.

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- (3) The Institute may require an applicant to provide further information or material in respect of the application.

14. Permission to teach

- (1) The Institute may grant an applicant permission to teach if—
- (a) the applicant has the appropriate skills and experience to teach and satisfies the requirements of section 10(b); and
 - (b) there are no grounds under section 11(2) that apply to the applicant; and
 - (c) the applicant has provided any information or material required under section 13;
 - (d) the applicant has paid the fee required by section 13(2)(b).
- (2) The Institute may impose any condition, limitation or restriction it thinks appropriate on the permission to teach including—
- (a) the period for which the permission remains in force;
 - (b) any subject that the person is permitted to teach;
 - (c) the school where the person is permitted to be employed or engaged at and teach.

Division 3—General Provisions

15. Entitlement of applicant to make submissions

If the Institute is proposing to refuse an application for registration or permission to teach or to impose conditions, limitations or restrictions on the registration or permission to teach of an applicant, the Institute must not do so until—

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- (a) it has given the applicant notice of this proposal; and
- (b) it has given the applicant an opportunity to make submissions to the Institute about the proposal.

16. Notification of outcome of application

- (1) Upon determining an application under this Part, the Institute must notify the applicant as to whether or not registration or permission to teach has been granted to the applicant.
- (2) A notice under sub-section (1) about an application for registration must include the following information—
 - (a) if the registration has been granted—
 - (i) the type of registration granted and the period of registration;
 - (ii) whether or not any conditions, limitations or restrictions have been imposed on the registration and, if so, the reasons for imposing those conditions, limitations or restrictions;
 - (b) if the registration has not been granted—
 - (i) the reasons why it has not been granted; and
 - (ii) a statement that the applicant has a right to obtain a review of the decision not to grant registration.

17. Duration and renewal of registration

- (1) The registration of a teacher, other than provisional registration under section 12, continues in force until the fifth anniversary of the date of the grant of registration.

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- (2) The renewal of registration of a teacher, other than provisional registration under section 12, continues in force until the fifth anniversary of the date of the grant or renewal of registration.
 - (3) The Institute may, before any registration expires, extend the registration for a period not exceeding 12 months if the Institute is satisfied there are special circumstances making it necessary to do so.

18. Application for renewal of and refusal to renew registration

- (1) An application for renewal of registration—
 - (a) must be made to the Institute before the existing registration expires; and
 - (b) must be accompanied by—
 - (i) evidence satisfactory to the Institute that the applicant has maintained an appropriate level of professional practice in the preceding 5 years referred to in sub-section (4)(a);
 - (ii) details of any information required by section 54;
 - (iii) the fee fixed under section 81.
- (2) If a person does not apply for renewal of registration before the end of the existing registration period, the Institute may renew that person's registration if the application is made within 3 months after the end of the registration period and if the applicant pays an additional fee fixed by the Institute which must not be more than 50% of the fee for renewal of registration.

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- (3) If a person's registration has expired without being renewed that person is deemed to be registered for 3 months after that expiry or, if an application for renewal has been made in accordance with subsection (2), for 3 months after that application is made, whichever is the later and if, at the end of that period of 3 months, the Institute has not renewed his or her registration, the Institute must remove that person's name from the register.
- (4) The Institute may refuse to renew the registration of an applicant—
 - (a) if the Institute is satisfied that the applicant has not maintained an appropriate level of professional practice in the preceding 5 years having regard to the standards of professional practice approved by the Minister; or
 - (b) on any other ground on which the Institute might refuse to grant registration.

19. Effect of suspension of registration

For the purposes of this Act, a teacher whose registration is suspended is deemed not to be registered for the period of that suspension.

20. Registration obtained by fraud

- (1) If the Institute believes that the registration of a teacher has been obtained by fraud or misrepresentation or that the qualifications upon which the teacher relied for registration have been withdrawn the Institute must conduct a hearing into the matter.
- (2) The Institute must give notice of the time and place of the hearing to the teacher.

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- (3) The provisions applying to the conduct of a formal hearing under Part 4 apply to a hearing under this section as if the hearing under this section were a formal hearing.
- (4) If, at the end of the hearing, the Institute determines that the registration of the teacher has been obtained by fraud or misrepresentation or that the qualifications upon which the teacher has relied for registration have been withdrawn, the Institute may cancel the registration of the teacher or take any other action that may be taken under Part 4.

21. Annual fees

- (1) Every registered teacher must pay an annual registration fee fixed under section 81 to the Institute on the anniversary of the date on which the person was registered or granted permission to teach.
- (2) If a registered teacher fails to pay the annual registration fee without reasonable excuse, the Institute may suspend the registration of the teacher or their permission to teach.
- (3) The Institute may revoke a suspension under subsection (2) if the person concerned gives a satisfactory explanation of the failure and pays the annual registration fee together with any additional fee fixed under section 81.

Division 4—The Register

22. The Register

There shall be a Register of Teachers containing the following particulars in relation to each registered teacher—

- (a) the teacher's name;

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- (b) the registration status of the teacher including details as to the type of registration held;
- (c) the teacher's qualifications;
- (d) the professional expertise that is recognised by the Institute;
- (e) the date of registration;
- (f) the registration number.

23. Publication of Register

The Institute must maintain the Register and make an up to date copy available for inspection by any person at the Institute's offices during normal office hours, free of charge.

24. Use of certificate as evidence

A certificate purporting to be signed by the Chairperson or any two members of the Council to the effect that—

- (a) a person is or is not or was or was not, at any specified date, registered as a teacher under this Act; or
- (b) a teacher did or did not at any specified date have the permission of the Institute to teach under this Act—

is evidence, and, in the absence of evidence to the contrary, is proof of the matters stated in it.

PART 4—DISCIPLINARY PROCEEDINGS

Division 1—Cancellation of registration or permission to teach without inquiry

25. Cancellation of registration or permission to teach without inquiry

- (1) A person who is registered under this Act ceases to be so registered if the person is, in Victoria or elsewhere, convicted or found guilty of a sexual offence.
- (2) A person who has obtained the permission of the Institute to teach in a school ceases to have that permission if the person, in Victoria or elsewhere, is convicted or found guilty of a sexual offence.
- (3) A person who, in Victoria or elsewhere, is convicted or found guilty of a sexual offence is disqualified from teaching in a school.
- (4) For the purposes of sub-sections (1), (2) and (3), a conviction or finding of guilt takes effect on the date of the conviction or finding of guilt and the lodging of an appeal against the conviction or finding does not affect the operation of those sub-sections.
- (5) If a finding or conviction in relation to a person referred to in sub-section (1), (2) or (3) is quashed on appeal the relevant sub-section ceases, from the date the finding or conviction was quashed, to apply to the person with respect to that particular finding or conviction.
- (6) Nothing in this section limits the powers of the Institute under this Part.

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S. 25(7)
substituted by
No. 83/2003
s. 12.

Victorian Legislation and Parliamentary Documents

- (7) This section applies to any conviction or finding of guilt of a sexual offence whether occurring before, on or after the commencement of section 12 of the **Education Legislation (Miscellaneous Amendments) Act 2003**.

Division 2—Powers of Inquiry

26. Powers of inquiry

- (1) The Institute may in accordance with this Part inquire into any information it receives under section 27 or 28 or any complaint that provides evidence of the serious incompetence of a registered teacher, serious misconduct of a registered teacher or that a registered teacher is unfit to be a teacher.
- (2) The Institute must in writing notify—
- (a) the registered teacher; and
 - (b) the employer of the registered teacher; and
 - (c) the person who made the complaint—
- of its determination to inquire or not to inquire into the registered teacher's competence or fitness to teach or the conduct of the registered teacher.

27. Employer to notify Institute of action against teacher

- (1) The employer of a registered teacher must inform the Institute if the employer has taken any action against the registered teacher in response to allegations of serious incompetence of the registered teacher, serious misconduct of the registered teacher or that the registered teacher is unfit to be a teacher or any other actions that may be relevant to the registered teacher's fitness to teach.

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- (2) The employer of a registered teacher must provide the Institute with any information the Institute may reasonably require to conduct an inquiry under this Part.
- (2A) The employer of a registered teacher must immediately notify the Institute if the employer becomes aware that the teacher has been charged with or committed for trial for a sexual offence or convicted or found guilty of a sexual offence.
- (2B) The Chief Commissioner of Police must immediately notify the Institute if the Chief Commissioner becomes aware that a registered teacher has been charged with or committed for trial for a sexual offence or convicted or found guilty of a sexual offence.

S. 27(2A)
inserted by
No. 83/2003
s. 13.

S. 27(2B)
inserted by
No. 83/2003
s. 13.

28. Inquiry into criminal conduct

If the Institute is informed that a registered teacher has been convicted or found guilty of an indictable offence other than a sexual offence, the Institute must conduct an inquiry under this Part into the registered teacher's fitness to teach.

Division 3—Preliminary Investigations into Complaints

29. When complaints are to be investigated

- (1) The Institute must investigate a complaint of serious incompetence, serious misconduct or a complaint involving the continued fitness to teach of a registered teacher unless the Institute has determined that the complaint is frivolous or vexatious.
- (2) In order to determine whether or not it is necessary to conduct a formal or informal hearing into a complaint, the Institute may conduct a preliminary investigation into the complaint or request the employer of the teacher who is the

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subject of the complaint to conduct the preliminary investigation.

- (3) The Institute may, in writing, delegate to—
- (a) an employee of the Institute; or
 - (b) an investigator retained by the Institute; or
 - (c) a member of the Council or a number of members not exceeding 3; or
 - (d) the employer of the teacher who is the subject of the complaint—

its power to conduct a preliminary investigation into a complaint, other than its power to make determinations upon a preliminary investigation.

30. Outcome of preliminary investigation

- (1) Upon completing a preliminary investigation, the person or persons conducting the investigation may make one of the following recommendations—
- (a) that the investigation into the matter should not proceed further; or
 - (b) that an informal or formal hearing should be held into the matter.
- (2) The Institute must determine whether or not to act on the recommendations of any person conducting the preliminary investigation.

31. Institute may determine to conduct a hearing

The Institute may, of its own motion, determine to conduct a formal or informal hearing into a registered teacher's competence or fitness to teach or the conduct of the registered teacher without conducting a preliminary investigation.

Division 4—Formal and Informal Hearings

32. Establishment and notification of an informal hearing

If the Institute has determined under section 30 or 31 that an informal hearing be held into the conduct, competence or the continued fitness to teach of a registered teacher, the Institute must—

- (a) refer the matter to the Professional Practice and Conduct Committee to hold the informal hearing; and
- (b) fix a time and place for the hearing to be held; and
- (c) by registered post, serve a notice on the registered teacher under section 34; and
- (d) serve notice on any complainant by registered post which complies with section 40(a) and (b).

33. Professional Practice and Conduct Committee to conduct informal hearing

- (1) A person who has made a complaint or undertaken a preliminary investigation of the matter is not entitled to be a member of the Professional Practice and Conduct Committee.
- (2) If—
 - (a) the Professional Practice and Conduct Committee is unable to hear the matter because there are not enough members available to sit on it; or

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- (b) the Institute is of the opinion that a person with special expertise is required for the hearing—

the chairperson of the Council may fill a vacant position on the Professional Practice and Conduct Committee by appointing a person who is not a member of the Council.

34. Notice of an informal hearing

A notice of an informal hearing must—

- (a) state the nature of the hearing and the complaint made against the teacher; and
- (b) give the time and place of the hearing; and
- (c) state that the teacher may choose to have the matter determined by a formal hearing and state the differences between a formal and informal hearing; and
- (d) state that there is no right to legal representation at the hearing, but that the teacher is entitled to be present and to make submissions and to be accompanied by another person; and
- (e) state that the hearing is not open to the public; and
- (f) list the findings the Professional Practice and Conduct Committee can make.

35. Conduct of an informal hearing

At an informal hearing—

- (a) the Professional Practice and Conduct Committee must hear and determine whether or not the matter before it should proceed to a formal hearing; and

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- (b) the teacher who is the subject of the hearing is entitled to be present, to make submissions and to be accompanied by another person but is not entitled to be represented; and
 - (c) the proceedings of the hearing must not be open to the public.

36. Findings and determinations of an informal hearing

- (1) After considering all the submissions made to the hearing, the Professional Practice and Conduct Committee may find—
 - (a) the matter should be referred to a formal hearing; or
 - (b) the matter should not be referred to a formal hearing.
- (2) If the Committee finds that there should be a formal hearing the Committee must refer the matter to a formal hearing.

37. Change of informal hearing to formal hearing during course of hearing

If, before the end of the informal hearing—

- (a) the teacher requests that a formal hearing be held; or
- (b) the Professional Practice and Conduct Committee is of the opinion that a formal hearing should be held—

the Committee must abandon the informal hearing and refer the matter to a formal hearing.

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38. Establishment and notification of formal hearing

If—

- (a) the Institute has determined under section 30 or 31 that a formal hearing be held; or
- (b) the Professional Practice and Conduct Committee has referred a matter to a formal hearing under section 36 or 37—

the Institute must—

- (c) appoint a panel to hold the hearing; and
- (d) fix a time and place for the hearing to be conducted; and
- (e) serve a notice on the teacher by registered post which complies with section 40; and
- (f) serve a notice on any complainant by registered post which complies with section 40(a) and (b).

39. Constitution of a hearing panel for a formal hearing

- (1) A panel appointed under section 38 must consist of not less than 3 persons, of whom—
 - (a) one is to be the Chairperson who is to be a member of the Council; and
 - (b) one is to be a registered teacher.
- (2) If—
 - (a) the Institute is unable to appoint a panel because there are not enough members available to sit on it; or
 - (b) the Institute is of the opinion that a person with special expertise is required for the hearing—

the Chairperson of the Council may fill a vacant position on the panel by appointing a person who is not a member of the Council.

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- (3) The following people are not entitled to be members of a panel for a formal hearing—
- (a) a person who has undertaken a preliminary investigation of the matter which is the subject of the hearing;
 - (b) a person who has been a member of the Professional Practice and Conduct Committee which held an informal hearing into the matter;
 - (c) a complainant.

40. Notice of a formal hearing

A notice of a formal hearing must—

- (a) state the nature of the hearing and the complaint or allegations made against the teacher; and
- (b) give the time and place of the hearing; and
- (c) state that there is a right to make submissions and to be represented, that the hearing is open to the public, list the possible findings the panel can make and state that there is a right to apply for a review of the panel's determinations.

41. Conduct of a formal hearing

At a formal hearing—

- (a) the hearing panel must hear and determine the matter before it; and
 - (b) the teacher who is the subject of the hearing is entitled to be present, to make submissions and to be represented; and
 - (c) if the hearing arises out of a complaint, the identity of the complainant is not to be published or broadcast and the complainant—
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- (i) in the case of a proceeding which has not been closed under paragraph (d), is entitled to be present; and
 - (ii) if not called as a witness, may make submissions with the permission of the panel; and
- (d) the proceedings are to be open to the public unless the panel determines that the proceedings should be closed because the hearing is taking evidence of intimate, personal or financial matters; and
- (e) if the panel has determined that the proceedings are closed, the panel may determine that the identity of any witness giving evidence in the proceedings is not to be published or broadcast; and
- (f) the panel may determine that any information that might enable the teacher who is the subject of the hearing to be identified prior to the making of a final determination must not be published if the panel considers it necessary to do so to avoid prejudicing the administration of justice or for any other reason in the interests of justice.

42. Findings and determinations of a formal hearing into conduct

- (1) After considering all the submissions made to a formal hearing into the conduct of a registered teacher the panel may make findings about whether or not—
- (a) the teacher has, whether by act or omission, engaged in serious misconduct; or
 - (b) the teacher has, whether by act or omission, been seriously incompetent; or

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- (c) the teacher is, whether by act or omission, not fit to teach.
- (2) If after considering the submissions made at an inquiry the panel finds that—
- (a) the teacher is seriously incompetent in his or her teaching practice; or
 - (b) the teacher is not fit to teach; or
 - (c) the teacher is guilty of serious misconduct; or
 - (d) the teacher has breached or failed to comply with any provision of this Act; or
 - (e) the teacher has been convicted or found guilty in Victoria of an indictable offence or has elsewhere been convicted or found guilty of an offence which if committed in Victoria, would be an indictable offence and that the teacher is not fit to teach; or
 - (f) the registration of the teacher has been obtained by fraud or misrepresentation or concealment of facts—
- the panel may make a determination to do one or more of the following—
- (g) impose conditions, limitations or restrictions on the registration of the teacher;
 - (h) suspend the registration of the teacher for the period and subject to the conditions, limitations and restrictions, if any, specified in the determination;
 - (i) cancel the registration of the teacher.
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Division 5—General Provisions relating to Inquiries

43. Inquiry may continue even if person no longer registered

The Institute may conduct or continue to conduct an inquiry into the conduct or activities of a person who was a registered teacher at the time of the conduct or activities but who has ceased to be a registered teacher as if the person were a registered teacher.

44. Procedure at formal and informal hearings

At a formal or informal hearing—

- (a) subject to this Part, the procedure of the Professional Practice and Conduct Committee or a panel is in its discretion; and
- (b) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit; and
- (c) the Committee or a panel is not bound by rules of evidence but may inform itself in any way it thinks fit; and
- (d) the Committee or a panel is bound by the rules of natural justice.

45. Powers of panel conducting a formal hearing

Sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to a panel in the conduct of a formal hearing as if it were a Board or the Chairman of a Board appointed by the Governor in Council.

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46. Determinations

- (1) A determination made by a panel on a hearing comes into operation on its making or at any later time stated in the determination.
- (2) A determination of a panel has effect as if it were a determination of the Institute.

47. Notice of cancellations and determinations of panel

- (1) The Institute must advise the teacher of the determination of the Professional Practice and Conduct Committee or a panel under this Part and of the reasons for the determination, within 28 days after the making of the determination.
- (2) The Institute must advise a person whose registration is cancelled under section 25 of that cancellation.

48. Notifications

- (1) If a determination has been made by a panel—
 - (a) imposing conditions, limitations or restrictions on the registration of a teacher; or
 - (b) suspending the registration of a teacher; or
 - (c) cancelling the registration of a teacher—the Institute must give notice of the determination—
 - (d) in the Government Gazette; and
 - (e) to the teacher registration authorities in all other States or Territories of the Commonwealth and in New Zealand; and
 - (f) to the teacher's employer; and

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- (g) if the Institute has received a request for information about the person in respect of whom the determination has been made from a teacher registration authority outside Australia or New Zealand, that authority.
- (2) Notice under sub-section (1) must be given as soon as practicable after the determination has been made.
- (3) If the registration of a teacher is cancelled by virtue of section 25 the Institute must give notice of that cancellation in accordance with paragraphs (d), (e), (f) and (g) of sub-section (1).
- (4) If a complaint has been made to the Institute, the Institute must notify the complainant—
- (a) of whether or not a formal or informal hearing is to be conducted into the matter and, if so, of the time and place of the hearing and, in the case of a formal hearing, of the fact that the complainant's identity is not to be published or broadcast; and
 - (b) in the case of a formal or informal hearing, of whether or not the complainant has any right to make submissions at the hearing; and
 - (c) of the findings and determinations of any hearing arising from that complaint and the reasons for those findings and determinations, within 28 days after their having been made.

49. Offence to disclose information identifying complainant, witness or teacher

A person must not publish or broadcast or cause to be published or broadcast any report of a formal hearing under this Part which contains information which would enable—

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- (a) the complainant to be identified; or
 - (b) if the panel has made a determination prohibiting the publication or broadcast of the identity of a witness, that witness to be identified; or
 - (c) if the panel has made a determination prohibiting the publication or broadcast of the identity of a registered teacher prior to the making of a final determination, that teacher to be identified prior to the making of the final determination—

unless the complainant, witness or teacher has, before publication or broadcast, consented to this.

Penalty: 50 penalty units for a natural person or 100 penalty units for a body corporate.

50. Enforcement of determination

- (1) The Institute must take all action necessary to give effect to a cancellation of registration under section 25 or a determination made on an inquiry under this Part.
- (2) Action under sub-section (1) includes, but is not limited to—
 - (a) the amendment of a certificate of registration; and
 - (b) the recording of matters in the Register.
- (3) A registered teacher who does not comply with a determination under section 42 is guilty of serious misconduct.

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51. Revocation of suspension

- (1) The Institute may at the request of the person concerned or on its own initiative revoke the suspension of the person's registration.
 - (2) The Institute must without delay give written notice of the revocation to the person concerned.
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Part 5—Review by Victorian Civil and Administrative Tribunal

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**PART 5—REVIEW BY VICTORIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL**

52. Review by VCAT

- (1) A person may apply to the Victorian Civil and Administrative Tribunal for review of—
 - (a) a determination refusing the person's application for registration or renewal of registration; or
 - (b) a determination made under Part 4 cancelling or suspending the person's registration; or
 - (c) a determination made under Part 4 imposing conditions, limitations or restrictions on a person's registration.
- (2) An application for review under this Part must be made—
 - (a) in the case of an application under subsection (1)(a)—within 28 days after the day on which the Institute gives notice of the determination to the person; or
 - (b) in any other case—within 3 months after the day on which the Institute gives notice of the determination to the person.

PART 6—OFFENCES

53. Unregistered teachers

- (1) A person who is not registered, or who does not have permission to teach, under this Act must not undertake the duties of a teacher in a school.

Penalty: 100 penalty units.

- (2) A person or body must not employ a person to teach in a school unless the person is registered to teach, or has permission to teach, under this Act.

Penalty: 100 penalty units.

54. Provision of information by teachers

- (1) If a registered teacher has in respect of a sexual offence or other indictable offence—

- (a) been committed for trial; or
(b) been convicted or found guilty of the offence—

the person must notify the Institute within 30 days after that commitment, conviction or finding of guilt.

Penalty: 50 penalty units.

- (2) An applicant for registration or renewal of registration as a teacher must ensure that details of any of the matters referred to in this section are set out in the application.

55. False representation

- (1) A person who is not a registered teacher must not claim to be a registered teacher or hold himself or herself out as being a registered teacher.

Penalty: 10 penalty units.

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- (2) A person must not fraudulently or by false representation obtain registration or permission to teach under this Act.

Penalty: 10 penalty units.

56. Return of document

- (1) If a teacher's registration is cancelled or suspended, the teacher must, within 14 days after the date on which notice of the determination is given, return the certificate or other document issued by the Institute as evidence of registration or permission to teach to the Institute.

Penalty: 5 penalty units.

- (2) The Institute must return a certificate or other document issued by the Institute as evidence of registration or permission to teach to the holder of the certificate or other document as soon as possible—
- (a) after the end of the suspension period; or
 - (b) if the suspension is sooner revoked, after that revocation.

57. Proceedings

Proceedings for an offence under this Part may be commenced by any person authorised by the Institute to do so.

PART 7—ADMINISTRATION

Division 1—The Council

58. Resignation and removal

- (1) A member of the Council may resign from office by delivering to the Chairperson a signed letter of resignation.
- (2) The Governor in Council may at any time remove a member appointed by the Governor in Council from office.
- (3) The office of a member becomes vacant if—
 - (a) the member becomes bankrupt; or
 - (b) the member is found guilty of an offence which is, or which would if committed in Victoria be, an indictable offence; or
 - (c) the Council resolves that the member has been absent from 3 consecutive meetings of the Council without the leave of the Chairperson, or in the case of the Chairperson without the Minister's leave.

59. Elected members

- (1) The Registrar of the Institute must maintain a roll of electors for the Institute consisting of registered teachers.
- (2) If the Council is, after making all reasonable efforts to do so, unable to obtain sufficient nominations to fill the number of vacancies to be filled by an election, the Governor in Council may appoint a member or members from the roll of electors to fill the vacancy.

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- (3) If the number of candidates for an election to the Council is equal to or less than the number of vacancies to be filled, the Council may appoint the candidate or candidates as a member or members of the Council.
- (4) If there is no candidate at an election or if for any reason no person is elected at an election, the Governor in Council may appoint a registered teacher to be a member of the Council even though that person has not been elected.
- (5) A person appointed under sub-section (2), (3) or (4) is deemed to be an elected member of the Council.
- (6) The Victorian Electoral Commission must conduct any election required for membership of the Council.
- (7) The Victorian Electoral Commission must ensure that an election required for membership of the Council is conducted in accordance with the regulations and may exercise the powers and perform any functions relating to the conduct of elections that are conferred on the Victorian Electoral Commission by the regulations.
- (8) A candidate for an election may submit a printed candidate statement not exceeding the number of words fixed by the Victorian Electoral Commission (which must not be less than 50 words) to be distributed by the Victorian Electoral Commission with the ballot papers for the election.

S. 59(6)
amended by
No. 23/2002
s. 203(2)(a).

S. 59(7)
amended by
No. 23/2002
s. 203(2)(b).

S. 59(8)
amended by
No. 23/2002
s. 203(2)(b).

60. Terms and conditions of appointment

- (1) An elected member holds office for 3 years and is eligible to stand for re-election.
- (2) An appointed member holds office for the term, not exceeding 3 years, specified in the instrument of appointment but is eligible for re-appointment.

- (3) A member must in the exercise of his or her functions—
 - (a) act honestly; and
 - (b) exercise reasonable care and diligence; and
 - (c) not make improper use of any information acquired as a member of the Council.
- (4) A member is appointed subject to any other terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.

61. Payment of members

- (1) A member or acting member of the Council, other than a member who holds a full-time government office, or a full-time office in the public service, teaching service or with a statutory authority is entitled to receive the remuneration and fees that are fixed from time to time by the Governor in Council for that member.
- (2) Each member or acting member of the Council is entitled to receive the personal and travelling expenses that are fixed from time to time by the Governor in Council.

62. Acting members

- (1) If a member is unable to perform his or her duties or is absent from duty or there is a vacancy in the office of a member, the Chairperson on the recommendation of the Council may appoint a person to act in the place of that member during that inability, absence or until the vacancy is filled or for any other period specified in the instrument of appointment.

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- (2) A person so appointed, while acting in the place of the member or during the vacancy in the office of a member—
 - (a) has all the powers and may perform all the functions of the member; and
 - (b) if the person does not hold a full-time government office or a full-time office in the public service, the teaching service or with a statutory authority, is entitled to be paid any remuneration and travelling or other expenses that the member would have been entitled to under section 61.
 - (3) An acting member may resign his or her office in writing delivered to the Chairperson of the Council.
 - (4) The Chairperson on the recommendation of the Council may remove or suspend an acting member from office.

63. Procedure of Council

- (1) The Chairperson must preside at any meeting of the Council at which he or she is present.
 - (2) If the Chairperson is absent, a member elected by the members present at a Council meeting must preside.
 - (3) A question arising at a meeting is determined by a majority of votes and the person presiding at a meeting has a deliberative vote and a second vote if necessary.
 - (4) A majority of the members of the Council currently holding office constitutes a quorum.
 - (5) Meetings of the Council (of which there must be at least 6 in each year) shall be held at the times and places determined by the Council or as directed by the Chairperson.
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- (6) The Council must keep a record of the decisions and full and accurate minutes of its meetings.
- (7) Subject to this Act the Council may regulate its own proceedings.

64. Member's interests

- (1) A member who has a pecuniary or other interest in any matter in which the Council is concerned must—
 - (a) if the member is present at a meeting of the Council at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the member is aware that the matter is to be considered at a meeting of the Council at which the member does not intend to be present, disclose the nature of the interest to the Chairperson or Deputy Chairperson of the Council before the meeting is held.
- (2) The member—
 - (a) may take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.

65. Resolutions without meetings

- (1) If—
 - (a) the Council has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and

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- (b) a majority of the members for the time being sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Council held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

- (2) If a resolution is, under sub-section (1), deemed to have been passed at a meeting of the Council, each member must as soon as practicable be advised of the matter and given a copy of the resolution.
- (3) For the purposes of sub-section (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.
- (4) The majority of members referred to in sub-section (1)(b) must not include a member who, because of section 64, is not entitled to vote on the resolution.

66. Approved methods of communication for Council

- (1) If not less than two-thirds of the members of the Council for the time being holding office so agree, a meeting of the Council may be held by means of a method of communication, or by means of a combination of methods of communication, approved by the Chairperson of the Council for the purposes of that meeting.
- (2) For the purposes of this Part, a member of the Council who participates in a meeting held as permitted by sub-section (1) is present at the meeting even if he or she is not physically present

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at the same place as another member participating in the meeting.

- (3) This section—
- (a) applies to a meeting or a part of a meeting;
 - (b) does not apply to a meeting conducted for the purposes of Part 4.

67. Effect of vacancy or defect

An act or decision of the Council is not invalid only because—

- (a) of a vacancy in its membership; or
- (b) of a defect or irregularity in the appointment or election of any of its members; or
- (c) in the case of a presiding or acting member, the occasion for that person so presiding or acting had not arisen or had ceased.

Division 2—Further powers of the Council

68. Institute staff

- (1) A Registrar, a chief executive officer and any other employees that are necessary for the purposes of this Act may be employed.
- (2) The chief executive officer is responsible for implementing any policy or decision of the Minister or the Council made in accordance with this Act.

69. Savings for certain staff

- (1) A person appointed under section 68 who was immediately before that appointment employed in—
 - (a) the Department of Education, Employment and Training is entitled on the expiry of his or her term of office to be employed under Part 3 of the **Public Sector Management**

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- and Employment Act 1998** on terms and conditions no less favourable than those of his or her employment in the public service;
- (b) the teaching service under the **Teaching Service Act 1981** is entitled on the expiry of his or her term of office to be employed in the teaching service on terms and conditions no less favourable than those of his or her employment in the teaching service.
- (2) For the purposes of long service leave, a person—
- (a) referred to in sub-section (1)(a) is to be taken to have continued to be an employee within the meaning of the **Public Sector Management and Employment Act 1998** for the period of his or her appointment; and
- (b) referred to in sub-section (1)(b) is to be taken to have continued to be employed in the teaching service under the **Teaching Service Act 1981** for the period of his or her appointment.
- (3) A person who immediately before being employed by the Institute was a contributor to or member of a superannuation fund or arrangement established by the **State Superannuation Act 1988** continues, subject to that Act, to be a contributor to or member of that fund or arrangement for so long as he or she is employed by the Institute.
- (4) The terms and conditions of a superannuation fund or arrangement to which a person continues to contribute or of which he or she continues to be a member by virtue of sub-section (3) apply to that person, for so long as he or she is employed by the Institute as if there had been no change of employer.
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70. Establishment of committees or bodies to act as delegates of Council

- (1) The Institute may from time to time, by instrument in writing, establish a committee or any other body to exercise any of the powers of the Council that are delegated to its members under this Act.
- (2) The Institute may make any provision with respect to the terms and conditions of appointment of the members of the committee or body and the procedure of the committee or body as the Institute thinks fit.
- (3) The Institute may appoint members to a committee or body including any person who is not a member of the Council.
- (4) A committee or body established under subsection (1) may permit members to participate in a particular meeting, or all meetings, by telephone, closed circuit television or other means of communication.
- (5) The members of a committee or body may exercise any power or perform any function delegated to its members by the Institute.

71. Delegation

The Council may, in writing, delegate to—

- (a) a member of the Council; or
- (b) the Registrar or any other person employed by the Institute under section 68; or
- (c) a member of a committee or body established under section 70; or
- (d) the members of the governing board of a college established under section 84 or 94—

its powers under this Act, other than—

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- (e) the power to refuse to grant registration or endorsement of registration or to refuse to renew registration; or
- (f) the power to impose or to amend, vary or revoke conditions, limitations or restrictions on registration or endorsement of registration; or
- (g) this power to delegate.

72. Accreditation Committee

- (1) The Council must establish a committee to be called the Accreditation Committee.
- (2) The Accreditation Committee has the following functions—
 - (a) to assess and approve teacher education courses for the purposes of registration under this Act consistently with guidelines issued by the Institute;
 - (b) to advise the Council or make recommendations to the Council about the criteria for and the assessment of those courses.
- (3) The Accreditation Committee has all the powers necessary to enable it to perform its functions.

73. Professional Practice and Conduct Committee

- (1) The Council must establish a committee to be called the Professional Practice and Conduct Committee.
- (2) The Professional Practice and Conduct Committee has the following functions—
 - (a) to advise on standards of professional conduct for teachers;

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- (b) to conduct informal hearings under Part 4 and to determine whether a matter needs to be referred to a formal hearing.
- (3) The Professional Practice and Conduct Committee is to consist of not more than 5 persons, of whom—
 - (a) one is to be the Chairperson who is to be a member of the Council; and
 - (b) 2 are to be members of the Council.
- (4) The Professional Practice and Conduct Committee has all the powers necessary to enable it to perform its functions.

74. Membership of committees and bodies

Any committee or body established under section 70 consists of—

- (a) at least one member of the Council, who will chair the committee or body;
- (b) a majority of persons who are registered teachers;
- (c) such other persons that are appointed by the Institute with expertise appropriate to carry out the functions of the committee or body.

75. Terms of office

- (1) A member of a committee, hearing panel or body established under section 38, 70, 72 or 73 holds office for such period as determined by the Council.
- (2) A member of such a committee, hearing panel or body is eligible for re-appointment.
- (3) A member is, in respect of that appointment as member, not subject to the **Public Sector Management and Employment Act 1998**.

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76. Resignation and removal

- (1) A member of a committee, hearing panel or body established under section 38, 70, 72 or 73 may resign the office of member by writing signed by the member and addressed to the Institute.
- (2) The Institute may at any time remove a member of such a committee, hearing panel or body from office.
- (3) If a member of the committee, hearing panel or body dies, resigns or is removed from office, the Institute may appoint an acting member to fill the vacant office.
- (4) A member appointed under sub-section (3) holds office for the rest of the term of appointment of the member whose place he or she fills.

77. Payment of members

- (1) A member or acting member of a committee, hearing panel or body established under section 38, 70, 72 or 73, other than a member who holds a full-time government office, or a full-time office in the public service, teaching service or with a statutory authority is entitled to receive the remuneration and fees (if any) that are fixed from time to time by the Institute for that member.
- (2) Each member or acting member of the committee, hearing panel or body is entitled to receive the personal and travelling expenses that are fixed from time to time by the Institute.

78. Procedure of committee, panel or body

- (1) The chairperson must preside at a meeting of a committee, hearing panel or body established under section 38, 70, 72 or 73 at which he or she is present.

- (2) If the chairperson is not present at a meeting the members present may elect a member to preside at the meeting.
- (3) A question arising at a meeting is to be decided by a majority of votes and the person presiding at the meeting has a deliberative vote and a second or casting vote.
- (4) A majority of the members of the committee, hearing panel or body currently holding office constitutes a quorum.
- (5) If a member of the Professional Practice and Conduct Committee or a hearing panel is unable to attend a meeting of the Committee or panel that is conducting a hearing or part of a hearing under Part 4, the remaining members of that Committee or hearing panel may continue to conduct the hearing or that part of the hearing if a quorum of members is present.
- (6) Subject to this Act a committee, hearing panel or body established under section 38, 70, 72 or 73 may regulate its own proceedings.

79. Effect of vacancy or defect

An act or decision of a committee, hearing panel or body established under section 38, 70, 72 or 73 is not invalid only because—

- (a) of a vacancy in its membership; or
- (b) of a defect or irregularity in the appointment of any of its members.

80. Immunity

- (1) A member of the Council or person responsible for keeping the register is not personally liable for anything done or omitted to be done in good faith—

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- (a) in the exercise of a power or the discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would but for sub-section (1), attach to a member of the Council or the person responsible for keeping the register, attaches instead to the Institute.

Division 3—Finances

81. Fees

- (1) The Minister, after calling for and considering recommendations from the Institute, may fix any fee that is required or permitted to be fixed under this Act.
- (2) In the case of any fee which the Minister is empowered to fix—
 - (a) the Minister must fix the fee for a period of 12 months and may amend or vary the fee at the end of that period; and
 - (b) the Minister may fix a different fee for a different case and may allow for the reduction, waiver or refund, in whole or in part, of any fee; and
 - (c) the Minister must ensure that any fee fixed under this section is published in a newspaper circulating generally throughout Victoria and in the Government Gazette.

82. Victorian Institute of Teaching Fund

- (1) The Institute must establish and maintain a Fund to be known as the Victorian Institute of Teaching Fund.
 - (2) There must be paid into the Fund—
 - (a) any investment income received by the Institute; and
 - (b) the proceeds of the sale of any investment made by the Institute; and
 - (c) any other money received by the Institute.
 - (3) There must be paid out of the Fund any payment that is authorised by the Institute to be made out of the Fund for or towards the costs and expenses of the exercise of powers or performance of functions by the Institute.
 - (4) The Institute may invest money in the Fund—
 - (a) in any manner in which a trustee may invest trust funds under the **Trustee Act 1958**; or
 - (b) in any other manner approved by the Minister.
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PART 8—REGULATIONS

83. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) requirements relating to the conduct of elections for members of the Council including provisions for voting at those elections, the method of voting and the counting of the votes;
 - (b) any other matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may confer a discretionary authority on the Victorian Electoral Commission, a returning officer or a specified person.

S. 83(2)(c)
amended by
No. 23/2002
s. 203(3).

PART 9—COLLEGES

84. Establishment of Colleges

- (1) The Institute may by Order published in the Government Gazette—
 - (a) establish a College for promoting particular domains of practice within the teaching profession; and
 - (b) appoint a governing board of the College to govern the College.
- (2) The College and the governing board of the College have the functions and powers conferred on them that are declared by the Order under sub-section (1).
- (3) The Order under sub-section (1) must contain a charter for the College that sets out—
 - (a) the name of the College;
 - (b) the domain of practice to be recognised by the College;
 - (c) the purposes and functions of the College;
 - (d) the governance and funding arrangements for the College;
 - (e) any powers of the Institute under the Act which are to be delegated to the members of the governing board of the College;
 - (f) the reporting and operational relationship between the College and Institute;
 - (g) the terms of office of the governing board of the College.

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- (4) The Institute may, after consultation with the governing board of the College and in accordance with the charter for the College by Order published in the Government Gazette alter any matter or thing that has been established by or under the charter of the College.
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PART 10—CONSEQUENTIAL AMENDMENTS

85. Education Act 1958

- (1) For section 37(1) and (2) of the **Education Act 1958** substitute—

"(1) The Board must make and keep a register of schools other than State schools and may from time to time add to or revise the register."

- (2) In section 37(3) of the **Education Act 1958**—

- (a) paragraph (a) is **repealed**;
- (b) in paragraph (b), **omit** "of teachers or";
- (c) paragraph (c) is **repealed**;

- (3) Sections 38, 39, 40 and 41A of the **Education Act 1958** and Part IIIA are **repealed**.

- (4) In section 43(1), for paragraphs (b) and (ba) **substitute**—

"(b) any person employed as a teacher in the school is not registered under the **Victorian Institute of Teaching Act 2001** or does not have the permission of the Institute under that Act to teach in that school; or

(ba) the school has employed as a teacher a person whom the proprietor or head teacher knew to be disqualified from teaching in a school under section 25 of the **Victorian Institute of Teaching Act 2001**; or"

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Part 10—Consequential Amendments

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86. New section 44 substituted

For section 44 of the **Education Act 1958**
substitute—

"44. Unregistered schools

A person must not carry on or conduct a school unless the school is registered under this Part.

Penalty: 10 penalty units."

87. New section 49 substituted

For section 49 of the **Education Act 1958**
substitute—

"49. Publication of register of schools

- (1) The Secretary must cause a copy of the register of schools to be published at the times and in the manner that the Minister directs.
- (2) The Secretary must make a copy of the last published copy of the register of schools available for inspection by any person at the Department's offices during normal office hours, free of charge."

88. Amendments to Teaching Service Act 1981

- (1) In section 64AA(1) of the **Teaching Service Act 1981**, for paragraph (c) **substitute—**

"(c) one shall be nominated by the Minister after calling for expressions of interest from teachers employed in State schools."

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Part 10—Consequential Amendments

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- (2) After section 81 of the **Teaching Service Act 1981** insert—

"82. Saving for membership of Merit Protection Board

Despite the amendment to section 64AA(1)(c) by the **Victorian Institute of Teaching Act 2001**, the person who at the date of commencement of section 88 of that Act held office continues to hold office subject to this Act for the period of that person's appointment."

89. Amendments to VCAT Act

In Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** after Part 21 insert—

"PART 22—VICTORIAN INSTITUTE OF TEACHING ACT 2001

100. Constitution of Tribunal for teaching matters

Despite section 64(2), in a proceeding under the **Victorian Institute of Teaching Act 2001**, the Tribunal is to be constituted by, or to include, a member who, in the opinion of the President, has knowledge of, or experience in, the teaching profession."

PART 11—TRANSITIONALS AND SAVINGS

90. First Council of the Institute

- (1) Despite section 8, the first Council after the commencement of this section is to consist of not more than 20 members appointed by the Minister for the period fixed by the Minister and subject to the terms and conditions fixed by the Minister.
- (2) The term of appointment of members of the first Council may be fixed by the Minister having regard to the time needed to conduct elections for the members of the Council referred to in section 8.
- (3) The first Council must arrange for—
 - (a) the preparation of a roll of the electors for the Council consisting of the persons referred to in section 91 who are deemed to be registered or to have permission to teach under this Act;
 - (b) the conduct of elections for members of the Council of the Institute who are to take office at the end of the appointment of the members of the first Council.
- (4) The Registered Schools Board must provide the first Council with a copy of the register of teachers kept under section 37(1)(a) of the **Education Act 1958** as in force at the date of commencement of this section.
- (5) A person or body employing or engaging teachers to teach in Victorian schools must provide, at the written request of the Institute, details of teachers employed or engaged by that person or body who are eligible to be on the roll of electors.

91. Existing registrations and permissions

- (1) A person who was registered as a teacher under section 37 of the **Education Act 1958** immediately before the commencement of this section of this Act is deemed to be registered under section 11 of this Act.
- (2) A person who had the express permission of the Registered Schools Board to teach in a school under Part III of the **Education Act 1958** immediately before the commencement of this section of this Act is deemed to have permission to teach under section 14 of this Act.
- (3) A person who was, within the period of 2 years before the commencement of this section, employed or engaged as a teacher in a State school in a fixed term or on-going position is deemed to be registered under section 11.
- (4) A person who was, within the period of 2 years before the commencement of this section, employed or engaged as a casual relief teacher in a State school is deemed to be registered under section 11 subject to the condition that the person will, if required by the Institute, before the first anniversary of the date of that deemed registration or within any further period authorised by the Institute achieve the standard of professional practice required by section 10.
- (5) If a person is deemed to be registered under this section and the registration of that person under section 37 of the **Education Act 1958** included an entry of any additional qualifications, the teacher's registration under this Act is deemed to include an entry of those qualifications.
- (6) Despite section 21, a person who is deemed by this section to be registered or to have permission to teach under this Act must pay first the annual

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registration fee under that section before 30 April 2003.

- (7) A reference in any Act (other than this Act) or a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to—
- (a) a teacher registered under the **Education Act 1958** who is deemed by sub-section (1) to be registered under this Act must, on and after the commencement of this section, be construed as a reference to a teacher registered under this Act unless the context otherwise requires; or
 - (b) a teacher who had the express permission of the Registered Schools Board to teach in a school who is deemed by sub-section (2) to have permission to teach under section 14 of this Act must, on and after the commencement of this section, be construed as a reference to a teacher who has permission to teach under section 14 of this Act unless the context otherwise requires.

92. Continuation of existing inquiries

- (1) If an investigation or inquiry into the registered teacher's competence or fitness to teach or the professional conduct of the teacher under the **Education Act 1958** has commenced but not been completed before the commencement of Part 4 of this Act—
- (a) that investigation or inquiry may be completed on and after that date; and
 - (b) any appeal or other further proceedings which might have been taken in relation to that investigation or inquiry under the **Education Act 1958** may be taken on and after that date—

as if this Act had not been enacted.

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- (2) The Institute must give effect to a decision made on an inquiry, investigation or appeal to which sub-section (1) applies as if it were a decision under this Act.

93. Application of this Act to conduct occurring before the commencement of Part 4

- (1) The Institute may perform its functions and exercise its powers under this Act in relation to the activities or conduct of a registered teacher which occurred before the commencement of Part 4 if no hearing into that conduct or activity has been commenced under the **Education Act 1958**.
- (2) Sub-section (1) does not apply to activities or conduct which are the subject of proceedings to which section 92 applies.

94. First College to be established by Minister

- (1) Despite section 84, the Minister by Order published in the Government Gazette may—
- (a) establish the first College under this Act; and
 - (b) appoint a Board of the College to be the governing body of the College.
- (2) The College and the Board of the College have the functions and powers conferred on them that are declared by the Order under sub-section (1).
- (3) The Order under sub-section (1) must contain a charter for the College that sets out—
- (a) the name of the College;
 - (b) the domain of practice to be recognised by the College;
 - (c) the purposes and functions of the College;
 - (d) the governance and funding arrangements for the College;

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- (e) any powers of the Institute under the Act which are to be delegated to a member of the governing Board of the College;
 - (f) the reporting and operational relationship between the College and Institute;
 - (g) the terms of office of the governing Board of the College.
- (4) On the commencement of section 84—
- (a) the College is deemed to be a College established by the Institute under that section; and
 - (b) the Institute may after—
 - (i) consultation with the governing body of the College; and
 - (ii) the expiration of the terms of office of the members of the governing board in office immediately before the commencement of section 84—
- by Order published in the Government Gazette alter any matters in the charter of the College.
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Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 1 November 2001

Legislative Council: 27 November 2001

The long title for the Bill for this Act was "A Bill to recognise, promote and regulate the profession of teaching and to establish the Victorian Institute of Teaching and for other purposes."

The **Victorian Institute of Teaching Act 2001** was assented to on 18 December 2001 and came into operation as follows:

Part 1 (sections 1–3), Part 2 (sections 4–8), Part 7 (sections 58–82), Part 8 (section 83), Part 9 (section 84), sections 88, 90, 94 on 20 June 2002: Government Gazette 20 June 2002 page 1346; Part 3 (sections 9–24), Part 4 (sections 25–51), Part 5 (section 52), Part 6 (sections 53–57), sections 85–87, 89, 91–93 on 31 December 2002: Government Gazette 19 December 2002 page 3278.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Victorian Institute of Teaching Act 2001** by Acts and subordinate instruments.

Electoral Act 2002, No. 23/2002

Assent Date: 12.6.02
Commencement Date: S. 203 on 1.9.02: Government Gazette 29.8.02 p. 2333
Current State: This information relates only to the provision/s amending the **Victorian Institute of Teaching Act 2001**

Education Legislation (Miscellaneous Amendments) Act 2003, No. 83/2003

Assent Date: 11.11.03
Commencement Date: Ss 12, 13, 14(4) on 12.11.03: s. 2
Current State: This information relates only to the provision/s amending the **Victorian Institute of Teaching Act 2001**

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Endnotes

3. Explanatory Details

No entries at date of publication.